AGENDA

MEETING OF THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES
September 13, 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 June 29, 2017.


5. Public Comment.

SAN ANTONIO WATER SYSTEM
HANDICAPPED ACCESSIBILITY STATEMENT
The San Antonio Water System Buildings and Meeting Rooms are accessible to individuals with disabilities. Accessible visitor parking spaces as well as the accessible entrance and ramp are located at the west side main entrance of the SAWS Headquarters Building, Tower I, 2800 U.S. Highway 281 North. Individuals with disabilities in need of auxiliary aids and services, including Deaf interpreters, must request such aids and services forty-eight (48) hours prior to the meeting. For assistance, contact the Board Administrator at 210-233-3690 or 711 (Texas Relay Service for the Deaf).
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 E.H. Wachs to provide: hydraulic powered pipe saw and appurtenant equipment, Bid No. 17-17078, for a total of $67,663.32.

2. Approving a one-time purchase from Technology International, Inc. to provide: automatic valve shutoff control panels and chlorine cylinder shutoff valves, Bid No. 17-17061A, for a total of $257,121.50.

3. Approving a one-time purchase from Freeit Data Solutions to provide: Nimble Expansion Shelves for additional 90TB raw storage for file shares and virtual desktop infrastructure, DIR-TSO-2716, Bid No. 17-17088, for a total of $229,411.28.

4. Approving a one-time purchase from SpawGlass to provide: furnish the structural and miscellaneous per plans and specifications for the Odor Control Unit stack fan support, BuyBoard #520-16, Bid No. 17-17087, for a total of $110,977.34.

5. Approving a one-time purchase and installation from Payton Construction, Inc. to provide: one ton capacity emergency chlorine scrubber tank, Bid No. 17-17079, for a total of $347,500.00.

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 Safety Supply, Inc. to provide: annual contract for safety harness (full body), Bid No. 16-8024, for a total of $79,468.22.

2. Acceptance of the sole source bid of IDEXX Distributions, Inc. to provide: annual contract for hydrolysable enzyme substrate packets, Bid No. 17-4017, for a total of $117,479.40.
7. A Resolution awarding a construction contract to Pronto Sandblasting & Coating & Oil Field Services Co., Inc. in an amount not to exceed $323,774.00 in connection with the Cox Manufacturing Project; approving a contract between the System, Texas Cox Partnership, Ltd., and Pronto Sandblasting & Coating & Oil Field Services Co., Inc. for the project work; authorizing the expenditures of funds in an amount of $179,888.83 for the System’s proportionate share of the project work payable to Pronto Sandblasting & Coating & Oil Field Services Co., Inc., and the expenditure of funds in an amount of $17,988.88 for the System’s proportionate share of the engineering design fees payable to Texas Cox Partnership, Ltd. (ANDREA BEYMER – SAM MILLS)

Water and Sewer Line Improvements

8. A Resolution approving Recapitulation Change Order No. 6 in the decreased amount of $1,029,434.10 to be credited to the construction contract with PM Construction & Rehab, LLC in connection with the 2014 Small Diameter Rehabilitation Project 1. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

9. A Resolution approving Recapitulation Change Order No. 4 in the decreased amount of $4,186,208.87 to be credited to the construction contract with PM Construction & Rehab, LLC in connection with the 2014 Small and Large Diameter Rehab Program - Project 2. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

10. A Resolution approving Recapitulation Change Order No. 2 in the decreased amount of $123,302.00 to be credited to the construction contract with SAK Construction, LLC in connection with the Castroville Road 48-inch Rehab Project. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

11. A Resolution awarding a professional services contract to K Friese & Associates, Inc. in an amount not to exceed $1,500,000.00 in connection with the 2017 Pipelines Condition Work Order Contract – Package I. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

12. A Resolution awarding a professional services contract to Unintech Consulting Engineers, Inc. in an amount not to exceed $1,250,000.00 in connection with the 2017 Pipelines Condition Work Order Contract – Package II. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

13. A Resolution awarding a professional services contract to LNV, Inc. in an amount not to exceed $500,000.00 in connection with the 2017 Pipelines Condition Work Order Contract – Package III. (ANDREA BEYMER – GAIL HAMRICK-PIGG)
14. A Resolution awarding a professional services contract to Lockwood, Andrews & Newnam, Inc. in an amount not to exceed $500,000.00 in connection with the 2017 Pipelines Condition Work Order Contract – Package IV. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

15. A Resolution awarding a professional services contract to Brown & Gay Engineers, Inc. dba BGE, Inc. in an amount not to exceed $1,250,000.00 in connection with the 2017 Pipelines Condition Work Order Contract – Package V. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

16. A Resolution awarding a professional services contract to Maestas & Associates, Inc. in an amount not to exceed $500,000.00 in connection with the 2017 Pipelines Condition Work Order Contract – Package VI. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

17. A Resolution awarding a professional services contract to Civil Design Services, Inc. dba CDS Muery in an amount not to exceed $1,500,000.00 in connection with the 2017 Pipelines Condition Work Order Contract – Package VII. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

18. A Resolution awarding a professional services contract to Arcadis U.S., Inc. in an amount not to exceed $1,000,000.00 in connection with the 2017 Pipelines Condition Work Order Contract – Package VIII. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

19. A Resolution ratifying the actions of the Vice President of Engineering and Construction in approving Contract Amendment No. 5 in an amount not to exceed $200,000.00 and approving Contract Amendment No. 6 in an amount not to exceed $368,100.00; authorizing the expenditure of additional funds to CH2M Hill Engineers, Inc. in an amount not to exceed $568,100.00 for additional engineering services in connection with the C-13 Broadway Corridor-Josephine Street to South Alamo Street Project. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

Production, Transmission and Treatment Improvements

20. A Resolution awarding a professional services contract to Garver, LLC in an amount not to exceed $221,803.00 in connection with the Dos Rios, Leon Creek and Medio Creek Water Recycling Centers – Tertiary Filter Expansion Project. (ANDREA BEYMER – MICHAEL MYERS)

EASEMENT AND REAL PROPERTY

21. A Resolution accepting an offer in the amount of $120,000.00 for the sale of 12720 S. Zarzamora located in San Antonio, Bexar County, Texas, and approving a purchase agreement with Rad Rav Enterprises, LLC; affirming a six percent commission to be paid to Cano and Company at closing and authorizing payment of closing costs up to $4,000.00 (excluding real estate commissions) at closing. (NANCY BELINSKY – BRUCE HABY)
MISCELLANEOUS ITEMS

22. A Resolution approving Contract Amendment No. 1 with Pure Technologies U.S., Inc. in an amount not to exceed $684,547.00 in connection with professional services for condition and risk assessment of pressurized water pipelines. (ANDREA BEYMER – SAM MILLS)

23. A Resolution awarding a professional services contract to EMA, Inc. dba EMA Services, Inc. in an amount not to exceed $1,135,518.00 in connection with the design of the new Production Control System Upgrade. (DOUG EVANSON – SREE PULAPAKA)

24. A Resolution awarding a contract to Baker Tilly Virchow Krause, LLP in an amount not to exceed $570,000.00 for independent audit and other professional services for the three fiscal years 2017 through 2019 with the option to extend the contract for two additional years. (DOUG EVANSON – MARY BAILEY)

25. A Resolution relating to the remarketing of obligations designated as “City of San Antonio, Texas Water System Variable Rate Junior Lien Revenue and Refunding Bonds, Series 2014B (No Reserve Fund)” into a new interest mode; authorizing certain SAWS Representatives to execute an approval certificate memorializing the terms of such remarketing; approving a remarketing agreement and remarketing memorandum relating to these obligations; and other matters in connection with the foregoing. (DOUG EVANSON – PHYLLIS GARCIA)

26. A Resolution offering sympathies to our neighbors adversely impacted by Hurricane Harvey; ratifying emergency aid and assistance provided to restore water, sewer and other operational services to communities adversely affected by Hurricane Harvey; authorizing continued aid and assistance to other communities adversely affected by Hurricane Harvey; authorizing deposit waivers for displaced customers; directing staff to seek reimbursement to the maximum extent possible. (ROBERT PUENTE)

27. PUBLIC HEARING: 2018 ANNUAL BUDGET

A. Briefing and deliberation regarding SAWS Historical Financial Performance (DOUG EVANSON)

B. Public Hearing Briefing (MARY BAILEY)

C. Public Hearing on the Annual Budget for the San Antonio Water System for the Fiscal Year ending December 31, 2018 and proposed rate adjustments.
ITEMS FOR INDIVIDUAL CONSIDERATION

CAPITAL IMPROVEMENT CONTRACTS
PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY

28. A Resolution awarding a design build contract to Kiewit Infrastructure South Co. in an amount not to exceed $7,487,584.00 in connection with the Central Water Integration Pipeline Project, Phase 1 Services. (DONOVAN BURTON)

EASEMENT AND REAL PROPERTY

29. A Resolution declaring a public necessity for public use, the acquisition of certain real property in the City of San Antonio being a permanent easement and temporary construction easements, the project consisting of new transmission water main, the construction of a pump station in the north central portion of Bexar County Texas, upgrades to existing pump stations and construction of pressure reducing valves, for the public use of the expansion and operation of the system through the construction of the Central Water Integration Pipeline Project; requesting that the City Council of the City of San Antonio 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. Project located in: NCB: 19221, 17606, 17428, 15669, 16332, 16331, 16329 and 12059. (NANCY BELINSKY – BRUCE HABY)

Developer Customer Contracts

30. 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). (ANDREA BEYMER – SAM MILLS)

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BOARD MEETING 6 09-13-17
31. **BRIEFING SESSION.**
   A. Briefing and deliberation regarding BexarMet Infrastructure and Improvements

32. **President/Chief Executive Officer’s Report.**
   A. Hurricane Harvey Emergency Response

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

34. The Regular Session of the September 13, 2017, Regular Board Meeting is hereby recessed to hold an Executive Session and discuss the matters listed below pursuant to Section §551.071 of the Texas Open Meetings Act.

35. **EXECUTIVE SESSION.**
   A. Consultation with attorneys regarding legal matters related to establishing rates for service of the San Antonio Water System, pursuant to Tex. Gov’t Code §551.071.

   B. Consultation with attorneys regarding legal matters related to the Consent Decree between the San Antonio Water System and the United States of America and the State of Texas, pursuant to Tex. Gov’t Code §551.071.

   C. Consultation with attorneys regarding legal matters related to the sewer line project and road collapse on Quintana Road in Bexar County, Texas, pursuant to Tex. Gov’t Code §551.071.

36. The Regular Session of the Regular Board Meeting of September 13, 2017, is hereby reconvened.

37. **Adjournment.** THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES MEETING OF SEPTEMBER 13, 2017, IS HEREBY ADJOURNED.
MINUTES

MEETING OF THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES
June 29, 2017, 3:00 P.M.
6th Floor Board Room #609
Administrative Offices
2800 U. S. Hwy 281 North, San Antonio, Texas 78212

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

Board Members Absent:
None

1. MEETING CALLED TO ORDER.

The meeting of the San Antonio Water System Board of Trustees was held on June 29, 2017, and called to order at 3:05 p.m. by Chairman Berto Guerra.

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 May 2, 2017.
Chairman Guerra asked if there were any corrections to the minutes. Hearing none, he stated the minutes were approved as presented.


On behalf of the Board, the staff and the city, Chairman Guerra welcomed the Mayor Ron Nirenberg to the SAWS Board. He commented on the Mayor’s knowledge of SAWS issues, and stated the mayor would be engaged in ensuring our water future.

Mayor Nirenberg stated he certainly came to this Board with a lot of enthusiasm. As a council member, his interest was in water security which was the number one role of this body. He looked forward to joining now as a colleague. His role was quite simply not, as some might expect, to antagonize but to challenge and to collaborate because there was not a more complex issue for our city. There was probably not a more important issue to work on and to accomplish together than water security. He stated he planned to be an active member of this body, and bring the voice of the public. As a council member and now as mayor, he had a million-and-a-half bosses as well. He looked forward to working with the Board. There was a lot of great work that had been done over the years in this room on many different subjects, but it was certainly an honor to be among the Board to be working on this together at the ground floor of our water challenges in the city.

Chairman Guerra introduced representatives of AccelerateH2O to present an award to Robert Puente. He welcomed Dick Evans, former chairman of Frost Bank and co-chairman of AccelerateH2O's Advisory Board, Randy Harig, chairman of Texas Research and Technology Foundation (TRTF) and former co-chairman of TRTF Water Committee, and Richard Seline, AccelerateH2O's executive director and senior advisor.

Mr. Seline gave a little background on the selection of SAWS and Mr. Puente for the Innovator of the Year Award. Texas was a $9 billion water technology marketplace with close to 7,000 water systems, 5,000 large-scale corporate campuses, and thousands of farms and ranches. The formation of AccelerateH2O was essential to try to connect the dots, and more efficiently and effectively supply great ideas, capital, smart people, and new technologies. The forum started in 2015 in Austin with 100 individuals and 25 speakers. This year’s forum had 35 speakers over two days, and a range of sponsors and underwriters. The forum included a global set of interest around water, water technology and specifically this global interest recognizing that Texas had been a leader in innovation. San Antonio has been a historical global leader in the adoption of new practices and new ways of managing water. During the forum, the Innovator of the Year Award was announced. The planning committee came to the conclusion that the city had been a leader in water urban sustainability and that through Mr. Puente’s leadership and the staff, SAWS had been positioning the community on a global basis.

Mr. Harig discussed the launch of AccelerateH2O that started with the first conference in 2015. The effort involved the idea of water and how important water was for Texas. He congratulated Mr. Puente and SAWS on a well-deserved award.

Mr. Evans stated that when he retired a year and a half ago, the two biggest challenges for
the State of Texas were water and education. Having worked with Charles Butt on education, he began to look for a way to help in the water segment. He became involved in AccelerateH2O and attended the last two forums. He stated it was a pleasure to recognize Mr. Puente and the entire Board for their leadership and for what SAWS had done as a public utility with innovation.

Mr. Seline added that there were very few public utilities in the State of Texas that had taken the risk that SAWS had taken. SAWS had made a significant investment, whether it’s in desal, aquifer storage, leak detection, a number of challenges that a large-scale system like this that had always been looking to secure its water future. This award was to not only recognize what Mr. Puente’s leadership had done and what the staff had done, but to also encourage even the next step and the next opportunities. They believed that San Antonio truly was a global platform for the world to come and identify ways to leverage technology and innovation with a public system.

Mr. Puente accepted the award on behalf of the SAWS employees, and thanked Mr. Seline and AccelerateH2O for the recognition of the staff’s work.

Chairman Guerra commented that this was a team effort because nothing could be done on an island, so everyone together. He congratulated Mr. Puente on the award. We sometimes forget what this city does when it comes to water and how it's recognized all over the country and all over the world for conservation, aquifer storage and recovery, the diversity of water sources, and desalination.

5. Public Comment.

Karen Weehler read a letter on behalf of Terry Burns, president of the Alamo Sierra Club, and welcomed the mayor to the SAWS Board. They urged that SAWS return to its original mission of providing adequate, safe, and cost effective water for the life needs of San Antonio. They looked forward to more water recycling and fit for purpose water use, more aquifer storage and recovery, careful use of desalination, and enhanced efficiency between SAWS, CPS Energy, and San Antonio River Authority. They looked forward to SAWS Water Management Plan that brought in many of the ideas of the Sierra Club's alternate water plan, and to SAWS exploring alternate consumer rate payments and approaches that would loosen the two-type link between selling more water and making more revenue. She recommended more research into the environmental sciences and climate data, and include some of the concepts of biodiversity, ecosystem fragmentation, indicator for endangered species, limiting factors, and trophic levels.

Curtis Chubb stated he lived in Milam County, about 20 miles from the Vista Ridge well field. He commented on the Vista Ridge Project and the needed protection of the aquifers by the Central Texas Groundwater District. He discussed the four reasons that supported his conclusion the Vista Ridge groundwater was not reliable. Transport permits may expire in 2034 with no certainty the permits would be renewed. The aquifer used by Vista Ridge would be depleted by extensive pumping. The groundwater laws and groundwater districts would change. When the groundwater levels should cross so far that the shallow end of the aquifer dry up, it would cause Milam County to demand the State of Texas to stop the depletion of the aquifers and would stop the export of groundwater to San Antonio.
Alan Montemayor commented on the city’s growth and the impact to San Antonio, particularly the ratepayers. He proposed low impact development regulations be made by the City of San Antonio, and SAWS to think about sustainable development with the use of rainwater harvesting, slow sink and spread technologies, and less impermeable cover. He asked for increased cooperation with SAWS and CPS Energy to be more efficient about how water and energy were used, and the look at air quality associated with all of those activities.

Dr. Meredith McGuire welcomed Mayor Nirenberg to the Board and thanked him for his leadership in San Antonio’s recent steps to commit to climate action planning. She asked for more transparency and public input on the Water Management Plan, and for full texts with graphs and charts of the proposed plan be made available to the public stakeholders, city council members, and staff well before their respective briefings.

**CONSENT AGENDA ITEMS**

**Items 6 – 28**

**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 and installation from Frost & Keeling Assoc., Inc. to provide: 500-HP hot water boiler at the Dos Rios Water Recycling Center, Bid No. 17-17062, for a total of $555,251.00.

2. Approving a one-time purchase and installation from Flexible Lifeline Systems, Inc. to provide: safety climb systems and cable tension retrofit systems on existing SAWS storage tank ladders, Bid No. 17-17057A, for a total of $152,801.09.

3. Approving one-time purchase from Double Radius, Inc. to provide: Cambium Equipment and FCC Coordination for wireless site-to-site communications at remote facilities, Bid No. 17-17048, for a total of $182,215.24.

4. Approving a one-time purchase from Grande Truck Center to provide: two each 19,000 GVWR (minimum) 4x4, 2-door, regular cab-chassis with mounted 16-ft van body with installed closed circuit television inspection system mounted complete, Bid No. 17-17045, for a total of $734,868.00.

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. Acceptance of the sole source bid of Ventiv Technology, Inc. to provide: annual contract for Ventiv Master Software License and Service
Agreement for claims management software, Bid No. 17-17066, for a total of $347,756.00.

2. Acceptance of the best value bid of BroadBlast, Inc. to provide: annual contract for emergency/mass notification system, Bid No. 17-17009, for a total of $378,115.79.

3. Acceptance of the best value bid of YNIS, Inc. dba You Name It Specialties, Inc. to provide: annual contract for novelty items & professional type clothing, Bid No. 17-0403, for a total of $196,370.00.

4. Acceptance of the single source bid of Salt Exchange, Inc. to provide: annual contract for the purchase and delivery of NSF 60 certified bulk salt, Bid No. 17-16084, for a total of $215,010.00.

5. Authorizing the extension of an existing contract of Pied Piper Pest Control to provide: annual contract for pest control and extermination services, Bid No. 15-0256, for a total of $89,203.25.

6. Authorizing additional funds to the existing contract of Polydyne, Inc. to provide: biennial contract for polymer, Bid No. 15-1107, for a total of $429,242.50.

7. Acceptance of the bid of Teqsys, Inc. to provide: annual contract for Veritas equipment and maintenance for SCADA backup system, Bid No. 17-17050, for a total of $190,205.00.

8. Authorizing the extension of an existing contract of CalAmp Radio Satellite Integrators, Inc. to provide: annual contract for GPS tracking system monitoring, Bid No.16-16030, for a total of $78,080.00.

9. Rescinding the award of the contract from Southern Tire Mart, LLC to provide: annual contract for tires, tubes and repair services, Bid No. 13-3120, for a total return of ($666,990.00). Approved on June 6, 2017 by Board Resolution No. 17-119, Item 6.B.3.

10. Authorizing the extension of an existing contract of Southern Tire Mart, LLC to provide: annual contract for tires, tubes and repair services, Bid No. 13-3120, for a total amount of $350,000.00.

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)
8. A Resolution awarding a construction contract to Texas Pride Utilities, LLC in the amount not to exceed $1,268,162.00 in connection with the 2017 Edwards Aquifer Recharge Zone Cured In Place Pipe Construction Contract. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

9. A Resolution ratifying the actions of the Vice President of Engineering and Construction in approving Change Order No. 1 in the amount not to exceed $198,784.08, payable to Atlas Construction, Inc., in connection with the Flores 24-inch Rehab Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

10. A Resolution ratifying the actions of the Vice President of Engineering and Construction in authorizing expenditures in an amount not to exceed $133,432.05 payable to CPS Energy in connection with the W6: Western Watershed Sewer Relief Line (P3 and P4 - Middle Segment) Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

11. A Resolution ratifying the actions of the Vice President of Engineering and Construction in approving Change Order No. 11 in the amount not to exceed $254,983.10 payable to Spiess Construction Co., Inc., in connection with the C5 Culebra - Castroville to Laredo and C28 Zarzamora Creek - San Gabriel to NW 23rd Street - Phase 1A Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

12. A Resolution approving Recapitulation Change Order No. 1 in the decreased amount of $524,519.02 to be credited to the construction contract with San Antonio Constructors, Ltd., in connection with the 2015 Open Cut Sanitary Sewer Construction Package I. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

13. A Resolution approving Recapitulation Change Order No. 8 in the decreased amount of $223,870.71 to be credited to the construction contract with Pronto Sandblasting & Coating & Oilfield Services Co., Inc., in connection with the 2011 Annual Open Cut Water Work Order Construction Contract; authorizing the return of funds in the amount of $223,870.71 and the construction contingency balance of $48,439.55 for a total amount of $272,310.26. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)
14. A Resolution approving Recapitulation Change Order No. 8 in the decreased amount of $174,943.15 to be credited to the construction contract with Pronto Sandblasting & Coating & Oilfield Services Co., Inc., in connection with the 2012 DSP Open Cut Water Work Order Construction Contract; authorizing the return of funds in the amount of $174,943.15 and the construction contingency balance of $137,142.08 for a total amount of $312,085.23. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

Production, Transmission and Treatment Improvements

15. A Resolution awarding a professional services contract to Brown & Gay Engineers, Inc., in the amount not to exceed $636,089.00 in connection with the Hunt Lane Elevated Storage Tank Project. (GENOVEVA GOMEZ – MICHAEL MYERS)

REPLACEMENT AND ADJUSTMENT PROJECTS

Governmental Relocations and Replacements

16. A Resolution approving the expenditure of funds in the amount of $187,875.00 for the adjustment of water and sewer facilities by the City of San Antonio in connection with the 2017 Asphalt Overlay Task Order Contract Package 5. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

17. A Resolution ratifying the actions of the Vice President of Engineering and Construction in approving Change Order No. 3; authorizing the expenditure of additional funds in the amount not to exceed $276,315.30 payable to the City of San Antonio in connection with the Redland Road North: Loop 1604 to Ridgewood Pkwy Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

18. A Resolution approving Contract Amendment No. 1 in an amount not to exceed $37,192.23 to the professional services contract with Camacho-Hernandez & Associates in connection with the DeZavala Road from I.H. 10 to Lockhill Selma Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

19. A Resolution approving an interlocal Agreement with Bexar County; authorizing the expenditure of funds in an amount not to exceed $48,817.50 for the adjustments of water and sewer facilities in connection with the Shaenfield Place Subdivision Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

20. A Resolution approving Contract Amendment No. 1 to the Advance Funding Agreement; authorizing the expenditure of additional funds in the amount not to exceed $4,657.50 payable to the Texas Department of Transportation for the water and sewer facility adjustments in connection with the FM 1560 at SH 16 Project. (GENOVEVA GOMEZ – GAIL HAMRICK-PIGG)

EASEMENT AND REAL PROPERTY

21. A Resolution accepting an offer of $56,500.00 for the sale of 228 Thelka, located in San Antonio, Bexar County, Texas; approving a purchase agreement with George O. Paz,
Jr. and Edna Denise Paz; affirming a ten percent commission to be paid to Cano and Company at closing; authorizing payment of closing costs up to $2,000.00 (excluding real estate commissions) at closing. (NANCY BELINSKY – BRUCE HABY)

22. A Resolution approving the acquisition of a permanent sewer line easement from SOF Hidden Lake SA Owner, L.P., a Delaware limited partnership, being approximately 0.497 acres and located along South Hausman Road, in the northwest quadrant of Bexar County, Texas, in connection with the South Hausman Road project in a total amount not to exceed $52,632.00. (NANCY BELINSKY – BRUCE HABY)

**MISCELLANEOUS ITEMS**

23. A Resolution awarding a professional services contract to J.D. Power in the amount not to exceed $94,090.00 in connection with professional consumer research services. (GAVINO RAMOS)

24. A Resolution awarding a services contract to Alsay, Inc. in an amount not to exceed $81,895.00 in connection with the System’s Water Well Mitigation Program. (STEVE CLOUSE – SCOTT HALTY)

25. A Resolution approving the filing of a lawsuit against ADB Utilities in connection with their alleged damage to SAWS infrastructure; and further authorizing the System’s General Counsel to take all necessary actions relating to such lawsuit. (NANCY BELINSKY)

26. A Resolution approving an agreement and a professional services contract with IMMIX Technology, Inc., in an amount not to exceed $254,516.12 for licensing and maintenance services and process improvements for the Kronos Workforce application. (DOUG EVANSON – SREE PULAPAKA)

27. A Resolution authorizing Engagement Letters with the law firms of Norton Rose Fulbright US, LLP to serve as lead bond counsel and Escamilla & Poneck, LLP and Kassahn & Ortiz, PC to serve as co-bond counsel for a term of five years with three one-year renewal options to provide debt-related legal services. (DOUG EVANSON – PHYLLIS GARCIA)

28. A Resolution terminating the Audit Services Agreement with RSM US, LLP; authorizing the President/Chief Executive Officer to execute and deliver the thirty-day notice of termination to RSM US, LLP. (PAT MERRITT, CHAIR, AUDIT COMMITTEE)

Chairman Guerra stated staff had pulled Tract 4 from Item 7. Tracts 1 through 3 remained on the Consent Agenda for consideration. He asked if there were any other items in the Consent Agenda that should be pulled for individual discussion or consideration.

Mr. McGee made a motion to approve the Consent Agenda Items, Nos. 6 – 28, except for Tract 4 from Item 7. Ms. Merritt seconded the motion.

Consent Agenda Items, Nos. 6 – 28 except for Tract 4 from Item 7, were unanimously approved. Verbal voting.
ITEMS FOR INDIVIDUAL CONSIDERATION
CAPITAL IMPROVEMENT CONTRACTS
MISCELLANEOUS PROJECTS

29. 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)

Julie Valadez presented Item 29, Phase 2 of the Service Center Project. Phase 1 was completed this past year and addressed the new sites to the Service Center Project. Phase 2 would address existing sites that were introduced by the City Water Board in the 1970's and 1980's. SAWS had been using these sites and dispatching emergency crews out of these service centers for 25 years. Phase 2 would include new buildings and improvements on two separate sites, the East Side Service Center and the Northwest Service Center.

She discussed the success with Phase 1, and the use of the same type of design-build contract as well as the aesthetic architectural template of pre-engineered metal buildings. Phase 1 reduced response time because the facilities were built to address the city's growth. Less time in the vehicle was less fuel cost and higher employee morale. She reviewed photos of the new facilities. Facility staff only had to carry a certain color of paint or bricks to maintain the branding throughout SAWS facilities. Both new facilities were the very first design-build projects done by SAWS, and the very first vertical construction done by SAWS. Both were developed and delivered on time and on budget, which was attributed to proper planning.

Phase 2 would address the issues at the existing sites. Phase 2 would completely replace the three-story building at East Side Service Center and then replace the building at the Northwest Service Center. During the planning process, scopes were developed and the Phase 1 templates with specifications and design pallet for construction were used. She reviewed photos of the existing buildings and renderings of the new facilities that would be constructed under Phase 2.

She discussed Teal Construction Company and their experienced team. One of the challenges with this project was that SAWS crews would continue to utilize the sites throughout construction. Teal was able to show site logistics and how they were able to plan the construction process. DHR Architects would be the lead architect in the design portion. She reviewed a breakdown of the design-build proposal.

Mr. Rowe asked about the total square footage of the two sites. Ms. Valadez replied the East Side Service Center had the total square footage of approximately 60,000 to 62,000 square feet, and the Northwest Service Center was 11,600 square feet.

Ms. Jasso asked if the building would be two stories at the East Side Service Center and the existing square footage. Ms. Valadez responded the East Side Service Center would go from a three-story building to a two-story admin building. The existing building was 61,600 square feet and was a very inefficient use of space. The third floor was originally a storage
attic and now had cubes and folks working up there.

Ms. Jasso inquired about the anticipated start date. Ms. Valadez replied that by November, the design documents would be completed, and by the first quarter of 2019, staff would be moving in.

Staff recommended the award of a design-build contract to Teal Construction Company, and approval of funds for the design-build contract in an amount not to exceed $17,710,927.00.

Ms. Jasso made a motion to approve Item 29. Mayor Nirenberg seconded the motion.

Mr. Rowe inquired about the estimated construction cost and whether FF&Es were included. Ms. Valadez responded the RFP listed the estimate at just over $16 million. Staff negotiated other items into the estimate, but still met SAWS budget. One of the items was to repave the entire front parking lot. The FF&E was a separate cost, and was already accounted for out of 2016 funds. FF&E came in between $800,000.00 and $900,000.00. The furniture already came to the Board because Phase 1 and Phase 2 were grouped together in order to get a better price, and in order to have a system that was interchangeable throughout the service centers.

Mr. Puente stated that was an example of the planning done early on. The furniture essentially for both phases was bought at one time to get a better price.

Mayor Nirenberg requested a briefing so he could become familiar with the contracting practices for procurement at SAWS. Mr. Puente confirmed.

Ms. Merritt asked if both sites would be able to have most or all of the equipment needed so that when a crew was called out to a job site the equipment would be right there. Ms. Valadez confirmed. The East Side Service Center already had existing equipment onsite, and the Northwest Service Center would actually house the production crews, which did not require a lot of the big equipment or a fleet garage.

After no further discussion, Item 29 was unanimously approved. Electronic voting.

30. A Resolution approving Contract Amendment No. 5 in the amount not to exceed $958,465.00 to the Program Management Services contract with APSI Construction Management in connection with Phase 2 of the Service Center Project.

(GENOVEVA GOMEZ – JULIE VALADEZ)

Staff recommended the approval of Contract Amendment No. 5 to the program management services contract with APSI Construction Management for Phase 2 of the Service Center Project, and approval of funds in an amount not to exceed $958,465.00.

Mayor Nirenberg made a motion to approve Item 30. Mr. Arrellano seconded the motion.

After no further discussion, Item 30 was unanimously approved. Electronic voting.
MISCELLANEOUS ITEMS

31. A Resolution awarding a construction contract to D. Guerra Construction, LLC in the amount not to exceed $1,681,055.00 in connection with the 2017 Annual Sanitary Sewer Main Point Repair, Manhole Adjustments and Laterals Contract, Package 1. (JEFF HABY – TAMSEN MCNARIE)

Jeff Haby presented Items 31 and 32, the 2017 Annual Sanitary Sewer Main Point Repair, Manhole Adjustments and Laterals Contract, Packages 1 and 2. The scope of work for both of the packages was identical and included main point repairs for wastewater collection system, laterals, and manholes. All of the work was related to the Consent Decree.

He discussed the changes from the previous bidding process that was discussed with the Board in May. Contracting reached out to the contractors to get their feedback. Some of the comments were to increase quantities and extend the schedule from 12 to 18 months. The results were the number of bidders increased from three bids up to five bids on both contracts. In addition, two independent estimates were performed.

For the bid results on Package 1, the lowest responsible bidder was D. Guerra Construction, LLC at $1,681,055.00. The bid was a 19.4 percent decrease from the estimated construction cost. D. Guerra Construction, LLC had worked extensively with SAWS in the past and had done excellent work on the work order contracts. Staff recommended the award of the construction contract to D. Guerra Construction, LLC for Package 1, and approval of funds in the amount of $1,681,055.00 for the construction contract.

For Package 2, the lowest responsible bidder was D. Guerra Construction, LLC with a bid of $1,567,055.00. The bid was a 24.8 percent decrease from the estimated construction cost. Staff recommended an award of the contract to D. Guerra Construction, LLC for Package 2, and approval of funds in the amount of $1,567,055.00 for the construction contract.

Mr. McGee made a motion to approve Item 31. Mr. Rowe seconded the motion.

Mr. McGee thanked Mr. Haby for going back and collaborating throughout the entire organization to try to get the price down. He congratulated him on great results.

Ms. Merritt inquired about the work history with the contractor. Mr. Haby responded that D. Guerra Construction, LLC had quite a few contracts with SAWS and were a very good contractor. He discussed their work on a project in front of the Federal Courthouse over a holiday weekend in terrible weather. They still made it on time and got the project done.

After no further discussion, Item 31 was unanimously approved. Electronic voting.

32. A Resolution awarding a construction contract to D. Guerra Construction, LLC in the amount not to exceed $1,567,055.00 in connection with the 2017 Annual Sanitary Sewer Main Point Repair, Manhole Adjustments and Laterals Contract, Package 2. (JEFF HABY – TAMSEN MCNARIE)

Ms. Merritt made a motion to approve Item 32. Ms. Jasso seconded the motion.
After no further discussion, Item 32 was unanimously approved. Electronic voting.

33. **BRIEFING SESSION.**

A. **Briefing and deliberation regarding Vista Ridge Project**

Mr. Puente explained how Vista Ridge was a big part of the Water Management Plan and the Water Management Plan was a big part of Vista Ridge. Understanding this was the first meeting for the Mayor, he wanted to bring both of these briefing items together for questions and comments. In the previous water management plans, there was a lot on how to address our water situation. This plan actually had very real projects that were in the plan. He asked Marty Jones to talk about some specific issues with the Vista Ridge Project, particularly the electrical part, and then Donovan Burton would talk more about the Water Management Plan.

Mr. Jones reviewed the ongoing construction. Garney had three crews installing pipe along the route. To date, four miles had been installed. Garney had three drilling rigs mobilized at the well site to drill water wells. There was a lot of tunneling activity going on along the route. Most notable was the crossing underneath Hwy 281 North just south of Evans Road.

He discussed the component of electrical service for the sites. SAWS was responsible for working with the electrical service providers to bring power to all of the sites. Staff was working with Bluebonnet Electrical Co-Op in Bastrop and Guadalupe Valley Electric Co-Op (GVEC) in Schertz to get power to all of the sites along the pipeline route. The integration team was going to work with CPS Energy to get power to the terminus site. SAWS would pay for the installation and power cost directly to the electrical service providers. It was very important to work with the providers and with the project company to get excellent rates and an energy efficient design.

SAWS and the project company faced some challenges early on in working with the electrical service providers. Managing customer flicker was something that was very important. The electrical service providers limit the amount of allowable voltage when large equipment was started because they did not want customers to experience any noticeable flickering of lights. If a facility design exceeded this allowable voltage dip, equipment would be required in the design that lowered this voltage dip or the electrical service providers would install a dedicated service at an additional cost. Staff was working with the project company to make sure that the voltage dip to all the facilities was within the allowable limits. Route selection for the electrical service was another challenge, particularly in the well field. SAWS and the project company worked very closely with Bluebonnet and GVEC to optimize the service route, to utilize as much of the existing electrical infrastructure to cut back on the installation costs, and also so more easements would not have to be acquired.

Bluebonnet would provide power to the well field. This included nine individual sites, and each site had two well pumps for a total of 18 wells pumps. Bluebonnet would provide power to the high service pump station located right next to the well field. There would be four 2000 horsepower pumps and a large cooling tower installed at the site to cool the well water down before pumping the water to San Antonio. Bluebonnet would also provide power to Intermediate Pump Station No. 1 that had four 1500 horsepower pumps. GVEC
would provide power to Intermediate Pump Station No. 2 that had four 2500 horsepower pumps.

He reviewed aerial photos of the preliminary routes for the electrical service providers. The first route was the preliminary proposed route for power to the well field and to a high service pump station. This site was located right between Austin and College Station. The route was roughly five miles of electrical feeder from the existing Lyle Wolz electrical sub-station. The proposed route for the Intermediate Pump Station No. 1 was located near Elgin, Texas. The route required roughly two miles of electrical feeder from the existing Cedar Hills electrical sub-station. The route for the proposed electrical service to Intermediate Pump Station No. 2 was located just east of New Braunfels, Texas. The route required roughly five-and-a-half miles of electrical feeder from the existing south electrical sub-station.

The Vista Ridge Integration Project would include the facilities and piping in San Antonio to distribute all the Vista Ridge water into the SAWS system. The RFP and submittals from the shortlisted firms were due July 13. Staff would bring the selection to the Board at the September meeting for consideration.

Mr. Donovan commented on the initial work during the negotiations with CPS Energy to provide power at a lower cost, and then with GVEC and Bluebonnet. Hopefully this could lower some of those costs going forward. Staff would continue to work and partner with CPS Energy on those issues.

He discussed another equity investor that was brought on by the project company. On June 12, Garney closed on a deal with Ridgewood Infrastructure, RI-VR Holdings, LLC. Ridgewood Infrastructure purchased a 29 percent equity holding in the project. Ridgewood Infrastructure was a part of Ridgewood Companies that was founded in 1982, had been focused generally on energy and water infrastructure issues, and managed over $5 billion in capital commitments. Garney retained 51 percent control of the project, and would renew the focus on an operating service provider.

He discussed legislation that was not specifically Vista Ridge related, but had an indirect impact on the project. During the period of the Governor's veto, the bill that automatically extended the transport permits with the production permits was vetoed. Another bill vetoed was the brackish bill. There was still plenty of time to get that legislation through, but the protections were still in the contract in the WTPA. If that was not resolved by 2031, SAWS would have a payment coming from Garney. There was a June 10 easement deadline and that milestone was met. Garney was required to have a little over 500 easements acquired by June 10. The definition of acquired was recorded or lawsuits filed. There were some variances that included encroachment with electric utilities, easements that were narrowed 50-feet to 60-feet on certain parcels, and certain circumstances with single pipeline. Garney still had some easement that were outstanding and some of the condemnation lawsuits. Garney had to have possession by October, so this milestone was not yet complete.

34. President/Chief Executive Officer’s Report.
   A. SAWS Water Management Plan
Mr. Burton presented the Water Management Plan. The draft plan was released to the public in many forms, and staff continued public outreach to get more input and public comments into the plan. The draft plan would be out for public comment another 30 to 45 days. City Council would be briefed at B Session, and staff would bring the draft plan back to the Board for consideration at the September board meeting.

Similar to previous plans, staff focused on demand management and supply, but believed water supply diversification was important. With the Vista Ridge Project, SAWS would now have 16 different water supply projects and nine different water sources so a very diversified water supply. Consumption levels had been reduced by almost 50 percent over the past four decades, and the draft plan continued another 30 percent drop during the planning horizon through 2070. Conservation was an integral part of this plan, and both water supply and conservation were needed. One of differences of this plan was a hybrid approach to the Drought of Record. This plan actually used some of the data from the 2011 and 2015 drought, which was a little steeper than the Drought of Record. Population was expected to double certainly in the 50-year planning horizon. In this plan the population growth numbers were aligned to that of the City of San Antonio. Without adding other water supply projects, there would be a water supply gap by 2024. With the Vista Ridge Project, there would not be a supply gap until the 2050 time frame. Vista Ridge was an important piece of this Water Management Plan, but staff also anticipated building out Phases 3 and 3 of desal and the Local Carrizo Project. These additional supplies would be brought on in the 2050 time frame for the next water supply gap. By phasing these projects flexibility was provided to bring the additional supplies on earlier or later as things changed. If anything happened to another water supply project, including Vista Ridge, staff would be able to have that flexibility to bring on desal and Local Carrizo at any time.

A couple other things that were addressed was integration and the different classes of consumption or demand by customer class. Regulatory impacts were a huge piece of groundwater pumping that could impact Vista Ridge, but could impact all of the projects. He asked for the Board’s input as well as the continued public input on the Water Management Plan and the Vista Ridge Project.

Mr. Rowe asked if the progress of the Vista Ridge Project could be put on the website. Mr. Burton confirmed. Communications was working to add this to the website. Garney, the project company, was building the pipeline portion so there needed to be some coordination and communication. Mr. Puente stated the answer was yes, we can and we will.

Mr. McGee asked for more background information on Ridgewood. Mr. Burton confirmed.

Ms. Merritt complemented Mr. Burton and his team for the outreach in the community and engagement with the homeowner’s associations and all of the different meetings with City Council, and the use of various sources of social media to alert the community and provide an opportunity for their input.

Mayor Nirenberg asked for clarification and the status of the right-of-way acquisition for the Vista Ridge Project. Mr. Burton replied according to the WTPA, Garney had acquired all of the right-of-way either by acquisition, variances or lawsuits. The WTPA requirements had been met. There were about 27 eminent domain lawsuits pending. A lot of those would
probably settle before the legal process, and Garney had to have possession by October. Nancy Belinsky commented on the magnitude of the real estate acquisition endeavor that had been undertaken by Garney. There were over 500 parcels of land that were going to be acquired. Some milestone triggers were set to meet these deadlines and to acquire either by acquisition or by filing of an eminent domain petition. Once a petition was filed, Garney would continue to work with the landowners for resolution and to not have to go forward with the contested case of the acquisition.

Mayor Nirenberg stated that one of the compliments he had given to the original contract in 2014 was the fact that the process had been shielded from the ratepayer. In an effort to ascertain the success of the project well into the future, he asked if October 1 was a feasible goal for the remaining acquisitions. Ms. Belinsky replied that she thought it was, but there may be case-by-case instances where something cannot be achieved. She stated she felt it was a realistic schedule, but there may be instances for reasons outside the project company’s control.

Mayor Nirenberg inquired about how the transport permits issue would be resolved. Mr. Burton replied there were a few different ways. One would be a resolution through the groundwater district. The project company could take an item forward through the groundwater district process to extend the permit automatically. The current legislation already allowed for it, but there were some legal disputes. That was why the legislative approach was preferred. This item went through a big stakeholder group. There were twenty-something different diverse groups that were in support at the legislative hearing, but the item just got caught up in politics post session. There was certainly a good possibility of this happening next session or the session after that.

Mayor Nirenberg asked to be kept apprised of the transport permits at the legislature and be provided the additional information on Ridgewood. He understood that 29 percent equity would be Ridgewood, 51 percent Garney, and the remaining was Abengoa. He asked how that affected the governance of the project company. Ms. Belinsky responded SAWS had always been concerned about the majority obtained with Garney. While Abengoa had a 20 percent role, it was a minority role, and they were not controlling any of the activities of the project company. Mayor Nirenberg asked if any additional changes to a majority stake, but also minority positions were approved by the Board. Mr. Burton replied the Board approved the change in control in majority.

Mayor Nirenberg commented on the Water Management Plan and the city’s population projections. He agreed with smart development, and took a lot of responsibility for how the city developed. He recognized the fact that growth was coming, and the job was to accommodate what was known would happen with water supply and water management. He asked when the plan would be brought to City Council and whether there would be more regular updates to the Water Management Plan in the future. Mr. Puente responded SAWS always wants to be in front of City Council because we always feel that Council should know and that we frankly have a good story to tell. It had always been a question of scheduling. City Council at different times had a lot of pressing issues and it was very easy to push SAWS issues back because these were not imperative and not something that City Council had to necessarily vote on. He stated we are ready, willing and able at any time to be in front of City Council, but it was a matter of falling victim to all the other pressing issues that had
Mayor Nirenberg responded that would no longer happen. City Council was going to be very active and interested in the conversations with SAWS as well as with CPS Energy. The conversation right now about SA Tomorrow had everything to do with the foundations of the city. SAWS was quite clearly at the foundation. At the very least, he would expect that major developments with the water supply projects or with the Water Management Plan or anything else would be given priority by him and by the City Council. Mr. Burton commented that SAWS was scheduled to be in front of City Council on August 9. Obviously, staff could go at any time, the plan was out there and ready.

Mayor Nirenberg commented on an alternative water management plan by many of the groups in the community that were active and interested in these issues. He asked how the conversations were going to be integrated, and what was the process for public engagement for the Water Management Plan. Mr. Burton responded there would be more public meetings and also an online method was available, WatercitySA.com. These comments would all be discussed internally as well as made available to the Board and brought into one document for the Board at the September board meeting.

Mayor Nirenberg commented on citizens who were collaborating to bring different perspectives together to move the community forward. He discussed the importance of water for the future and his interest in moving the city forward to ensure that our children and grandchildren had water. He was interested in connecting the City Council, which had a responsibility to the citizens of San Antonio and fiduciary obligations to the community, to SAWS Board and organization, which was focused on water issues of doing right by the community. In order to take these bold risks for the community and understand that the projects were the best available alternatives, there were criteria to understand and best available alternatives to address that would give him confidence to continue to vote and to invest. The first criteria was a renewed commitment to conservation. This community was one of the most income disparate in the entire country, and there were many citizens that simply could not afford their water bill or electrical bill and simply subsidizing was not good enough. It was very important to establish a rate structure and also establish priority on problems that could protect affordability. He stated he wanted to make sure that everything done at SAWS would protect the water through the use of conservation. The second criteria was fiscal responsibility. He stated he believed that the Board did a masterful job of protecting and risk-shifting on the original contract for Vista Ridge. It was a fiscally responsible contract, but the provisions within that contract had to be protected when changes were made. Projects needed to be affordable in the long run. Purchasing water that did not get here or investing in infrastructure that would not be needed was not good enough for fiscal responsibility. It was unprecedented for the Board to negotiate a contract in full view of the public, and was a good faith effort into being transparent. Understanding that Council had given the authority to SAWS to make changes to the contract, there was a fiduciary responsibility to bring those conversation to Council to have a discussion about what this meant not just for the organization but for the city as a whole. The fourth and most important one was regional responsibility. Unfortunately, Texas water law was several decades behind where it needed to be, but the reality was if water security for future generation was to be protected, transfer was one of the things that needed to be looked at. He stated he wanted to ensure the communities in Burleson and Milam that our responsibility as partners was to
protect those landowners that might experience the drawdown.

Chairman Guerra commented on the Mayor’s past support on water issues. Like the Sierra Club, the Mayor asked good questions and kept us transparent and grounded. As a city, we are very proud of the Vista Ridge project and of the Water Management Plan. He commented on the fact that everyone owned the utility, not just certain groups, and he had made that very clear to everyone all throughout this process. As far as transparency, it was the Sierra Club who expressed their concern that the contract would be negotiated behind closed doors, and then they would be given 48 hours to comment on it. He responded on the spot and stated the rest of the negotiations would be posted and help publicly for anyone to attend. On conservation, SAWS had never once let up on conservation. Through conservation, water use had been reduced by almost 50 percent over the last four decades. SAWS was committed to conservation. On regional responsibility, SAWS did not ever want to be the big bad guy, the big city that came and took the water away from some of our family and friends upstream. He discussed the meeting in Burleson County with the water conservation district and the local leaders, and how the negotiation and contract would be set up that the district had control of the water. On behalf of the Board, the staff, and the leadership team, SAWS was committed to working together for our children and our grandchildren. SAWS would continue to work for alternate means just in case something were to happen. SAWS had the Local Carrizo water, desal, the purple pipe used at our plants at Toyota and at Avanzar to conserve water, and SAWS was doing everything to be the most diversified city in water.

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

Mr. Puente noted the earlier requests from the Board, and stated staff would follow-up on those requests. Chairman Guerra confirmed.

At this point in the meeting, an Executive Session was held. The time was 5:06 p.m.

36. The Regular Session of the June 29, 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.

37. EXECUTIVE SESSION.

A. 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 and §551.071, respectively.

38. The Regular Session of the Regular Board Meeting of June 29, 2017, is hereby reconvened.

The meeting reconvened at 5:42 p.m. The Chairman stated that no decisions were made in Executive Session.

The San Antonio Water System Board of Trustees Meeting of June 29, 2017, adjourned at 5:43 p.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  

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

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<th>Description</th>
<th>This Board Meeting</th>
<th>Year-to-Date</th>
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<td></td>
<td>Number of Contracts (SMWB)</td>
<td>Estimated Amount (SMWB)</td>
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<td>A. Award of New One Time Purchases of Materials, Equipment or Services</td>
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SMWB Purchasing Contracts (percentage)  

Yvonne C. Torres, Director  
Purchasing Division  

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 AWARDING CONTRACTS FOR THE PROCUREMENT OF CERTAIN SERVICES, EQUIPMENT, MATERIALS AND SUPPLIES; AUTHORIZING EXPENDITURES TO PROCURE 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 13th day of September, 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>E.H. Wachs</td>
<td>One Time Purchase of Hydraulic Powered Pipe Saw and Appurtenant Equipment</td>
<td>All</td>
<td>$67,663.32</td>
<td>This is a one time purchase of a hydraulic powered pipe saw and appurtenant equipment. This saw will be utilized to assist in making repairs on large water mains.</td>
</tr>
<tr>
<td>Technology International, Inc.</td>
<td>One Time Purchase of Automatic Valve Shutoff Control Panels and Chlorine Cylinder Shutoff Valves</td>
<td>All</td>
<td>$257,121.50</td>
<td>This is a one time purchase of an automatic valve shutoff control panels and chlorine cylinder shutoff valves. These control panels and shutoff valve will be used on the chlorine system for our water and wastewater facilities.</td>
</tr>
<tr>
<td>Freeit Data Solutions</td>
<td>One Time Purchase of Nimble Expansion Shelves (DIR-TSO-2716)</td>
<td>All</td>
<td>$229,411.28</td>
<td>This is a one time purchase of Nimble Expansion Shelves for additional 90TB raw storage to each of the unstructured storage arrays located at HQ and Echo. This purchase will expand the available space for file shares and virtual desktop infrastructure so that we will not run out of space for System employees utilizing these systems.</td>
</tr>
<tr>
<td>SpawGlass</td>
<td>One Time Purchase to Furnish Odor Control Unit (OCU) Stack Fan Support</td>
<td>All</td>
<td>$110,977.34</td>
<td>This is a one time purchase to furnish the structural and miscellaneous per plans and specifications for the Apollo Drive OCU stack fan support. This purchase is to fabricate and erect an OCU fan stack support at the Apollo Drive location. These services are being purchased through the Local Government Purchasing Cooperative (BuyBoard).</td>
</tr>
</tbody>
</table>

*Indicates vendor is an SMWB, unless otherwise noted vendor is non minority.

Board Date: September 13, 2017
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>5. Payton Construction, Inc. (SBE)</td>
<td>One Time Purchase and Installation of One (1) Ton (2,350 Pounds) Capacity Emergency Chlorine Gas Scrubber Tank Bid No. 17-17079</td>
<td>All</td>
<td>$ 347,500.00</td>
<td>This is a one time purchase and installation of one (1) 3,000 CFM one (1) Ton (2,350 pounds) capacity emergency chlorine gas scrubber tank for ASR. The existing system had leaks on the caustic tank that were repaired with fiberglass patches and is now recommended that it gets replaced.</td>
</tr>
</tbody>
</table>

$ 1,012,673.44

**DIRECTOR Comments**

System utilized ezIQC BuyBoard Job Order Contract to get a proposal to do the specified work. The Job Order Contracts are awarded by the Local Government Purchasing Cooperative (BuyBoard) through a competitive process. Specific jobs are priced based upon a catalog of pre-priced tasks. Price proposed by Spaw Glass has been determined to be competitive. Recommend Award.

The Purchase of the Emergency Chlorine Gas Scrubber Tank is to replace the existing unit that has reached end of life. The Bid solicited purchase of replacement equipment along with any required materials and service needed to modify piping, vents, and electrical service to make the new unit compatible. All emergency gas scrubber system manufactures were invited to bid, and two mandatory pre bid meetings were conducted. Only one bid was received from Payton Construction, Inc. and they proposed a De Nora Water Technologies Emergency Chlorine Gas Scrubber Tank that is an exact match of the existing tank. Recommend award.

*Indicates vendor is an SMWB, unless otherwise noted vendor is non minority.

Board Date: September 13, 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>1. Safety Supply, Inc. (SBE)</td>
<td>Annual Contract for Safety Harness (Full Body)</td>
<td>All</td>
<td>$79,468.22</td>
<td>This is an extension of an existing contract. This contract will be utilized by System employees entering confined spaces and any additional circumstances where fall protection is required. Safety Supply has performed well during the contract period. This contract extension will be effective October 1, 2017 through September 30, 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. IDEXX Distributions, Inc.</td>
<td>Annual Contract for Hydrolysable Enzyme Substrate Packets (Sole Source)</td>
<td>All</td>
<td>$117,479.40</td>
<td>This is a sole source. This contract will be utilized for the purchase of hydrolysable enzyme substrate packets for the Analysis of Standards Methods 9223 and 9223B for monitoring the presence of Total Coliform and E. coli in potable water under the Revised Total Coliform Rule. This contract will be effective October 1, 2017 through September 30, 2018. 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>
</tbody>
</table>

$196,947.62

**DIRECTOR Comments**

IDEXX Distribution, Inc. is a sole source provider for the Hydrolysable enzyme substrate packets. These packets are used for the analysis of samples utilizing Standards Methods 9223 and 9223B for the monitoring of potable water distribution system for the presence of Total Coliform and E. coli. The method employed by the Hydrolysable enzyme substrate packets makes this the only available source due to the System laboratory's TCEQ accreditation requirements. Recommend award.

*Indicates vendor is an SMWB unless otherwise noted vendor is non minority.

Board Date: September 13, 2017
**SAN ANTONIO WATER SYSTEM**  
**P. O. BOX 2449**  
**SAN ANTONIO, TEXAS 78298-2449**  
**TABULATION OF BIDS**

**PURCHASE OF HYDRAULIC POWERED PIPE SAW AND APPURTENANT EQUIPMENT**  

<table>
<thead>
<tr>
<th>Item No.</th>
<th>DESCRIPTION AND APPROPRIATE QUANTITY</th>
<th>Make/Model</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 ca.</td>
<td>Pipe Cut-Off Saw, Portable, Hydraulic Powered, Mfg: E.H. Wachs; P/N 02-000-02 or approved equal</td>
<td>E.H. Wachs</td>
<td>22,500.00</td>
<td>22,500.00</td>
</tr>
<tr>
<td>1 ea.</td>
<td>Saw, Carbide Tipped, 7&quot; x 3/16&quot; Diameter for Ductile, Cast &amp; Cement Line Pipe Up to 1 - 1/2&quot; Wal, Mfg: E.H. Wachs, P/N 02-606-00 or approved equal</td>
<td>E.H. Wachs</td>
<td>750.00</td>
<td>750.00</td>
</tr>
<tr>
<td>2. Make/Model</td>
<td></td>
<td>E.H. Wachs</td>
<td>9,995.00</td>
<td>10,080.00</td>
</tr>
<tr>
<td>4 ea.</td>
<td>Diamond Wire Guillotine Package for 4&quot; - 16&quot; Diameter, Mfg: E.H. Wachs, P/N 29-000-10 or approved equals</td>
<td>E.H. Wachs</td>
<td>745.00</td>
<td>2,980.00</td>
</tr>
<tr>
<td>4 ea.</td>
<td>Diamond Wire Loop Assembly, High Density, Mfg: E.H. Wachs; P/N 29-010-03 or approved equal</td>
<td>E.H. Wachs</td>
<td>125.00</td>
<td>500.00</td>
</tr>
</tbody>
</table>

**TOTAL**  

<table>
<thead>
<tr>
<th></th>
<th>TOTAL</th>
<th>NET PRICE</th>
<th>NET PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>67,663.32</td>
<td>74,094.48</td>
<td>78,878.14</td>
</tr>
</tbody>
</table>

**TERMS**  

- Net 30 days
- Net 30 days
- Net 30 days

**DELIVERY DAYS**  

- 30-45 days
- 21-28 days
- 3-4 weeks

**LOW BIDDER**

- Dealers Electric
- Ferguson Water Works
- Demandstar
- Alamo Iron Works
- Lone Star Inv'l
- SAWS Website
- Bay Tech
- Meister Supply
- Sunbelt Mill
- Buildchase
- Wesco Dist.
- EH Wachs
- Fastenal
SAN ANTONIO WATER SYSTEM  
P. O. BOX 2449  
SAN ANTONIO, TEXAS 78298-2449

TABULATION OF BIDS

**PROPOSAL FOR:**  
Purchase of Automatic Valve Shutoff Control Panels and Chlorine Cylinder Shutoff Valves  

**TIME & DATE:**  
3:00 p.m., July 27, 2017

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Automatic Valve Shutoff Control Panel, Robo-Controls P/N RCP002UPS10 or approved equal</td>
<td>6,229.35</td>
<td>62,293.50</td>
</tr>
<tr>
<td>2.</td>
<td>Chlorine Cylinder Shutoff Valves; Robo-Controls P/N U150-LD-CL or approved equals</td>
<td>4,586.20</td>
<td>91,724.00</td>
</tr>
<tr>
<td>3.</td>
<td>Automatic Valve Shutoff Control Panel, Robo-Controls P/N RCP010XLIO or approved equals</td>
<td>14,028.50</td>
<td>28,057.00</td>
</tr>
<tr>
<td>4.</td>
<td>Chlorine Cylinder Shutoff Valves; Robo-Controls P/N 2000C-G-10-CL2 or approved equals</td>
<td>7,504.70</td>
<td>75,047.00</td>
</tr>
</tbody>
</table>

**TOTAL**  

<table>
<thead>
<tr>
<th></th>
<th><strong>UNIT PRICE</strong></th>
<th><strong>TOTAL</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UNIT PRICE</strong></td>
<td><strong>62,293.50</strong></td>
<td><strong>91,724.00</strong></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>257,121.50</strong></td>
<td><strong>259,399.00</strong></td>
</tr>
</tbody>
</table>

**Terms**  
1/2% Net  
10 days 30 days 30 days  

**Delivery Days**  
18-20 weeks 120 days 90 days

*LOW BIDDER*

**BID INVITATIONS WERE E-MAILED TO AND/OR PICKED UP BY:**  
EI2  
Global Treat  
JCS Industries, Inc.  
Macaulay Controls Co.  
Moody Bros.  
Technology International, Inc.  
Demandstar  
SAWS Website
# Nimble Expansion Shelves

**DIR-TS0-2716**

**3:00 p.m., July 28, 2017**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>UNIT</th>
<th>PRICE 1/EA.</th>
<th>TOTAL 1/EA.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6.4TB Cache Field Upgrade; 4X1600GB SSD for Base Head AF-128915</td>
<td>UNIT</td>
<td>24,126.96</td>
<td>43,740.00</td>
</tr>
<tr>
<td>2</td>
<td>2X1 Meter SAS Cable; ES1 Shelf; GEN1 Connectivity</td>
<td>UNIT</td>
<td>0.00</td>
<td>Included</td>
</tr>
<tr>
<td>3</td>
<td>90TB RAW, 66-132TB Usable, 1920GB Flash Cache, HYB EXP Shelf, 2X1M Qual SAS Cable</td>
<td>UNIT</td>
<td>45,238.05</td>
<td>82,012.50</td>
</tr>
<tr>
<td>4</td>
<td>6.4TB Cache Field Upgrade; 4X1600GB SSD for Base Head AF-128897</td>
<td>UNIT</td>
<td>24,126.96</td>
<td>43,740.00</td>
</tr>
<tr>
<td>5</td>
<td>2X1 Meter SAS Cable; ES1 Shelf; GEN1 Connectivity</td>
<td>UNIT</td>
<td>0.00</td>
<td>Included</td>
</tr>
<tr>
<td>6</td>
<td>90TB RAW, 66-132TB Usable, 1920GB Flash Cache, HYB EXP Shelf, 2X1M Qual SAS Cable</td>
<td>UNIT</td>
<td>45,238.05</td>
<td>82,012.50</td>
</tr>
<tr>
<td>7</td>
<td>3.2TB Cache Field Upgrade; 4X800GB SSD for Base Head AF-124591</td>
<td>UNIT</td>
<td>12,566.12</td>
<td>22,781.25</td>
</tr>
<tr>
<td>8</td>
<td>2X1 Meter SAS Cable; ES1 Shelf; GEN1 Connectivity</td>
<td>UNIT</td>
<td>0.00</td>
<td>Included</td>
</tr>
<tr>
<td>9</td>
<td>30TB RAW HYB Exp Shelf, 960GB SSD, 2X1M Qual SAS Cable</td>
<td>UNIT</td>
<td>25,132.25</td>
<td>45,562.50</td>
</tr>
<tr>
<td>10</td>
<td>3.2TB Cache Field Upgrade; 4X800GB SSD for Base Head AF-124749</td>
<td>UNIT</td>
<td>12,566.12</td>
<td>22,781.25</td>
</tr>
<tr>
<td>11</td>
<td>2X1 Meter SAS Cable; ES1 Shelf; GEN1 Connectivity</td>
<td>UNIT</td>
<td>0.00</td>
<td>Included</td>
</tr>
<tr>
<td>12</td>
<td>30TB RAW HYB Exp Shelf, 960GB SSD, 2X1M Qual SAS Cable</td>
<td>UNIT</td>
<td>25,132.25</td>
<td>45,562.50</td>
</tr>
<tr>
<td>13</td>
<td>4HR Parts DEL SERV/SOFTW Support for Controller Upgrade</td>
<td>UNIT</td>
<td>444.00</td>
<td>1,881.03</td>
</tr>
<tr>
<td>14</td>
<td>4HR Parts DEL, SW SUP &amp; INFOSIGHT-ES1</td>
<td>UNIT</td>
<td>3,326.67</td>
<td>1,466.66</td>
</tr>
<tr>
<td>15</td>
<td>4HR Parts DEL SERV/SOFTW Support for Controller Upgrade</td>
<td>UNIT</td>
<td>444.00</td>
<td>1,881.03</td>
</tr>
<tr>
<td>16</td>
<td>4HR Parts DEL, SW SUP &amp; INFOSIGHT-ES1</td>
<td>UNIT</td>
<td>3,326.67</td>
<td>1,466.66</td>
</tr>
</tbody>
</table>
## SAN ANTONIO WATER SYSTEM
P. O. BOX 2449
SAN ANTONIO, TEXAS 78298-2449

### TABULATION OF BIDS

**Nimble Expansion Shelves**  
(DIR-TSO-2716)  
3:00 p.m., July 28, 2017

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
</table>
| 17.      | 4HR Parts DEL, SERV/SOFTW Support for Controller Upgrade  
Part No: SLA-4HR-UPG  
Support Period Duration: 03/9/2017-7/26/2020 | 2,023.44 | 880.88 |
| 18.      | 4HR Parts DEL, SW SUP & INFOSIGHT-ESI  
Part No: SLA-4HR-ESI  
Support Period Duration: 12 months | 1,848.15 | 1,466.66 |
| 19.      | 4HR Parts DEL, SERV/SOFTW Support for Controller Upgrade  
Part No: SLA-4HR-UPG  
Support Period Duration: 03/9/2017-7/26/2020 | 2,023.44 | 880.88 |
| 20.      | 4HR Parts DEL, SW SUP & INFOSIGHT-ESI  
Part No: SLA-4HR-ESI  
Support Period Duration: 12 months | 1,848.15 | 1,466.66 |

**TOTAL**  
UNIT PRICE | TOTAL | 229,411.28 | 399,582.96 |

**Terms**  
Net 30 days  
Net 30 days

**Delivery Days**  
7-10 days 2-10 days

*LOW BIDDER

BIDS WERE E-MAILED TO, ALL DIR* HOLDERS FOR THIS EQUIPMENT

- Carasolff
- CDW Government LLC
- Critical Start
- Data Vox
- Freeit Data Solutions
- Kelyn Tech
- SHI
- Way Point Solutions
BID NO. 17-17087
One Time Purchase of OCU Stack Fan Support
Local Government Purchasing Cooperative (BuyBoard) #520-16 Area M

This is a new one-time purchase to furnish the structural and miscellaneous per plans and specifications for the Apollo Drive OCU stack fan support. This is to address the odor complaints at this location which is located by a school.

Bid No. 17-17087 utilized ezIQC BuyBoard contract number 520-16 Area M Job Order Contract (JOC) for the Apollo Drive OCU stack fan support.

- The ezIQC uses a construction procurement methodology that list all prices for every piece of material, every hour of labor and equipment.
- The JOC has fixed competitive pricing.
- EzICQ offers an adjustment factor for standard hours and non-standard hours.
- The adjustment factor is to include direct and indirect cost to the bid.
- Offers joint scope of work that is conducted at the job site to ensure that both parties are fully aware of what is expected.

<table>
<thead>
<tr>
<th>UOM</th>
<th>Description</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Factor</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>EA Shop drawings for Structure</td>
<td>4,100.00</td>
<td>$ 1.00</td>
<td>1.2252</td>
<td>$ 5,023.32</td>
</tr>
<tr>
<td>2.</td>
<td>HR Clean up and handling of materials</td>
<td>320.00</td>
<td>$ 29.68</td>
<td>1.2252</td>
<td>$ 11,636.46</td>
</tr>
<tr>
<td>3.</td>
<td>HR Installation assembly and disassembly before galvanized</td>
<td>160.00</td>
<td>$ 41.15</td>
<td>1.2252</td>
<td>$ 8,066.72</td>
</tr>
<tr>
<td>4.</td>
<td>HR Installation assembly of structure &amp; hand rails on site</td>
<td>80.00</td>
<td>$ 41.15</td>
<td>1.2252</td>
<td>$ 4,033.36</td>
</tr>
<tr>
<td>5.</td>
<td>WK 60’ engine powered telescoping boom manlift</td>
<td>4.00</td>
<td>$ 1,505.22</td>
<td>1.2252</td>
<td>$ 7,376.78</td>
</tr>
<tr>
<td>6.</td>
<td>LF Temporary 6’ high chain link fence and post</td>
<td>120.00</td>
<td>$ 3.56</td>
<td>1.2252</td>
<td>$ 523.41</td>
</tr>
<tr>
<td>7.</td>
<td>MOD For shade cloth</td>
<td>12.00</td>
<td>$ 2.55</td>
<td>1.2252</td>
<td>$ 37.49</td>
</tr>
<tr>
<td>8.</td>
<td>EA 20 cy dumpster (6 ton) construction debris</td>
<td>2.00</td>
<td>$ 459.00</td>
<td>1.2252</td>
<td>$ 1,124.73</td>
</tr>
<tr>
<td>9.</td>
<td>CYM Delivery of materials to site</td>
<td>20.00</td>
<td>$ 0.54</td>
<td>1.2252</td>
<td>$ 13.23</td>
</tr>
<tr>
<td>10.</td>
<td>CYM Delivery for galvanizer</td>
<td>20.00</td>
<td>$ 0.54</td>
<td>1.2252</td>
<td>$ 13.23</td>
</tr>
<tr>
<td>11.</td>
<td>LB Hot dip galvanizing</td>
<td>12,000.00</td>
<td>$ 0.67</td>
<td>1.2252</td>
<td>$ 9,850.61</td>
</tr>
<tr>
<td>12.</td>
<td>TON Structural shapes steel angle A36</td>
<td>6.00</td>
<td>$5,397.13</td>
<td>1.2252</td>
<td>$39,675.38</td>
</tr>
<tr>
<td>13.</td>
<td>VLF 24” wide vertical steel caged ladder</td>
<td>37.00</td>
<td>$179.32</td>
<td>1.2252</td>
<td>$ 8,129.01</td>
</tr>
<tr>
<td>14.</td>
<td>EA 27-1/2’ length powder coated welded steel ladder cage</td>
<td>2.00</td>
<td>$ 2,647.23</td>
<td>1.2252</td>
<td>$ 6,486.77</td>
</tr>
<tr>
<td>15.</td>
<td>LF 1-1/2” diameter three rail up to 42” high welded steel pipe railing</td>
<td>96.00</td>
<td>$52.21</td>
<td>1.2252</td>
<td>$ 6,140.90</td>
</tr>
<tr>
<td>16.</td>
<td>EA ¾” x 24” copper lightning protection air terminal</td>
<td>6.00</td>
<td>$82.53</td>
<td>1.2252</td>
<td>$ 606.69</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bolted base for copper lightning protection terminal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>----------------------------------------------------</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>EA</td>
<td>6.00</td>
<td>$53.14</td>
<td>1.2252</td>
<td>$390.64</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Beam connector for copper lightning protection system</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>EA</td>
<td>6.00</td>
<td>$76.91</td>
<td>1.2252</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Cable supports for copper lightning protection system</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>EA</td>
<td>24.00</td>
<td>$9.56</td>
<td>1.2252</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>¾&quot; x 9-1/2&quot; flex braided strap for copper lightning protection system</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>EA</td>
<td>24.00</td>
<td>$34.08</td>
<td>1.2252</td>
</tr>
</tbody>
</table>

|   |   | Total | $110,977.34 |

The price proposal submitted by SpawGlass meets all the requirements of the specification.
# SAN ANTONIO WATER SYSTEM

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

## TABULATION OF BIDS

<table>
<thead>
<tr>
<th>PROPOSAL</th>
<th>FOR:</th>
<th>Terms</th>
<th>Delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase and Installation of One (1) ton (2350 Pounds) Capacity Emergency Chlorine Gas Scrubber Tank</td>
<td>3:00 p.m., July 27, 2017</td>
<td>Net 30 days</td>
<td>252 days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>EST Low Pressure Fan Driven &quot;Multi Venturi Packless&quot; 1 Ton (2350 Pounds) 3000 CFM Capacity Liquid Emergency Chlorine Gas Scrubber Tank</td>
<td>347,500.00</td>
<td>347,500.00</td>
</tr>
</tbody>
</table>

*LOW BID*

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

- EI2
- Envitech Inc.
- Evoqua
- KCH Service
- Macaulay Controls
- Northeast Controls
- Payton Construction, Inc.
- Powell Fabrication
- Demandstar
- SAWS Website
ITEM
BID NO. 17-17079
PURCHASE OF ONE (1) 3000 CFM ONE (1) TON (2350 POUNDS) CAPACITY EMERGENCY CHLORINE GAS SCRUBBER TANK SINGLE SOURCE

Bid No. 17-17079 solicited bids to replace one (1) 3000 CFM emergency gas scrubber tank for H2Oaks Center Aquifer Storage and Recovery WTP. ASR Emergency Gas Scrubber System was installed in 2004 at the one (1) ton chlorine storage building as a safety precaution in the event of a chlorine gas release. The existing system had leaks on the caustic tank that were repaired with fiberglass patches that is now considered unrepairable. Modifications to piping, vents and electrical to accommodate the tank that does not match the dimensions of the existing tank would be extremely difficult, mainly due to the chemical containment for the tank and the proximity to the building. Bidders were required to provide in their bid along with their proposed systems, all materials required to modify the piping, vents and electrical service connections at the tank.

De Nora Water Technologies is the manufacturer of the model “MVP 3000-1VP-F” horizontal venturi scrubber tank. All emergency gas scrubber system manufacturers were invited to bid, and bid required respondents to be responsible for the cost associated with all structural, piping, and electrical modifications required for the installation of their system. Two (2) mandatory pre bid meetings were held for prospective bidders and were attended by Zachry Parson, Payton Construction & Macaulay Controls. We received one bid from Payton Construction on this requirement.

The tank submitted by De Nora Water Technologies is an exact match of the existing tank and meets all the requirements of the specifications. The tank can be installed without major structural, piping, or electrical modifications. The criticality of the Emergency Gas Scrubber System makes the horizontal venturi scrubber tank offered by De Nora Water Technologies as the only available source for this application.

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>EST Low Pressure Fan Driven “Multi Venturi Packless” One Ton (2350 Pounds) 3000 CFM Capacity Liquid Emergency Chlorine Gas Scrubber Tank</td>
<td>1</td>
<td>$347,500.00</td>
<td>$347,500.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>$347,500.00</td>
</tr>
</tbody>
</table>

- The award amount is $347,500.00
**SAN ANTONIO WATER SYSTEM**  
P. O. BOX 2449  
SAN ANTONIO, TEXAS  78298-2449  

**SOLE SOURCE**  
Annual Contract for Hydrolysable Enzyme Substrate Packets  
(October 1, 2017 through September 30, 2018)  
3:00 p.m., July 18, 2017  

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>REAGENT</td>
<td>120 packs Colilert Reagent Packs for 100 ml sample size 200/pack, IDEXX WP2001</td>
<td>659.00</td>
<td>79,080.00</td>
</tr>
<tr>
<td>QUALITY CONTROL KITS</td>
<td>6 ea. IDEXX Quanti-Cult-QC bacteria; 3 E coli, 3 Klebsiella P, 3 Pseudomonas A; Part # UN 3373-WQC TCEC 98-2900-00</td>
<td>185.90</td>
<td>1,115.40</td>
</tr>
<tr>
<td>COLILERT COMPARATORS</td>
<td>6 ea. IDEXX vessel filled with 100 ml Colilert/Colilert 18 comparator, WP104</td>
<td>7.00</td>
<td>42.00</td>
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<tr>
<td>COLILERT COMPARATORS</td>
<td>6 ea. IDEXX Quanti-Tray 2000 Comparator, WQT2KC</td>
<td>23.00</td>
<td>138.00</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>117,479.40</td>
</tr>
</tbody>
</table>

**EXTENSION 1**  
117,479.40

**EXTENSION 2**  
117,479.40

**EXTENSION 2**  
117,479.40

Terms  
Net  
30 days

Delivery Days  
5-7 days
BID NO. 17-4017
HYDROLYSABLE ENZYME SUBSTRATE PACKETS
for the Analysis of Samples utilizing Standards Methods 9223 and 9223B
SOLE SOURCE

IDEXX Distribution, Inc. is a sole source for Bid No. 17-4017 Hydrolysable enzyme substrate packets for the analysis of samples utilizing Standards Methods 9223 and 9223B. System is required by the Texas Commission for Environmental Quality (TCEQ) under the Revised Total Coliform Rule to monitor the potable water distribution system for the presence of Total Coliform and E. coli. The Hydrolysable enzyme substrate packets made by IDEXX Distribution, Inc. will be used to monitor the presence of Total Coliform and E. coli. The Hydrolysable enzyme substrate packets from the manufacturer will be accepted due to the System laboratory’s TCEQ accreditation requirements.

The IDEXX Distribution, Inc. is the exclusive manufacturer of the Hydrolysable enzyme substrate packets.

The method employed by the Hydrolysable enzyme substrate packets makes this the only practicably available source for the necessary item(s).

The bid submitted by IDEXX Distribution, Inc. meets System requirements to provide Hydrolysable enzyme substrate packets for the analysis of samples utilizing Standards Methods 9223 and 9223B. IDEXX Distribution, Inc. is the only source for this application.

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Extended Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colilert® Reagent Packs for 100 ml Sample Size 200 per pack, IDEXX WP2001</td>
<td>120 Packs</td>
<td>$659.00</td>
<td>$79,080.00</td>
</tr>
<tr>
<td>Colilert®-18 Reagent Packs for 100 ml Sample Size 200 per pack, IDEXX WP2001-18</td>
<td>48 Packs</td>
<td>$773.00</td>
<td>$37,104.00</td>
</tr>
<tr>
<td>QUALITY CONTROL KITS - IDEXX Quanti-Cult - QC bacteria: 3 E coli, 3 Klebsiella P, 3 Pseudomonas A; part # UN 3373-WQC TCEC 98-29000-00</td>
<td>6 Each</td>
<td>$185.90</td>
<td>$1,115.40</td>
</tr>
<tr>
<td>COLILERT COMPARATORS - IDEXX vessel filled with 100ml Colilert®/Colilert®-18 Comparator, WP104</td>
<td>6 Each</td>
<td>$7.00</td>
<td>$42.00</td>
</tr>
<tr>
<td>COLILERT COMPARATORS - IDEXX Quanti-Tray 2000 Comparator, WQT2KC</td>
<td>6 Each</td>
<td>$23.00</td>
<td>$138.00</td>
</tr>
</tbody>
</table>

TOTAL $117,479.40

- The award amount is $117,479.40
AGENDA ITEM NO. 7

TO: San Antonio Water System Board of Trustees

FROM: Sam Mills, P.E., Director, Development, and Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF CONSTRUCTION CONTRACT AND APPROVAL OF EXPENDITURES IN CONNECTION WITH THE COX MANUFACTURING PROJECT

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract in the amount of $323,774.00 to Pronto Sandblasting & Coating & Oil Field Services Co., Inc., a local, MBE-Hispanic contractor, on a Developer Customer construction contract, and authorizes the expenditures of funds in the amount of $179,888.83 for associated construction fees to Pronto Sandblasting & Coating & Oil Field Services Co., Inc., and reimbursements of $17,988.88 for associated design fees to Texas Cox Partnership, Ltd. in connection with the Cox Manufacturing Project.

- On July 1, 2016, by Resolution No. 16-170, the San Antonio Water System (the “System”) Board of Trustees approved a Utility Service Agreement to provide water and/or wastewater services to a tract of land known as the 7.288-Acre Cox Manufacturing Tract, being developed by Texas Cox Partnership, Ltd. (the “Developer”) and the oversizing of approximately 1,621 feet of 8-inch water main to 12-inch water main located southeast of the intersection of N. Loop 1604 East and Judson Rd. in order to conform with the Water Infrastructure Master Plan.

- The Developer is required to construct an 8-inch water main. System staff recommends oversizing a portion of the 8-inch water main to a 12-inch water main. The Developer is responsible for 44.44 percent of the oversizing and for $143,885.16 of the project costs. The System is responsible for 55.56 percent of the oversizing.

- The System solicited bids for the construction of the oversize water main. Upon Board authorization of the construction contract, the Developer will enter into a contract with both the contractor and the System.

- This project consists of the oversize construction of approximately 1,621 feet of 12-inch water main. The construction area is not located over the Edwards Aquifer Recharge Zone and not over the Edwards Aquifer Contributing Zone.

- Pronto Sandblasting & Coating & Oil Field Services Co., Inc., has submitted the low bid
of $323,774.00 for construction of the project.

- The System will pay Pronto Sandblasting & Coating & Oil Field Services Co., Inc., for the construction costs for the oversize project. The Developer will pay the System prior to the beginning of construction for the Developer’s proportionate share of the construction cost for the oversize project.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

This is a Capital Improvement Project that will be financed by the Water Main Oversizing 2017, job number 16-1126. The applicable water main oversize payment will be made monthly to Pronto Sandblasting & Coating & Oil Field Services Co., Inc., in accordance with the Utility Service Regulations. The applicable design fees payment will be made to the Developer. The System will contribute $179,888.83 for construction costs and $17,988.88 for associated design fees for a total cost of $197,877.71. The Developer will pay $143,885.17 of the construction costs and the remainder of the design fees.

Upon completion of construction, the cost of the project will be recorded as a Developer contribution along with an allowance for reimbursement.

**SUPPLEMENTARY COMMENTS:**

Bids for this project were opened on June 29, 2017, at 10:00 a.m. The following bids were accepted for submittal:

<table>
<thead>
<tr>
<th>BIDDER</th>
<th>BID AMOUNT</th>
<th>LOCAL/SMWVB</th>
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</thead>
<tbody>
<tr>
<td>Engineer’s Estimate</td>
<td>$314,250.00</td>
<td></td>
</tr>
<tr>
<td>Pronto Sandblasting &amp; Coating &amp; Oil Field Services Co., Inc.*</td>
<td>$323,774.00</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>J. Sanchez Contracting, Inc.</td>
<td>$338,455.20</td>
<td>Local/MBE–Hispanic</td>
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<tr>
<td>RCO Construction, LLC</td>
<td>$356,312.00</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Austin Engineering Co., Inc.</td>
<td>$414,222.30</td>
<td>Non–Local/Non–SMWVB</td>
</tr>
</tbody>
</table>

*Lowest Responsible Bidder

The contract provides for the completion of this project within 120 calendar days.
Award of Construction Contract
Cox Manufacturing Project

Sam Mills, P.E.
Director
Development

APPROVED:

Robert R. Puente
President/Chief Executive Office

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

COX MANUFACTURING PROJECT

LEGEND

PROJECT LIMITS
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE BID OF PRONTO SANDBLASTING & COATING & OIL FIELD SERVICES CO., INC., IN THE AMOUNT OF $323,774.00 FOR THE CONSTRUCTION OF THE 12-INCH WATER MAIN IN CONNECTION WITH THE COX MANUFACTURING PROJECT; AWARDING A CONSTRUCTION CONTRACT TO PRONTO SANDBLASTING & COATING & OIL FIELD SERVICES CO., INC., IN THE AMOUNT OF $323,774.00 FOR THE PROJECT WORK; AUTHORIZING THE EXPENDITURE OF SYSTEM FUNDS IN THE AMOUNT OF $179,888.83 FOR THE SYSTEM'S PROPORTIONATE SHARE OF THE PROJECT WORK; AUTHORIZING THE EXPENDITURE OF SYSTEM FUNDS IN THE AMOUNT OF $17,988.88 FOR THE SYSTEM'S PROPORTIONATE SHARE OF THE ENGINEERING DESIGN FEES; AUTHORIZING A TOTAL AMOUNT NOT TO EXCEED $197,877.71 FROM SYSTEM'S 2017 CAPITAL IMPROVEMENTS PLAN OVERSIZE PROJECTS FUND FOR THE SYSTEM'S PROPORTIONATE SHARE OF THE PROJECT WORK AND ENGINEERING FEES RELATED TO THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONTRACT WITH TEXAS COX PARTNERSHIP, LTD., AND PRONTO SANDBLASTING & COATING & OIL FIELD SERVICES CO., INC., AND PROVIDE PAYMENT IN AN AMOUNT NOT TO EXCEED $179,888.83 TO PRONTO SANDBLASTING & COATING & OIL FIELD SERVICES CO., INC., AND REIMBURSEMENTS OF $17,988.88 TO TEXAS COX PARTNERSHIP, LTD., FOR THE SYSTEM'S PROPORTIONATE SHARE OF THE COST TO OVERSIZE THE PROPOSED WATER MAIN; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, by Resolution No. 16-170, approved on July 1, 2016, the San Antonio Water System (the “System”) authorized the extension of water service within the 7.288-Acre Cox Manufacturing Tract being developed by Texas Cox Partnership, Ltd., and the oversize of approximately 1,621 feet of 8-inch water main to a 12-inch water main to conform with the Water Infrastructure Master Plan; and
WHEREAS, Texas Cox Partnership Ltd., is required to construct an 8-inch water main and the System has elected to oversize a portion of the 8-inch water main to a 12-inch water main; and

WHEREAS, the System has solicited bids for the Cox Manufacturing Project (the “project work”); and

WHEREAS, Pronto Sandblasting & Coating & Oil Field Services Co., Inc., a local, MBE-Hispanic contractor, submitted the bid of $323,774.00 for construction of the project and this bid is determined to be the lowest responsible bid; and

WHEREAS, Texas Cox Partnership, Ltd., is responsible for funding their proportionate share of the construction of the project; and

WHEREAS, the amount of $197,877.71 is available in the System’s Water Main Oversizing 2017 for the System’s proportionate share of the project work costs and engineering fees related to oversizing the off-site water main; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to accept the bid of Pronto Sandblasting & Coating & Oil Field Services Co., Inc., in the amount of $323,774.00 for the project work, in connection with the Cox Manufacturing Project, (ii) to award a construction contract to Pronto Sandblasting & Coating & Oil Field Services Co., Inc., in the amount of $323,774.00 for the project work, (iii) to authorize System funds in the amount of $179,888.83 for the project work, (iv) to authorize System funds in the amount of $17,988.88 for design fees, (v) to make available a total amount not to exceed $197,877.71 from the System’s 2017 Capital Improvement Plan Oversize Projects Fund for the System’s proportionate share of the project work and engineering fees related to oversizing the proposed off-site water main, and (vi) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a contract with Texas Cox Partnership, Ltd., and Pronto Sandblasting & Coating & Oil Field Services Co., Inc., for the project work and to provide payment in an amount not to exceed $179,888.83 to Pronto Sandblasting & Coating & Oil Field Services Co., Inc., and reimbursements in an amount not to exceed $17,988.88 to Texas Cox Partnership, Ltd., for the System’s cost to oversize the proposed off-site water main; now, therefore:

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

1. That the bid of Pronto Sandblasting & Coating & Oil Field Services Co., Inc., in the amount of $323,774.00 for the project work in connection with the Cox Manufacturing Project is hereby accepted.

2. That a construction contract for the project work is hereby awarded to Pronto Sandblasting & Coating & Oil Field Services Co., Inc., in the amount of $323,774.00.

3. That the expenditure of System funds in an amount of $179,888.83 for the System's
proportionate share of the project work is hereby approved.

4. That the expenditure of System funds in the amount of $17,988.88 for the System’s proportionate share of engineering design fees associated with the project work is hereby authorized and approved.

5. That a total sum not to exceed $197,877.71 consisting of the System’s proportionate share of the project work costs and engineering fees related to the 12-inch oversized (8-inch required) water main, is hereby made available and is to be expended from the System’s 2017 Capital Improvements Plan Oversize Projects Fund.

6. That the President/Chief Executive Officer or his duly appointed designee, is hereby authorized and directed to execute a contract with Texas Cox Partnership, Ltd., and Pronto Sandblasting & Coating & Oil Field Services Co., Inc., and to further provide payment in an amount not to exceed $179,888.83 for the cost to oversize the off-site water main to Pronto Sandblasting & Coating & Oil Field Services Co., Inc., and reimbursements in an amount not to exceed $17,988.88 to Texas Cox Partnership, Ltd., in accordance with the Utility Service Regulations in connection with the Cox Manufacturing Project.

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 shall take effect immediately upon its passage.

PASSED AND APPROVED on this 13th day of September, 2017.

Berto Guerra, Jr., Chairman

ATTEST:

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

FROM: Gail Hamrick-Pigg, P.E., Director, Pipelines, and Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: APPROVAL OF RECAPITULATION CHANGE ORDER NO. 6 IN CONNECTION WITH THE 2014 SMALL DIAMETER REHABILITATION PROJECT 1

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Recapitulation Change Order No. 6 in the decreased amount of $1,029,434.10 to be credited to the construction contract with PM Construction & Rehab, LLC, a local, non-SMWB contractor, in connection with the 2014 Small Diameter Rehabilitation Project 1. It further returns $1,029,434.10 to the Project Fund and closes the contract.

- On November 4, 2014, by Resolution No. 14-303, the San Antonio Water System (the “System”) Board of Trustees awarded a construction contract in the amount of $4,954,105.00 to PM Construction & Rehab, LLC.

- 2014 Small Diameter Rehabilitation Project 1 included the replacement of 8-inch through 24-inch sewer mains.

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

- Change Order No. 6 recapitulates the construction contract quantities in the decreased amount of $1,029,434.10 to the Project Fund and closes the contract.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

This is a capital improvement expenditure that was included in the CY 2014 Capital Improvement Program, Wastewater Core Business category, 2014 Small Diameter Rehabilitation Project 1 under job number 14-4805.
Approval of Recapitulation Change Order No. 6
2014 Small Diameter Rehabilitation Project 1

The authorizations for this project are as follows:

<table>
<thead>
<tr>
<th>Contract:</th>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 14-303)</td>
<td>$4,954,105.00</td>
</tr>
<tr>
<td>Change Order Nos. 1 through 5</td>
<td>(14.90)</td>
</tr>
<tr>
<td>Proposed Recapitulation Change Order No. 6</td>
<td>(1,029,434.10)</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>3,924,656.00</td>
</tr>
<tr>
<td><strong>Balance Returned:</strong></td>
<td></td>
</tr>
<tr>
<td>Total Remaining Balance Returned</td>
<td>$1,029,434.10</td>
</tr>
</tbody>
</table>

**SUPPLEMENTARY COMMENTS:**

Change Order No. 6 reflects a 20.78 percent decrease in the original contract cost for the project.

Gail Hamrick-Pigg, P.E.
Director
Pipelines

Andrea L.H. Beymer, 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 RECAPITULATION CHANGE ORDER NO. 6 IN THE DECREASED AMOUNT OF $1,029,434.10 TO BE CREDITED TO THE CONSTRUCTION CONTRACT WITH PM CONSTRUCTION & REHAB, LLC, IN CONNECTION WITH THE 2014 SMALL DIAMETER REHABILITATION PROJECT 1; AUTHORIZING THE RETURN OF FUNDS IN THE AMOUNT OF $1,029,434.10 TO THE SYSTEM’S PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE RECAPITULATION CHANGE ORDER NO. 6 AND CLOSE THE CONTRACT WITH PM CONSTRUCTION & REHAB, LLC; 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 2014 Small Diameter Rehabilitation Project 1 as part of its Capital Improvement Program; and

WHEREAS, funds in the amount of $4,954,105.00 for the construction contract with PM Construction & Rehab, LLC, were authorized for the project by Resolution 14-303, adopted November 4, 2014; and

WHEREAS, the construction of this project is complete; and

WHEREAS, Change Order No. 6 recapitulates the construction contract quantities in the decreased amount of $1,029,434.10; and

WHEREAS, funds in the amount of $1,029,434.10 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. 6 in the decreased amount of $1,029,434.10 in connection with the 2014 Small Diameter Rehabilitation Project 1, (ii) to return the amount of $1,029,434.10 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. 6 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. 6 in the decreased amount of $1,029,434.10 in connection with the 2014 Small Diameter Rehabilitation Project 1 is hereby approved.

2. That the amount of $1,029,434.10 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. 6 to the construction contract between the System and PM Construction & Rehab, LLC, in connection with the 2014 Small Diameter Rehabilitation Project 1 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 remain 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 13th day of September, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

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

FROM: Gail Hamrick-Pigg, P.E., Director, Pipelines, and Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: APPROVAL OF RECAPITULATION CHANGE ORDER NO. 4 IN CONNECTION WITH THE 2014 SMALL AND LARGE DIAMETER REHAB PROGRAM – PROJECT 2

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Recapitulation Change Order No. 4 in the decreased amount of $4,186,208.87 to be credited to the construction contract with PM Construction & Rehab, LLC, a local, non-SMWB contractor, in connection with the 2014 Small and Large Diameter Rehab Program – Project 2. It further returns $4,186,208.87 to the Project Fund and closes the contract.

• On December 2, 2014, by Resolution No. 14-348, the San Antonio Water System (the “System”) Board of Trustees awarded a construction contract in the amount of $8,413,590.00 to PM Construction & Rehab, LLC.

• 2014 Small and Large Diameter Rehab Program – Project 2 included the replacement of 8-inch through 48-inch sewer mains.

• Attempts to extend this contract were unsuccessful, and the contractor elected to allow this contract to expire with the remaining funds.

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

• Change Order No. 4 recapitulates the construction contract quantities in the decreased amount of $4,186,208.87 to the Project Fund and closes the contract.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

This is a capital improvement expenditure that was included in the CY 2014 Capital Improvement Program, Wastewater Core Business category, 2014 Small and Large Diameter Rehab Program – Project 2 under job number 14-4806.
The authorizations for this project are as follows:

<table>
<thead>
<tr>
<th>Contract</th>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 14-348)</td>
<td>$8,413,590.00</td>
</tr>
<tr>
<td>Change Order Nos. 1 through 3</td>
<td>0.00</td>
</tr>
<tr>
<td>Proposed Recapitulation Change Order No. 4</td>
<td>(4,186,208.87)</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>4,227,381.13</td>
</tr>
<tr>
<td><strong>Balance Returned:</strong></td>
<td></td>
</tr>
<tr>
<td>Total Remaining Balance Returned</td>
<td>$4,186,208.87</td>
</tr>
</tbody>
</table>

**SUPPLEMENTARY COMMENTS:**

Change Order No. 4 reflects a 49.75 percent decrease in the original contract cost for the project due to the contractor’s refusal to renew the contract with the System.

Gail Hamrick-Pigg, P.E.
Director
 Pipelines

Andrea L.H. Beymer, 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 RECAPITULATION CHANGE ORDER NO. 4 IN THE DECREASED AMOUNT OF $4,186,208.87 TO BE CREDITED TO THE CONSTRUCTION CONTRACT WITH PM CONSTRUCTION & REHAB, LLC, IN CONNECTION WITH THE 2014 SMALL AND LARGE DIAMETER REHAB PROGRAM – PROJECT 2; AUTHORIZING THE RETURN OF FUNDS IN THE AMOUNT OF $4,186,208.87 TO THE SYSTEM'S PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE RECAPITULATION CHANGE ORDER NO. 4 AND CLOSE THE CONTRACT WITH PM CONSTRUCTION & REHAB, LLC; 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 2014 Small and Large Diameter Rehab Program – Project 2 as part of its Capital Improvement Program; and

WHEREAS, funds in the amount of $8,413,590.00 for the construction contract with PM Construction & Rehab, LLC, were authorized for the project by Resolution 14-348, adopted on December 2, 2014; and

WHEREAS, the construction of this project is complete; and

WHEREAS, Change Order No. 4 recapitulates the construction contract quantities in the decreased amount of $4,186,208.87; and

WHEREAS, funds in the amount of $4,186,208.87 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. 4 in the decreased amount of $4,186,208.87 in connection with the 2014 Small and Large Diameter Rehab Program – Project 2, (ii) to return the amount of $4,186,208.87 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. 4 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. 4 in the decreased amount of $4,186,208.87 in connection with the 2014 Small and Large Diameter Rehab Program – Project 2 is hereby approved.

2. That the amount of $4,186,208.87 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. 4 to the construction contract between the System and PM Construction & Rehab, LLC, in connection with the 2014 Small and Large Diameter Rehab Program – Project 2 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 the 13th day of September, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Ernesto Arrellano, Jr., Secretary
AGENDA ITEM NO. 10

TO: San Antonio Water System Board of Trustees
FROM: Gail Hamrick-Pigg, P.E., Director, Pipelines, and Andrea L.H Beymer, P.E., Vice President, Engineering and Construction
THROUGH: Robert R. Puente, President/Chief Executive Officer
SUBJECT: APPROVAL OF RECAPITULATION CHANGE ORDER NO. 2 IN CONNECTION WITH THE CASTROVILLE ROAD 48-INCH REHAB PROJECT

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Recapitulation Change Order No. 2 in the decreased amount of $123,302.00 to be credited to the construction contract with SAK Construction, LLC, a non-local, non-SMWVB contractor, in connection with the Castroville Road 48-inch Rehab Project. It further returns $123,302.00 to the Project Fund and closes the contract.

- On December 13, 2016, by Resolution No. 16-304, the San Antonio Water System (the “System”) Board of Trustees ratified the actions of the Vice President of Engineering and Construction in approving the construction contract in the amount of $2,082,547.00 to SAK Construction, LLC.

- Castroville Road 48-inch Rehab Project included the replacement of approximately 3,105 feet of 48-inch and 56 feet of 42-inch diameter cured in place pipe, rehabilitation of sewer manholes, replacement and repair.

- On June 6, 2017, by Resolution No. 17-124, the System’s Board of Trustees ratified the actions of the Vice President of Engineering and Construction approving Change Order No. 1 in the amount of $470,535.64 payable to SAK Construction, LLC in connection with the Castroville 48-inch Rehab Project.

- Change Order No. 1 authorized the addition of three segments that required rehabilitation by early May 2017, to meet compliance requirements set by the Texas Commission of Environmental Quality. The Lariat Drive project involved the rehabilitation of 254 feet of 30-inch sewer main and associated manholes. The Willow Moss project involved the rehabilitation of two segments that totaled 417 feet of 24-inch sewer main and associated manholes and laterals.

- All work on these projects has been completed and this final change order is necessary to reflect actual quantities.
Approval of Recapitulation Change Order No. 2  
Castroville Road 48-inch Rehab Project

- Change Order No. 2 recapitulates the construction contract quantities in the decreased amount of $123,302.00 to the Project Fund and closes the contract.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

This is a capital improvement expenditure that was included in the CY 2016 Capital Improvement Program, Wastewater Core Business category, the Castroville Road 48-inch Rehab Project under job number 14-4652.

The authorizations for this project are as follows:

<table>
<thead>
<tr>
<th>Contract</th>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 16-304)</td>
<td>$2,082,547.00</td>
</tr>
<tr>
<td>Change Order No. 1</td>
<td>470,535.64</td>
</tr>
<tr>
<td>Proposed Recapitulation Change Order No. 2</td>
<td>(123,302.00)</td>
</tr>
<tr>
<td>Revised Contract Amount:</td>
<td>2,429,780.64</td>
</tr>
<tr>
<td><strong>Balance Returned:</strong></td>
<td></td>
</tr>
<tr>
<td>Total Remaining Balance Returned</td>
<td>$123,302.00</td>
</tr>
</tbody>
</table>

**SUPPLEMENTARY COMMENTS:**

Change Order No. 2 reflects a 5.07 percent decrease in the revised contract amount cost for the project.

Gail Hamrick-Pigg, P.E.  
Director  
Pipelines

Andrea L.H. Beymer, P.E.  
Vice President  
Engineering and Construction

APPROVED:

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 RECAPITULATION CHANGE ORDER NO. 2 IN THE DECREASED AMOUNT OF $123,302.00 TO BE CREDITED TO THE CONSTRUCTION CONTRACT WITH SAK CONSTRUCTION, LLC, IN CONNECTION WITH THE CASTROVILLE ROAD 48-INCH REHAB PROJECT; AUTHORIZING THE RETURN OF FUNDS IN THE AMOUNT OF $123,302.00 TO THE SYSTEM’S PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE RECAPITULATION CHANGE ORDER NO. 2 AND CLOSE THE CONTRACT WITH SAK CONSTRUCTION, LLC; 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 Castroville Road 48-inch Rehab Project as part of its Capital Improvement Program; and

WHEREAS, funds in the amount of $2,553,082.64 for the construction contract with SAK Construction, LLC, were authorized for the project by Resolution No. 16-304, adopted December 13, 2016; and

WHEREAS, the construction of this project is complete; and

WHEREAS, Change Order No. 2 recapitulates the construction contract quantities in the decreased amount of $123,302.00; and

WHEREAS, funds in the amount of $123,302.00 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. 2 in the decreased amount of $123,302.00 in connection with the Castroville Road 48-inch Rehab Project, (ii) to return the amount of $123,302.00 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. 2 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. 2 in the decreased amount of $123,302.00 in connection with the Castroville Road 48-inch Rehab Project is hereby approved.

2. That the amount of $123,302.00 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. 2 to the construction contract between the System and SAK Construction, LLC, in connection with the Castroville Road 48-inch Rehab 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 13th day of September, 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 Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE I

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to K Friese & Associates, Inc., a local, WBE-Caucasian firm, and authorizes funds in the amount of $1,500,000.00 for the 2017 Pipelines Condition Work Order Contract – Package I.

- The San Antonio Water System (the “System”) Pipelines Division manages programmed CIP projects designed by consultants and in-house staff for emergency and non-emergency operations projects. A need exists for an outside consultant to provide engineering services beyond the capability of the System’s Pipeline Division due to workload and the need for specialized design services.

- In addition, local and state agencies typically hire engineering consultants to design their infrastructure improvement projects. In many cases, the System elects to contract with the same engineer to design water or sewer facility related work in connection with each project. However, there are some projects that require the System to use a separate design consultant.

- The use of Engineering Services Work Order contracts, over the past several years, has been very successful in insuring that the System is able to meet the design and construction schedules of other agencies and the need for expedited design services for emergency and non-emergency work for both water and sewer. This practice allows projects to be assigned as soon as they are identified, thereby avoiding delays associated with the selection of individual consultants for each project.

- The contract that is 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 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.

- Projects will be assigned to the contract on a work order basis as they are identified. The
scope of services and fees will be negotiated for each project prior to authorization to proceed.

- System staff will review the design documents and coordinate with other utility and governmental agencies. Construction may be jointly bid with the lead agency or may be accomplished through the use of System construction work order contracts.

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. The water work is included in the Water Delivery Core Business budget line item. The amount is $250,000.00 for water related engineering work. The job number is 17-5001-000.

The wastewater work is included in the Wastewater Core Business budget line item. The amount is $1,250,000.00 for sewer related engineering work. The job numbers are 17-5501-000 and 17-4542-000.

**SUPPLEMENTARY COMMENTS:**

This contract will be valid for two years from the date of execution. Thirty-five firms responded to the Request for Qualifications. K Friese & 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>6S Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Alan Plummer &amp; Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Arcadis U.S., Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Arredondo, Zepeda, &amp; Brunz, LLC</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Bain Medina Bain, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Brown &amp; Gay Engineers, Inc. dba BGE, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Civil Design Services, Inc. dba CDS Muery</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>CP&amp;Y, Inc.</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td>Don Durden, Inc. dba Civil Engineering Consultants</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Ford Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Garcia &amp; Wright Consulting Engineers, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Garver, LLC</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Gonzalez-De La Garza &amp; Associates, LLC</td>
<td>Local/WBE–Hispanic</td>
</tr>
<tr>
<td>JQ Infrastructure, LLC</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td><strong>K Friese &amp; Associates, Inc.</strong></td>
<td><strong>Local/WBE–Caucasian</strong></td>
</tr>
<tr>
<td>KCI Technologies, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Kimley-Horn and Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>LNV, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Lockwood, Andrews, and Newnam, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Maestas and Associates, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Mendez Engineering, PLLC</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Merrick &amp; Company</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Omega Engineers, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Premier Civil Engineering, LLC dba Premier Engineering Surveying</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>RPS Klotz Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Reyes &amp; Hamilton Engineers, PLLC</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>RJN Group, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>S &amp; B Infrastructure, Ltd.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Trihydro Corporation</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Unintech Consulting Engineering, Inc.</td>
<td>Local/WBE–Asian</td>
</tr>
<tr>
<td>Vickrey &amp; Associates, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Ward, Getz, &amp; Associates, LLP</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Weston Solutions, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Whitman, Requardt and Associates, LLP</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Young Professional Resources</td>
<td>Local/MBE–AABE</td>
</tr>
</tbody>
</table>

*Selected Firm*
K Friese & 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kimley-Horn &amp; Associates, Inc.</td>
<td>15.00%</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td>Civil Design Services, Inc. dba CDS Muery</td>
<td>10.00%</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td>Raba Kistner, Inc.</td>
<td>5.00%</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td>The Rios Group, Inc.</td>
<td>2.00%</td>
<td>Local/WBE-Hispanic</td>
</tr>
<tr>
<td>Underground Services, Inc.</td>
<td>2.00%</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Construct-Ability, LLC</td>
<td>4.00%</td>
<td>Local/Non-SMWVB</td>
</tr>
</tbody>
</table>

2017 Pipelines Condition Work Order Contract – Package I

K FRIESE & ASSOCIATES, INC.

SMWVB ANALYSIS – BOARD AWARD

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
<td>2.00%</td>
</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>
<td>0.00%</td>
</tr>
<tr>
<td>MBE–Other</td>
<td>0.00%</td>
</tr>
<tr>
<td>WBE–Minority</td>
<td>2.00%</td>
</tr>
<tr>
<td>WBE–Non–Minority</td>
<td>62.00%</td>
</tr>
<tr>
<td>SMWVB Total</td>
<td>66.00%</td>
</tr>
</tbody>
</table>

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

APPROVED:

Andrea L.H. Beymer, P.E.
Vice President
Engineering and Construction

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A PROFESSIONAL SERVICES CONTRACT TO K FRIESE & ASSOCIATES, INC., IN AN AMOUNT NOT TO EXCEED $1,500,000.00 IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT – PACKAGE I; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $1,500,000.00 FROM THE SYSTEM'S PROJECT FUND FOR THE PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH K FRIESE & ASSOCIATES, INC., AND TO PAY K FRIESE & ASSOCIATES, INC., AN AMOUNT NOT TO EXCEED $1,500,000.00 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 San Antonio Water System (the “System”) requires professional engineering services (the “project engineering work”) related to various capital improvement projects; and

WHEREAS, the project engineering work will consist of all services necessary for the design and construction of projects; and

WHEREAS, K Friese & Associates, Inc., a local, WBE-Caucasian firm, was selected through the System’s Architect/Engineer Selection Procedure for the project engineering work; and

WHEREAS, a contract in an amount not to exceed $1,500,000.00 is to be awarded to K-Friese & Associates, Inc.; and

WHEREAS, the amount of $1,500,000.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a professional services contract to K Friese & Associates, Inc., in an amount not to exceed $1,500,000.00 for the project engineering work in connection with the 2017 Pipelines Condition Work Order Contract – Package I, (ii) to make available for the project engineering work an amount not to exceed $1,500,000.00 from the System’s Project Fund, and (iii) to authorize the
President/Chief Executive Officer or his duly appointed designee to execute a standard professional services contract with K Friese & Associates, Inc., for the project engineering work and further to make payment in an amount not to exceed $1,500,000.00 to K Friese & Associates, Inc., for the project engineering work in connection with this contract; now, therefore:

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

1. That a professional services contract in an amount not to exceed $1,500,000.00 is hereby awarded to K Friese & Associates, Inc., for engineering services in connection with the 2017 Pipelines Condition Work Order Contract – Package I.

2. That an amount not to exceed $1,500,000.00 for the project engineering work is hereby made available and is to be expended from the System’s Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard professional services contract with K Friese & Associates, Inc., and to make payment in an amount not to exceed $1,500,000.00 to K Friese & Associates, Inc., for the project engineering work.

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, invalid or ineffective, 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 13th day of September, 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 Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE II

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Unintech Consulting Engineers, Inc., a local, WBE-Asian firm, and authorizes funds in the amount of $1,250,000.00 for the 2017 Pipelines Condition Work Order Contract – Package II.

- The San Antonio Water System (the “System”) Pipelines Division manages programmed CIP projects designed by consultants and in-house staff for emergency and non-emergency operations projects. A need exists for an outside consultant to provide engineering services beyond the capability of the System’s Pipeline Division due to workload and the need for specialized design services.

- In addition, local and state agencies typically hire engineering consultants to design their infrastructure improvement projects. In many cases, the System elects to contract with the same engineer to design water or sewer facility related work in connection with each project. However, there are some projects that require the System to use a separate design consultant.

- The use of Engineering Services Work Order contracts, over the past several years, has been very successful in insuring that the System is able to meet the design and construction schedules of other agencies and the need for expedited design services for emergency and non-emergency work for both water and sewer. This practice allows projects to be assigned as soon as they are identified, thereby avoiding delays associated with the selection of individual consultants for each project.

- The contract that is 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 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.

- Projects will be assigned to the contract on a work order basis as they are identified. The
scope of services and fees will be negotiated for each project prior to authorization to proceed.

- System staff will review the design documents and coordinate with other utility and governmental agencies. Construction may be jointly bid with the lead agency or may be accomplished through the use of System construction work order contracts.

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. The water work is included in the Water Delivery Core Business budget line item. The amount is $250,000.00 for water related engineering work. The job number is 17-5001-000.

The wastewater work is included in the Wastewater Core Business budget line item. The amount is $1,000,000.00 for sewer related engineering work. The job numbers are 17-5501-000 and 17-4542-000.

**SUPPLEMENTARY COMMENTS:**

This contract will be valid for two years from the date of execution. Thirty-five firms responded to the Request for Qualifications. Unintech Consulting Engineers, 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>6S Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
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<td>Alan Plummer &amp; Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
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<td>Local/Non–SMWVB</td>
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<td>Local/MBE–Hispanic</td>
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<td>Brown &amp; Gay Engineers, Inc. dba BGE, Inc.</td>
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<td>CP&amp;Y, Inc.</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td>Don Durden, Inc. dba Civil Engineering Consultants</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Ford Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Garcia &amp; Wright Consulting Engineers, Inc.</td>
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<td>Garver, LLC</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Gonzalez-De La Garza &amp; Associates, LLC</td>
<td>Local/WBE–Hispanic</td>
</tr>
<tr>
<td>JQ Infrastructure, LLC</td>
<td>Local/MBE–Asian</td>
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<td>K Friese &amp; Associates, Inc.</td>
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<tr>
<td>KCI Technologies, Inc.</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Kimley-Horn and Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>LNV, Inc.</td>
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<tr>
<td>Lockwood, Andrews, and Newnam, Inc.</td>
<td>Local/Non–SMWVB</td>
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<td>Maestas and Associates, Inc.</td>
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<td>Mendez Engineering, PLLC</td>
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<td>Merrick &amp; Company</td>
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<td>Omega Engineers, Inc.</td>
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</tr>
<tr>
<td>Premier Civil Engineering, LLC dba Premier Engineering Surveying</td>
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</tr>
<tr>
<td>RPS Klotz Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Reyes &amp; Hamilton Engineers, PLLC</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>RJN Group, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
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<td>S &amp; B Infrastructure, Ltd.</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Trihydro Corporation</td>
<td>Local/Non–SMWVB</td>
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<td><strong>Unintech Consulting Engineering, Inc.</strong></td>
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<td>Vickrey &amp; Associates, Inc.</td>
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</tr>
<tr>
<td>Ward, Getz, &amp; Associates, LLP</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Weston Solutions, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Whitman, Requardt and Associates, LLP</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Young Professional Resources</td>
<td>Local/MBE–AABE</td>
</tr>
</tbody>
</table>

*Selected Firm
Unintech Consulting Engineers, 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alan Plummer &amp; Associates, Inc.</td>
<td>5.00%</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td>Chief Solutions, Inc.</td>
<td>5.00%</td>
<td>Non-Local/MBE–Native American</td>
</tr>
<tr>
<td>The Rios Group, Inc.</td>
<td>3.00%</td>
<td>Local/WBE–Hispanic</td>
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<tr>
<td>RPS Klotz Associates, Inc.</td>
<td>15.00%</td>
<td>Local/Non-SMWVB</td>
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<tr>
<td>Terracon Consultants, Inc.</td>
<td>5.00%</td>
<td>Non-Local/Non-SMWVB</td>
</tr>
<tr>
<td>Terra Design Group, Inc.</td>
<td>2.00%</td>
<td>Local/SBE</td>
</tr>
</tbody>
</table>

**2017 Pipelines Condition Work Order Contract – Package II**

**UNINTECH CONSULTING ENGINEERS, INC.**

**SMWVB ANALYSIS – BOARD AWARD**

<p>| | |</p>
<table>
<thead>
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<tr>
<td>SBE</td>
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</tr>
<tr>
<td>MBE–African American</td>
<td>0.00%</td>
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<tr>
<td>MBE–Asian</td>
<td>0.00%</td>
</tr>
<tr>
<td>MBE–Hispanic</td>
<td>0.00%</td>
</tr>
<tr>
<td>MBE–Other</td>
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<tr>
<td>WBE–Minority</td>
<td>68.00%</td>
</tr>
<tr>
<td>WBE–Non–Minority</td>
<td>0.00%</td>
</tr>
<tr>
<td><strong>SMWVB Total</strong></td>
<td><strong>70.00%</strong></td>
</tr>
</tbody>
</table>

**APPROVED:**

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

Andrea L.H. Boymer, P.E.
Vice President
Engineering and Construction

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A PROFESSIONAL SERVICES CONTRACT TO UNINTECH CONSULTING ENGINEERS, INC., IN AN AMOUNT NOT TO EXCEED $1,250,000.00 IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT – PACKAGE II; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $1,250,000.00 FROM THE SYSTEM’S PROJECT FUND FOR THE PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH UNINTECH CONSULTING ENGINEERS, INC., AND TO PAY UNINTECH CONSULTING ENGINEERS, INC., AN AMOUNT NOT TO EXCEED $1,250,000.00 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 San Antonio Water System (the “System”) requires professional engineering services (the “project engineering work”) related to various capital improvement projects; and

WHEREAS, the project engineering work will consist of all services necessary for the design and construction of projects; and

WHEREAS, Unintech Consulting Engineers, Inc., a local, WBE-Asian firm, was selected through the System’s Architect/Engineer Selection Procedure for the project engineering work; and

WHEREAS, a contract in an amount not to exceed $1,250,000.00 is to be awarded to Unintech Consulting Engineers, Inc.; and

WHEREAS, the amount of $1,250,000.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a professional services contract to Unintech Consulting Engineers, Inc., in an amount not to exceed $1,250,000.00 for the project engineering work in connection with the 2017 Pipelines Condition Work Order Contract – Package II, (ii) to make available for the project engineering work an amount not to exceed $1,250,000.00 from the System’s Project Fund, and (iii) to authorize the
President/Chief Executive Officer or his duly appointed designee to execute a standard professional services contract with Unintech Consulting Engineers, Inc., for the project engineering work and further to make payment in an amount not to exceed $1,250,000.00 to Unintech Consulting Engineers, Inc. for the project engineering work in connection with this contract; now, therefore:

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

1. That a professional services contract in an amount not to exceed $1,250,000.00 is hereby awarded to Unintech Consulting Engineers, Inc., for engineering services in connection with the 2017 Pipelines Condition Work Order Contract – Package II.

2. That an amount not to exceed $1,250,000.00 for the project engineering work is hereby made available and is to be expended from the System’s Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard professional services contract with Unintech Consulting Engineers, Inc., and to make payment in an amount not to exceed $1,250,000.00 to Unintech Consulting Engineers, Inc. for the project engineering work.

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 13th day of September, 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 Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE III

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to LNV, Inc., a local, MBE-Hispanic firm, and authorizes funds in the amount of $500,000.00 for the 2017 Pipelines Condition Work Order Contract – Package III.

- The San Antonio Water System (the “System”) Pipelines Division manages programmed CIP projects designed by consultants and in-house staff for emergency and non-emergency operations projects. A need exists for an outside consultant to provide engineering services beyond the capability of the System’s Pipeline Division due to workload and the need for specialized design services.

- In addition, local and state agencies typically hire engineering consultants to design their infrastructure improvement projects. In many cases, the System elects to contract with the same engineer to design water or sewer facility related work in connection with each project. However, there are some projects that require the System to use a separate design consultant.

- The use of Engineering Services Work Order contracts, over the past several years, has been very successful in insuring that the System is able to meet the design and construction schedules of other agencies and the need for expedited design services for emergency and non-emergency work for both water and sewer. This practice allows projects to be assigned as soon as they are identified, thereby avoiding delays associated with the selection of individual consultants for each project.

- The contract that is 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 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.

- Projects will be assigned to the contract on a work order basis as they are identified. The
scope of services and fees will be negotiated for each project prior to authorization to proceed.

- System staff will review the design documents and coordinate with other utility and governmental agencies. Construction may be jointly bid with the lead agency or may be accomplished through the use of System construction work order contracts.

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. The wastewater work is included in the Wastewater Core Business budget line item. The amount is $500,000.00 for sewer related engineering work. The job number is 17-4542-000.

**SUPPLEMENTARY COMMENTS:**

This contract will be valid for two years from the date of execution. Thirty-five firms responded to the Request for Qualifications. LNV, Inc., was selected through the System’s Architect/Engineer Selection procedure as a qualified consultant. The submitting firms are as follows:
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<td>LNV, Inc.*</td>
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<td>Hazen and Sawyer</td>
<td>5.00%</td>
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<td>Grubb Engineering, Inc.</td>
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<td>7.00%</td>
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<td>Raba Kistner, Inc.</td>
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<td>2.00%</td>
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<td>10.00%</td>
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<td>Encotech Engineering Consultants</td>
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<td>Local/MBE–Asian</td>
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<td>Construct-Ability, LLC</td>
<td>2.00%</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Chapman Engineering, Inc.</td>
<td>1.00%</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Chief Solutions, Inc.</td>
<td>2.00%</td>
<td>Non–Local/MBE–Native American</td>
</tr>
</tbody>
</table>

The table shows the participation and local/smwbv participation of each sub-consultant. The total local/smwbv participation is 78.00%.

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

Andrea L. H. Beymer, P.E.  
Vice President  
Engineering and Construction
Award of Professional Services Contract
2017 Pipelines Condition Work Order Contract – Package III

APPROVED:

[Signature]

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A PROFESSIONAL SERVICES CONTRACT TO LNV, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE III; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $500,000.00 FROM THE SYSTEM'S PROJECT FUND FOR THE PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH LNV, INC., AND TO PAY LNV, INC. AN AMOUNT NOT TO EXCEED $500,000.00 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 San Antonio Water System (the “System”) requires professional engineering services (the “project engineering work”) related to various capital improvement projects; and

WHEREAS, the project engineering work will consist of all services necessary for the design and construction of projects; and

WHEREAS, LNV, Inc., a local, MBE–Hispanic firm, was selected through the System’s Architect/Engineer Selection Procedure for the project engineering work; and

WHEREAS, a contract in an amount not to exceed $500,000.00 is to be awarded to LNV, Inc.; and

WHEREAS, the amount of $500,000.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a professional services contract to LNV, Inc., in an amount not to exceed $500,000.00 for the project engineering work in connection with the 2017 Pipelines Condition Work Order Contract - Package III, (ii) to make available for the project engineering work an amount not to exceed $500,000.00 from the System's Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a standard professional services contract with LNV, Inc., for the project engineering work and further to make payment in an amount not to
exceed $500,000.00 to LNV, Inc., for the project engineering work in connection with this contract; now, therefore:

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

1. That a professional services contract in an amount not to exceed $500,000.00 is hereby awarded to LNV, Inc., for engineering services in connection with the 2017 Pipelines Condition Work Order Contract – Package III.

2. That an amount not to exceed $500,000.00 for the project engineering work is hereby made available and is to be expended from the System’s Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard professional services contract with LNV, Inc., and to make payment in an amount not to exceed $500,000.00 to LNV, Inc., for the project engineering work.

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 13th day of September, 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 Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE IV

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Lockwood, Andrews & Newnam, Inc., a local, non-SMWVB firm, and authorizes funds in the amount of $500,000.00 for the 2017 Pipelines Condition Work Order Contract – Package IV.

- The San Antonio Water System (the “System”) Pipelines Division manages programmed CIP projects designed by consultants and in-house staff for emergency and non-emergency operations projects. A need exists for an outside consultant to provide engineering services beyond the capability of the System’s Pipeline Division due to workload and the need for specialized design services.

- In addition, local and state agencies typically hire engineering consultants to design their infrastructure improvement projects. In many cases, the System elects to contract with the same engineer to design water or sewer facility related work in connection with each project. However, there are some projects that require the System to use a separate design consultant.

- The use of Engineering Services Work Order contracts, over the past several years, has been very successful in insuring that the System is able to meet the design and construction schedules of other agencies and the need for expedited design services for emergency and non-emergency work for both water and sewer. This practice allows projects to be assigned as soon as they are identified, thereby avoiding delays associated with the selection of individual consultants for each project.

- The contract that is 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 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.

- Projects will be assigned to the contract on a work order basis as they are identified. The
scope of services and fees will be negotiated for each project prior to authorization to proceed.

- System staff will review the design documents and coordinate with other utility and governmental agencies. Construction may be jointly bid with the lead agency or may be accomplished through the use of System construction work order contracts.

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. The water work is included in the Water Delivery Core Business budget line item. The amount is $250,000.00 for water related engineering work. The job number is 17-5001-000.

The wastewater work is included in the Wastewater Core Business budget line item. The amount is $250,000.00 for sewer related engineering work. The job number is 17-5501-000.

**SUPPLEMENTARY COMMENTS:**

This contract will be valid for two years from the date of execution. Thirty-five firms responded to the Request for Qualifications. Lockwood, Andrews & Newnam, Inc., was selected through the System’s Architect/Engineer Selection procedure as a qualified consultant. The submitting firms are as follows:
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<td>Local/Non–SMWVB</td>
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<td>Arredondo, Zepeda, &amp; Brunz, LLC</td>
<td>Local/MBE–Hispanic</td>
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<tr>
<td>Bain Medina Bain, Inc.</td>
<td>Local/WBE–Caucasian</td>
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<td>Brown &amp; Gay Engineers, Inc. dba BGE, Inc.</td>
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</tr>
<tr>
<td>LNV, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td><strong>Lockwood, Andrews, and Newnam, Inc.</strong></td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Maestas and Associates, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Mendez Engineering, PLLC</td>
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<tr>
<td>Omega Engineers, Inc.</td>
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</tr>
<tr>
<td>Premier Civil Engineering, LLC dba Premier Engineering Surveying</td>
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<td>RPS Klotz Associates, Inc.</td>
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<td>Trihydro Corporation</td>
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<td>Ward, Getz, &amp; Associates, LLP</td>
<td>Local/SBE</td>
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<td>Weston Solutions, Inc.</td>
<td>Local/Non–SMWVB</td>
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<td>Whitman, Requardt and Associates, LLP</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Young Professional Resources</td>
<td>Local/MBE–AABE</td>
</tr>
</tbody>
</table>

*Selected Firm
Lockwood, Andrews & Newnam, 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medina Consulting Company, Inc.</td>
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<td>Gonzalez-De La Garza &amp; Associates, LLC</td>
<td>12.00%</td>
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<td>Big Red Dog, Inc.</td>
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</tr>
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<td>Maestas &amp; Associates</td>
<td>18.00%</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Sherwood Surveying and SUE, LLC</td>
<td>2.00%</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>The Rios Group, Inc.</td>
<td>2.00%</td>
<td>Local/WBE–Hispanic</td>
</tr>
<tr>
<td>HVJ South Central Texas - M&amp;J, Inc.</td>
<td>5.00%</td>
<td>Local/MBE–Asian</td>
</tr>
</tbody>
</table>

2017 Pipelines Condition Work Order Contract – Package IV

LOCKWOOD, ANDREWS & NEWNAM, INC.

SMWVB ANALYSIS – BOARD AWARD

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
<td>5.00%</td>
</tr>
<tr>
<td>MBE–African American</td>
<td>0.00%</td>
</tr>
<tr>
<td>MBE–Asian</td>
<td>5.00%</td>
</tr>
<tr>
<td>MBE–Hispanic</td>
<td>18.00%</td>
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<td>MBE–Other</td>
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<tr>
<td>WBE–Minority</td>
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<tr>
<td>WBE–Non–Minority</td>
<td>3.00%</td>
</tr>
<tr>
<td>SMWVB Total</td>
<td>45.00%</td>
</tr>
</tbody>
</table>

APPROVED:

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

Andrea L.H. Beymer, P.E.
Vice President
Engineering and Construction

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A PROFESSIONAL SERVICES CONTRACT TO LOCKWOOD, ANDREWS & NEWNAM, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT – PACKAGE IV; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $500,000.00 FROM THE SYSTEM’S PROJECT FUND FOR THE PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH LOCKWOOD, ANDREWS & NEWNAM, INC., AND TO PAY LOCKWOOD, ANDREWS & NEWNAM, INC., AN AMOUNT NOT TO EXCEED $500,000.00 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 San Antonio Water System (the “System”) requires professional engineering services (the “project engineering work”) related to various capital improvement projects; and

WHEREAS, the project engineering work will consist of all services necessary for the design and construction of projects; and

WHEREAS, Lockwood, Andrews & Newnam, Inc, a local, non-SMWVB firm, was selected through the System’s Architect/Engineer Selection Procedure for the project engineering work; and

WHEREAS, a contract in an amount not to exceed $500,000.00 is to be awarded to Lockwood, Andrews & Newnam, Inc.; and

WHEREAS, the amount of $500,000.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a professional services contract to Lockwood, Andrews & Newnam, Inc., in an amount not to exceed $500,000.00 for the project engineering work in connection with the 2017 Pipelines Condition Work Order Contract – Package IV, (ii) to make available for the project engineering work.
work an amount not to exceed $500,000.00 from the System's Project Fund, and (iii) to authorize
the President/Chief Executive Officer or his duly appointed designee to execute a standard
professional services contract with Lockwood, Andrews & Newnam, Inc., for the project
engineering work and further to make payment in an amount not to exceed $500,000.00 to
Lockwood, Andrews & Newnam, Inc., for the project engineering work in connection with this
contract; now, therefore:

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

1. That a professional services contract in an amount not to exceed $500,000.00 is hereby
awarded to Lockwood, Andrews & Newnam, Inc., for engineering services in connection with the
2017 Pipelines Condition Work Order Contract – Package IV.

2. That an amount not to exceed $500,000.00 for the project engineering work is hereby made
available and is to be expended from the System's Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby
authorized to execute a standard professional services contract with Lockwood, Andrews &
Newnam, Inc., and to make payment in an amount not to exceed $500,000.00 to Lockwood,
Andrews & Newnam, Inc. for the project engineering work.

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 13th day of September, 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 Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE V

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Brown & Gay Engineers, Inc., dba BGE, Inc., a local, non-SMWVB firm, and authorizes funds in the amount of $1,250,000.00 for the 2017 Pipelines Condition Work Order Contract – Package V.

- The San Antonio Water System (the “System”) Pipelines Division manages programmed CIP projects designed by consultants and in-house staff for emergency and non-emergency operations projects. A need exists for an outside consultant to provide engineering services beyond the capability of the System’s Pipeline Division due to workload and the need for specialized design services.

- In addition, local and state agencies typically hire engineering consultants to design their infrastructure improvement projects. In many cases, the System elects to contract with the same engineer to design water or sewer facility related work in connection with each project. However, there are some projects that require the System to use a separate design consultant.

- The use of Engineering Services Work Order contracts, over the past several years, has been very successful in insuring that the System is able to meet the design and construction schedules of other agencies and the need for expedited design services for emergency and non-emergency work for both water and sewer. This practice allows projects to be assigned as soon as they are identified, thereby avoiding delays associated with the selection of individual consultants for each project.

- The contract that is 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 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.

- Projects will be assigned to the contract on a work order basis as they are identified. The
scope of services and fees will be negotiated for each project prior to authorization to proceed.

- System staff will review the design documents and coordinate with other utility and governmental agencies. Construction may be jointly bid with the lead agency or may be accomplished through the use of System construction work order contracts.

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. The water work is included in the Water Delivery Core Business budget line item. The amount is $250,000.00 for water related engineering work. The job number is 17-5001-000.

The wastewater work is included in the Wastewater Core Business budget line item. The amount is $1,000,000.00 for sewer related engineering work. The job numbers are 17-5501-000 and 17-4542-000.

**SUPPLEMENTARY COMMENTS:**

This contract will be valid for two years from the date of execution. Thirty-five firms responded to the Request for Qualifications. Brown & Gay Engineers, Inc., dba BGE, Inc., was selected through the System’s Architect/Engineer Selection procedure as a qualified consultant. The submitting firms are as follows:
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<td>Arias &amp; Associates, Inc. dba Arias Geoprofessionals</td>
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<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>LNV, Inc.</td>
<td>38.00%</td>
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<td>The Rios Group, Inc.</td>
<td>5.00%</td>
<td>Local/WBE–Hispanic</td>
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<tr>
<td>Zara Environmental, LLC</td>
<td>2.00%</td>
<td>Non–Local/WBE–Caucasian</td>
</tr>
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**SMWVB ANALYSIS – BOARD AWARD**

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</tr>
<tr>
<td>MBE–African American</td>
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<td>WBE–Minority</td>
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<td>WBE–Non–Minority</td>
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</tr>
<tr>
<td><strong>SMWVB Total</strong></td>
<td><strong>48.00%</strong></td>
</tr>
</tbody>
</table>

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Andrea L.H. Beymer, P.E.
Vice President
Engineering and Construction

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A PROFESSIONAL SERVICES CONTRACT TO BROWN & GAY ENGINEERS, INC., DBA BGE, INC., IN AN AMOUNT NOT TO EXCEED $1,250,000.00 IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT – PACKAGE V; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $1,250,000.00 FROM THE SYSTEM'S PROJECT FUND FOR THE PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH BROWN & GAY ENGINEERS, INC., DBA BGE, INC., AND TO PAY BROWN & GAY ENGINEERS, INC., DBA BGE, INC., AN AMOUNT NOT TO EXCEED $1,250,000.00 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 San Antonio Water System (the “System”) requires professional engineering services (the “project engineering work”) related to various capital improvement projects; and

WHEREAS, the project engineering work will consist of all services necessary for the design and construction of projects; and

WHEREAS, Brown & Gay Engineers, Inc., dba BGE, Inc., local, non-SMWVB firm, was selected through the System’s Architect/Engineer Selection Procedure for the project engineering work; and

WHEREAS, a contract in an amount not to exceed $1,250,000.00 is to be awarded to Brown & Gay Engineers, Inc., dba BGE, Inc.; and

WHEREAS, the amount of $1,250,000.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a professional services contract to Brown & Gay Engineers, Inc., dba BGE, Inc., in an amount not to exceed $1,250,000.00 for the project engineering work in connection with the 2017 Pipelines
Condition Work Order Contract – Package V, (ii) to make available for the project engineering work an amount not to exceed $1,250,000.00 from the System's Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a standard professional services contract with Brown & Gay Engineers, Inc., dba BGE, Inc., for the project engineering work and further to make payment in an amount not to exceed $1,250,000.00 to Brown & Gay Engineers, Inc., dba BGE, Inc., for the project engineering work in connection with this contract; now, therefore:

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

1. That a professional services contract in an amount not to exceed $1,250,000.00 is hereby awarded to Brown & Gay Engineers, Inc., dba BGE, Inc., for engineering services in connection with the 2017 Pipelines Condition Work Order Contract – Package V.

2. That an amount not to exceed $1,250,000.00 for the project engineering work is hereby made available and is to be expended from the System's Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard professional services contract with Brown & Gay Engineers, Inc., dba BGE, Inc., and to make payment in an amount not to exceed $1,250,000.00 to Brown & Gay Engineers, Inc., dba BGE, Inc., for the project engineering work.

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 13th day of September, 2017.

______________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Ernesto Arrellano, Jr., Secretary
AGENDA ITEM NO. 16

TO: San Antonio Water System Board of Trustees

FROM: Gail A. Hamrick-Pigg, P.E., Director, Pipelines, and Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE VI

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Maestas & Associates, Inc., a local, MBE-Hispanic firm, and authorizes funds in the amount of $500,000.00 for the 2017 Pipelines Condition Work Order Contract – Package VI.

- The San Antonio Water System (the “System”) Pipelines Division manages programmed CIP projects designed by consultants and in-house staff for emergency and non-emergency operations projects. A need exists for an outside consultant to provide engineering services beyond the capability of the System’s Pipeline Division due to workload and the need for specialized design services.

- In addition, local and state agencies typically hire engineering consultants to design their infrastructure improvement projects. In many cases, the System elects to contract with the same engineer to design water or sewer facility related work in connection with each project. However, there are some projects that require the System to use a separate design consultant.

- The use of Engineering Services Work Order contracts, over the past several years, has been very successful in insuring that the System is able to meet the design and construction schedules of other agencies and the need for expedited design services for emergency and non-emergency work for both water and sewer. This practice allows projects to be assigned as soon as they are identified, thereby avoiding delays associated with the selection of individual consultants for each project.

- The contract that is 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 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.

- Projects will be assigned to the contract on a work order basis as they are identified. The
scope of services and fees will be negotiated for each project prior to authorization to proceed.

- System staff will review the design documents and coordinate with other utility and governmental agencies. Construction may be jointly bid with the lead agency or may be accomplished through the use of System construction work order contracts.

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. The wastewater work is included in the Wastewater Core Business budget line item. The amount is $500,000.00 for sewer related engineering work. The job number is 17-4542-000.

**SUPPLEMENTARY COMMENTS:**

This contract will be valid for two years from the date of execution. Thirty-five firms responded to the Request for Qualifications. Maestas & 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>6S Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Alan Plummer &amp; Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
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<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Arredondo, Zepeda, &amp; Brunz, LLC</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Bain Medina Bain, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Brown &amp; Gay Engineers, Inc. dba BGE, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Civil Design Services, Inc. dba CDS Muery</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>CP&amp;Y, Inc.</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td>Don Durden, Inc. dba Civil Engineering Consultants</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Ford Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
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<td>Garcia &amp; Wright Consulting Engineers, Inc.</td>
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<td>Garver, LLC</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Gonzalez-De La Garza &amp; Associates, LLC</td>
<td>Local/WBE–Hispanic</td>
</tr>
<tr>
<td>JQ Infrastructure, LLC</td>
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<tr>
<td>K Friese &amp; Associates, Inc.</td>
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<tr>
<td>Kimley-Horn and Associates, Inc.</td>
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<td>LNV, Inc.</td>
<td>Local/MBE–Hispanic</td>
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<tr>
<td>Lockwood, Andrews, and Newnam, Inc.</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Maestas and Associates, Inc.*</td>
<td>Local/MBE–Hispanic</td>
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<td>Mendez Engineering, PLLC</td>
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<td>Merrick &amp; Company</td>
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<td>Omega Engineers, Inc.</td>
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<td>Reyes &amp; Hamilton Engineers, PLLC</td>
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<td>RJN Group, Inc.</td>
<td>Local/Non–SMWVB</td>
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<td>S &amp; B Infrastructure, Ltd.</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Trihydro Corporation</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Unintech Consulting Engineering, Inc.</td>
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<tr>
<td>Vickrey &amp; Associates, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Ward, Getz, &amp; Associates, LLP</td>
<td>Local/SBE</td>
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<tr>
<td>Weston Solutions, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Whitman, Requardt and Associates, LLP</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Young Professional Resources</td>
<td>Local/MBE–AABE</td>
</tr>
</tbody>
</table>

*Selected Firm
Maestas & 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kimley-Horn and Associates, Inc.</td>
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<td>Freese and Nichols, Inc.</td>
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<td>Brown &amp; Gay Engineers, Inc.</td>
<td>8.00%</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td>Don Durden, Inc. dba Civil Engineering Consultants</td>
<td>5.00%</td>
<td>Local/SBE</td>
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<tr>
<td>Terracon Consultants, Inc.</td>
<td>2.00%</td>
<td>Local/Non-SMWVB</td>
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<tr>
<td>Cardno, Inc.</td>
<td>2.00%</td>
<td>Local/Non-SMWVB</td>
</tr>
</tbody>
</table>

2017 Pipelines Condition Work Order Contract - Package VI

MAESTAS & ASSOCIATES, INC.

SMWVB ANALYSIS – BOARD AWARD

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>SBE</td>
<td>5.00%</td>
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<tr>
<td>MBE–African American</td>
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<tr>
<td>WBE–Non–Minority</td>
<td>0.00%</td>
</tr>
<tr>
<td>SMWVB Total</td>
<td>61.00%</td>
</tr>
</tbody>
</table>

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

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Andrea L.H. Beymer, P.E.
Vice President
Engineering and Construction
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A PROFESSIONAL SERVICES CONTRACT TO MAESTAS & ASSOCIATES, INC., IN AN AMOUNT NOT TO EXCEED $500,000.00 IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT – PACKAGE VI; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $500,000.00 FROM THE SYSTEM’S PROJECT FUND FOR THE PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH MAESTAS & ASSOCIATES, INC., AND TO PAY MAESTAS & ASSOCIATES, INC., AN AMOUNT NOT TO EXCEED $500,000.00 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 San Antonio Water System (the “System”) requires professional engineering services (the “project engineering work”) related to various capital improvement projects; and

WHEREAS, the project engineering work will consist of all services necessary for the design and construction of projects; and

WHEREAS, Maestas & Associates, Inc., a local, MBE-Hispanic firm, was selected through the System’s Architect/Engineer Selection Procedure for the project engineering work; and

WHEREAS, a contract in an amount not to exceed $500,000.00 is to be awarded to Maestas & Associates, Inc.; and

WHEREAS, the amount of $500,000.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a professional services contract to Maestas & Associates, Inc., in an amount not to exceed $500,000.00 for the project engineering work in connection with the 2017 Pipelines Condition Work Order Contract – Package VI, (ii) to make available for the project engineering work an amount not to exceed $500,000.00 from the System's Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a standard
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a professional services contract in an amount not to exceed $500,000.00 is hereby awarded to Maestas & Associates, Inc., for engineering services in connection with the 2017 Pipelines Condition Work Order Contract – Package VI.

2. That an amount not to exceed $500,000.00 for the project engineering work is hereby made available and is to be expended from the System’s Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard professional services contract with Maestas & Associates, Inc., and to make payment in an amount not to exceed $500,000.00 to Maestas & Associates, Inc., for the project engineering work.

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 13th day of September, 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 Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE VII

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Civil Design Services, Inc., dba CDS Muery, a local, non-SMWVB firm, and authorizes funds in the amount of $1,500,000.00 for the 2017 Pipelines Condition Work Order Contract – Package VII.

- The San Antonio Water System (the “System”) Pipelines Division manages programmed CIP projects designed by consultants and in-house staff for emergency and non-emergency operations projects. A need exists for an outside consultant to provide engineering services beyond the capability of the System’s Pipeline Division due to workload and the need for specialized design services.

- In addition, local and state agencies typically hire engineering consultants to design their infrastructure improvement projects. In many cases, the System elects to contract with the same engineer to design water or sewer facility related work in connection with each project. However, there are some projects that require the System to use a separate design consultant.

- The use of Engineering Services Work Order contracts, over the past several years, has been very successful in insuring that the System is able to meet the design and construction schedules of other agencies and the need for expedited design services for emergency and non-emergency work for both water and sewer. This practice allows projects to be assigned as soon as they are identified, thereby avoiding delays associated with the selection of individual consultants for each project.

- The contract that is 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 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.

- Projects will be assigned to the contract on a work order basis as they are identified. The
scope of services and fees will be negotiated for each project prior to authorization to proceed.

- System staff will review the design documents and coordinate with other utility and governmental agencies. Construction may be jointly bid with the lead agency or may be accomplished through the use of System construction work order contracts.

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. The wastewater work is included in the Wastewater Core Business budget line item. The amount is $1,500,000.00 for sewer related engineering work. The job number is 17-4542-000.

**SUPPLEMENTARY COMMENTS:**

This contract will be valid for two years from the date of execution. Thirty-five firms responded to the Request for Qualifications. Civil Design Services, Inc., dba CDS Muery was selected through the System’s Architect/Engineer Selection procedure as a qualified consultant. The submitting firms are as follows:
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<td>Local/MBE–Hispanic</td>
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<td>Local/Non–SMWVB</td>
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<td><strong>Civil Design Services, Inc. dba CDS Muery</strong>*</td>
<td>Local/Non–SMWVB</td>
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<td>KCI Technologies, Inc.</td>
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<td>Kimley-Horn and Associates, Inc.</td>
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<td>LNV, Inc.</td>
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<td>Maestas and Associates, Inc.</td>
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<td>Merrick &amp; Company</td>
<td>Local/Non–SMWVB</td>
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<td>Omega Engineers, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Premier Civil Engineering, LLC dba Premier Engineering Surveying</td>
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<td>RPS Klotz Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
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<td>Reyes &amp; Hamilton Engineers, PLLC</td>
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<tr>
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<td>Local/Non–SMWVB</td>
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<tr>
<td>Ward, Getz, &amp; Associates, LLP</td>
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<td>Local/Non–SMWVB</td>
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<td>Young Professional Resources</td>
<td>Local/MBE–AABE</td>
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*Selected Firm
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<th>SUB PARTICIPATION</th>
<th>LOCAL/SMWVB</th>
</tr>
</thead>
<tbody>
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<td>Adams Environmental, Inc.</td>
<td>5.00%</td>
<td>Local/WBE–Caucasian</td>
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<td>Arias &amp; Associates, Inc. dba Arias Geoprofessionals</td>
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<td>Local/MBE–Hispanic</td>
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<td>K Friese &amp; Associates, Inc.</td>
<td>30.00%</td>
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<tr>
<td>Prewitt &amp; Associates, Inc. (PAI)</td>
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<tr>
<td>The Rios Group, Inc.</td>
<td>2.00%</td>
<td>Local/WBE–Hispanic</td>
</tr>
</tbody>
</table>

2017 Pipelines Condition Work Order Contract – Package VII
CIVIL DESIGN SERVICES, INC., DBA CDS MUERY

SMWVB ANALYSIS – BOARD AWARD

<p>| | |</p>
<table>
<thead>
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<tbody>
<tr>
<td>SBE</td>
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</tr>
<tr>
<td>MBE–African American</td>
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<tr>
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<td>WBE–Minority</td>
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<td>WBE–Non–Minority</td>
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<tr>
<td>SMWVB Total</td>
<td>39.00%</td>
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</table>

Approved:

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

Andrea L.H. Beymer, P.E.
Vice President
Engineering and Construction

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A PROFESSIONAL SERVICES CONTRACT TO CIVIL DESIGN SERVICES, INC., DBA CDS MUEY IN AN AMOUNT NOT TO EXCEED $1,500,000.00 IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE VII; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $1,500,000.00 FROM THE SYSTEM'S PROJECT FUND FOR THE PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH CIVIL DESIGN SERVICES, INC., DBA CDS MUEY AND TO PAY CIVIL DESIGN SERVICES, INC., DBA CDS MUEY AN AMOUNT NOT TO EXCEED $1,500,000.00 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 San Antonio Water System (the “System”) requires professional engineering services (the “project engineering work”) related to various capital improvement projects; and

WHEREAS, the project engineering work will consist of all services necessary for the design and construction of projects; and

WHEREAS, Civil Design Services, Inc., dba CDS Muery, a local, non-SMWVB firm, was selected through the System’s Architect/Engineer Selection Procedure for the project engineering work; and

WHEREAS, a contract in an amount not to exceed $1,500,000.00 is to be awarded to Civil Design Services, Inc., dba CDS Muery; and

WHEREAS, the amount of $1,500,000.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a professional services contract to Civil Design Services, Inc., dba CDS Muery in an amount not to exceed $1,500,000.00 for the project engineering work in connection with the 2017 Pipelines Condition Work Order Contract – Package VII, (ii) to make available for the project engineering
work an amount not to exceed $1,500,000.00 from the System's Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a standard professional services contract with Civil Design Services, Inc., dba CDS Muery for the project engineering work and further to make payment in an amount not to exceed $1,500,000.00 to Civil Design Services, Inc., dba CDS Muery for the project engineering work in connection with this contract; now, therefore:

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

1. That a professional services contract in an amount not to exceed $1,500,000.00 is hereby awarded to Civil Design Services, Inc., dba CDS Muery for engineering services in connection with the 2017 Pipelines Condition Work Order Contract – Package VII.

2. That an amount not to exceed $1,500,000.00 for the project engineering work is hereby made available and is to be expended from the System’s Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard professional services contract with Civil Design Services, Inc., dba CDS Muery and to make payment in an amount not to exceed $1,500,000.00 to Civil Design Services, Inc., dba CDS Muery for the project engineering work.

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 13th day of September, 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 Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE VIII

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Arcadis U.S., Inc., a local, non-SMWVB firm, and authorizes funds in the amount of $1,000,000.00 for the 2017 Pipelines Condition Work Order Contract – Package VIII.

- The San Antonio Water System (the “System”) Pipelines Division manages programmed CIP projects designed by consultants and in-house staff for emergency and non-emergency operations projects. A need exists for an outside consultant to provide engineering services beyond the capability of the System’s Pipeline Division due to workload and the need for specialized design services.

- In addition, local and state agencies typically hire engineering consultants to design their infrastructure improvement projects. In many cases, the System elects to contract with the same engineer to design water or sewer facility related work in connection with each project. However, there are some projects that require the System to use a separate design consultant.

- The use of Engineering Services Work Order contracts, over the past several years, has been very successful in insuring that the System is able to meet the design and construction schedules of other agencies and the need for expedited design services for emergency and non-emergency work for both water and sewer. This practice allows projects to be assigned as soon as they are identified, thereby avoiding delays associated with the selection of individual consultants for each project.

- The contract that is 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 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.

- Projects will be assigned to the contract on a work order basis as they are identified. The
scope of services and fees will be negotiated for each project prior to authorization to proceed.

- System staff will review the design documents and coordinate with other utility and governmental agencies. Construction may be jointly bid with the lead agency or may be accomplished through the use of System construction work order contracts.

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. The wastewater work is included in the Wastewater Core Business budget line item. The amount is $1,000,000.00 for sewer related engineering work. The job number is 17-4542-000.

**SUPPLEMENTARY COMMENTS:**

This contract will be valid for two years from the date of execution. Thirty-five firms responded to the Request for Qualifications. Arcadis U.S., 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>6S Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Alan Plummer &amp; Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td><strong>Arcadis U.S., Inc.</strong>*</td>
<td><strong>Local/Non–SMWVB</strong></td>
</tr>
<tr>
<td>Arredondo, Zepeda, &amp; Brunz, LLC</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Bain Medina Bain, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Brown &amp; Gay Engineers, Inc. dba BGE, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Civil Design Services, Inc. dba CDS Muery</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>CP&amp;Y, Inc.</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td>Don Durden, Inc. dba Civil Engineering Consultants</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Ford Engineering, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Garcia &amp; Wright Consulting Engineers, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Garver, LLC</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Gonzalez-De La Garza &amp; Associates, LLC</td>
<td>Local/WBE–Hispanic</td>
</tr>
<tr>
<td>JQ Infrastructure, LLC</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td>K Friese &amp; Associates, Inc.</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>KCI Technologies, Inc.</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Kimley-Horn and Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>LNV, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Lockwood, Andrews, and Newnam, Inc.</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Maestas and Associates, Inc.</td>
<td>Local/MBE–Hispanic</td>
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<tr>
<td>Mendez Engineering, PLLC</td>
<td>Local/MBE–Hispanic</td>
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<tr>
<td>Merrick &amp; Company</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Omega Engineers, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Premier Civil Engineering, LLC dba Premier Engineering Surveying</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>RPS Klotz Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Reyes &amp; Hamilton Engineers, PLLC</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>RJN Group, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>S &amp; B Infrastructure, Ltd.</td>
<td>Local/Non–SMWVB</td>
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<tr>
<td>Trihydro Corporation</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Unintech Consulting Engineering, Inc.</td>
<td>Local/WBE–Asian</td>
</tr>
<tr>
<td>Vickrey &amp; Associates, Inc.</td>
<td>Local/WBE–Caucasian</td>
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<tr>
<td>Ward, Getz, &amp; Associates, LLP</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Weston Solutions, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Whitman, Requardt and Associates, LLP</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Young Professional Resources</td>
<td>Local/MBE–AABE</td>
</tr>
</tbody>
</table>

*Selected Firm
Arcadis U.S., 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/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arias &amp; Associates, Inc. dba Arias Geoprofessionals</td>
<td>5.00%</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Bain Medina Bain, Inc.</td>
<td>17.00%</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>K Friese &amp; Associates, Inc.</td>
<td>18.00%</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Lina T. Ramey and Associates, Inc.</td>
<td>1.50%</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Zara Environmental, LLC</td>
<td>1.50%</td>
<td>Non–Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Brierley Associates, LLC</td>
<td>3.00%</td>
<td>Non–Local/Non–SMWVB</td>
</tr>
</tbody>
</table>

### 2017 Pipelines Condition Work Order Contract – Package VIII

<table>
<thead>
<tr>
<th>SMWVB ANALYSIS – BOARD AWARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
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<tr>
<td>MBE–African American</td>
</tr>
<tr>
<td>MBE–Asian</td>
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<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>SMWVB Total</strong></td>
</tr>
</tbody>
</table>

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

APPROVED:

Robert R. Puente  
President/Chief Executive Officer  

Andrea L.H. Beymer, P.E.  
Vice President  
Engineering and Construction
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDED A PROFESSIONAL SERVICES CONTRACT TO ARCADIS U.S., INC., IN AN AMOUNT NOT TO EXCEED $1,000,000.00 IN CONNECTION WITH THE 2017 PIPELINES CONDITION WORK ORDER CONTRACT - PACKAGE VIII; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $1,000,000.00 FROM THE SYSTEM'S PROJECT FUND FOR THE PROJECT ENGINEERING WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH ARCADIS U.S., INC., AND TO PAY ARCADIS U.S., INC. AN AMOUNT NOT TO EXCEED $1,000,000.00 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 San Antonio Water System (the “System”) requires professional engineering services (the “project engineering work”) related to various capital improvement projects; and

WHEREAS, the project engineering work will consist of all services necessary for the design and construction of projects; and

WHEREAS, Arcadis U.S., Inc., a local, non-SMWVB firm, was selected through the System’s Architect/Engineer Selection Procedure for the project engineering work; and

WHEREAS, a contract in an amount not to exceed $1,000,000.00 is to be awarded to Arcadis U.S., Inc.; and

WHEREAS, the amount of $1,000,000.00 is available from the System’s Project Fund for the project engineering work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a professional services contract to Arcadis U.S., Inc., in an amount not to exceed $1,000,000.00 for the project engineering work in connection with the 2017 Pipelines Condition Work Order Contract – Package VIII, (ii) to make available for the project engineering work an amount not to exceed $1,000,000.00 from the System's Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a standard professional services contract with Arcadis U.S., Inc., for the project engineering work and further to make payment in
an amount not to exceed $1,000,000.00 to Arcadis U.S., Inc., for the project engineering work in connection with this contract; now, therefore:

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

1. That a professional services contract in an amount not to exceed $1,000,000.00 is hereby awarded to Arcadis U.S., Inc., for engineering services in connection with the 2017 Pipelines Condition Work Order Contract – Package VIII.

2. That an amount not to exceed $1,000,000.00 for the project engineering work is hereby made available and is to be expended from the System’s Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a standard professional services contract with Arcadis U.S., Inc., and to make payment in an amount not to exceed $1,000,000.00 to Arcadis U.S., Inc., for the project engineering work.

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 13th day of September, 2017.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

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

FROM: Gail Hamrick-Pigg, P.E., Director, Pipelines, and Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: RATIFICATION OF CONTRACT AMENDMENT NO. 5 AND APPROVAL OF CONTRACT AMENDMENT NO. 6 AND AUTHORIZATION OF ADDITIONAL FUNDING FOR PROFESSIONAL SERVICES IN CONNECTION WITH THE C-13 BROADWAY CORRIDOR-JOSEPHINE STREET TO SOUTH ALAMO STREET PROJECT

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution ratifies the actions of the Vice President of Engineering and Construction in approving Contract Amendment No. 5 in an amount not to exceed of $200,000.00, and approves Contract Amendment 6 in an amount not to exceed $368,100.00, for a total amount not to exceed $568,100.00. It amends Resolution No. 11-352, as previously amended by Resolution Nos. 12-342, 13-063, 13-188, and 14-192, by authorizing additional funds in an amount not to exceed $568,100.00 for additional engineering services. It further authorizes the President/Chief Executive Officer to provide additional payment in an amount not to exceed $568,100.00 to CH2M Hill Engineers, Inc., for additional engineering services associated with the C-13 Broadway Corridor-Josephine Street to South Alamo Street Project.

- The contract amendment 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 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 project was identified in the Comprehensive Wastewater Master Plan developed by the System’s 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 during peak storm events.

- This project consists of the installation of new gravity main segments ranging in size from 24-inch up to 42-inch located along South Alamo, Josephine, Losoya, E. Houston Street, McCullough Avenue, IH-37, and Broadway. The project also includes the rehabilitation of 18-inch to 60-inch gravity sewer main by Cured-in-Place Pipe method.
The scope of work included basic services consisting of standard professional engineering services related to the design of a sanitary sewer project as well as aerial survey acquisition, public agency coordination, and subsurface exploration. The scope of work also included supplemental services consisting of services associated with creating an additional construction package, an odor control study, generating easement documents, additional local agency/public participation, and additional geotechnical investigations. The total fee for basic and supplemental services was $2,891,150.00.

Contract Amendment No. 1 provided for additional professional services related to the expansion of the project limits along South Alamo Street from Commerce Street to Market Street. Contract Amendment No. 1 added approximately 320 feet in length to the project limits and included two siphons and associated structures. Contract Amendment No. 1 also provided for additional supplemental engineering design services related to preparation of an Environmental Information Document required for Texas Water Development Board funding. Total cost for Contract Amendment No. 1 was $351,585.20.

Contract Amendment No. 2 provided for professional services related to sewer main CCTV investigation for purposes of determining methods and limits of rehabilitation of pipe along North Alamo and Josephine Streets. Total cost for additional services was $168,386.00.

Contract Amendment No. 3 provided for professional services related to the design of rehabilitation of existing pipe along North Alamo and Josephine Streets and the design of a parallel sewer main for additional capacity along North Alamo and Josephine Streets. Total cost for additional services was $216,715.00.

Contract Amendment No. 4 provided for professional services related to the rebidding and repackaging of Construction Package A. The first construction package, which included a 120-inch diameter tunnel and rehabilitation of an existing 60-inch pipe, was advertised in October 2013. Due to high bids, Construction Package A was repackaged and rebid only including the tunnel. Contract Amendment No. 4 also included archeological professional services related to the requirements of the Texas Historical Commission. Total cost for additional services was $461,490.00.

Ratification is required for the additional engineering design services performed related to the redesign of a parallel gravity sewer main; including additional hydraulic analysis, developing alignment options to minimize traffic impacts to City of San Antonio and Texas Department of Transportation, and redesign of hydraulic structures in order to meet project schedule requirements. Total cost for Contract Amendment No. 5 is $200,000.00.

Additional engineering design services are also required for construction phase services and tunneling inspections support. Total cost requested for Contract Amendment No. 6 is $368,100.00.
Ratification of Contract Amendment No. 5 & Approval of Contract Amendment No. 6 and Authorization of Additional Funding for Professional Services
C-13 Broadway Corridor – Josephine Street to South Alamo Street Project

- The total cost for Contract Amendment No. 5 and Contract Amendment No. 6 is $568,100.00.

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. The sewer work is included in the Wastewater Core Business, Main Replacements Category, C-13 Broadway Corridor: Josephine to South Alamo budget line item. The amount is $568,100.00 for the additional wastewater engineering work. The job number is 11-2518.

<table>
<thead>
<tr>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 11-325)</td>
</tr>
<tr>
<td>Amendment No. 1 (Resolution No. 12-342)</td>
</tr>
<tr>
<td>Amendment No. 2 (Resolution No. 13-063)</td>
</tr>
<tr>
<td>Amendment No. 3 (Resolution No. 13-188)</td>
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<td>Amendment No. 4 (Resolution No. 14-192)</td>
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<tr>
<td>Proposed Contract Amendment No. 5</td>
</tr>
<tr>
<td>Proposed Contract Amendment No. 6</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
</tr>
</tbody>
</table>

As a result of Contract Amendment Nos. 5 and 6, the new contract amount is $4,657,426.20. This represents an increase of 61.1 percent to the System’s original contract amount.

Gail Hamrick-Pigg, P.E.
Director
Pipelines

Andrea L.H. Beymer, P.E.
Vice President
Engineering and Construction

APPROVED:

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 RATIFYING THE ACTIONS OF THE VICE PRESIDENT OF ENGINEERING AND CONSTRUCTION IN APPROVING CONTRACT AMENDMENT NO. 5, IN THE AMOUNT OF $200,000.00, AND APPROVING CONTRACT AMENDMENT NO. 6 IN AN AMOUNT NOT TO EXCEED $368,100.00, FOR A TOTAL AMOUNT NOT TO EXCEED $568,100.00, IN CONNECTION WITH THE C-13 BROADWAY CORRIDOR – JOSEPHINE STREET TO SOUTH ALAMO STREET PROJECT; AMENDING RESOLUTION NO. 11-352, AS PREVIOUSLY AMENDED BY RESOLUTION NOS. 12-342, 13-063, 13-368, AND 14-192, BY APPROVING ADDITIONAL EXPENDITURES IN AN AMOUNT NOT TO EXCEED $568,100.00 FOR ADDITIONAL ENGINEERING SERVICES BY CH2M HILL ENGINEERS, INC., IN CONNECTION WITH THE PROJECT; APPROVING THAT AN AMOUNT NOT TO EXCEED $568,100.00 BE MADE AVAILABLE AND EXPENDED FROM THE SYSTEM’S PROJECT FUND FOR THE SEWER RELATED ADDITIONAL ENGINEERING SERVICES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE CONTRACT AMENDMENT NO. 5 AND CONTRACT AMENDMENT NO. 6, AND TO PAY CH2M HILL ENGINEERS, INC., AN ADDITIONAL AMOUNT NOT TO EXCEED $568,100.00 FOR ENGINEERING SERVICES 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 (“System”) is undertaking to replace and upgrade sewer facilities within the C-13 Broadway Corridor-Josephine Street to South Alamo Street Project as part of its Capital Improvement Program; and

WHEREAS, the System requires professional engineering services related to the installation and replacement of sewer systems (the “project engineering work”); and

WHEREAS, a contract was executed with CH2M Hill Engineers, Inc., to provide basic and supplemental professional engineering services related to the design of a sanitary sewer project; and
WHEREAS, the total fee for basic and supplemental services was $2,891,150.00; and

WHEREAS, Contract Amendment No. 5, in the amount of $200,000.00, and Contract Amendment No. 6, in an amount not to exceed $368,100.00, are required to increase the contract, in a total amount not to exceed $568,100.00; and

WHEREAS, the amount of $568,100.00 is available from the System’s Project Fund for the additional engineering services; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to ratify the actions of the Vice President of Engineering and Construction in approving Contract Amendment No. 5 in the amount of $200,000.00, in connection with the C-13 Broadway Corridor-Josephine Street to South Alamo Street Project, (ii) to approve Contract Amendment No. 6, in an amount not to exceed $368,100.00, in connection with the C-13 Broadway Corridor-Josephine Street to South Alamo Street Project, (iii) to amend Resolution No. 11-325, as previously amended by Resolution Nos. 12-342, 13-063, 13-188, and 14-192, by approving additional expenditures in an amount not to exceed $568,100.00 for additional engineering services by CH2M Hill Engineers, Inc., in connection with the Project, (iv) to make available an additional amount not to exceed $568,100.00 from the System’s Project Fund for the additional engineering services, and (v) to authorize the President/Chief Executive Officer or his duly appointed designee to execute Contract Amendment No. 5 and Contract Amendment No. 6, and to pay CH2M Hill Engineers, Inc., an additional amount not to exceed $568,100.00 for the additional engineering services in connection with 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 Engineering and Construction in approving Contract Amendment No. 5 to the professional services contract with CH2M Hill Engineers, Inc., in the amount of $200,000.00, in connection with the C-13 Broadway Corridor-Josephine Street to South Alamo Street Project is hereby ratified.

2. That Contract Amendment No. 6 to the professional services contract with CH2M Hill Engineers, Inc., in an amount not to exceed $368,100.00, in connection with the C-13 Broadway Corridor-Josephine Street to South Alamo Street Project is hereby approved.

3. That Resolution No. 11-352, as previously amended by Resolution Nos. 12-342, 13-063, 13-188, and 14-192, is hereby amended by increasing the amount approved for engineering design services by an amount not to exceed $568,100.00 to an amended total authorization of $4,657,426.20.

4. That an additional amount not to exceed $568,100.00 for additional engineering services 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 Contract Amendment No. 5 and Contract Amendment No. 6, and to pay CH2M Hill Engineers, Inc., an additional amount not to exceed $568,100.00 for additional engineering services in connection with the C-13 Broadway Corridor-Josephine Street to South Alamo Street 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 13th day of September, 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 Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: AWARD OF A PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE DOS RIOS, LEON CREEK AND MEDIO CREEK WRCs – TERTIARY FILTER EXPANSION PROJECT

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Garver, LLC, a local, non-SMWVB firm, and authorizes funds in the amount not to exceed $221,803.00 in connection with the Dos Rios, Leon Creek and Medio Creek WRCs – Tertiary Filter Expansion Project (the “project”).

• The San Antonio Water System (the “System”) supplies recycled water from its Water Recycling Centers (WRCs). The treatment facilities employ traveling bridge sand filters and cloth media filters for tertiary filtration.

• The tertiary filtration systems at the Dos Rios WRC and Leon Creek WRC were retrofitted with a different technology in 2011. Five of the ten traveling bridge sand filters at the Dos Rios WRC and three of the eight traveling bridge sand filters at the Leon Creek WRC were replaced with cloth media diamond filters. With the completion of the Medio Creek WRC expansion at the end of 2010, cloth media disc filters were installed while the other plants continued the use of traveling bridge sand filters.

• Due to the increase in peak flows, there is a need to expand the tertiary filtration systems at all WRCs. This expansion will also provide the needed redundancy to enable the operators to take down a filter for maintenance.

• The project scope includes preparation of a Preliminary Engineering Report to evaluate current filtration technologies to retrofit the remaining traveling bridge sand filters for expansion, assess the capacity of the filter backwash pump station for expansion, present options to mitigate algae growth and premature fouling of the filter media in the existing and new filters, and miscellaneous civil, mechanical, structural, hydraulic, electrical, and instrumentation and controls recommendations.

• Garver, LLC, will provide engineering services for the Preliminary Engineering Phase for a not to exceed fee of $221,803.00. The preliminary estimated construction cost for this
The project is $13,000,000.00. Garver, LLC, will complete the Preliminary Engineering Report in 90 calendar days.

- The System will in the future solicit for engineering design and construction services based upon the findings of the Preliminary Engineering Report and funding availability.

- A Request for Qualifications was issued on April 21, 2017 for professional services for this project. Five interest statements were received. Garver, LLC, was selected through the Architect/Engineer Selection Process.

- Garver, LLC, will provide engineering services for a negotiated not to exceed amount of $221,803.00. Services include preparation of the Preliminary Engineering Report.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure included in the 2017 Capital Improvement Program, Wastewater Core Business, Treatment Category, Dos Rios, Medio Creek and Leon Creek WRC Tertiary Filter Expansion project. The total amount is $221,803.00 under job number 17-6501.

**SUPPLEMENTARY COMMENTS:**

The five firms that provided qualifications statements for this project are listed below:

<table>
<thead>
<tr>
<th>NAME OF FIRM</th>
<th>LOCAL/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alan Plummer Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Arcadis U.S., Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td><strong>Garver, LLC</strong></td>
<td><strong>Local/Non–SMWVB</strong></td>
</tr>
<tr>
<td>CH2M Hill Engineers, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>CP&amp;Y, Inc.</td>
<td>Local/MBE–Asian</td>
</tr>
</tbody>
</table>

*Selected Firm

Garver, LLC, proposed to use the following sub-consultants on this contract:

<table>
<thead>
<tr>
<th>NAME OF FIRM</th>
<th>PERCENT OF FEE</th>
<th>LOCAL/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unintech Consulting Engineers, Inc.</td>
<td>10.80%</td>
<td>Local/WBE–Asian</td>
</tr>
<tr>
<td>Gupta and Associates, Inc.</td>
<td>15.40%</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td>S&amp;GE, LLC</td>
<td>15.20%</td>
<td>Local/WBE–Hispanic</td>
</tr>
</tbody>
</table>
Additionally, the overall SMWVB analysis is shown in the following table:

```
+---------------------------------+----------+
| SMWVBM ANALYSIS – BOARD AWARD   | 41.40%   |
| SBE                             | 0.00%    |
| MBE–Asian                       | 15.40%   |
| MBE–Hispanic                    | 0.00%    |
| MBE–Other                       | 0.00%    |
| WBE–Minority                    | 26.00%   |
| WBE–Non–Minority                | 0.00%    |
+---------------------------------+----------+
```

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

Andrea L.H. Beymer, P.E.
Vice President
Engineering and Construction

Robert R. Puente
President/Chief Executive Officer

Attachments:
1. Project Area Map
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE PROPOSAL OF AND AWARDING A PROFESSIONAL SERVICES CONTRACT TO GARVER, LLC, IN AN AMOUNT NOT TO EXCEED $221,803.00 IN CONNECTION WITH THE DOS RIOS, LEON CREEK AND MEDIO CREEK WRCS – TERTIARY FILTER EXPANSION PROJECT; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $221,803.00 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 GARVER, LLC, AND TO PAY GARVER, LLC, AN AMOUNT NOT TO EXCEED $221,803.00 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, San Antonio Water System (the “System”) utilizes tertiary filtration at its Water Recycling Centers (WRCs) to meet effluent permit requirements and to supply recycled water to its customers; and

WHEREAS, due to the increase in peak flows, there is a need to expand the tertiary filtration systems at all WRCs; and

WHEREAS, Garver, LLC, a local, non-SMWVB firm, will provide engineering services for the Preliminary Engineering Phase for a not to exceed fee of $221,803.00; and

WHEREAS, the amount of $221,803.00 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 Garver, LLC, in an amount not to exceed $221,803.00 for the project engineering work in connection with the Dos Rios, Leon Creek and Medio Creek WRCs – Tertiary Filter Expansion Project, (ii) to award a professional engineering services contract to Garver, LLC, in an amount not to exceed $221,803.00 for the project engineering work, (iii) to authorize the expenditure of System funds in an amount not to exceed $221,803.00 for project engineering work, (iv) to make available an amount not to exceed $221,803.00 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 Garver, LLC, for the project engineering work, and further to pay an amount not to exceed $221,803.00 to Garver, LLC, 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 Garver, LLC, for the project engineering work in connection with the Dos Rios, Leon Creek and Medio Creek WRCs – Tertiary Filter Expansion Project is hereby accepted.

2. That a professional services contract in an amount not to exceed $221,803.00 is hereby awarded to Garver, LLC, for the project engineering work in connection with the project.

3. That the expenditure of System funds in an amount not to exceed $221,803.00 for the project engineering work is hereby approved.

4. That an amount not to exceed $221,803.00 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 engineering services with Garver, LLC, and to pay an amount not to exceed $221,803.00 to Garver, LLC, 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 13th day of September, 2017.

Berto Guerra, Jr., Chairman

ATTEST:

Ernesto Arrellano, Jr., Secretary
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: ACCEPTING AN OFFER ANDApproving A PURCHASE AGREEMENT WITH RAD RAV ENTERPRISES, LLC FOR THE SALE OF 12720 S. ZARZAMORA LOCATED IN SAN ANTONIO, BEXAR COUNTY, TEXAS

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution accepts an offer of $120,000.00 for the sale of approximately 2.87 acres located at 12720 S. Zarzamora, San Antonio, Bexar County, Texas (the “Property”), and approves a Purchase Agreement (the “Agreement”) with Rad Rav Enterprises, LLC (as assignee of On Site Contracting, LLC), for the sale of this Property for the purchase price of $120,000.00.

- San Antonio Water System’s (SAWS) Board of Trustees (the “Board”) declared the Property surplus by Board Resolution No. 13-225, which was approved on August 13, 2013.
- On May 29, 2014, by Ordinance No. 2014-05-29-0372, the City Council of San Antonio declared the Property surplus, and authorized SAWS to sell the Property.
- On February 10, 2014, by Resolution No. 14-034, the Board authorized SAWS to sell the Property according to the requirements of Texas Local Government Code Section 253.014 which authorizes SAWS to contract with a real estate broker to market real property owned by the municipality and to sell the property pursuant to the highest offer. On January 15, 2015, by Ordinance No. 2015-01-15-0017, the City Council of San Antonio authorized SAWS to sell the Property pursuant to Texas Local Government Code Section 253.014.
- SAWS’ real estate broker, Cano and Company, listed the Property on the MLS beginning May 24, 2016, and negotiated directly with potential buyers for the sale of the Property. SAWS listed the Property at a sale price of $120,000.00, which was based upon recent comparable sales.
From August 2016 to July 2017, eight offers for the Property were received ranging from $75,000.00 to $120,000.00.

The highest offer received was from OnSite Contracting, LLC. The basic terms of the said offer are as follows:
- Purchase Price: $120,000.00
- Survey cost – none to SAWS
- Title Policy – Buyer to pay the basic premium
- Feasibility period – 30 days
- Independent consideration – $1,000.00
- Earnest money – $2,500.00
- Closing Date – September 15, 2017 or closely after Board approval

Subject to SAWS Board approval, SAWS entered into the Agreement with OnSite Contracting, LLC, dated effective July 17, 2017. Pursuant to a written assignment, OnSite Contracting, LLC, assigned its interest in the Agreement to Rad Rav Enterprises, LLC, effective July 19, 2017. Rad Rav Enterprises, LLC, is a related entity under the common control of OnSite Contracting, LLC.

SAWS’ Brokerage Agreement No. S-14-019-DB with Cano and Company, approved by the SAWS Board by Resolution No. 15-009, on January 6, 2015, authorizes SAWS to pay a commission of six percent of the sales price at the closing if closing occurs. If closing occurs, the six percent commission will be paid to Cano and Company for real estate services related to the sale of this property.

This resolution authorizes SAWS to pay, pursuant to the Agreement, closing costs (excluding real estate commissions) not to exceed $4,000.00.

Staff recommends that the Board approve this Resolution.
FINANCIAL IMPACT:

SAWS will receive $120,000.00 in cash upon the sale of this property, less related closing costs and real estate commissions. Total closing costs plus real estate commissions are not expected to exceed $11,200.00. Funds received will be deposited to the Renewal and Replacement Fund.

[Signatures]

Bruce A. Haby  
Manager, Corporate Real Estate

Nancy Belinsky  
Vice President and General Counsel

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

OF THE SAN ANTONIO WATER SYSTEM (THE “SYSTEM”) BOARD OF TRUSTEES ACCEPTING AN OFFER IN THE AMOUNT OF $120,000.00 FOR THE SALE OF APPROXIMATELY 2.87 ACRES LOCATED AT 12720 S. ZARZAMORA LOCATED IN SAN ANTONIO, BEXAR COUNTY, TEXAS (THE “PROPERTY”), AND APPROVING A PURCHASE AGREEMENT WITH RAD RAV ENTERPRISES, LLC; AFFIRMING A SIX PERCENT COMMISSION TO BE PAID TO CANO AND COMPANY AT CLOSING AND AUTHORIZING PAYMENT OF CLOSING COSTS (EXCLUDING REAL ESTATE COMMISSIONS) UP TO $4,000.00 AT CLOSING; 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 declared the Property surplus by Board Resolution No. 13-225, approved on August 13, 2013; and

WHEREAS, City Ordinance No. 2014-05-29-0372 approved on May 29, 2014, declared the Property, being approximately 2.87 acres located at 12720 S. Zarzamora, San Antonio, Bexar County, Texas, generally depicted on the Area Map attached as Attachment I hereto, as surplus; and

WHEREAS, authorization to use Section 253.014 of the Texas Local Government Code, being the listing of a property on a multiple listing service rather than a sealed bid process, was approved by the System’s Board of Trustees (the “Board”) on February 10, 2014, Resolution No. 14-034; and

WHEREAS, City Ordinance No. 2015-01-15-0017, approved on January 15, 2015, authorized the System to sell the property according to the Texas Local Government Code Section 253.014; and

WHEREAS, pursuant to Local Government Code Chapter 253.014, the System, via its broker, Cano and Company, marketed the Property, and, the highest offer in the amount of $120,000.00 for the Property was received by OnSite Contracting, LLC pursuant to a Purchase Agreement (the “Purchase Agreement”), subject to Board approval, which Purchase Agreement was subsequently assigned to Rad Rav Enterprises, LLC effective July 19, 2017; and

WHEREAS, the System’s Brokerage Agreement No. S-14-019-DB (the “Brokerage
Agreement”) with Cano and Company, approved by the Board via Resolution No. 15-009, dated January 6, 2015, authorizes the System to pay a commission of six percent of the sales price to Cano and Company for its real estate services under the contract; and

WHEREAS, pursuant to the Purchase Agreement attached hereto as Attachment II, the System seeks to authorize the payment of up to $4,000.00 in closing costs (excluding real estate commissions) to Alamo Title Insurance Company; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) accept the offer in the amount of $120,000.00 for the Property and approve a Purchase Agreement with Rad Rav Enterprises, LLC (as assignee of OnSite Contracting, LLC) for the sale of the Property, (ii) affirm the payment of a commission of six percent of the sales price to Cano and Company to be paid at closing pursuant to the Brokerage Agreement, if and only if closing occurs, (iii) authorize payment of up to $4,000.00 for closing costs (excluding real estate commissions) payable to Alamo Title Insurance Company, and (iv) authorize the President/Chief Executive Officer or his duly appointed designee to execute all documents necessary to complete the sale of the Property, including contract amendments/extensions that do not decrease the purchase price, and perform all the duties and obligations of the seller in said Purchase Agreement; now, therefore:

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

1. That the offer in the amount of $120,000.00 for the Property, San Antonio, Bexar County, Texas, is hereby accepted and a Purchase Agreement with Rad Rav Enterprises LLC (as assignee of OnSite Contracting, LLC) for the sale of the Property is hereby approved as attached hereto as Attachment II (together with the Commercial Contract Assignment of Buyer’s Interest between OnSite Contracting, LLC and Rad Rav Enterprises, LLC) and incorporated herein for all purposes.

2. That a commission of six percent of the sales price is hereby affirmed to be paid to Cano and Company at closing pursuant to the Brokerage Agreement, if and only if closing occurs.

3. That payment of up to $4,000.00 for closing costs (excluding real estate commissions), payable to Alamo Title Insurance Company, is hereby authorized.

4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute all documents, including contract amendments/extensions that do not decrease the purchase price, necessary to complete the sale of the Property and perform all duties of the Seller under said Purchase Agreement.

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 13th day of September, 2017.

___________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________
Ernesto Arrellano, Jr., Secretary

Attachments:
I  Aerial Map
II  Purchase Agreement and Commercial Contract Assignment of Buyer’s Interest
PURCHASE AGREEMENT
12720 S. Zarzamora

This Purchase Agreement (the “Agreement") is made by and between City of San Antonio, acting by and through its San Antonio Water System, hereinafter called “Seller", and OnSite Contracting, LLC, a Texas limited liability company, hereinafter called "Buyer", and constitutes a contract for the purchase and sale of the described property, as follows:

1. Property. Subject to the terms and conditions of this Agreement, Seller agrees to convey to Buyer the tract of real property located in Bexar County, Texas, being Lot 18, Block 1, Zarzamora Park Subdivision, Bexar County, Texas, according to the map(s) or plat(s) thereof recorded in Volume 9507, Pages 223—225 and Volume 9508, Page 1, Deed and Plat Records of Bexar County, Texas (the “Property”), together with Seller’s right, title and interest in all rights and appurtenances thereto.

2. Consideration. The consideration for the conveyance shall be as follows:

a. Purchase Price. The total purchase price ("Purchase Price") for the Property shall be ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS ($120,000.00).

b. Earnest Money. Buyer shall deposit TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($2,500.00) with Alamo Title Company, Attn: Chris Varley, Senior Vice President, 18618 Tuscany Stone, Suite 240, San Antonio, TX 78258, San Antonio, Texas 78257 ("Title Company"), as earnest money ("Earnest Money"). The Earnest Money shall be credited toward the Purchase Price at closing if the conveyance of the Property is closed or otherwise held and disbursed in accordance with the terms and provisions hereof. Title Company shall, immediately following receipt, deposit the Earnest Money in an interest bearing account and maintain such account until the Earnest Money is disbursed in accordance herewith.

c. Independent Consideration. On or before this Date of this Agreement (hereinafter defined), Buyer shall pay to Seller by certified or cashier’s check the sum of ONE THOUSAND AND NO/100 DOLLARS ($1,000.00) (the “Independent Consideration”) as independent consideration for this Agreement and for Buyer’s termination rights under Section 8 hereinafter. The Independent Consideration shall be non-refundable except in the event of a SAWS default under this Agreement. The Independent Consideration shall be credited toward the Purchase Price at closing if the conveyance of the Property is closed.

3. Date of this Agreement. The Date of this Agreement shall be the date when a fully executed copy of this Agreement together with Buyer’s deposit of the Earnest Money is delivered to the Title Company, as evidenced by the date inserted by Title Company beneath its signature of receipt.

4. Title Commitment. Within fifteen (15) days following the Date of this Agreement, Title Company shall issue to Buyer a commitment for an Owner’s Policy Title Insurance for the Property (“Title Policy”) in the amount of the Purchase Price.

5. Survey. Any survey that Buyer wishes to obtain shall be at Buyer’s sole expense.

6. Property Information Documents. Any documents provided by Seller concerning the Property shall be referred to as “Property Information Documents." If the Property Information Documents include a Phase I environmental assessment, SAWS does not warrant whether it will qualify Buyer as an "innocent Buyer" under CERCLA, 42 USC 9601 et seq. and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Chapter 361 et seq., and Seller recommends that the Buyer...
conduct its own environmental assessment of the Property. Further, Seller does not represent or warrant that the Property Information Documents constitute all of the documents in Seller's possession related to the Property. NOTWITHSTANDING ANYTHING IN THIS PARAGRAPH TO THE CONTRARY, BUYER ACKNOWLEDGES AND UNDERSTANDS THAT SOME OR ALL OF THE PROPERTY INFORMATION DOCUMENTS HAVE BEEN PREPARED BY PARTIES OTHER THAN SELLER. SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE QUALITY, COMPLETENESS, CONTENT OR ACCURACY OF THE DELIVERED MATERIALS.

7. Exceptions, Reservations, Platting. The Property will be conveyed without warranty of title and subject to (i) all visible and apparent easements (ii) all matters of record relating to the Property as shown in the Real Property Records of Bexar County, Texas, and (iii) all applicable zoning, platting and other governmental ordinances, laws, rules and regulations.

8. Inspections. On or before thirty (30) days from the Effective Date (the “Feasibility Period”), the Buyer shall conduct, at the Buyer’s sole cost, any inspections and environmental assessments on the Property that the Buyer may elect, subject to the indemnity and other provisions of Section 8 of this Agreement. If an Environmental Professional (as defined in 40 CFR Part 312.10(b)) desires to communicate with Seller, the communication must be in writing and delivered to SAWS at the address stated in Section 14 below. The Buyer may not conduct invasive tests, including boring and drilling, upon the Property, without Seller’s prior written consent, a condition of which shall be Seller’s approval, in Seller’s reasonable discretion, of Buyer’s plan for conducting such invasive tests on the Property. Buyer shall promptly restore the Property to its original condition following any such invasive tests, which obligation shall survive termination of this Agreement.

If Buyer decides in its sole discretion not to proceed with the purchase of the Property and the easements described herein, Buyer shall give Seller written notice of termination on or before the expiration of the Feasibility Period, in which event this Agreement shall terminate and be of no further force and effect, and Buyer shall receive back the Earnest Money, and Seller shall retain the Independent Consideration.

Buyer shall cause all third party surveyors, inspectors and Environmental Professionals to submit to Seller an insurance certificate evidencing commercial general liability coverage in not less than $100,000 prior to and as a condition to entry upon the Property.

BUYER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF SAN ANTONIO ("COSA"), THE SAN ANTONIO WATER SYSTEM AND THEIR OFFICERS, EMPLOYEES, AGENTS, OFFICIALS AND FIDUCIARIES (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM ANY AND ALL DAMAGES, CLAIMS AND LOSSES OF ANY NATURE, INCLUDING THOSE ASSOCIATED WITH PROPERTY DAMAGE, PERSONAL INJURY, BODILY INJURY, OR DEATH, ATTORNEY'S FEES AND COURT COSTS, ARISING FROM THE BUYER'S OR THE BUYER'S AGENTS OR CONTRACTORS PRESENCE ON OR USE OR INSPECTION OF THE PROPERTY (INCLUDING ANY ENVIRONMENTAL ASSESSMENTS PERFORMED ON THE PROPERTY) OR THE CONDITION OF THE PROPERTY. IT IS THE EXPRESS INTENT OF THE PARTIES HERETO THAT THIS INDEMNITY SHALL APPLY TO AND PROTECT THE INDEMNIFIED PARTIES FROM DAMAGES CAUSED BY THE INDEMNIFIED PARTIES' SOLE AND/OR CONCURRENT NEGLIGENCE AND/OR STRICT LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL OVERRIDE AND CONTROL ANY CONTRARY PROVISIONS IN THE TEXAS TORT CLAIMS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE CHAPTER 101). THIS SECTION 8 SHALL SURVIVE CLOSING OR TERMINATION OF THIS AGREEMENT.

2
9. **AS-IS. THE PROPERTY WILL BE CONVEYED IN ITS PRESENT "AS IS" CONDITION.** IF THE PURCHASE AGREEMENT CLOSES, BUYER ACCEPTS THE PROPERTY IN ITS PRESENT CONDITION. AS A MATERIAL PART OF THE CONSIDERATION FOR THE SALE OF THE PROPERTY, BUYER ACKNOWLEDGES THAT IT IS NOT RELYING UPON THE ACCURACY OR COMPLETENESS OF ANY REPRESENTATION, BROCHURE, RENDERING, PROMISE, STATEMENT OR OTHER ASSERTION OR INFORMATION (INCLUDING THE PROPERTY INFORMATION DOCUMENTS) WITH RESPECT TO THE PROPERTY MADE OR FURNISHED BY OR ON BEHALF OF, OR OTHERWISE ATTRIBUTED TO, SELLER OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS OR REPRESENTATIVES, ANY AND ALL SUCH RELIANCE BEING HEREBY EXPRESSLY AND UNEQUIVOCALLY DISCLAIMED, BUT IS RELYING SOLELY AND EXCLUSIVELY UPON ITS OWN EXPERIENCE AND ITS INDEPENDENT JUDGMENT, EVALUATION AND EXAMINATION OF THE PROPERTY. BUYER FURTHER UNEQUIVOCALLY DISCLAIMS (I) THE EXISTENCE OF ANY DUTY TO DISCLOSE ON THE PART OF SELLER OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS OR REPRESENTATIVES AND (II) ANY RELIANCE BY BUYER ON THE SILENCE OR ANY ALLEGED NONDISCLOSURE OF SELLER OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS OR REPRESENTATIVES, AND HEREBY RELEASES SELLER AND ITS AGENTS, EMPLOYEES OR REPRESENTATIVES FROM ANY CLAIM, DEMAND OR CAUSE OF ACTION BASED IN WHOLE OR IN PART UPON ANY RELIANCE UPON ANY ALLEGED SILENCE, REPRESENTATION OR NON-DISCLOSURE BY SELLER OR ANY OF ITS AGENTS, EMPLOYEES OR REPRESENTATIVES. BUYER TAKES THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES. BUYER EXPRESSLY WARRANTS AND REPRESENTS THAT NO PROMISE OR AGREEMENT WHICH IS NOT HEREIN EXPRESSED HAS BEEN MADE TO IT AND HEREBY DISCLAIMS ANY RELIANCE UPON ANY SUCH ALLEGED PROMISE OR AGREEMENT. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. BUYER HAS AGREED TO DISCLAIM RELIANCE ON SELLER AND TO ACCEPT THE PROPERTY "AS-IS" WITH FULL AWARENESS THAT THE PROPERTY’S PRIOR USES OR OTHER MATTERS COULD AFFECT ITS CONDITION, VALUE, SUITABILITY OR FITNESS; AND BUYER CONFIRMS THAT BUYER IS HEREBY ASSUMING ALL RISK ASSOCIATED THEREWITH. BUYER UNDERSTANDS THAT THE DISCLAIMERS OF RELIANCE AND OTHER PROVISIONS CONTAINED HEREIN COULD LIMIT ANY LEGAL RECOURSE OR REMEDY BUYER OTHERWISE MIGHT HAVE. BUYER ACKNOWLEDGES THAT IT HAS SOUGHT AND HAS RELIED UPON THE ADVICE OF ITS OWN LEGAL COUNSEL CONCERNING THIS PROVISION. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING AND SHALL NOT MERGE, AND ARE ALSO INCLUDED IN THE DEED WITHOUT WARRANTY.

10. **Conditions to Closing.** This Agreement is subject to the approval of the Board of Trustees of the San Antonio Water System on or before the Closing Date (hereinafter defined). In the event that this Agreement is not approved by the Board of Trustees of the San Antonio Water System on or before the Closing Date, notwithstanding any provision herein to the contrary, this Agreement shall automatically terminate and the Earnest Money and Independent Consideration shall be returned to Buyer, and neither party shall have any further rights or duties hereunder other than those rights or duties that expressly survive termination of this Agreement.
11. **Closing.** The conveyance of the Property to Buyer shall be closed ("Closing") at the office of the Title Company on September 15, 2017 (the “Closing Date”), or such earlier date as the parties may agree to, provided all conditions to closing have been satisfied.

12. **Closing Documents.** The following documents shall be delivered at Closing:

   a. **Deed.** Seller and Buyer shall execute and acknowledge a deed without warranty conveying title to the Property to Buyer, substantially in the form of Exhibit A attached hereto (the "Deed").

   b. **Tax Certificates.** Seller shall deliver, at Seller’s expense, tax certificates showing there are no delinquent taxes levied or assessed against the Property as of Closing.

   c. **Settlement Statements.** Buyer and Seller shall execute customary settlement statements reflecting the Purchase Price, closing costs, prorations, credits and Commissions under this Agreement.

13. **Closing Costs and Prorations.** Closing costs and prorations shall be allocated as follows:

   a. **Taxes.** Seller is a tax-exempt entity. Buyer agrees that it shall be solely responsible for all ad valorem real property taxes assessed against the Property for periods from and after the Closing Date. If this sale or Buyer’s use of the Property after Closing results in the assessment of additional taxes, penalties or interest, including without limitation “rollback taxes” (the “Assessments”) for periods prior to Closing, the Assessments will be the obligation of the Buyer. Buyer shall indemnify, defend and hold Seller harmless from and against any loss, cost, cause of action or claim related to the Assessments and all ad valorem real property taxes assessed against the Property for periods from and after the Closing Date. All provisions and obligations of this section shall survive Closing.

   b. **Title Insurance Premium.** Buyer shall pay the basic premium for the Title Policy, and any deletions or endorsements Buyer elects to obtain.

   c. **Fees.** Any escrow fee charged by Title Company shall be divided equally between Seller and Buyer. Buyer shall pay the recording and/or filing fees for the Deed. Each party will pay its own attorney's fees.

14. **Notices.** Any notice to be given hereunder shall be given by placing the notice or designation in the United States mail, certified or registered, properly stamped and addressed to the address shown below or such other address as the respective party may direct in writing to the other, or by personal delivery to such address by a party, by email, or by a delivery service which documents delivery, and such notice or designation shall be deemed to be received upon such placing in the mails or such delivery:

   **Seller:**
   San Antonio Water System  
   Attn: Manager, Corporate Real Estate  
   2800 US 281 North  
   San Antonio, Texas 78212  
   bruce.haby@saws.org
With a copy to: San Antonio Water System
Arm: Mark E. Brewton, Corporate Counsel
2800 US 281 North
San Antonio, Texas 78212
mark.brewton@saws.org

Buyer: OnSite Contracting, LLC
4203 Gardendale, Suite C222
San Antonio, Texas 78229
rudy@onsite-contracting.com

15. Default. In the event that Seller should fail to materially perform its obligations herein, except due to Buyer’s default or the failure of Buyer to satisfy any of the conditions to Seller’s obligations set forth herein, Buyer may, as its sole and exclusive remedy, terminate this Agreement, in which event, provided Buyer is not in default, the Earnest Money and Independent Consideration shall be forthwith returned to Buyer following Seller’s receipt of notice of such termination whereupon neither party shall have any obligations hereunder other than those obligations in this Agreement that expressly survive termination. In no event shall any damages, rights or remedies be collectible, enforceable or available to Buyer other than as provided in this paragraph. In no event shall any trustee, officer, employee, agent or broker of Seller shall be liable, in any manner whatsoever, for any act, omission or obligation of Seller or its agents.

In the event Buyer should fail to close upon the purchase of the Property as required under this Agreement, Seller shall be entitled to terminate this Agreement and receive the Earnest Money whereupon neither party shall have any obligations hereunder other than those obligations in this Agreement that expressly survive termination, such sum being agreed upon as liquidated damages for the failure of Buyer to close as required by the terms and provisions of this Agreement and because of the difficulty, inconvenience and uncertainty of ascertaining actual damages. These provisions shall not be deemed to limit Seller’s remedies for indemnification or other Buyer obligations under this Agreement, and Seller retains all remedies at law or in equity in the event Buyer should fail to comply with the terms of this Agreement. In the event that Seller is entitled to receive the Earnest Money under this Section 15, and Buyer fails to cooperate with the release of the Earnest Money to Seller, Seller shall be entitled to recovery from Buyer of Seller’s attorneys’ fees in any suit to receive the Earnest Money.

16. Real Estate Commission. If and only if the sale from Seller to Buyer closes pursuant to this Agreement, SAWWS will pay at Closing a six percent (6%) brokerage fee (the “Commission”) to Cano & Company (“Seller’s Broker”) pursuant to a separate written agreement. The Buyer represents and warrants that no broker represents Buyer and Buyer hereby agrees to defend, indemnify and hold harmless Seller for any claims for a brokerage fee or commission resulting from this transaction. The Buyer’s obligation to indemnify under this Section 16 shall survive Closing.

17. Entire Agreement. This Agreement contains all agreements between the parties regarding the Property, and no agreement not contained herein shall be recognized by the parties.

18. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and permitted assigns.

19. Assignability. Buyer shall have no right to assign this Agreement or any of its rights hereunder to any person or entity without the prior written consent of Seller, which consent may be given or withheld in Seller’s sole and absolute discretion.
20. **Time of Essence.** Time is of the essence of this Agreement.

21. **Legal Holidays.** Notwithstanding anything herein to the contrary, if the final date of any period, any date of performance or any deadline date which is set forth in this Agreement falls on a Saturday, Sunday, federal legal holiday or day in which Seller is closed for business, then such date shall be extended to the next following date which is not a Saturday, Sunday, federal legal holiday or day in which Seller is closed for business.

22. **Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of which when taken together shall constitute but one and the same Agreement. Pdf or electronically transmitted signatures shall constitute originals signatures.

23. **Sale under Local Government Code Section 253.014.** Seller and Buyer acknowledge and agree that the transaction contemplated in this Agreement is being conducted under Texas Local Government Code Section 253.014.

24. **Disclosures.**

   a. **Notice Regarding Title.** THE TEXAS REAL ESTATE LICENSE ACT REQUIRES A REAL ESTATE AGENT TO ADVISE A BUYER THAT BUYER SHOULD HAVE AN ATTORNEY EXAMINE AN ABSTRACT OF TITLE TO THE PROPERTY BEING PURCHASED; OR A TITLE INSURANCE POLICY SHOULD BE OBTAINED. NOTICE TO THAT EFFECT IS HEREBY GIVEN TO BUYER.

   b. **Notice Regarding Possible Liability for Additional Taxes (Texas Property Code-Section 5.010).** If for the current ad valorem tax year the taxable value of the Property that is the subject of this Agreement is determined by a special appraisal method that allows for appraisal of the Property at less than its market value, the person to whom the Property is transferred may not be allowed to qualify the Property for that special appraisal in a subsequent tax year and the Property may then be appraised at its full market value. In addition, the transfer of the Property or a subsequent change in the use of the Property may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the Property. The taxable value of the Property and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the Property is located.

   c. **Annexation Disclosures.** If the Property that is the subject of this Agreement is located outside the limits of a municipality, the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

   d. **Utility District.** Buyer agrees that if the Property is situated in any utility district, Buyer will sign and acknowledge at or prior to the Closing, a statutory notice as required under Section 50.301 of the Texas Water Code.
c. **Notice of Water and Sewer Service.** The real property, described below, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. There may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to the Property. You are advised to contact the applicable utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to the Property.

f. **Lead Paint Disclosure.** The Buyer agrees and acknowledges that the Property is not "residential real property" subject to any federally mandated lead paint disclosures.

(SIGNATURE PAGE Follows)
EXECUTED by Seller on July 14, 2017.

Seller:

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

BY: Nancy Belinsky
   Vice President and General Counsel

EXECUTED by Buyer on 7/12/17, 2017.

Buyer:

OnSite Contracting, LLC, a Texas limited liability company

By: 
Printed name: Rudy B. Rothen Jr.
Title: President

Exhibits:
Exhibit A: Form of Deed
RECEIPT OF CONTRACT & EARNEST MONEY

Alamo Title Company ("Title Company") acknowledges receipt of $2,500.00 as Earnest Money under the foregoing Purchase Agreement. Title Company will promptly deposit the Earnest Money in an interest bearing account and hold the Earnest Money in escrow in accordance with the terms of the Purchase Agreement. The undersigned will promptly notify the parties if these instructions are for any reason not carried out.

Alamo Title Company

By: [Signature]

Date: 7/17/17

GF#: 4041006723
EXHIBIT A

Form of Deed

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

STATE OF TEXAS

COUNTY OF BEXAR

DEED WITHOUT WARRANTY

Effective Date:

Grantor: City of San Antonio, acting by and through its San Antonio Water System

Grantor's Mailing Address: P.O. Box 2449, San Antonio, Texas 78298-2449

Grantee:

Grantee's Mailing Address:

Consideration: Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property: Lot 18, Block 1, Zarzamora Park Subdivision, Bexar County, Texas, according to the map(s) or plat(s) thereof recorded in Volume 9507, Pages 223—225 and Volume 9508, Page 1, Deed and Plat Records of Bexar County, Texas, together with Grantor's right, title and interest in all rights and appurtenances thereto.

Property Address: 12720 S. Zarzamora, San Antonio, Texas 78224

Exceptions to Conveyance: All visible and apparent easements, all applicable zoning, platting and other governmental ordinances, laws, rules and regulations, and all matters of record relating to the Property as shown in the Real Property Records of Bexar County, Texas.

Grantor, for the Consideration, grants, sells, and conveys to Grantee the Property, subject to Exceptions to, to have and to hold it to Grantee and Grantee's successors and assigns forever, but without warranty of title or any other warranty of any kind or nature, and without limitation on such disclaimer of warranties, including but not limited to any warranties under Section 5.023 of the Texas Property Code.

By accepting this deed, Grantee acknowledges that the PROPERTY IS BEING CONVEYED IN ITS PRESENT "AS IS" CONDITION AND GRANTEE ACCEPTS THE PROPERTY IN ITS PRESENT CONDITION. GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING UPON THE ACCURACY OR COMPLETENESS OF ANY REPRESENTATION, BROCHURE, RENDERING, PROMISE, STATEMENT OR OTHER ASSERTION OR INFORMATION WITH RESPECT TO

A-1
THE PROPERTY MADE OR FURNISHED BY OR ON BEHALF OF, OR OTHERWISE ATTRIBUTED TO, GRANTOR OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS OR REPRESENTATIVES, ANY AND ALL SUCH RELIANCE BEING HEREBY EXPRESSLY AND UNEQUIVOCALLY DISCLAIMED, BUT IS RELYING SOLELY AND EXCLUSIVELY UPON ITS OWN EXPERIENCE AND ITS INDEPENDENT JUDGMENT, EVALUATION AND EXAMINATION OF THE PROPERTY. GRANTEE FURTHER UNEQUIVOCALLY DISCLAIMS (I) THE EXISTENCE OF ANY DUTY TO DISCLOSE ON THE PART OF GRANTOR OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS OR REPRESENTATIVES AND (II) ANY RELIANCE BY GRANTEE ON THE SILENCE OR ANY ALLEGED NONDISCLOSURE OF GRANTOR OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS OR REPRESENTATIVES. GRANTEE TAKES THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES. GRANTEE EXPRESSLY WARRANTS AND REPRESENTS THAT NO PROMISE OR AGREEMENT WHICH IS NOT HEREIN EXPRESSED HAS BEEN MADE TO IT AND HEREBY DISCLAIMS ANY RELIANCE UPON ANY SUCH ALLEGED PROMISE OR AGREEMENT. GRANTEE HAS AGREED TO DISCLAIM RELIANCE ON GRANTOR AND TO ACCEPT THE PROPERTY "AS-IS" WITH FULL AWARENESS THAT THE PROPERTY'S PRIOR USES OR OTHER MATTERS COULD AFFECT ITS CONDITION, VALUE, SUITABILITY OR FITNESS; AND GRANTEE CONFIRMS THAT GRANTEE IS HEREBY ASSUMING ALL RISK ASSOCIATED THEREWITH. GRANTEE UNDERSTANDS THAT THE DISCLAIMERS OF RELIANCE AND OTHER PROVISIONS CONTAINED HEREIN COULD LIMIT ANY LEGAL RECOURSE OR REMEDY GRANTEE OTHERWISE MIGHT HAVE. GRANTEE ACKNOWLEDGES THAT IT HAS SOUGHT AND HAS RELIED UPON THE ADVICE OF ITS OWN LEGAL COUNSEL CONCERNING THIS PROVISION.

When the context requires, singular nouns and pronouns include the plural.

This conveyance is being made subject to ad valorem taxes for the year 2017 and all subsequent years, which are assumed by Grantee. Any "rollback" taxes assessed against the Property are hereby assumed by Grantee.

Signatures on following pages
GRANTOR:

CITY OF SAN ANTONIO, ACTING BY AND THROUGH ITS SAN ANTONIO WATER SYSTEM:

By: ________________________________
Printed Name: Nancy Belinsky
Title: Vice President and General Counsel

STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me on this ______ day of ______________________
______ by Nancy Belinsky, Vice President and General Counsel of the San Antonio Water System, a
municipal utility of the City of the San Antonio, on behalf of said municipal utility.

[Seal]

Notary Public, State of Texas
ACCEPTED BY GRANTEE:

STATE OF TEXAS

COUNTY OF

This instrument was acknowledged before me on this ______ day of _____________
by ______________________________.

[Seal]

Notary Public, State of Texas

After recording, return to:
ASSIGOR: Onsite Contracting, LLC

ASSIGNEE: Bad Bav Enterprises, LLC

Address: 4903 Gardendale St., Suite C222, San Antonio, TX 78229
Phone: 210-472-2345
Fax: None
E-mail: rudy@onsite-contracting.com
Other:

SELLER: City of San Antonio, Acting by and Through San Antonio Water System

PROPERTY: 12730 3rd Avenue

CONTRACT: A Commercial Contract - [ ] Improved Property [X] Unimproved Property executed by Assignor (as Buyer) and Seller concerning the Property, having an effective date of July 19, 2017.

For and in consideration of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration paid by Assignee to Assignor, Assignor hereby assigns Assignor's interest in the Contract, including Assignor's interest as Buyer and Assignor's interest in the earnest money in the amount of $3,500.00 to Assignee, and Assignee hereby assumes all of Assignor's responsibilities and obligations associated with Assignor's interest in the Contract.

SPECIAL PROVISIONS:

This Assignment shall be effective as of July 19, 2017.
Commercial Contract Assignment concerning: 12930 S. Zarzamora

Assignor: Onsite Contracting, LLC

By: Rudy Rendon

By (signature): 
Printed Name: Rudy Rendon
Title: President Date: 7-19-17

By: 

By (signature): 
Printed Name: 
Title: 
Date: 

Assignee: Bud RV Enterprises, LLC

By: Rudy Rendon

By (signature): 
Printed Name: Rudy Rendon
Title: President Date: 7-19-17

By: 

By (signature): 
Printed Name: 
Title: 
Date: 

Seller consents to the assignment of Assignor's interest in the Contract to Assignee.

CITY OF SAN ANTONIO, ACTING BY AND THROUGH

Seller: San Antonio Water System

By: 

By (signature): Nancy Belasky
Printed Name: Nancy Belasky
Title: Vice President and General Counsel Date: 7/31/17

By: 

By (signature): 
Printed Name: 
Title: 
Date: 

(TAR-1943) 4-1-14
TO: San Antonio Water System Board of Trustees

FROM: Sam Mills, P.E., Director, Development, and Andrea L.H. Beymer, P.E., Vice President Engineering & Construction

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

SUBJECT: APPROVAL OF CONTRACT AMENDMENT NO. 1 AND AUTHORIZATION FOR ADDITIONAL FUNDS FOR PROFESSIONAL SERVICES FOR CONDITION AND RISK ASSESSMENT OF PRESSURIZED WATER PIPELINES

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Contract Amendment No. 1 and amends Resolution No. 16-261 by authorizing additional funds to an existing professional services contract with Pure Technologies U.S., Inc., a non-local, non-SMWVB firm, in the amount not to exceed $684,547.00 for professional services for condition and risk assessment of pressurized water pipelines.

- On October 4, 2016, by Resolution No. 16-261, the San Antonio Water System (the “System”) Board of Trustees authorized a professional services contract in the amount of $2,537,000.00 for the period of October 5, 2016 to December 31, 2019 with Pure Technologies U.S., Inc., to provide condition and risk assessment of pressurized water pipelines.

- The System has established a proactive “assess and address” program to reduce water loss, reduce the risk of water main failure due to potential structural deficiencies, and avoid full scale pipeline replacement projects in favor of small, targeted repair or replacement projects. In support of this program, the System engaged a professional services contract with Pure Technologies U.S., Inc., specializing in the condition and risk assessment of pressurized water pipelines.

- The contract with Pure Technologies U.S., Inc., is based on budget allocations of $600,000.00 in 2016, $587,000.00 in 2017, $700,000.00 in 2018, and $700,000.00 in 2019. The Board has approved the respective budget allocations for 2016 and 2017. Approval of the work in 2018 and 2019 is pursuant to and contingent upon Board approval of the 2018 and 2019 budgets with a line item for such expenditures.

- In 2016 and 2017, the System has assessed approximately 4.6 miles of existing 48-inch main, and approximately 7.8 miles of existing 36-inch main required for integration of the approximate 45 millions of gallons per day for the upcoming Vista Ridge Water Supply Project. The assessment has indicated that less than approximately 1 percent of the 12.4 miles
of existing infrastructure is potentially deficient. The approximate $1,100,000.00 spent to date for Pure Technologies U.S., Inc., to perform the assessment work indicates that the System may use the existing 12.4 miles of infrastructure in lieu of replacing the pipeline at the present time.

- Based on the success of the condition assessment work performed to date for the Vista Ridge Integration Project, System staff requests an amendment to Pure Technologies U.S., Inc., 2017 contract allocations to allow assessment of other pipelines identified as critical infrastructure.

- Pipelines to be assessed include 43,700 feet of 42-inch water main, 3 sections of 30-inch water main and 35,279 feet of 24-inch water main.

- Additional funding in the amount of $684,547.00 is available from the System Fund and can be added to the current contract with Pure Technologies U.S., Inc.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The item/services will be paid from System funds budgeted in the 2017 budget (Company: 1000, Accounting Unit: 5047500, Accounts: 511312, Estimated total 2017 amount: $684,547.00).

The services will be paid from System funds budgeted in the 2018 and 2019 budgets, pursuant to and contingent upon Board approval of the 2018 and 2019 budgets with a line item for such expenditures. (Company: 1000, Accounting Unit: 5047500, Accounts: 511312, Estimated total 2018 amount: $700,000.00; 2019 amount: $700,000.00).

The revised authorization for this project is as follows:

<table>
<thead>
<tr>
<th>Amount Authorized</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Contract Amount (Resolution No. 16-261)</td>
</tr>
<tr>
<td>Proposed Contract Amendment No. 1</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
</tr>
</tbody>
</table>

As a result of Contract Amendment No. 1, the new contract amount is $3,221,547.00. This represents a 27 percent increase in the System’s original contract.
Approval of Contract Amendment No. 1 and Authorization for Additional Funds for Professional Services for Condition and Risk Assessment of Pressurized Water Pipelines

Sam Mills, P.E.
Director
Development

Andrea L.H. Beymer, 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. 1 TO THE EXISTING PROFESSIONAL SERVICES FOR CONDITION AND RISK ASSESSMENT OF PRESSURIZED WATER PIPELINES CONTRACT WITH PURE TECHNOLOGIES U.S., INC., FOR ADDITIONAL FUNDS IN AN AMOUNT NOT TO EXCEED $684,547.00 IN CONNECTION WITH THE CONDITION AND RISK ASSESSMENT OF PRESSURIZED WATER PIPELINES CONTRACT; AMENDING RESOLUTION NO. 16-261, TO APPROVE ADDITIONAL EXPENDITURES IN AN AMOUNT NOT TO EXCEED $684,547.00 FROM THE SYSTEM FUND 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 AGREEMENT WITH PURE TECHNOLOGIES U.S., INC., AND TO PAY PURE TECHNOLOGIES U.S., INC. AN ADDITIONAL AMOUNT NOT TO EXCEED $684,547.00 FOR ADDITIONAL ENGINEERING 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, on October 4, 2016, by Resolution No. 16-261, the San Antonio Water System (the “System”) Board of Trustees authorized a professional services contract in the amount of $2,537,000.00 for the period of October 5, 2016 to December 31, 2019 with Pure Technologies U.S., Inc. to provide condition and risk assessment of pressurized water pipelines; and

WHEREAS, in support of this program, the System engaged a professional services contract with Pure Technologies U.S., Inc., specializing in the condition and risk assessment of pressurized water pipelines; and

WHEREAS, the contract with Pure Technologies U.S., Inc., is based on budget allocations of $600,000.00 in 2016, $587,000.00 in 2017, $700,000.00 in 2018, and $700,000.00 in 2019; and

WHEREAS, additional funding in the amount of $684,547.00 is available from the System Fund and can be added to the current contract with Pure Technologies U.S., Inc.; and
WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve Contract Amendment No. 1 to the existing professional services contract with Pure Technologies U.S., Inc., for additional funds in an amount not to exceed $684,547.00 for condition and risk assessment of pressurized water pipelines, (ii) to amend Resolution No. 16-261 by providing for additional expenditures of System funds in an amount not to exceed $684,547.00 for the engineering services, (iii) to make available for the additional engineering services an amount not to exceed $684,547.00 from the System Fund, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute an amendment to the professional services agreement with Pure Technologies U.S., Inc., for the project engineering work and to pay the additional amount not to exceed $684,547.00 to Pure Technologies U.S., Inc., for the additional engineering services; now, therefore:

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

1. That Contract Amendment No. 1 is hereby approved to provide additional engineering services related to the existing professional services contract with Pure Technologies U.S., Inc. in an amount not to exceed $684,547.00 for condition and risk assessment of pressurized water pipelines.

2. That Resolution No. 16-261 is hereby amended by providing additional engineering services in an amount not to exceed $684,547.00.

3. That an amount not to exceed $684,547.00 is hereby made available and is to be expended from the System Fund for the additional engineering 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 Pure Technologies U.S., Inc. and to pay Pure Technologies U.S., Inc. an amount not to exceed $684,547.00 for the project engineering 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 13th day of September, 2017.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

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

FROM: Sree Pulapaka, Vice President/Chief Information Officer, and Douglas P. Evanson, Senior Vice President/Chief Financial Officer

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

SUBJECT: AWARD OF A PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE DESIGN OF THE PRODUCTION CONTROL SYSTEM UPGRADE

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to EMA, Inc. dba EMA Services, Inc. (EMA), a non-local, non-SMWVB firm, and authorizes funds in the amount of $1,135,518.00 in connection with the design of the Production Control System Upgrade.

- San Antonio Water System (the “System”) intends to upgrade the Production Control System in order to improve reliability, security, and operational efficiencies.

- The Production Control System is both computer hardware and software that provides remote monitoring and control capabilities for field equipment, enabling System water operators to produce water remotely from headquarters. The System currently operates and supports two Production Control Systems. The first (Transdyn Dynac) operates the SAWS service area prior to the BexarMet merger in 2012; and the second (ClearSCADA) operates the former BexarMet service area.

- A Supervisory Control and Data Acquisition (SCADA) master plan was completed in 2013. An evaluation of both control systems were performed. The SCADA master plan recommended replacement and convergence of both systems into a single new control system.

- As part of this initiative, the System issued a Request for Qualifications on October 6, 2016. The scope of services encompassed the following items: 1) Developing design to integrate and replace the existing Transdyn Dynac and the ClearSCADA Production Control Systems; 2) developing standards and proposed design changes; 3) developing and providing project reports and deliverables to include user requirements, functional and technical designs; 4) providing an evaluation, options and recommendation for each user recommended improvement; and 5) preparing preliminary and final reports with detailed findings and recommendations, planning estimates of opinion of probable construction cost for all recommended modifications and upgrades.

- On November 14, 2016, five firms responded to the Request for Qualifications and were
evaluated by the Technical Evaluation Committee.

- The top three firms were interviewed by the Selection Committee, where EMA was deemed to be the most qualified.

- EMA will provide professional services in an amount not to exceed $1,135,518.00, for a term of 400 days from the Notice to Proceed.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Total cost of the professional services contract is a not to exceed amount of $1,135,518.00. Funds required for this contract are included in the Production Control System upgrade budget line item as part of the 2016 Capital Improvement Program budget. The job number is 16-6001.

**SUPPLEMENTARY COMMENTS:**

Five firms responded to the Request for Qualifications. EMA was selected as the overall most qualified for the Production Control System design. The submitting firms are as follows:

<table>
<thead>
<tr>
<th>NAME OF FIRM</th>
<th>LOCAL/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arcadis U.S. Inc</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td>CH2M Hill Engineers, Inc.</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td>**EMA, Inc. dba EMA Services, Inc **</td>
<td><strong>Non-Local/Non-SMWVB</strong></td>
</tr>
<tr>
<td>Rockwell Automation</td>
<td>Non-Local/Non-SMWVB</td>
</tr>
<tr>
<td>Wunderlich-Malec Engineering, Inc.</td>
<td>Non-Local/SBE</td>
</tr>
</tbody>
</table>

*Selected firm

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**SMWVB ANALYSIS – BOARD AWARD**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
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</tr>
<tr>
<td>MBE – African American</td>
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<tr>
<td>MBE – Asian</td>
<td>0.00%</td>
</tr>
<tr>
<td>MBE – Hispanic</td>
<td>40.00%</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>SMWVB Total</strong></td>
<td><strong>40.00%</strong></td>
</tr>
</tbody>
</table>
Award of a Professional Services Contract
Design of the Production Control System Upgrade

Sree Pulapaka  
Vice President/Chief Information Officer

Douglas P. Evanson  
Senior Vice President/Chief Financial Officer

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE PROPOSAL OF EMA, INC. DBA EMA SERVICES, INC. IN AN AMOUNT NOT TO EXCEED $1,135,518.00 IN CONNECTION WITH THE DESIGN OF THE PRODUCTION CONTROL SYSTEM UPGRADE; AWARDING A PROFESSIONAL SERVICES CONTRACT TO EMA INC. DBA EMA SERVICES, INC. IN AN AMOUNT NOT TO EXCEED $1,135,518.00 IN CONNECTION WITH THE DESIGN OF PRODUCTION CONTROL SYSTEM UPGRADE; AUTHORIZING THE EXPENDITURE OF FUNDS IN THE AMOUNT NOT TO EXCEED $1,135,518.00 FROM THE PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A PROFESSIONAL SERVICES CONTRACT WITH EMA INC. DBA EMA SERVICES, INC. AND TO PAY EMA INC. DBA EMA SERVICES, INC. AN AMOUNT NOT TO EXCEED $1,135,518.00 FOR THE AGREEMENT DELIVERABLES; 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 evaluating the feasibility of implementing a transition and design solution for the production control system; and

WHEREAS, the implementation is to potentially improve reliability, security, and operational efficiencies with the System’s Production Control System; and

WHEREAS, a Request for Qualifications was issued on October 6, 2016 for the professional services for this project; and

WHEREAS, the System received 5 proposals for these services and EMA Inc. dba EMA Services, Inc., a non-local, non-SMWVB firm, was deemed the most qualified; and

WHEREAS, the proposal from EMA Inc. dba EMA Services, Inc., was for an amount not to exceed $1,135,518.00 to complete the scope of services listed in scope of services of the Request for Qualifications; and

WHEREAS, approval of funds in an amount not to exceed $1,135,518.00 is required to analyze the feasibility and develop the integration and replacement design for Production Control System Upgrade; and
WHEREAS, the San Antonio Water System Board of Trustees desires (i) to accept the proposal of EMA, Inc. dba EMA Services, Inc. in an amount not to exceed $1,135,518.00 in connection with the design of the Production Control System Upgrade, (ii) to award a professional services contract to EMA Inc. dba EMA Services, Inc., in an amount not to exceed $1,135,518.00 in connection with the design of the Production Control System Upgrade, (iii) to approve the expenditure of funds in the amount not to exceed $1,135,518.00 from the Project Fund, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a professional services contract with EMA Inc. dba EMA Services, Inc., and to pay EMA Inc. dba EMA Services, Inc. an amount not to exceed $1,135,518.00 for the services deliverables; now, therefore:

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

1. That a professional services contract in an amount not to exceed $1,135,518.00 is hereby awarded to EMA Inc. dba EMA Services, Inc. for the design of the Production Control System Upgrade.

2. That an amount not to exceed $1,135,518.00 for the design of the Production Control System Upgrade is hereby approved and to be expended from the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a professional services contract with EMA Inc. dba EMA Services, Inc., and to pay EMA Inc. dba EMA Services, Inc. an amount not to exceed $1,135,518.00 for the services deliverables.

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 is effective immediately upon passage of this resolution.
PASSED AND APPROVED this 13th day of September, 2017.

___________________________________
Berto Guerra, Jr., Chairman

ATTEST:

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

FROM: Mary Bailey, Vice President, Accounting & Business Planning, and Douglas P. Evanson, Senior Vice President/Chief Financial Officer

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

SUBJECT: AWARD A CONTRACT FOR INDEPENDENT AUDIT AND OTHER PROFESSIONAL SERVICES

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the award of a contract to Baker Tilly Virchow Krause, LLP (Baker Tilly) to provide independent audit and other professional services for fiscal years 2017 through 2019.

- City Ordinance No. 75686 adopted April 30, 1992, by the City Council of the City of San Antonio, Texas requires that the San Antonio Water System (SAWS) be audited on an annual basis by an independent accountant.

- SAWS issued a Request for Proposal in June 2017 for independent audit services. Five firms submitted proposals. The proposals were reviewed by the Audit Selection Committee which was composed of Doug Evanson, Senior Vice President/Chief Financial Officer; Stacey Isenberg, Chief of Internal Audit; and Mary Bailey, Vice President, Accounting & Business Planning. The Audit Selection Committee members reviewed the proposals and scored each proposal based on the firms’ qualification and experience, engagement approach (including staff qualifications and timing), a three year proposed fee schedule, and adherence to Affirmative Action and SMWB participation.

- The Audit Selection Committee recommended that the Audit Committee interview the two firms submitting the top scoring proposals. Based on those interviews, the Audit Committee recommends that Baker Tilly be awarded a contract to provide independent audit and other professional services.

- The term of the contract is for three years and includes the performance of an annual audit for the years ended December 31, 2017 through 2019. In addition to audit services, Baker Tilly will perform certain agreed upon procedures (as set forth in the Texas Administrative Code Title 30, Part 1, Chapter 37, Subchapter C) required by the Texas Commission on Environmental Quality (TCEQ) related to SAWS’ desalination well injection permit. The contract includes an option to extend the contract for two additional years.
Independent audit and other professional services

- The audit fees will not exceed $570,000.00 in total over the three year period and will be paid as follows: $190,000.00 for 2017, $190,000.00 for 2018 and $190,000.00 for 2019. The fees to perform the TCEQ procedures for fiscal years 2017 through 2019 will not exceed $7,500.00.

- Baker Tilly will subcontract 35 percent of the services each year to Garza, Preis & Co., LLC, an SMWB firm.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

Audit Services: Total audit fees for fiscal years 2017 through 2019 will not exceed $570,000.00. The audit fee for the fiscal year ending December 31, 2017 is $190,000.00. These fees are included in the 2017 Annual Operations and Maintenance Budgets (Company: 1000, Accounting Unit Number: 5015900, Accounts: 511312, Total 2017 amount of $190,000.00). Audit fees of $190,000.00 for fiscal year ending December 31, 2018 and $190,000.00 for the fiscal year ending December 31, 2019 will be expended pursuant to and contingent upon Board approval of the annual budgets for each fiscal year with a line item for such expenditure.

TCEQ Procedures: Total fees to perform the TCEQ procedures for fiscal years 2017 through 2019 will not exceed $7,500.00. These fees are included in the 2017 Annual Operations and Maintenance Budgets (Company: 1000, Accounting Unit Number: 5015900, Accounts: 511312, Total 2017 amount of $2,500.00). Fees to perform the TCEQ procedures of $2,500.00 for fiscal year ending December 31, 2018 and $2,500.00 for the fiscal year ending December 31, 2019 will be expended pursuant to and contingent upon Board approval of the annual budgets for each fiscal year with a line item for such expenditure.

Mary Bailey
Vice President, Accounting & Business Planning

Douglas P. Evanson
Senior Vice President/Chief Financial Officer

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A CONTRACT TO BAKER TILLY VIRCHOW KRAUSE, LLP FOR INDEPENDENT AUDIT AND OTHER PROFESSIONAL SERVICES FOR THE THREE FISCAL YEARS 2017 THROUGH 2019; AUTHORIZING THE EXPENDITURE FOR AUDIT FEES NOT TO EXCEED $570,000.00 IN TOTAL, CONSISTING OF $190,000.00 FOR FISCAL YEAR 2017, $190,000.00 FOR FISCAL YEAR 2018 AND $190,000 FOR FISCAL YEAR 2019; AUTHORIZING ADDITIONAL FEES IN THE AMOUNT OF $7,500.00 FOR PROCEDURES REQUIRED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RELATING TO THE SYSTEM’S DESALINATION INJECTION WELL PERMIT FOR FISCAL YEARS 2017 THROUGH 2019; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE THE THREE YEAR CONTRACT WITH BAKER TILLY VIRCHOW KRAUSE, LLP WITH AN OPTION TO EXTEND THE CONTRACT FOR TWO ADDITIONAL YEARS; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Ordinance No. 75686 adopted April 30, 1992, by the City Council of the City of San Antonio, Texas requires that the San Antonio Water System (the “System”) be audited on an annual basis by an independent accountant; and

WHEREAS, certain agreed upon procedures (as set forth in the Texas Administrative Code Title 30, Part 1, Chapter 37, Subchapter C) are required to be performed by an independent accountant by the Texas Commission on Environmental Quality (TCEQ) related to System’s desalination well injection permit; and

WHEREAS, the System solicited proposals for the required audit services; and

WHEREAS, the Audit Committee recommends that Baker Tilly Virchow Krause, LLP submitted the best proposal based on their qualifications and proposed fee; and

WHEREAS, the System would like to engage Baker Tilly Virchow Krause, LLP to provide independent audit and other professional services for fiscal years 2017 through 2019; and
WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a contract to Baker Tilly Virchow Krause, LLP to provide independent audit and other professional services for the three fiscal years 2017 through 2019; (ii) to authorize expenditure for audit fees not to exceed $570,000.00 in total, consisting of $190,000.00 for fiscal year 2017, $190,000.00 for fiscal year 2018 and $190,000.00 for fiscal year 2019 from the System Fund; (iii) to authorize the expenditure of additional fees not to exceed $7,500.00 for procedures required by the TCEQ relating to the System’s desalination injection well permit for fiscal years 2017 through 2019 from the Project Fund; and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the three year contract with Baker Tilly Virchow Krause, LLP with an option to extend the contract for two additional years; now, therefore:

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

1. That a contract with Baker Tilly Virchow Krause, LLP to provide independent audit and other professional services for the fiscal years 2017 through 2019 is hereby authorized.

2. That the expenditures from the System Fund in an amount not to exceed $570,000.00 in total, consisting of $190,000.00 for fiscal year 2017, $190,000.00 for fiscal year 2018 and $190,000.00 for fiscal year 2019 are hereby authorized.

3. That the expenditures from the System Fund in an amount not to exceed $7,500.00 for performing certain agreed upon procedures required by the TCEQ relating to the System’s desalination injection well permit for fiscal years 2017 through 2019 are hereby authorized.

4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute the three year contract with Baker Tilly Virchow Krause, LLP with an option to extend the contract for two additional years.

5. It is officially found, determined and declared that the meeting at which this resolution was 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 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 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 has 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 13th day of September, 2017.

__________________________
Berto Guerra, Jr., Chairman

ATTEST:

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

FROM: Douglas P. Evanson, Senior Vice President/Chief Financial Officer

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

SUBJECT: AUTHORIZING THE REMARKETING OF THE OBLIGATIONS DESIGNATED AS “CITY OF SAN ANTONIO, TEXAS WATER SYSTEM VARIABLE RATE JUNIOR LIEN REVENUE AND REFUNDING BONDS, SERIES 2014B (NO RESERVE FUND)

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the Designated Financial Officers of the San Antonio Water System (“SAWS”) to remarket the City of San Antonio, Texas Water System Variable Rate Junior Lien Revenue and Refunding Bonds, Series 2014B (No Reserve Fund) (the “Series 2014B Bonds”) into a new interest rate mode.

• In April 2014, SAWS issued the Series 2014B Bonds in a SIFMA Index Mode to take advantage of historically low short-term interest rates. The interest rate for the Series 2014B Bonds is reset weekly based on the SIFMA Index plus a spread of 0.40%. The average interest rate over the life of the bonds through July 2017 has been 0.69%. The Series 2014B Bonds were issued for an initial period of three years, expiring October 31, 2017. Upon the expiration of the initial period, the ordinance of the Series 2014B Bonds allows the Board of Trustees to authorize the remarketing of the Series 2014B Bonds into a successive SIFMA Index Mode, or other mode as provided in the ordinance to include other variable rate modes, a Term Mode or Fixed Mode.

• Based on current market conditions and to provide a fixed interest rate for the next term of the Series 2014B Bonds, it is recommended to remarket the Series 2014B Bonds effective November 1, 2017 into a fixed rate term mode for a period of three (3) to five (5) years. As of August 30, 2017, the estimated all in interest rate on a fixed rate term mode bond of this tenor is between 1.34% and 1.62%. Remarketing the Series 2014B Bonds in a fixed rate term mode continues to take advantage of the historically low interest rates on the short end of the yield curve, while providing interest rate certainty for the term of the remarketing.

• On August 2, 2016, the Board of Trustees approved the selection of a pool of investment banking firms to serve as underwriters. The standard process of requesting and evaluating proposals based on experience and qualifications using the SAWS decision analysis tool was used. The pool is comprised of the following firms:
Based on the review of financing proposals submitted to SAWS by the investment banking firms, past performance, other services provided to SAWS, rotation of firms within the pool, and structure of proposed financings, in consultation with SAWS’ co-financial advisors, the following firm is recommended to serve as the sole remarketing agent for the Series 2014B Bonds:

<table>
<thead>
<tr>
<th>ROLE</th>
<th>FIRM</th>
<th>LOCAL/SMWBE</th>
</tr>
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<tbody>
<tr>
<td>Sole Manager</td>
<td>Jefferies &amp; Company, Inc.</td>
<td>Non-Local/Non-SMWB</td>
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</table>

Staff recommends that the Board approve this Resolution.

**FINANCIAL IMPACT:**

The debt service for the bonds will be paid from revenues of SAWS and is included in the current budget.

**SUPPLEMENTAL INFORMATION:**

The System’s co-financial advisory team of Public Financial Management and Estrada Hinojosa assisted staff in the formulation of this recommendation.
Issuance of Debt

DOUGLAS P. EVANS
Senior Vice President/Chief Financial Officer

APPROVED:

ROBERT R. PUENTE
President/Chief Executive Officer
RESOLUTION NO. 17-____

A RESOLUTION BY THE BOARD OF TRUSTEES OF THE SAN ANTONIO WATER SYSTEM RELATING TO THE REMARKETING OF OBLIGATIONS DESIGNATED AS “CITY OF SAN ANTONIO, TEXAS WATER SYSTEM VARIABLE RATE JUNIOR LIEN REVENUE AND REFUNDING BONDS, SERIES 2014B (NO RESERVE FUND)” INTO A NEW INTEREST MODE; AUTHORIZING CERTAIN SAWs REPRESENTATIVES TO EXECUTE AN APPROVAL CERTIFICATE MEMORIALIZING THE TERMS OF SUCH REMARKETING; APPROVING A REMARKETING AGREEMENT AND REMARKETING MEMORANDUM RELATING TO THESE OBLIGATIONS; AND OTHER MATTERS IN CONNECTION WITH THE FOREGOING

WHEREAS, pursuant to the authority contained in (i) chapter 1502, as amended, Texas Government Code, (ii) certain ordinances (the Senior Lien Bond Ordinances) previously adopted by the City Council (the City Council) of the City of San Antonio, Texas (the City) authorizing the issuance of the currently outstanding senior lien revenue bonds (the Previously Issued Senior Lien Bonds), (iii) certain ordinances (the Junior Lien Bond Ordinances) authorizing the issuance of the currently outstanding junior lien revenue bonds (the Previously Issued Junior Lien Bonds), (iv) certain ordinances (the Subordinate Lien Bond Ordinances) previously adopted by the City Council authorizing the issuance of subordinate lien revenue bonds and obligations arising under a related credit agreement, and (v) an ordinance adopted by the City Council relating to the implementation of a commercial paper program (the Commercial Paper Ordinances) under which is issued from time to time subordinate lien commercial paper notes (the Commercial Paper Notes), the complete management and control of the water system (the System) of the City is vested in a Board of Trustees known as the San Antonio Water System (the Board), during the period of time any of such foregoing obligations are outstanding and unpaid; and

WHEREAS, pursuant to the provisions of Chapters 1207, 1371 and 1502, as amended, Texas Government Code (Chapter 1207, Chapter 1371, and Chapter 1502 respectively, and, together, the Act), the City Council, on March 20, 2014, adopted an ordinance (the 2014B Bond Ordinance) authorizing the issuance of the “CITY OF SAN ANTONIO, TEXAS WATER SYSTEM VARIABLE RATE JUNIOR LIEN REVENUE AND REFUNDING BONDS, SERIES 2014B (NO RESERVE FUND)” (the 2014B Bonds), which 2014B Bonds were initially issued on April 30, 2014 and the proceeds therefrom used for the purpose of (i) building, improving, extending, enlarging, and repairing the System, (ii) refunding certain then-outstanding Commercial Paper Notes and (iii) paying the costs of their issuance; and

WHEREAS, the 2014B Bonds are variable rate demand obligations, initially issued in a SIFMA Index Mode expiring on October 31, 2017, and as a result thereof, the 2014B Bonds are subject to mandatory tender by the current Holders thereof, without right of retention, on November 1, 2017; and

WHEREAS, the Board has determined, and the 2014B Bond Ordinance allows, that the 2014B Bonds that are subject to mandatory tender on November 1, 2017 shall be remarke
a new Interest Mode of fixed duration (as finally determined in the manner hereafter provided); and

WHEREAS, by virtue of the authority and power vested in the Board, generally, with reference to the expenditure and application of the revenues of the Systems as prescribed in the City ordinances authorizing the prior issuance of the Senior Lien Obligations, the Junior Lien Obligations, the Commercial Paper Obligations, and the Inferior Lien Obligations, and specifically, regarding the manner of remarketing the 2014B Bonds as provided in the 2014B Bond Ordinance, the Board hereby finds and determines that it is now authorized and empowered to proceed with the passage and adoption of this Resolution authorizing (i) the remarketing of the 2014B Bonds in the manner described herein and in the 2014B Bond Ordinance, (ii) the execution and delivery of a Remarketing Agreement (hereinafter defined) relating to the 2014B Bonds, (iii) the distribution of a Remarketing Memorandum (hereinafter defined) relating to the 2014B Bonds, and (iv) the exercise and performance of certain powers and duties to be exercised and performed by the Board, acting through its Authorized Official (hereinafter defined), including the execution of an Approval Certificate of the type described herein and in the 2014B Bond Ordinance; and

WHEREAS, the Board hereby finds and determines that the remarketing of the 2014B Bonds and the adoption of this Resolution is in the best interest of the ratepayers of the Systems; now, therefore,

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

SECTION 1: Conversion to New Interest Mode; Delegation of Obligations to Authorized Officials. Pursuant to Sections 2.2B and 2.2C of the 2014B Bond Ordinance, the 2014B Bonds, in the principal amount not to exceed $100,000,000, shall be converted to a new Interest Mode that is a Fixed Mode, a SIFMA Index Mode, or a Term Mode (the period of any such mode, the New Interest Period), during which the 2014B Bonds shall bear interest at Fixed Rates, a SIFMA Index Rate, or a Term Rate. The New Interest Period shall commence on November 1, 2017 and shall conclude, if the 2014B Bonds during such New Interest Period bear interest at (i) a SIFMA Index Rate or a Term Rate, not later than October 31, 2027 and (ii) Fixed Rates, not later than the 2014B Bonds’ stated maturity date, as specified in the 2014B Bond Ordinance. If the 2014B Bonds in the New Interest Period bear interest at a SIFMA Index Rate, the Applicable Spread to the SIFMA Index for use in calculating the SIFMA Index Rate that is applicable to such 2014B Bonds during such New Interest Period shall not exceed 200 basis points and the Stepped Rate applicable to the 2014B Bonds during such New Interest Period shall not exceed 8.00% per annum. If the 2014B Bonds in the New Interest Period bear interest at a Term Rate, the Term Rate and the Stepped Rate applicable to the 2014B Bonds during such New Interest Period shall not exceed 5.00% and 8.00%, respectively, per annum. If the 2014B Bonds in the New Interest Period bear interest at Fixed Rates, the true interest cost (federal arbitrage yield) applicable to the Series 2014B Bonds during such New Interest Period shall not exceed 5.00%. Determination of the foregoing shall be made by an Authorized Official, within his or her discretion (but subject to the limitations described above).
In the event that the establishment of the Term Rate or Fixed Rate applicable to the 2014B Bonds in the New Interest Period, determined in accordance with Section 2.2E of the 2014B Bond Ordinance, generates a premium (being an amount in excess of the Purchase Price of those 2014B Bonds tendered for purchase on the next occurring Purchase Date (such 2014B Bonds, the *Tendered Bonds*), then the Authorized Official shall provide for the disposition of such premium in a manner permitted under the 2014B Bond Ordinance, this Resolution, and applicable Texas law (which may include redemption of Tendered Bonds in accordance with Section 5 hereof). Such Tendered Bonds that remain Outstanding after accomplishing the remarketing that is the subject of this Resolution (which includes any redemption of Tendered Bonds) are referred to herein as the *Remarked Bonds*.

Each Authorized Official, acting by and through the Board for and on behalf of the City, is authorized to execute the Certificate for Conversion of Interest Rate, in substantially the form attached hereto as Exhibit A, establishing the final terms of the Remarked Bonds. This Certificate for Conversion of Interest Rate is an “Approval Certificate” under the 2014B Bond Ordinance, including particularly Section 2.2C thereof. Within such Certificate for Conversion of Interest Rate, the Authorized Official shall, within the limitations of the paragraph above and the 2014B Bond Ordinance, evidence the Applicable Spread, Term Rate, Stepped Rate, or Fixed Rates, as applicable, for the Remarked Bonds, the duration of the New Interest Period (including the commencement date thereof), and the disposition of any premium resulting from the remarketing of the Remarked Bonds. Upon execution of the Certificate of Conversion of Interest Rate, Co-Bond Counsel is authorized to complete this Resolution to reflect such final terms of the Remarked Bonds, as evidenced in the Certificate for Conversion of Interest Rate.

The Purchase Date for the Tendered Bonds and the Rate Adjustment Date for the Remarked Bonds, respectively, shall be November 1, 2017. Accordingly the New Interest Period applicable to the 2014B Bonds during which the Remarked Bonds are outstanding in a Term Mode shall commence on November 1, 2017 and end on October 31, 20__. The Purchase Date for the Remarked Bonds shall be November 1, 2017. During the New Interest Period, the Remarked Bonds shall bear interest at a Term Rate of __%, which Term Rate has been determined in accordance with the provisions of Sections 2.2C and 2.2E of the 2014B Bond Ordinance; the Stepped Rate applicable to the Remarked Bonds shall be 8.000%, which Stepped Rate has been determined in accordance with the provisions of paragraph (k) of Section 2.2B of the 2014B Bond Ordinance. [The remarketing of the Remarked Bonds has resulted in a premium of $________, including an amount (when added to the par amount of the Remarked Bonds) that is in excess of the Purchase Price of the Tendered Bonds (excluding the accrued but unpaid interest on the Tendered Bonds, to be paid directly by the City from lawfully available funds), which premium will be utilized in the manner specified in the Certificate for Conversion of Interest Rate.]

**SECTION 2: Notices.** (a) **Notice of Mandatory Tender and Conversion of Interest Rate.** Each Authorized Official is hereby authorized and directed to cause to be delivered to the Tender Agent a Notice of Mandatory Tender and Conversion of Bonds, in substantially the form attached hereto as Exhibit B, and in accordance with and as required by Section 2.5B of the 2014B Bond Ordinance. The Tender Agent is hereby authorized and directed to provide this Notice of Mandatory Tender and Conversion of Bonds to the Holders of all 2014B Bonds.
currently Outstanding in accordance with and as required by the 2014B Bond Ordinance. In addition to the foregoing, each Authorized Official (or the designee thereof) is authorized and directed to deliver or cause to be delivered any notice of the remarketing of the 2014B Bonds and conversion of Interest Mode that is the subject of this Resolution that may be required by the 2014B Bond Ordinance or that is otherwise determined by the Authorized Official to be necessary or desirable (including a notice of the type attached hereto as Exhibit E).

(b) Material Event Notice. Each Authorized Official (or the designee thereof) is hereby authorized and directed to take any action, and to execute and deliver any and all documents, certificates or other instruments as are necessary or appropriate, for the filing of any material event notice required as a result of the transactions authorized by this Resolution and the City’s and the Board’s continuing disclosure undertaking under United States Securities and Exchange Commission Rule 15c2-12 (the Rule) and the 2014B Bond Ordinance.

SECTION 3: Reoffering Memorandum. The Board hereby approves, ratifies and confirms the form and content of the remarketing memorandum (the Remarketing Memorandum) presented to the Board with this Resolution, in substantially the same form attached hereto as Exhibit C, and prepared for use by the Remarketing Agent (defined herein) in connection with the remarketing of the 2014B Bonds and the determination of the Term Rate for the Remarked Bonds in the New Interest Period, and authorizes the preparation of any addenda, supplements or amendments thereto as an Authorized Official may deem appropriate; and the Board further ratifies and approves the use and distribution of such Remarketing Memorandum in connection with the remarketing of the 2014B Bonds and the determination of the Term Rate. The Authorized Officials are individually authorized and directed to execute and deliver any certificates, instruments, affidavits or other documents as may be necessary or appropriate in connection with the Remarketing Memorandum. It is hereby officially found, determined and declared that the descriptions, statements and information contained in the Remarketing Memorandum are true and correct in all material respects, to the best knowledge and belief of the Board.

SECTION 4: 2014B Bonds Subject to Mandatory Tender Without Right of Retention. The Board hereby determines that, at the end of the New Interest Period into which the Remarked Bonds are remarked pursuant to Section 1 hereof, such Remarked Bonds shall be subject to mandatory tender, without right of retention by the Holders; provided, however, that a failure of the Remarketing Agent to remarket the 2014B Bonds at the end of such New Interest Period shall result in the holders of the 2014B Bonds retaining such 2014B Bonds until the same are remarked or redeemed pursuant to the applicable provisions of the 2014B Bond Ordinance (including Section 2.5E thereof).

SECTION 5: Redemption of Certain 2014B Bonds. As described in Section 1 hereof, the remarketing of the Tendered Bonds in the manner specified in Section 2.2E of the 2014B Bond Ordinance may result in excess proceeds, which excess proceeds can be used to redeem certain of the Tendered Bonds. The 2014B Bonds are subject to redemption, in whole or in part, on any Rate Adjustment Date. If the remarketing of the 2014B Bonds produces proceeds in excess of the amount necessary to pay the Purchase Price of the Tendered Bonds, and an Authorized Official determines that such excess proceeds shall be used to optionally redeem certain of the Tendered Bonds, then such Tendered Bonds determined to be optionally redeemed
by the Authorized Official (to be evidenced in the Certificate for Conversion of Interest Rate) are hereby called for redemption.

The City shall give written notice to the Paying Agent/Registrar of any 2014B Bonds that have been called for redemption. The Paying Agent/Registrar is authorized and instructed to provide notice of this redemption to the holders of any redeemed 2014B Bonds in the form and manner described in the 2014B Bond Ordinance. Notwithstanding the foregoing, a notice of mandatory tender without retention rights shall satisfy any notice requirements for an optional redemption of Bonds which occurs on the Purchase Date, pursuant to Sections 2.4F and 2.5B of the Ordinance.

SECTION 6: Appointment of Remarketing Agent. In recognition and satisfaction of its obligations under the 2014B Bond Ordinance (including Section 2.5G thereof), the Board hereby appoints Jefferies LLC, to serve as the Remarketing Agent for the 2014B Bonds (the Remarketing Agent) to accomplish the remarketing of the 2014B Bonds into the New Interest Period, during which the Remarketed Bonds will bear interest in a Term Mode, in the manner contemplated under this Resolution. The Remarketing Agent shall signify its acceptance of the duties and obligations imposed thereon by such appointment by execution of the Remarketing Agreement, in substantially the form attached hereto as Exhibit D (the Remarketing Agreement). Each Authorized Official is hereby authorized and directed to execute and deliver the Remarketing Agreement, for and on behalf of this Board, and such agreement, as executed by the Board and the Remarketing Agent, shall be deemed to be the Remarketing Agreement herein approved and authorized to be executed and delivered for and on behalf of this Board. The Remarketing Agreement shall specify the compensation to be paid to the Remarketing Agent for its service in connection with accomplishing the remarketing of the Remarketed Bonds into the New Interest Period, payment of which is hereby authorized to be made from any lawful source of funds available to the Board (including proceeds derived from the remarketing of the Remarketed Bonds). Upon completion of the foregoing, the Remarketing Agent shall constitute the “Remarketing Agent”, and the Remarketing Agreement shall constitute the “Remarketing Agreement”, respectively, under the 2014B Bond Ordinance for purposes of remarketing the Remarketed Bonds into the New Interest Period.

SECTION 7: Additional Actions Authorized; Authorized Officials. Pursuant to the authority provided by Chapter 1371 and the 2014B Bond Ordinance, the Board’s President/Chief Executive Officer, or the Board’s Senior Vice President/Chief Financial Officer, each of whom were identified as Authorized Officials under the 2014B Bond Ordinance, are hereby identified and designated as Authorized Officials under this Resolution, as well. The Authorized Officials, and all other appropriate officers, agents and representatives of the Board, are hereby authorized and directed to take any and all other actions as may be necessary and appropriate to provide for the (i) payment of the Purchase Price of the Tendered Bonds, the redemption of any Tendered Bonds, and the conversion and remarketing of the Remarketed Bonds into the New Interest Period; (ii) execution of the Remarketing Agreement with the Remarketing Agent; and (iii) preparation and distribution of replacement definitive 2014B Bonds and the Remarketing Memorandum, as contemplated by this Resolution and the 2014B Bond Ordinance. In addition and with respect to accomplishing the foregoing matters, each Authorized Official is hereby authorized and directed to execute, deliver, and accept on behalf of the City (acting by and through the Board) all agreements certificates, consents, waivers, receipts, notices, requests and
other documents as may be necessary or appropriate to carry out the actions contemplated by this Resolution.

SECTION 8: Definition of Terms. Capitalized terms used herein without definition shall have the respective meanings ascribed thereto in the 2014B Bond Ordinance.

SECTION 9: Ratification of Prior Actions. The actions of the Authorized Officials, as well as their agents, designees, and representatives, taken prior to the date of this Resolution to accomplish the conversion and remarketing of 2014B Bonds that is the subject of this Resolution are hereby ratified, confirmed and approved as the act and deed of the Board.

SECTION 10: 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 11: Incorporation of Preamble Recitals. The recitals contained in the preamble to this Resolution are hereby found to be true and such recitals 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: Coordination of Transaction Matters; Further Procedures. The Board hereby authorizes PFM Financial Advisors LLC and Estrada Hinojosa & Company, Inc., its Co-Financial Advisors, to coordinate these financial matters in consultation with Board staff, Norton Rose Fulbright US LLP and Kassahn and Ortiz, P. C., its Co-Bond Counsel, the Tender Agent, the Paying Agent/Registrar, and the Remarketing Agent. In addition, the Board authorizes the payment of the professional fees and expenses associated with this transaction upon the approval by an Authorized Official of written invoices for any such services, which payments are hereby authorized to be made from any lawful source of funds available to the Board (including proceeds derived from the remarketing of the Remarketed Bonds).

Each Authorized Official and Co-Bond Counsel are hereby authorized and directed to approve any technical changes or corrections to this Resolution or to any of the instruments authorized and approved by this Resolution necessary in order to (i) correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Resolution and as described in the Reoffering Memorandum or (ii) obtain a rating from any of the national bond rating agencies. In case any officer of the Board whose signature shall appear on any certificate shall cease to be such officer before the delivery of such certificate, such signature shall nevertheless be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

SECTION 13: Effective Date. This Resolution shall be in force and effect from and after its passage on the date shown below.
PASSED AND APPROVED this the 13th day of September, 2017.

Berto Guerra, Jr., Chairman

Attest:

Ernesto Arrellano, Jr., Secretary
EXHIBIT A

Certificate for Conversion of Interest Rate

See Tab No. __
EXHIBIT B

Notice of Mandatory Tender and Conversion of Bonds

See Tab No. __
EXHIBIT C

Remarketing Memorandum

See Tab No. __
EXHIBIT D

Form of Remarketing Agreement

See Tab No. __
EXHIBIT E

Notice to Working Group of Remarketing

See Tab No. __
TO: San Antonio Water System Board of Trustees
FROM: Robert R. Puente, President/Chief Executive Officer
SUBJECT: APPROVAL OF EMERGENCY ASSISTANCE IN CONNECTION WITH HURRICANE HARVEY

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

As a result of the catastrophic damage and destruction in and around east and southeast Texas caused by Hurricane Harvey, the San Antonio Water System (SAWS) received various requests for aid and assistance. In the absence of a written agreement, assistance between local government entities under emergency circumstances is authorized by Texas Government Code Section 418.109 under the conditions established by the legislature in Subchapter E-1 of Government Code Chapter 418.

Following an assessment of SAWS’ resources, SAWS dispatched crews, vehicles and miscellaneous equipment in response to the requests. In each instance, the dispatch occurred with the approval and consent of the Chairman of the Board of Trustees of SAWS, and the Mayor of the City of San Antonio.

The attached resolution offers sympathies to our neighbors adversely impacted by Hurricane Harvey; ratifies the emergency aid and assistance provided to restore water, sewer and other operational services; authorizes continued aid and assistance to other communities adversely affected by Hurricane Harvey; and directs SAWS’ staff to seek reimbursement for all applicable expenses incurred in connection with such emergency services, to the maximum extent possible from all available federal, state and local sources.

Aid and assistance consisted generally of the activities related to restoration of water and sewer service as well as restoration of other operational services. Additionally, SAWS’ staff recommends deposit waivers for those customers who have been displaced by Hurricane Harvey and request a new customer account for water or sewer services.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

Expenditures will be made from the System Fund. SAWS has received reimbursement in the past for similar expenditures. SAWS staff intends to seek recovery of all applicable expenditures from all federal, state and local resources using similar processes, although no guarantee of full recovery can be made.
Approval Of Emergency Assistance
Hurricane Harvey

APPROVED:

[Signature]

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES OFFERING SYMPATHIES TO OUR NEIGHBORS ADVERSLY IMPACTED BY HURRICANE HARVEY; RATIFYING EMERGENCY AID AND ASSISTANCE PROVIDED TO RESTORE WATER, SEWER AND OTHER OPERATIONAL SERVICES TO COMMUNITIES ADVERSLY AFFECTED BY HURRICANE HARVEY; AUTHORIZING CONTINUED AID AND ASSISTANCE TO OTHER COMMUNITIES ADVERSLY AFFECTED BY HURRICANE HARVEY; AUTHORIZING DEPOSIT WAIVERS FOR DISPLACED CUSTOMERS; DIRECTING STAFF TO SEEK REIMBURSEMENT TO THE MAXIMUM EXTENT POSSIBLE; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Hurricane Harvey has caused loss of life, injury and property to the residents and communities of east and southeast Texas; and

WHEREAS, as a result of the catastrophic damage and destruction in and around the Texas Gulf Coast caused by Hurricane Harvey, the San Antonio Water System (the “System”) received various requests for aid and assistance; and

WHEREAS, in the absence of a written agreement, assistance between local government entities under emergency circumstances is authorized by Texas Government Code Section 418.109 under the conditions established by the legislature in Subchapter E-1 of Government Code Chapter 418; and

WHEREAS, following an assessment of the System’s resources, the President/Chief Executive Officer dispatched crews, vehicles and miscellaneous personnel and equipment, with the approval and consent of the Chairman of the Board of Trustees of the System, and the Mayor of the City of San Antonio; now, therefore:

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

1. That the sympathies of the System are hereby extended to the System’s families, friends and neighbors in east and southeast Texas for the losses and suffering they have experienced as a result of Hurricane Harvey.

2. That all actions undertaken to provide emergency aid and assistance to restore water, sewer
and other operational services to communities adversely affected by Hurricane Harvey are hereby ratified.

3. That the President/Chief Executive Officer is hereby authorized to continue to provide emergency aid and assistance to other communities adversely affected by Hurricane Harvey, as he determines to be in the best interest of the System after an assessment of the System’s available resources.

4. That System staff is hereby directed to seek reimbursement for all expenses incurred in connection with such emergency services, to the maximum extent possible, from all available federal, state and local sources.

5. That System staff is further authorized to implement a program to waive deposits for those customers who have been displaced by Hurricane Harvey and request a new customer account for water or sewer services.

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 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 has 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 13th day of September, 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 & Governmental Relations

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

SUBJECT: AWARD OF DESIGN BUILD CONTRACT IN CONNECTION WITH THE CENTRAL WATER INTEGRATION PIPELINE PROJECT, PHASE 1 SERVICES

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution awards a Design Build (DB) contract in the amount of up to $7,487,584.00 to Kiewit Infrastructure South Co., a non-local, non-SMWVB firm, in connection with the Central Water Integration Pipeline Project, Phase 1 Services, designed to integrate Vista Ridge water into the San Antonio Water System’s (the “System”) distribution system along the central corridor of the service area.

- The System entered into a water transmission and purchase agreement on November 4, 2014 with Abengoa Vista Ridge LLC to provide and deliver alternate water supplies to the System through the Vista Ridge Regional Supply Project. The Central Water Integration Pipeline (CWIP) Project will integrate and deliver water from the Vista Ridge Regional Supply Project to integration points within the System’s distribution system.

- The CWIP Project consists of approximately 15 miles of existing and new transmission main beginning at the Vista Ridge terminus facility in north Bexar County to the Basin Pump Station, with intermediate drop-off points at Bitters and Maltzberger Pump Stations, two new tanks, treatment facility, 20 million gallon pump station, rehab of existing tanks and pump station, and distribution system components, which include pressure reducing/sustaining valves with SCADA/control ability at various locations within the distribution system.

- On November 1, 2016, an Owner’s Representative Contract was awarded to Black & Veatch Corporation. This contract provided standard professional engineering services related to facility and pipeline condition assessments, pipeline routing analysis, hydraulic model and water quality analysis, design criteria package development, and construction delivery procurement services in preparation for the DB Request for Proposals (RFP).

- On March 15, 2017, a Request for Qualifications was issued for DB services for this project. The System received five qualification statements, and three firms were shortlisted to proceed to the RFP phase.
On April 24, 2017, a RFP was issued to the shortlisted firms for DB services for this project. The System received two proposal statements and Kiewit Infrastructure South Co. was selected following an interview process.

The DB firm’s scope of work for the project is to be performed in two distinct phases under the DB contract between the System and the DB firm. These phases are generally described as follows:

- Phase 1 services will require the DB firm to (a) perform design development; (b) perform pre-construction services; and (c) prepare, submit and negotiate a commercial proposal for Phase 2 services, including a guaranteed maximum price (GMP) for Phase 2 services.

- Phase 2 services will generally require the DB Firm to complete the entirety of the project’s design and construction, as well as perform post-construction tasks, such as commissioning, performance testing, and operation. A condition precedent to the commencement of Phase 2 will be the agreement between the System, upon approval by the System’s Board of Trustees, and the DB Firm of a GMP Amendment for Phase 2 services.

Additional funds will be required in order to complete the Phase 2 of the project. The current early estimate of construction, as prepared by the Owner’s Representative, is approximately $107,500,000.00, not including easement acquisition or the DB and Owner’s Representative service fees.

The GMP for Phase 1 has been negotiated in the amount of $7,487,584.00 and includes design services fees, costs of work, and insurance for the performance of the DB work and services in connection with and as required by the contract, as well as the potential of additional geotechnical work as directed by the System. Upon completion of the 60 percent design phase by March 2018, Kiewit Infrastructure South Co. will submit the design documents and its GMP proposal to the System to complete the design and construct the project.

The CWIP Project is expected to be constructed in time for the Vista Ridge water supply to come on line in the first quarter of 2020.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure from the CY 2016 Capital Improvement Program. The project work is included in the Water Delivery Core Business, Vista Ridge Integration Project.
budget line. The amount is $7,437,584.00 and the job number for this project is 15-8601. Due to a change in portions of the pipeline alignment in certain areas since the RFP was issued, an additional allowance for Supplemental Geotechnical Services will be made available for use by Kiewit Infrastructure South Co. in the amount of up to $50,000.00, as directed by the System, and will utilize the same job number.

SUPPLEMENTARY COMMENTS:

The three teams listed below were invited to submit proposals for the design and construction of the CWIP. Kiewit Infrastructure South Co. and Vista Ridge Integration, LLC ultimately submitted proposals. Interviews were conducted on July 27, 2017.

<table>
<thead>
<tr>
<th>NAME OF FIRM</th>
<th>LOCAL/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>CH2M Hill Engineers, Inc.**</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Kiewit Infrastructure South Co.*</td>
<td>Non-Local/Non–SMWVB</td>
</tr>
<tr>
<td>Vista Ridge Integration, LLC</td>
<td>Local/Non–SMWVB</td>
</tr>
</tbody>
</table>

*Selected Firm
**Did not respond

Kiewit Infrastructure South Co. proposes to use the following sub-consultants for services on this contract:

<table>
<thead>
<tr>
<th>NAME OF FIRM</th>
<th>PERCENT OF FEE</th>
<th>LOCAL/SMWVB</th>
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</thead>
<tbody>
<tr>
<td>Tetra Tech, Inc.</td>
<td>70.00%</td>
<td>Local/Non-SMWVB</td>
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<tr>
<td>Structural Engineering Associates, Inc. (SEA)</td>
<td>8.00%</td>
<td>Local/MBE-Hispanic</td>
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<tr>
<td>Arias &amp; Associates, Inc.</td>
<td>2.50%</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>Snell &amp; Associates Land Surveyors, Inc. dba Maverick Land Surveying Co.</td>
<td>5.00%</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Lopez Salas Architects, Inc.</td>
<td>3.00%</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>Coltrane, Fernandez, Zavala Group, LLC</td>
<td>3.00%</td>
<td>Local/WBE-Hispanic</td>
</tr>
<tr>
<td>Bain Medina Bain, Inc.</td>
<td>5.00%</td>
<td>Local/WBE-Caucasian</td>
</tr>
<tr>
<td>Encotech Engineering Consultants S.A., Inc.</td>
<td>2.00%</td>
<td>Local/MBE-Asian</td>
</tr>
<tr>
<td>Sanchez-Salazar &amp; Associates, LLC</td>
<td>1.50%</td>
<td>Local/MBE-Hispanic</td>
</tr>
</tbody>
</table>
Additionally, the overall SMWVB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>Central Water Integration Pipeline Project</th>
<th>KIEWIT INFRASTRUCTURE SOUTH CO.</th>
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<tbody>
<tr>
<td>SMWVB ANALYSIS – BOARD AWARD</td>
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<tr>
<td>SBE</td>
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<tr>
<td>MBE–African American</td>
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<tr>
<td>MBE–Asian</td>
<td>2.00%</td>
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<tr>
<td>MBE–Hispanic</td>
<td>15.00%</td>
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<tr>
<td>MBE–Other</td>
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<tr>
<td>WBE–Minority</td>
<td>3.00%</td>
</tr>
<tr>
<td>WBE–Non-Minority</td>
<td>5.00%</td>
</tr>
<tr>
<td>SMWVB Total</td>
<td>30.00%</td>
</tr>
</tbody>
</table>

Donovan S. Burton
Vice President
Water Resources & Governmental Relations

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachments:
1. Project Area Map
2. Project Site Map
CENTRAL WATER INTEGRATION PIPELINE PROJECT DESIGN BUILD
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES ACCEPTING THE PROPOSAL OF AND AWARDING A DESIGN BUILD CONTRACT TO KIEWIT INFRASTRUCTURE SOUTH CO. IN AN AMOUNT NOT TO EXCEED $7,487,584.00 IN CONNECTION WITH THE CENTRAL WATER INTEGRATION PIPELINE PROJECT, PHASE 1 SERVICES; AUTHORIZING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $7,487,584.00 FROM THE SYSTEM’S PROJECT FUND FOR THE PHASE 1 DESIGN BUILD SERVICES IN CONNECTION WITH THE PROJECT; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A DESIGN BUILD SERVICES CONTRACT WITH KIEWIT INFRASTRUCTURE SOUTH CO., AND TO PAY KIEWIT INFRASTRUCTURE SOUTH CO. AN AMOUNT NOT TO EXCEED $7,487,584.00 FOR THE PHASE 1 SERVICES 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 Central Water Integration Pipeline Project (the “Project”) will deliver water from the Vista Ridge Regional Supply Project to integration points within the distribution system; and

WHEREAS, the Project consists of approximately 15 miles of existing and new transmission main beginning at the proposed pump station located at the Vista Ridge terminus facility in north Bexar County to the Basin Pump Station, with intermediate drop-off points at Bitters and Maltsberger Pump Stations, two 10 million gallon tanks, treatment facility, 20 million gallon pump station, rehab of existing tanks and pump station, and distribution system components, which include pressure reducing/sustaining valves with SCADA/control ability at various locations within the distribution system; and

WHEREAS, the San Antonio Water System (the “System”) has determined that the Design Build (DB) method is appropriate for the Project; and

WHEREAS, the System has solicited DB proposals for the required project DB work; and

WHEREAS, Kiewit Infrastructure South Co., a non-local, non-SMWVB firm, has been determined to be the most qualified DB on the basis of their demonstrated competence and qualifications and the best evaluated and scored technical and cost proposals submitted by the DB;
WHEREAS, Kiewit Infrastructure South Co., has submitted a proposal for a guaranteed maximum contract amount not to exceed $7,437,584.00 to provide the DB services and work for the Phase 1 of the Project work; and

WHEREAS, System funds in an amount not to exceed $7,437,584.00 are required for the DB work and services for the Phase 1 of the Project and up to $50,000.00 as a System controlled allowance for Supplemental Geotechnical Services; and

WHEREAS, the required amount not to exceed $7,437,584.00 and up to $50,000.00 as a System controlled allowance for Supplemental Geotechnical Services is available from the Project Fund; and

WHEREAS, the San Antonio Water System’s Board of Trustees desires (i) to accept the proposal of and award a DB contract to Kiewit Infrastructure South Co. in an amount not to exceed $7,487,584.00 in connection with Phase 1 of the Project, (ii) to authorize the expenditure of System funds in an amount not to exceed $7,437,584.00 for the design build work and services in connection with the Project and up to $50,000.00 as a System controlled allowance for Supplemental Geotechnical Services, (iii) to make available a total amount not to exceed $7,437,584.00 from the System’s Project Fund for the design build services in connection with the Project and up to $50,000.00 as a System controlled allowance for Supplemental Geotechnical Services, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the contract with Kiewit Infrastructure South Co., and to pay an amount not to exceed $7,487,584.00 to Kiewit Infrastructure South Co. for the performance of the Phase 1 design build work and services in connection with the Project; now, therefore:

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

1. That the proposal of Kiewit Infrastructure South Co. for the DB engineering work in connection with the Central Water Integration Pipeline Project, Phase 1 Services is hereby accepted.

2. That the DB contract with Kiewit Infrastructure South Co., in substantial form as that attached hereto as Attachment I for the Phase 1 Design Build Services for the Project is hereby approved.

3. That expenditures in an amount not to exceed $7,437,584.00 are hereby approved to be expended from the Project Fund for the performance of the DB work and services as required by the contract in connection with Phase 1 of the Project and up to $50,000.00 as a System controlled allowance for Supplemental Geotechnical Services.

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 Kiewit Infrastructure South Co., in an amount not to exceed $7,487,584.00 for the performance
of the DB work and services as required by the contract in connection with Phase 1 of the 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. That this resolution shall become effective upon its passage.

PASSED AND APPROVED this 13th day of September, 2017.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

Ernesto Arrellano, Jr., Secretary

Attachment:
I. Design Build Contract - Phase 1 Design Build Services for the Central Water Integration Pipeline Project
DESIGN-BUILD CONTRACT
FOR THE
CENTRAL WATER
INTEGRATION PIPELINE

between

THE SAN ANTONIO WATER SYSTEM

and

KIEWIT INFRASTRUCTURE SOUTH CO.

Dated

September __, 2017
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REFERENCE DOCUMENTS

2. 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, November 2, 2016 and April 5, 2017

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DESIGN-BUILD CONTRACT
FOR THE
CENTRAL WATER INTEGRATION PIPELINE

THIS DESIGN-BUILD CONTRACT ("Design-Build Contract") is entered into on September __, 2017 between the San Antonio Water System, an agency of the City of San Antonio established and created pursuant to provisions of Ordinance No. 75686 of the City of San Antonio, Texas and Texas Local Government Code Sections 402.141 et seq., acting by and through its President and CEO, or his or her authorized representative, having its principal offices at 2800 U.S. Hwy 281 North, San Antonio, Texas 78212, hereinafter referred to as "SAWS," and Kiewit Infrastructure South Co., a corporation organized and existing under the laws of the State of Delaware (the "Design-Builder").

RECITALS

WHEREAS, SAWS has determined that it is in SAWS’ best interests to contract with a private entity to supplement and diversify SAWS’ existing and projected water inventory and have entered into the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (the "WTPA"), dated November 4, 2014, as amended, with Vista Ridge LLC (formerly Abengoa Vista Ridge, LLC);

WHEREAS, the Vista Ridge 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 by Vista Ridge LLC, pursuant to the WTPA;

WHEREAS, the WTPA requires SAWS to design and construct certain storage, treatment, piping and pumping facilities necessary for SAWS to be able to take delivery of water from the Vista Ridge Water Supply Project and introduce the delivered water into SAWS’ distribution system (the “Central Water Integration Pipeline”);

WHEREAS, SAWS has determined that it is in SAWS’ best interests to contract with a private entity to design, construct, commission, and accept the test the Central Water Integration Pipeline using the design-build project delivery method in accordance with Title 10, Subtitle F, Chapter 2269, Subchapter H of the Texas Government Code (the “Enabling Law”);

WHEREAS, pursuant to the Enabling Law, SAWS issued a Request for Qualifications, Vista Ridge Integration Project: Progressive Design-Build Services, Solicitation No. PS-00039, on March 15, 2017 (the “RFQ”), in order to prequalify or short-list the design-build entities whose proposals would be evaluated, selected or rejected on a best value basis;

WHEREAS, statements of qualifications submitted in response to the RFQ were received on April 7, 2017, from five entities;

WHEREAS, SAWS, in accordance with the requirements and evaluation criteria set forth in the RFQ, selected three entities (including the Design-Builder) to participate in the second phase of the procurement process;

WHEREAS, pursuant to the Enabling Law, SAWS undertook the second phase of the competitive process by issuing a Request for Proposals, Vista Ridge Integration Project: Progressive Design-Build Services, Solicitation No. R-17-005-GC, on April 27, 2017 (the “RFP”);
WHEREAS, proposals submitted in response to the RFP were received on July 13, 2017, from two entities, including the Design-Builder;

WHEREAS, SAWS engaged in a comprehensive evaluation of the competing proposals in accordance with the evaluation factors and selection criteria set forth in the RFP;

WHEREAS, SAWS determined that the proposal submitted by the Design-Builder in response to the RFP was the most advantageous to SAWS considering the evaluation factors set forth in the RFP;

WHEREAS, in August, 2017, negotiations were initiated with the Design-Builder, which negotiations have concluded with this Design-Build Contract;

WHEREAS, on September 13, 2017, the SAWS Board of Trustees adopted Resolution Number ______ authorizing the execution and delivery of this Design-Build Contract;

WHEREAS, Kiewit Infrastructure Group Inc., an affiliate of the Design-Builder, will guarantee the payment and performance of the obligations of the Design-Builder under this Design-Build Contract pursuant to a guaranty agreement executed concurrently herewith;

WHEREAS, the Central Water Integration Pipeline will be designed, constructed, commissioned and acceptance tested by the Design-Builder pursuant to the terms of this Design-Build Contract and the appendices attached hereto; and

WHEREAS, SAWS desires to receive, and the Design-Builder desires to provide design and construction services under the terms of this Design-Build Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:
ARTICLE 1
DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Design-Build Contract, the following terms shall have the meanings set forth below:

“Acceptance” means demonstration by the Design-Builder in accordance with Article 8 and Appendix 9 that the Acceptance Test has been conducted and that the Project has met all of the Acceptance Standards, including full compliance with the Performance Guarantees, as certified by the Design-Builder pursuant to Section 8.4(G) and agreed to by SAWS pursuant to Section 8.6(A).

“Acceptance Date” means the date on which Acceptance of the Project occurs or is deemed to have occurred under Article 8.

“Acceptance Date Conditions” means the preconditions for the achievement of Acceptance by the Design-Builder, as set forth in Section 8.5.

“Acceptance Longstop Date” means the date 120 days following the Scheduled Acceptance Date, subject to adjustment due to the occurrence of Uncontrollable Circumstance as and to the extent provided in Article 14; provided that, the Acceptance Longstop Date shall be any earlier date following the Scheduled Acceptance Date upon which the liquidated damages payable pursuant to Section 8.8 equal the limitation of liability sub-limit set forth in Section 12.3(B).

“Acceptance Standards” means the standards set forth in Appendix 9 that the Project must meet during the performance of the Acceptance Test, including the Performance Guarantees.

“Acceptance Test” and “Acceptance Testing” means the test and testing required in order to achieve Acceptance, as more particularly described in Article 8 and Appendix 9.

“Additional Phase I Services” has the meaning specified in Section 5.2(B).

“Affiliate” means, in respect of a person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of trustees or similar body governing the affairs of such person. The Guarantor is hereby deemed an Affiliate of the Design-Builder.

“Appendix” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Design-Build Contract and identified as such in the table of contents to this Design-Build Contract.
“Applicable Law” means:

(1) Any federal, state or local law, statute, code or regulation, including all SAWS rules and regulations;

(2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction;

(3) Any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable;

(4) Any Governmental Approval; and

(5) Any consent order or decree, settlement agreement or similar agreement between SAWS and any Governmental Body;

in each case having the force of law and applicable from time to time, over the Project, the Contract Obligations or any other transaction contemplated hereby.

“Approved Subcontractors” means the subcontractors identified in Appendix 11.

“Assumed Approval Issuance Date” has the meaning specified in Section 6.5(E).

“Base Guaranteed Maximum Price” means the initial amount approved by SAWS as the Guaranteed Maximum Price pursuant to Appendix 8.

“Base Guaranteed Maximum Price Adjustment” means an adjustment to the Base Guaranteed Maximum Price made in accordance with and subject to the terms and conditions of Appendix 8.

“Base Phase I Services” means those services designated as Base Phase I Services in Appendix 2.

“Baseline Date” means the Contract Date; except that:

(1) With respect to any Design-Build Work authorized pursuant to an Early Work Package Amendment, the Baseline Date shall mean the Early Work Package Amendment Date; and

(2) Upon the execution and delivery of a GMP Amendment, the Baseline Date shall mean the GMP Amendment Date.

“Baseline Design Documents” means the Specifications, Drawings, and other technical requirements for the performance of the Design-Build Work developed by or on behalf of the Design-Builder through the performance of the Phase I Services and established in any Early Work Package Amendment or GMP Amendment, as applicable.

“Baseline Design Requirements Change” means a change to the Baseline Design Documents made by a Change Order pursuant to Section 6.7, Section 6.8 or a Work Change Directive pursuant to Section 6.10:
(1) As a result of a Design-Builder request agreed to by SAWS;

(2) Due to Uncontrollable Circumstances;

(3) As a result of a term or condition imposed by a Governmental Body; or

(4) At the direction of SAWS.

“Basis of Design Report” or “BDR” means the report so designated to be prepared by the Design-Builder pursuant to Phase I Services Task 3.

“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” shall also include 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.

“Basin Pump Station Improvements” means the improvements to SAWS’ existing Basin Pump Station, including all related buildings, structures, fixtures, pipes, valves and equipment, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, to be designed, constructed, commissioned and tested by the Design-Builder in accordance with the Contract Documents.

“Basin Pump Station Improvements Site” means the parcel of real property on which the Basin Pump Station Improvements are to be constructed by the Design-Builder, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents.

“Bitters Pump Station Improvements” means the improvements to SAWS’ existing Bitters Pump Station, including all related buildings, structures, fixtures, pipes, valves and equipment, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, to be designed, constructed, commissioned and tested by the Design-Builder in accordance with the Contract Documents.

“Bitters Pump Station Improvements Site” means the parcel of real property on which the Bitters Pump Station Improvements are to be constructed by the Design-Builder, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents.

“Board of Trustees” means the board of trustees of SAWS.

“Books and Records” has the meaning specified in Section 9.10(A).

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

“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.

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferes with, delays or increases the cost of performing the obligations of the Design-Builder:
(1) Except as provided below with respect to the exclusions from the definition of “Change in Law”, the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Baseline Date, unless such Applicable Law was on or prior to the Baseline Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body; or

(2) Except as provided below with respect to the exclusions from the definition of “Change in Law”, the order or judgment of any Governmental Body issued on or after the Baseline Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Baseline Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Design-Builder; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

It is specifically understood, however, that none of the following shall constitute a “Change in Law”:

(1) Acts, events and circumstances with respect to Governmental Approvals to the extent the Design-Builder has assumed the permitting risk under Section 6.5;

(2) Any Change in Law relating to Taxes other than a change in law pertaining to exemption from State and local sales Taxes under Section 6.1(K);

(3) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law that was in effect as of the Contract Date;

(4) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Baseline Date; or

(5) Any Change in Law (including the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Design-Builder than are imposed by the Contract Standards in effect as of the Baseline Date.

“Change Order” means a written order issued by SAWS and agreed to in writing by the Design-Builder prior to Final Completion making a Baseline Design Requirements Change, a Base Guaranteed Maximum Price Adjustment, adjustment to the Scheduled Mechanical Completion Date or the Scheduled Acceptance Date or any other change to the terms and conditions of the Contract Documents. A Change Order shall be deemed to constitute a Contract Amendment.

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

“CMMS Integration Plan” means the Design-Builder’s plan for integrating asset information into the existing SAWS computerized maintenance management system, to be developed as part of the Phase I Services in accordance with the requirements set forth in Appendix 2.

“Commercial Operation Date” has the meaning specified under the WTPA.
“Commissioning” means starting up, testing, operating and maintaining the Project prior to the performance of the Acceptance Test in order to tune and adjust the systems, subsystems and processes comprising the Project to achieve stable operating conditions, as more particularly described in Appendix 9.

“Commissioning and Acceptance Test Plan” means the plans, protocols, procedures and processes for the performance of Commissioning and Acceptance Testing to be prepared and documented by the Design-Build and approved by SAWS in accordance with Section 8.4(A) and Appendix 9.

“Construction” means that part of the Design-Build Work consisting of the construction of the Project as required by the Contract Documents, including furnishing, installing or incorporating Supplies into the Project.

“Construction Commencement Date” means the date, following satisfaction of the Construction Commencement Date Conditions by the Design-Build, upon which the Design-Build shall have the right to proceed with the Construction of the Project, as determined in accordance with Section 6.2(A).

“Construction Commencement Date Conditions” has the meaning specified in Section 6.2(A).

“Contract Administration Memorandum” has the meaning specified in Section 17.4(B).

“Contract Amendment” has the meaning specified in Section 17.5(A).

“Contract Compensation” means the Phase I Services Fee and the Design-Build Price.

“Contract Date” means the date this Design-Build Contract is executed and delivered by the parties hereto.

“Contract Documents” means:

(1) This Design-Build Contract and all Appendices;

(2) The GMP Amendment and any Early Work Package Amendment;

(3) The Baseline Design Documents;

(4) Any Change Order, Work Change Directive or other Contract Amendment;

(5) Any Notice to Proceed;

(6) Any Contract Administration Memorandum; and

(7) The Issued for Construction Drawings and Specifications.

“Contract Obligations” means everything required to be furnished and done for and relating to the Design-Build Work and the Warranty Work pursuant to the Contract Documents.
“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by:

1. Applicable Law;
2. The Baseline Design Documents;
3. The Acceptance Standards;
4. Good Engineering and Construction Practice;
5. The Insurance Requirements
6. The Project Management Plans, as accepted by SAWS pursuant to the terms and conditions of the Contract Documents; and
7. Any other standard, term, condition or requirement specifically provided in the Contract Documents to be observed by the Design-Builder.

Section 1.2(Q) shall govern issues of interpretation related to the applicability, stringency and consistency of the Contract Standards.

“Cost Substantiation” means the process of providing evidence of actual costs in accordance with Section 9.8.

“Deliverable Material” means the Phase I Services Deliverable Material and the Phase II Services Deliverable Material.

“Design-Build Contract” means this Design-Build Contract for the Central Water Integration Pipeline between the Design-Builder and SAWS, including the Appendices and all other Contract Documents, as the same may be amended or modified from time to time in accordance herewith.

“Design-Build Costs” has the meaning specified in Appendix 8.

“Design-Build Manager” has the meaning specified in Section 7.1(A).

“Design-Build Period” means the Phase I Services Period and the Phase II Services Period.

“Design-Build Price” has the meaning specified in Appendix 8.

“Design-Build Quality Management Plan” means the Design-Builder’s plan for quality assurance and quality control in implementing the Design-Build Work, to be developed as part of the Phase I Services in accordance with the requirements set forth in Appendices 2 and 6.

“Design-Build Work” means everything required to be furnished and done for and relating to the design and construction of the Project pursuant to the Contract Documents. Design-Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Design-Builder’s design, engineering, permitting, procurement, construction, Commissioning, Acceptance Testing, and related obligations with respect to the construction of the Project under the Contract Documents, including all completed structures, assemblies,
fabrications, acquisitions and installations, all testing, and all of the Design-Builder’s administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under the Contract Documents pertaining to such obligations, as well as all work performed pursuant to Early Work Package Amendments, the Phase I Services, the Phase II Services and the Warranty Work. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless the context otherwise requires, and shall include all Design-Build Work authorized by Change Order or Work Change Directive.

“Design-Builder” means Kiewit Infrastructure South Co., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

“Design-Builder Contingency” has the meaning specified in Appendix 8.

“Design-Builder Contract Representative” has the meaning specified in Section 17.6(A).

“Design-Builder Fault” means:

1. A breach by the Design-Builder of any of its obligations under this Design-Build Contract;

2. A breach of any representation or warranty made by the Design-Builder under this Design-Build Contract;

3. Willful misconduct of the Design-Builder or any other Design-Builder Person; or

4. A negligent act or omission of the Design-Builder or any other Design-Builder Person.

“Design-Builder Fee” has the meaning specified in Appendix 8.

“Design-Builder Operations Manager” has the meaning specified in Section 8.4(C).

“Design-Builder Person” means each of the following:

1. The Design-Builder;

2. Any director, officer, employee or agent of the Design-Builder in each case acting as such;

3. Any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Design-Builder, in any such person’s capacity as a provider of services directly or indirectly to the Design-Builder in connection with the Project; and

4. Anyone for whose acts any of the foregoing may be legally or contractually liable in connection with this Design-Build Contract, including officers, directors, employees, representatives, agents, consultants, and contractors.

“Design Completion Fee” has the meaning specified in Section 5.7.
“Design Professional Services” means that part of the Design-Build Work consisting of the preparation of plans, drawings and specifications for the Project by licensed professional engineering, architectural and land surveying firms, as well as all other services required to be performed by licensed design professionals as part of the Design-Build Work for the design and engineering of the Project, including professional engineering, architectural and land surveying services.


“Document Control and Records Management Plan” means the Design-Builder’s plan for document control and records management during the Phase I Services, to be developed as part of the Phase I Services in accordance with the requirements set forth in Appendix 2.

“Document Submittal Protocol” means the protocol for the submittal of Phase II Design Documents by the Design-Builder to SAWS to be developed by the Design-Builder in accordance with the requirements set forth in Appendix 7.

“Drawings” means drawings, diagrams, illustrations, schedules and other data that show the scope, extent, and character of the Design-Build Work, as prepared by or on behalf of the Design-Builder.

“Early Work Package” has the meaning specified in Section 5.6(A).

“Early Work Package Amendment” has the meaning specified in Section 5.6(A).

“Early Work Package Amendment Date” means the date that an Early Work Package Amendment is executed and delivered by the parties.

“Early Work Package Price” means the price established in any Early Work Package for the portion of the Design-Build Work to be performed thereunder.

“Early Work Package Submittal” has the meaning specified in Section 5.6(A).

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

“Engineer-of-Record” means the professional engineer licensed in the State in good standing who is designated by the Design-Builder and acceptable to SAWS, acting reasonably, as the engineer responsible for the preparation, signing, dating, sealing and issuing of the engineering documents relating to all or a portion of the Design-Build Work.

“EPA” means the United States Environmental Protection Agency and any successor agency.

“Environmental Requirements” has the meaning specified in Section 9.6.6 of Appendix 9.

“Environmental Mitigation Measures” means any environmental mitigation measures set forth in a Governmental Approval.

“Event of Default” means, with respect to the Design-Builder, those items specified in Section 12.2 and, with respect to SAWS, those items specified in Section 12.5.
“Expiration Date” means the last day of the Warranty Period.

“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 Design-Build Work, including all Construction of the Project, in compliance with the Contract Documents and the requirements of Section 8.9.

“Finished Water” means WTPA Water which is treated pursuant to this Design-Build Contract at the Terminus Facility for conveyance to the SAWS Distribution System.

“Finished Water Transmission Pipelines” means the transmission pipelines for the conveyance of Finished Water from the Terminus Facility to the SAWS Distribution System, including all related buildings, structures, pipes, valves and equipment; as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, to be designed, constructed, commissioned and tested by the Design-Builder in accordance with the Contract Documents.

“Finished Water Transmission Pipelines Right of Ways” means the real property, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, on or under which the Finished Water Transmission Pipelines are to be constructed by the Design-Builder.

“Finished Water Treatment and Delivery Guarantee” has the meaning specified in Section 9.6.3 of Appendix 9.

“General Conditions Costs” has the meaning specified in Appendix 8.

“General Conditions Fee” has the meaning specified in Appendix 8.

“Geotechnical Report” means the report so designated to be prepared by the Design-Builder pursuant to Phase I Services Task 2.

“Geotechnical Services Order” has the meaning specified in Appendix 2.

“GMP Amendment” has the meaning specified in Section 5.9(B).

“GMP Amendment Date” has the meaning specified in Section 5.9(B).

“GMP Submittal” has the meaning specified in Section 5.8.

“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 design, engineering, equipping, installation, construction, commissioning and testing practices as observed for drinking water treatment, storage and pumping facilities and pipelines as followed in the State.

“Governmental Approval” means any permit, license, authorization, consent, certification, exemption, ruling, entitlement or approval issued by a Governmental Body of whatever kind and however described, which is required under Applicable Law to be obtained.
or maintained by any person with respect to the Design-Build Work, including any SAWS Managed Governmental Approvals.

“Governmental Approval Application Date” means the applicable date set forth in the Governmental Approvals Schedule Table.

“Governmental Approvals Schedule Table” means Table 3-1 of Appendix 3, as specified in the GMP Amendment.

“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 Design-Build Contract), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Design-Build Contract or the Project.

“Guaranteed Maximum Price” has the meaning specified in Appendix 8.

“Guarantor” means Kiewit Infrastructure Group Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

“Guaranty Agreement” means the Guaranty Agreement entered into concurrently with this Design-Build Contract from the Guarantor to SAWS in the form set forth in the Transaction Forms, as the same may be amended from time to time in accordance therewith.

“Hazardous Material” 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.

“Health and Safety Plan” means the Design-Builder’s plan for health and safety in implementing the Design-Build Work, to be developed as part of the Phase I Services in accordance with the requirements set forth in Appendices 2 and 5.

“Initial GMP” has the meaning specified in Section 5.7(A).

“Initial GMP Submittal” has the meaning specified in Section 5.7.

“Intellectual Property” means any trade secrets, proprietary rights, patents, copyrights or trademarks recognized under Applicable Law.

“Interim Construction Milestone” has the meaning specified in Section 4.9(B).

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurance company that has issued a policy of Required Insurance under this Design-Build Contract or by any insurance company that has issued a policy of insurance required to be obtained and maintained by SAWS in connection with this Design-Build Contract, compliance with which is a condition to the effectiveness of such policy.
“Issued for Construction Drawings and Specifications” means the Drawings and Specifications which have been accepted by SAWS in accordance with the Document Submittal Protocol as final Drawings and Specifications for the commencement of Construction of all or any portion of the Design-Build Work.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Design-Build Contract, and all appeals therefrom.

“Lien” means any and every lien against the Project or against any monies due or to become due from SAWS to the Design-Builder under this Design-Build Contract, for or on account of the Contract Obligations, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Logistics Plan” means the Design-Builder’s plan for Construction sequencing and site access, to be developed as part of the Phase I Services in accordance with the requirements set forth in Appendix 2.

“Loss-and-Expense” means any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, Lien, deposit, Tax, charge, assessment, cost or expense, including all Fees and Costs, relating to third party claims for which the Design-Builder is obligated to indemnify the SAWS Indemnitees pursuant to this Design-Build Contract.

“Maintenance of Operations During Construction Plan” has the meaning specified in Section 6.11(A).

“Maltsberger Pump Station Improvements” means the improvements to SAWS’ existing Maltsberger Pump Station, including all related buildings, structures, fixtures, pipes, valves and equipment, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, to be designed, constructed, commissioned and tested by the Design-Builder in accordance with the Contract Documents.

“Maltsberger Pump Station Improvements Site” means the parcel of real property on which the Maltsberger Pump Station Improvements are to be constructed by the Design-Builder, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents.

“Material Subcontract” means any Subcontract for the construction of the mechanical, electrical and plumbing systems and equipment comprising the Project, and any other Subcontract with a contract value exceeding $50,000.

“Material Subcontractor” means any Subcontractor that is party to a Material Subcontract.

“Mechanical Completion” has the meaning specified in Section 8.2.

“Mechanical Completion Date” means the date on which Mechanical Completion of the Project occurs or is deemed to have occurred under Section 8.2.

“Mechanical Completion Longstop Date” means the date 120 days following the Scheduled Mechanical Completion Date, subject to adjustment due to the occurrence of Uncontrollable Circumstance as and to the extent provided in Article 14; provided that, the Mechanical Completion Longstop Date shall be any earlier date following the Scheduled
Mechanical Completion Date upon which the liquidated damages payable pursuant to Section 8.8 equal the limitation of liability sub-limit set forth in Section 12.3(B).

“Mechanical Completion Procedures” has the meaning specified in Appendix 9.

“Mediator” means any person serving as a third-party mediator of disputes hereunder pursuant to Section 11.1.

“MG” means millions of gallons.

“MGD” means millions of gallons per day.

“mg/L” means milligrams per liter.

“Monthly Progress Report” has the meaning specified in Section 4.8.

“Non-Binding Mediation” means the voluntary system of dispute resolution through third-party mediation established by Section 11.1 for the resolution of any dispute arising under this Design-Build Contract.

“Notice of Final Completion” has the meaning set forth in Section 8.9(B).

“Notice to Proceed” or “NTP” means a written notice issued by the SAWS Contract Representative authorizing the Design-Builder to commence performing a portion of the Design-Build Work, as specified in the Notice to Proceed.

“Operations and Maintenance Manual” means the manual and related computer programs prepared by the Design-Builder containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Project, developed and maintained as required by Section 6.18 and Appendix 5. The Operations and Maintenance Manual includes the service manuals describing the operation and maintenance requirements for each equipment system, package and unit incorporated into the Project.

“OSHA” means the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, as amended or superseded from time to time.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate, whichever is lower.

“Owner Representative” means any individual or firm, or team of individuals or firms, under contract with SAWS, including subcontractors, and designated by SAWS from time to time as part of its management-consulting, engineering or construction management team for purposes of administering this Design-Build Contract on behalf of SAWS.

“Payment Bond” means the labor and materials payment bond provided by the Design-Builder as described in and maintained pursuant to this Design-Build Contract and in the form set forth in the Transaction Forms.

“Payment Request” means a written submission by the Design-Builder in the form approved by SAWS and accompanied by all required supporting documentation, requesting payment hereunder of any portion of the Contract Compensation.
“Performance Bond” means the performance bond provided by the Design-Builder as described in and maintained pursuant to this Design-Build Contract and in the form set forth in the Transaction Forms.

“Performance Guarantees” means the Finished Water Treatment and Delivery Guarantee and the Environmental Requirements.

“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 Design-Builder and against which the Design-Builder has established appropriate reserves in accordance with generally accepted accounting principles;

2. Any encumbrance arising out of any judgment rendered that is being contested diligently and in good faith by the Design-Builder, 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 (a) the ability of the Design-Builder to construct the Project in accordance with this Design-Build Contract or (b) the ability of SAWS to 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 Design-Builder and against which the Design-Builder has established appropriate reserves or bonded against, at SAWS’ request;

4. Servitudes, licenses, leases, easements, restrictions, rights-of-way, rights in the nature of easements or similar items which shall not individually or in the aggregate materially and adversely impair (a) the construction of the Project by the Design-Builder in accordance with this Design-Build Contract or (b) the operation of the Project by SAWS;

5. Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which individually or in the aggregate do not materially interfere with and adversely affect (a) the construction of the Project by the Design-Builder in accordance with this Design-Build Contract or (b) the operation of the Project by SAWS;

6. Encumbrances which are created on or before the Contract Date;

7. Encumbrances which are created by a Change in Law on or after the Contract Date; and

8. Any encumbrance created by SAWS.

“Phase I Design Documents” means the Design-Builder’s plans, technical specifications, drawings and other documents prepared in connection with the Phase I Services, including the Baseline Design Documents.

“Phase I Services” means the Base Phase I Services and the Additional Phase I Services performed by the Design-Builder hereunder prior to the GMP Amendment Date.
“Phase I Services Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Design-Builder to SAWS in the performance of the Phase I Services pursuant to this Design-Build Contract, including the Phase I Design Documents.

“Phase I Services Fee” has the meaning specified in Section 9.1 and Appendix 2.

“Phase I Services Period” means the period between the Contract Date and the GMP Amendment Date.

“Phase I Services Schedule” has the meaning specified in Section 5.3.

“Phase I Services Tasks” means the tasks specified in Appendix 2.

“Phase II Design Documents” means the Design-Builder’s plans, technical specifications, drawings, record drawings and other design documents prepared following the GMP Amendment Date (or in connection with any Early Work Package, the applicable Early Work Package Amendment Date) in connection with the Phase II Services, including:

1. Specifications, Drawings and all other work product generated through the performance of the Design Professional Services following the establishment of the Baseline Design Documents; and

2. All technical criteria, written descriptions and design data necessary for obtaining Governmental Approvals and performing Construction, such as shop drawings, product data and samples whether or not such documents are required to be prepared by licensed design professionals.

“Phase II Services” means all Design-Build Work performed by the Design-Builder hereunder on and after (1) the GMP Amendment Date and (2) the Early Work Package Amendment Date in connection with any Early Work Package.

“Phase II Services Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Design-Builder to SAWS in the performance of the Phase II Services pursuant to this Design-Build Contract, including the Phase II Design Documents.

“Phase II Services Period” means the period from and including the GMP Amendment Date (or with respect to any Design-Build Work authorized pursuant to an Early Work Package Amendment, the applicable Early Work Package Amendment Date) through the date Final Completion is achieved.

“Phase II Services Schedule” means the Design-Builder’s critical path method completion schedule for the performance of the Design-Build Work, as set forth as an attachment to Appendix 5 on the GMP Amendment Date and as updated and maintained by the Design-Builder in accordance with Section 6.1(F).

“Pre-Existing Intellectual Property” has the meaning specified in Section 17.7(D).

“Prime Rate” means the prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer
published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.

“Project” means the Terminus Facility, the Pump Station Improvements, the Finished Water Transmission Pipelines, the SAWS Distribution System Upgrades and the Project Sites and all Contract Obligations required to be performed under the Contract Documents. The Project does not include the Vista Ridge Regional Supply Project.

“Project Execution Plan” means the Design-Build’s plan for execution of the Phase I Services, to be developed as part of the Phase I Services in accordance with the requirements set forth in Appendix 2.

“Project Management Plans” means:

1. The Commissioning and Acceptance Test Plan;
2. The Document Control and Records Management Plan;
3. The CMMS Integration Plan;
4. The Design-Build Quality Management Plan;
5. The Health and Safety Plan;
6. The Logistics Plan;
7. The Maintenance of Operations During Construction Plan;
8. The Project Execution Plan;
9. The Regulated Substances Management Plan;
10. The Subcontracting Plan; and

“Project Schedule” means the Phase I Services Schedule and the Phase II Services Schedule.

“Project Sites” means the Terminus Facility Site, the Bitters Pump Station Improvements Site, the Maltsberger Pump Station Improvements Site, the Basin Pump Station Improvements Site, the Stone Oak Pump Station Improvements Site, the PRV Facilities Sites and the Finished Water Transmission Pipelines Right of Ways.

“Project Warranties” has the meaning specified in Section 10.1(A).

“Proposal” means the proposal submitted by the Design-Build on June 30, 2017, in response to the RFP.

“PRV Facilities” means the pressure reducing valve facilities, including all related buildings, structures, pipes, valves and equipment; as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, to be designed, constructed, commissioned and tested by the Design-Build in accordance with the Contract Documents.
“PRV Facilities Sites” means the parcels of real property, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, on which the PRV Facilities are to be constructed by the Design-Builder.

“Public Information Act” means the Texas Public Information Act, Chapter 552 of the Texas Government Code.

“Pump Station Improvements” means the Bitters Pump Station Improvements, the Maltzberger Pump Station Improvements, the Basin Pump Station Improvements and the Stone Oak Pump Station Improvements.

“Punch List” has the meaning specified in Section 6.19(A).

“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.

“Reference Documents” means the documents listed as reference documents in the table of contents to this Design-Build Contract.

“Regulated Site Condition” means, and is limited to:

1. Surface or subsurface structures, materials or conditions having historical, archaeological, religious or similar significance;

2. The presence or habitat of a species that is classified under Applicable Law as endangered, rare, threatened, of special concern, or similarly subject to the protections of Applicable Law;

3. The presence anywhere in, on or under the Project Sites on the Baseline Date of wells or underground storage tanks for the storage of chemicals, petroleum products or Regulated Substances; and

4. The presence of Regulated Substances in environmental media anywhere in, on or under the Project Sites (including presence in surface water, groundwater, soils or subsurface strata), but not including Regulated Substances used, stored or otherwise brought to the Project Sites by the Design-Builder or any Subcontractor as provided in Section 6.4(A);

in each case, however, only to the extent not disclosed to the Design-Builder as of the Baseline Date.

“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, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Materials.

“Regulated Substances Management Plan” means the Design-Builder’s plan for the management of Regulated Substances, to be developed as part of the Phase II Services in accordance with the requirements set forth in Appendix 5.
“Related Projects” has the meaning specified in Section 6.11(B).

“Relief Request Notice” has the meaning specified in Section 14.2(C).

“Request for Proposals” or “RFP” means SAWS’ Request for Proposals, Vista Ridge Integration Project: Progressive Design-Build Services, Solicitation No. R-17-005-GC, issued on April 27, 2017, as amended.


“Required Insurance” means the insurance policies and coverage required to be provided by the Design-Builder under this Design-Build Contract, as set forth in Section 13.1 and Appendix 10.

“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 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 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 SAWS’ view, in either case, be reasonably likely to materially affect the ability of the Design-Builder to perform its obligations under this Design-Build Contract;

(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 directors 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 misdemeanor) 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; or

(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.

“Safety Manager” has the meaning specified in Section 6.14(A).

“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 Contract Representative” has the meaning specified in Section 17.6(B).

“SAWS Contract Representative’s Final Decision” has the meaning specified in Section 11.1(C).
“SAWS Distribution System” means the water distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and assets) and all appurtenances thereto owned by SAWS and serving the Service Area. The SAWS Distribution System does not include the Vista Ridge Regional Supply Project.

“SAWS Distribution System Upgrades” means the improvements to the SAWS Distribution System and all related buildings, structures, fixtures and equipment, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, to be designed, constructed, commissioned and tested by the Design-Build in accordance with the Contract Documents.

“SAWS Fault” means:

1. A breach by SAWS of any of its obligations under this Design-Build Contract; or

2. A breach of any representation or warranty by SAWS under this Design-Build Contract; or

3. Willful misconduct of SAWS or a SAWS Indemnitee; or

4. A negligent act or omission of SAWS or a SAWS Indemnitee.

“SAWS Indemnitee” has the meaning specified in Section 15.1.

“SAWS Managed Governmental Approvals” means, to the extent necessary for the Project, the following permits and approvals:

1. Clean Water Act §404 Permit;

2. Clean Water Act §401 Water Quality Clarification for Individual and §401 Permit;

3. Environmental Review for State Funding (TWDB);

4. Texas Antiquities Permit;

5. National Historical Preservation Act;

6. Marl, Sand, Gravel, Shell or Mudshell Permits;

7. Endangered Species Permit;

8. Migratory Bird Permit; and

9. COSA Tree Permit.

“SAWS Operations Manager” has the meaning specified in Section 8.4(D).

“SAWS Property” means any structures, improvements, equipment, or other real or personal property owned, leased, operated, maintained, or occupied by SAWS.

“SCADA System” means the supervisory control and data acquisition systems required for the Project, as generally described in Appendix 5.
“Schedule of Values” means the detailed, itemized list of prices and costs that establishes the value of each part or component of the Phase II Services, to be developed by the Design-Builder in accordance with the Contract Standards, and to serve as the basis for progress payments of the Design-Build Price during the Phase II Services Period.

“Scheduled Acceptance Date” means March 26, 2020, as such Scheduled Acceptance Date may be adjusted in accordance with Section 8.7(A).

“Scheduled Mechanical Completion Date” means December 18, 2019, as such Scheduled Mechanical Completion Date may be adjusted in accordance with Section 8.3(A).

“Security Bond” means the security bond provided by the Design-Builder as described in and maintained pursuant to this Design-Build Contract and in the form set forth in the Transaction Forms.

“Security Instruments” means the Guaranty Agreement, the Security Bond, the Performance Bond, the Payment Bond and the Warranty Bond.

“Senior Supervisors” has the meaning specified in Section 17.6(A).

“Separate Contractor” means any person or entity under contract with SAWS for the performance of work associated with the Related Projects, including Vista Ridge LLC.

“Service Area” means all territory in which customers are served by the SAWS Distribution System.

“Specifications” means the documents prepared by or on behalf of Design-Builder comprising written technical descriptions of materials, equipment, construction systems, standards, and workmanship for the Design-Build Work and certain administrative details applicable thereto.

“Specified WTPA Water Quality Parameters” has the meaning specified in Section 9.6.2 of Appendix 9.


“State” means the State of Texas.

“Stone Oak Pump Station Improvements” means the new SAWS’ Stone Oak Pump Station, including all related buildings, structures, fixtures, pipes, valves and equipment, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, to be designed, constructed, commissioned and tested by the Design-Builder in accordance with the Contract Documents.

“Stone Oak Pump Station Improvements Site” means the portion of the Terminus Site on which the Stone Oak Pump Station Improvements are to be constructed by the Design-Builder, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents.

“Subcontract” means any contract entered into by the Design-Builder, or a Subcontractor of the Design-Builder of any tier, with one or more persons in connection with the carrying out of the Design-Builder’s obligations under this Design-Build Contract, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise, including contracts for Construction, Design Professional Services and Supplies.
“Subcontracting Plan” means the Design-Builder’s plan for entering into Subcontracts, to be developed as part of the Phase I Services in accordance with the requirements set forth in Appendix 2 and finalized on the GMP Amendment Date in accordance with Section 7.4(C).

“Subcontractor” means any person, other than the Design-Builder or the Guarantor, that enters into a Subcontract, including Construction Subcontractors, Design Professional Services Firms and Suppliers.

“Subcontractor Default Insurance” means a contractor default insurance (CDI) policy insuring against the default of some or all of the Construction Subcontractors.

“Supplemental Geotechnical Services Allowance” has the meaning specified in Appendix 2.

“Supplier” means a manufacturer, distributor, materialman, fabricator, vendor or other supplier having a Subcontract to furnish Supplies.

“Supplies” means materials, equipment or other supplies furnished in connection with the Design-Build Work.

“Surety” means the surety company issuing the Security Bond, the Performance Bond, the Payment Bond or the Warranty Bond, as applicable.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

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

“Term” has the meaning set forth in Section 3.1.

“Termination Date” means the last day of this Design-Build Contract resulting from a termination under any provision hereof.

“Terminus Facility” means the water treatment facility, including all pumping, storage and chemical feed facilities, with an initial firm production capacity of 48.62 MGD and all related buildings, yard piping structures, fixtures, equipment, roads, grounds, fences and landscaping appurtenant thereto, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents, to be designed, constructed, commissioned and tested by the Design-Builder in accordance with the Contract Documents.

“Terminus Facility Site” means the portion of the Terminus Site on which the Facility is to be constructed by the Design-Builder, as generally described in Appendix 1 and more particularly described in the Baseline Design Documents.

“Terminus Site” means the parcel of approximately 20 acres of real property in the City at the terminus of the transmission pipeline from the Vista Ridge Regional Supply Project on which the Terminus Facility and the Stone Oak Pump Station Improvements are to be constructed by the Design-Builder as part of the Project and on which certain Related Projects are to be constructed by Separate Contractors.
“Training Plan” means the Design-Builder’s plan for the training of SAWS employees in the long-term operations and maintenance of the Project, to be developed as part of the Phase II Services in accordance with the requirements set forth in Appendix 5.

“Transaction Form” means any of the transaction forms identified in the table of contents to this Design-Build Contract.

“TWDB” means the Texas Water Development Board, or any predecessor or successor agency.

“Unallowable Costs” has the meaning specified in Appendix 8.

“Uncontrollable Circumstance” means any act, event or condition that (1) is beyond the reasonable control of the party relying on it as a justification for not performing an obligation or complying with any condition required of the party under this Design-Build Contract, and (2) materially expands the scope, interferes with, delays or increases the cost of performing the party’s obligations under this Design-Build Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Design-Build Contract on the part of the party claiming the occurrence of an Uncontrollable Circumstance.

1. Inclusions. Subject to the foregoing, Uncontrollable Circumstances may include the following:

(a) A Change in Law;

(b) Failure of SAWS to timely acquire all easements necessary for the Finished Water Transmission Pipelines Right of Ways, as and to the extent provided in Section 4.3(D);

(c) Errors, omissions or insufficiencies relating to certain information provided to the Design-Builder by or on behalf of SAWS, as and to the extent provided in Section 4.4(B);

(d) The existence of a Regulated Site Condition, as and to the extent provided in Section 6.4;

(e) Delays in the issuance of a Governmental Approval, as and to the extent provided in Section 6.5(E);

(f) The imposition of certain terms and conditions in Governmental Approvals, as and to the extent provided in Section 6.5(F);

(g) Acts, events or circumstances associated with the Separate Contractors, as and to the extent provided in Section 6.11(C);

(h) Naturally occurring events, including unusually severe and abnormal climactic conditions (as determined in accordance with Section 14.5), landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;

(i) Explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
(j) Labor disputes, strikes, slowdowns, stoppages, boycotts or disruption affecting a specific trade on a national or regional level, to the extent not caused by Design-Builder Fault;

(k) The failure of any Subcontractor (other than the Design-Builder or any Affiliate of the Design-Builder) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Design-Builder directly;

(l) 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 material portion of the Project;

(m) An act, event or circumstance occurring outside of the United States only to the extent that such act, event or circumstance (i) directly impacts the Design-Builder’s foreign suppliers or vendors with respect to the performance of the Design-Build Work, and (ii) would otherwise constitute an Uncontrollable Circumstance affecting the Design-Builder directly, as determined in accordance with Article 14;

(n) Insufficiency in the supply of WTPA Water for the performance of the Acceptance Test and the achievement of the Acceptance Standards, as and to the extent provided in Section 8.4(H);

(o) Variations in the nature, condition or quality of WTPA Water parameters outside the range set forth in the Specified WTPA Water Quality Parameters for the performance of the Acceptance Test and the achievement of the Acceptance Standards, as and to the extent provided in Section 8.4(I);

(p) With respect to the Design-Builder, any SAWS Fault or a Change Order not made due to Design-Builder Fault;

(q) With respect to SAWS, any Design-Builder Fault; or

(r) Any other act, event or circumstance specifically identified herein as providing a basis for Uncontrollable Circumstance relief.

(2) Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

(a) Any act, event or circumstance that would not have occurred but for the affected party’s failure to comply with its obligations hereunder;

(b) Changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, labor availability, currency values, exchange rates or other economic conditions;

(c) Changes in the financial condition of SAWS, the Design-Builder or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;

(d) The consequences of error, neglect or omissions by the Design-Builder, any Subcontractor, any of their Affiliates or any other person in the performance of the Design-Build Work;
(e) 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 Design-Builder of performing the Design-Build Work;

(f) Except as specifically provided in the “Inclusions” section of this definition, strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions;

(g) Weather conditions that do not constitute unusually severe and abnormal climatic conditions (as determined in accordance with Section 14.5);

(h) Except as specifically provided in Section 6.4, any surface or subsurface conditions affecting the Project Sites during the Phase II Services;

(i) Except as specifically provided in the “Inclusions” section of this definition, any act, event, circumstance or Change in Law occurring outside of the United States;

(j) Mechanical failure of equipment to the extent not resulting from a condition that is listed in the “Inclusions” section of this definition; or

(k) The failure of the Design-Builder to secure any patent or other Intellectual Property right which is or may be necessary for the performance of the Design-Build Work.

“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.

“Vista Ridge LLC” 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.

“Vista Ridge Regional Supply Project” means the Vista Ridge Regional Supply Project, consisting 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 pursuant to the WTPA.

“Warranty Bond” means the warranty bond provided by the Design-Builder as described in and maintained pursuant to this Design-Build Contract and in the form set forth in the Transaction Forms.

“Warranty Period” has the meaning specified in Section 10.1(B).

“Warranty Work” means all work and services required to be performed or provided by the Design-Builder pursuant to the Project Warranties in accordance with Article 10.

“Water Permit” means the new or amended water permit required to be issued by TCEQ to SAWS following Mechanical Completion, authorizing SAWS to use Finished Water from the Project as a source of potable water for public consumption.
“Work Change Directive” has the meaning specified in Section 6.10.


“WTPA Commercial Operation Date” has the meaning specified as “Commercial Operation Date” under the WTPA.

“WTPA Substantial Completion” has the meaning specified as “Substantial Completion” under the WTPA.

“WTPA Water” means any water produced by the Vista Ridge Regional Supply Project pursuant to the WTPA that is conveyed to the Terminus Facility.

SECTION 1.2. INTERPRETATION.

This Design-Build Contract shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Design-Build Contract otherwise require:

(A) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include firms, individuals, legal personal representatives, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, 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 Design-Build Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereto”, “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Design-Build Contract.

(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. 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. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.

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

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.
(H) **References to SAWS, Governmental Bodies and Private Persons.** Each reference to SAWS or a Governmental Body is deemed to include a reference to any successor to SAWS or such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of SAWS or such Governmental Body. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.

(I) **References to 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.

(J) **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.

(K) **Entire Agreement.** This Design-Build Contract contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Design-Build Contract. Without limiting the generality of the foregoing, this Design-Build Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFQ, the submittal made by the Design-Builder in response thereto, the RFP, the Proposal, and any amendments or supplements to any such documents.

(L) **Standards of Workmanship and Materials.** Any reference in the Contract Documents to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Design-Builder to furnish the same in accordance with the grades and standards therefor indicated in the Contract Documents. Where the Contract Documents do not specify any explicit quality or standard for construction materials or workmanship, the Design-Builder shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials that are specified elsewhere in the Contract Documents, and the Contract Documents are to be interpreted accordingly.

(M) **Technical Standards and Codes.** References in the Contract Documents to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Baseline Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Baseline Design Documents, and (2) if any material revision occurs, to the Design-Builder’s actual knowledge, after the Baseline Date, and prior to completion of the applicable Design-Build Work, the Design-Builder shall notify SAWS. If so directed by SAWS through a Work Change Directive or Change Order, the Design-Builder shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code, or specification, subject to the Design-Builder’s rights under this Design-Build Contract with respect to Work Change Directives and Change Orders at the direction of SAWS.

(N) **Causing Performance.** A party shall itself perform, or shall cause to be performed, subject to any limitations specifically imposed hereby with respect to
Subcontractors or otherwise, the obligations affirmatively undertaken by such party under this Design-Build Contract.

(O) 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 Guaranteed Maximum Price.

(P) Good Engineering and Construction Practice. Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event displace or lessen the stringency of, the Contract Standards.

(Q) Interpretation of Contract Documents. The Contract Documents are intended to be complementary, and what is set forth in any one document is as binding as if set forth in each document. The parties recognize that Contract Amendments, Change Orders and Work Change Directives may provide for specific modification to the terms and conditions of other Contract Documents, in which case, the modified terms and conditions shall govern, as expressly set forth in the Contract Amendment, Change Order or Work Change Directive. However, all terms and conditions of such other Contract Documents that are not expressly modified or deleted by a Contract Amendment, Change Order or Work Change Directive shall remain in effect. Section 1.2(R) shall govern matters of interpretation related to the applicability, stringency and consistency of the Contract Documents, the requirements of which are included among the Contract Standards.

(R) Applicability, Stringency and Consistency of Contract Standards. The Design-Builder shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the Design-Builder 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. In the event of any inconsistency among the Contract Standards, SAWS’ determination, acting reasonably, as to the applicable standard shall be binding.

(S) Delivery of Documents in Digital Format. In the Contract Documents, the Design-Builder 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 Design-Builder 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 Design-Build Contract. 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.

(T) Severability. Each provision of this Design-Build Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Design-Build Contract 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 Design-Build Contract, 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 Design-Build Contract 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 Design-Build Contract as nearly as possible to its original intent and effect.
Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Design-Build Contract 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.

No Third-Party Rights. This Design-Build Contract is exclusively for the benefit of SAWS and the Design-Builder and, except as specifically provided in Article 15 with respect to SAWS Indemnitees, shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

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 Design-Build Contract. When a party does not have “discretion” it means that the party shall act reasonably.

Counterparts. This Design-Build Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Design-Build Contract.

Governing Law. This Design-Build Contract shall be governed by and construed in accordance with the applicable laws of the State.

Defined Terms. The definitions set forth in Section 1.1 shall control in the event of any conflict with any definitions used in the recitals hereto.

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.

Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles.

References to Dollar Amounts. All statements of, or references to, dollar amounts or money, including references to “$” and “dollars”, are to the lawful currency of the United States of America. All payments required to be made by either party hereunder shall be made in dollars.
ARTICLE 2

DESIGN-BUILDER REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE DESIGN-BUILDER.

In addition to any other representations and warranties made by the Design-Builder in this Design-Build Contract, the Design-Builder represents and warrants that:

(A) Existence and Powers. The Design-Builder is a corporation, having its principal office at 3555 Farnam Street, Omaha, NE 68131 and a branch office at 13119 Old Denton Road Fort Worth, TX 76177. Such corporation is duly organized, validly existing and in good standing under the laws of the State of Delaware has the authority to do business in the State and in any state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Design-Build Contract.

(B) Due Authorization and Binding Obligation. This Design-Build Contract has been duly authorized, executed and delivered by all necessary corporate action of the Design-Builder and constitutes a legal, valid and binding obligation of the Design-Builder, enforceable against the Design-Builder in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Law or by equitable principles of general application.

(C) No Conflict. Neither the execution nor delivery by the Design-Builder of this Design-Build Contract nor the performance by the Design-Builder of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the Design-Builder 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 Design-Builder 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 Design-Builder or any of its Affiliates is a party or by which the Design-Builder or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Commitments Limiting Ability to Perform Contract Obligations. The Design-Builder has no commitments, obligations, or impediments of any kind that would have a material and adverse impact on the ability of the Design-Builder to perform the Contract Obligations in accordance with the Contract Standards. The Design-Builder covenants that it will not enter into any such commitment throughout the Term.

(E) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Design-Build Contract by the Design-Builder except as such have been duly obtained or made.

(F) Licensing and Registration Requirements. The Design-Builder possesses all licenses required under Applicable Law to perform all services required of the Design-Builder under this Design-Build Contract and is not in violation of any of the terms or conditions of such licenses. The Design-Builder is registered with all appropriate Governmental Bodies to the extent necessary to perform all services required of the Design-Builder under this Design-Build Contract.
(G) **No Litigation.** There is no legal proceeding, at law or in equity, before or by any court, arbitral tribunal or other Governmental Body pending or, to the best of the Design-Builder’s knowledge after due inquiry, overtly threatened or publicly announced against the Design-Builder, 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 Design-Build Contract by the Design-Builder or the validity, legality or enforceability of this Design-Build Contract against the Design-Builder, or any other agreement or instrument entered into by the Design-Builder in connection with the transactions contemplated hereby, or on the ability of the Design-Builder to perform its obligations hereunder or under any such other agreement or instrument.

(H) **Claims and Demands.** There are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against the Design-Builder or any of its Affiliates with respect to any facilities designed or constructed by the Design-Builder or any of its Affiliates that would have a material and adverse effect upon the ability of the Design-Builder to perform the Contract Obligations.

(I) **Applicable Law Compliance.** To the best of its knowledge after due inquiry, the Design-Builder and its Affiliates have no material violation of any law, order, rule or regulation with respect to any facilities designed or constructed by the Design-Builder or any of its Affiliates.

(J) **Information Supplied by the Design-Builder.** The information supplied and representations and warranties made by the Design-Builder in all submittals made in response to the RFQ and RFP with respect to the Design-Builder (and to its knowledge after due inquiry, all information supplied in such submittals with respect to any Affiliate or Subcontractor) are true, correct and complete in all material respects.

(K) **Intellectual Property.** The Design-Builder owns, or has sufficient rights to use, all Intellectual Property necessary for the Project without any material conflict with the rights of others.

(L) **Practicability of Performance.** Subject to, and in accordance with, the terms of this Design-Build Contract, the Design-Builder assumes the risk of the practicability and possibility of performance of the Contract Obligations in compliance with the requirements of the Contract Standards 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 Contract Compensation.

(M) **Required Insurance.** Concurrently with the execution of this Design-Build Contract, the Design-Builder has provided SAWS with certificates of insurance for all Required Insurance specified in Appendix 10 to be in effect as of the Contract Date. The Required Insurance is in compliance with the requirements of Section 13.1.

(N) **Security Bond.** Concurrently with the execution of this Design-Build Contract, the Design-Builder has provided SAWS with a Security Bond in accordance with the requirements set forth in Section 16.2(A).

(O) **Guaranty Agreement.** Concurrently with the execution of this Design-Build Contract, the Design-Builder has caused the Guarantor to provide SAWS with a Guaranty Agreement in accordance with the requirements set forth in Section 16.1.
ARTICLE 3
TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Design-Build Contract 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 Design-Build Contract is earlier terminated by either party in accordance with their respective termination rights under Article 12, to the Termination Date.

(B) Accrued Rights. No termination of this Design-Build Contract 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. SURVIVAL.

Notwithstanding any other provision of this Design-Build Contract, this Section and the following provisions hereof shall survive the expiration or any earlier termination of this Design-Build Contract:

1. Article 2;
2. Section 4.7;
3. Section 5.9(F);
4. Section 5.9(G);
5. Section 7.2(G);
6. Section 9.9;
7. Section 9.10;
8. Section 10.3;
9. Article 11;
10. Article 12, as applicable to the obligations of the parties following the Termination Date;
11. Article 15, including all of the indemnities, limitations and releases set forth therein;
12. Section 17.7;
13. Section 17.12
(14) Attachment 8C of Appendix 8 regarding Subcontractor and surety recoveries;

(15) Appendix 10;

(16) All provisions of this Design-Build Contract with respect to payment obligations of the Design-Builder or SAWS accrued prior to the Termination Date;

(17) Any other provisions which either expressly or by their context or inherent character should survive expiration or earlier termination of this Design-Build Contract or the completion of the Contract Obligations; and

(18) Any provisions necessary to give effect to the provisions referenced or described in this Section 3.2.
ARTICLE 4

GENERAL PERFORMANCE REQUIREMENTS

SECTION 4.1. PROJECT SCOPE.

(A) Project Scope Generally. The Project and the Project Sites are generally described in Appendix 1. The Design-Builder recognizes that the Project will ultimately be defined by the Baseline Design Documents, which will be developed by the Design-Builder as part of the Phase I Services. The Design-Builder further recognizes that SAWS may provide for the design and construction of certain Related Projects through Separate Contractors, and such Related Projects are not included within the scope of the Design-Build Work, except as specifically provided in Section 6.11.

(B) Pricing Established on the Contract Date. The parties acknowledge and agree that the Phase I Services Fee, the Design-Builder Fee and certain unit pricing reflected in the General Conditions Fee were proposed by the Design-Builder as part of the Proposal, negotiated by the parties prior to the Contract Date and included in this Design-Build Contract as executed on the Contract Date, and shall not be the subject of (1) any Early Work Package Submittal or any Early Work Package Amendment, and (2) the GMP Submittal or the GMP Amendment.

(C) Pricing Established Subsequent to the Contract Date. The parties further acknowledge and agree that all other elements of pricing provided for in this Design-Build Contract are to be negotiated by the parties subsequent to the Contract Date in connection with establishing an Early Work Package Amendment and the GMP Amendment in accordance with the terms and conditions of this Design-Build Contract.

SECTION 4.2. DESIGN-BUILDER RESPONSIBILITIES GENERALLY.

(A) Reliance. The Design-Builder acknowledges and agrees that SAWS is entering into this Design-Build Contract in reliance on the Design-Builder’s expertise with respect to the performance of the Contract Obligations. The Design-Builder recognizes that the SAWS’ sole purpose is to provide an essential public service and that the achievement of Mechanical Completion by the Scheduled Mechanical Completion Date, Acceptance by the Scheduled Acceptance Date and Final Completion by the date specified in Section 8.9(A) is critically important in order to enable SAWS to take delivery of WTPA Water from the Vista Ridge Regional Supply Project, treat such WTPA Water to produce Finished Water, and supply such Finished Water to the SAWS Distribution System to enable SAWS to continue to meet the treated water needs of its customers. The Design-Builder agrees that it will be relieved of its performance obligations under this Design-Build Contract solely to the extent provided in Article 14 with respect to the occurrence of Uncontrollable Circumstances.

(B) Scope of the Contract Obligations. The Contract Obligations are divided into the Phase I Services, the Phase II Services and the Warranty Work, each as more particularly described in Article 5, Article 6, Article 8 and Article 10. The Design-Builder recognizes that, notwithstanding this division, the Contract Obligations may overlap and agrees to perform all Contract Obligations in accordance with the Contract Standards. In no event shall the Design-Builder commence with the Phase II Services prior to the GMP Amendment Date and the issuance of a Notice to Proceed with Phase II Services in accordance with Section 6.1(A) or, in respect of any Early Work Package, the execution of an Early Work Package Amendment and the issuance by SAWS of the associated Notice to Proceed in accordance with Section 5.6(H). Following the issuance of a Notice to Proceed with Phase II Services, the Design-Builder shall be solely responsible for undertaking and completing the design and for
the construction of the Project in accordance with the Contract Documents, including supervision, coordination and administration of all design work and of all Construction, and all other work reasonably inferable from the Contract Documents.

(C) **Cooperation.** The Design-Builder agrees to cooperate with SAWS and any other contractor engaged by SAWS in connection with the work to be performed toward completion of the Project and any Related Project, including the Owner Representative and any Separate Contractor. The Design-Builder recognizes that a cooperative and collaborative environment among all persons engaged in performing such work is essential to the successful implementation of the Project and agrees to use all reasonable efforts to work with all such other persons toward fostering such an environment.

(D) **Responsibility for Personnel and Subcontractors.** All obligations of the Design-Builder under this Design-Build Contract shall be performed by Design-Builder employees, agents or Subcontractors (subject to the limitations set forth in Article 7) who are qualified to perform the specific services and meet all licensing and certification requirements of Applicable Law. The Design-Builder shall be fully responsible, in accordance with the terms and conditions of this Design-Build Contract, for all Contract Obligations performed by its employees, agents or Subcontractors.

(E) **Compliance with TWDB Requirements.** The Design-Builder shall comply with the TWDB requirements set forth in Appendix 13. The Design-Builder shall include requirements substantially identical to those set forth in Appendix 13 in all Subcontracts in a manner that effectively establishes the right of TWDB to enforce such requirements. The Design-Builder shall also comply with any guidelines promulgated from time to time by the TWDB with respect to TWDB-funded projects procured using the design-build project delivery method. SAWS, in its discretion, shall have the right to obtain TWDB funding for the Project. In the event SAWS does not obtain TWDB funding for the Project, the TWDB requirements set forth in Appendix 13 shall not be applicable.

**SECTION 4.3. ACCESS TO AND SUITABILITY OF THE PROJECT SITES.**

(A) **Familiarity with the Project Sites.** Prior to the issuance of a Notice to Proceed with Phase II Services, the Design-Builder’s agents and representatives shall have inspected and become familiar with the Project Sites, their physical condition relevant to the obligations of the Design-Builder pursuant to this Design-Build Contract, including surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions and air and water quality conditions and, as part of the Phase I Services, shall have developed the Geotechnical Report. As of the issuance of a Notice to Proceed with Phase II Services, the Design-Builder shall be familiar with all local and other conditions which may be material to the Design-Builder’s performance of the Design-Build Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities); the Design-Builder shall have received and reviewed all information regarding the Project Sites provided to or developed by it in connection with the Phase I Services pursuant to this Design-Build Contract; and the Design-Builder shall have made all other site investigations that it deems necessary to make a determination as to the suitability of the Project Sites and to submit its GMP Submittal to SAWS in accordance with Section 5.8.

(B) **Independent Verification of SAWS-Provided Project Sites Information.** The Design-Builder acknowledges that, except as otherwise provided under Section 4.4, it is responsible for the independent verification and confirmation of any Project Sites information, including geotechnical, soils and other reports, surveys and analyses regarding the Project Sites, supplied to it by or on behalf of SAWS and upon which it elects to rely in connection
herewith. Except as otherwise provided in Section 4.4 and except, with respect to Regulated Site Conditions, as and to the extent provided in Section 6.4, no error or omission in any such information shall constitute an Uncontrollable Circumstance, or relieve the Design-Builder from the Contract Obligations or entitle the Design-Builder to any increase in compensation hereunder. Notwithstanding any factual statement, conclusion, or any language or recommendation contained in any information supplied to the Design-Builder by or on behalf of SAWS, the Design-Builder assumes full responsibility for inspecting the Project Sites and for the means and methods of construction that it employs when performing the Design-Build Work.

(C) **Access to the Project Sites.** Except as provided in Section 4.3(D), the execution of this Design-Build Contract shall be deemed to constitute the granting of a license to the Design-Builder to access the Project Sites for the purposes of performing the Contract Obligations, including such additional surface, subsurface and geotechnical studies or tests required to be performed as part of the Phase I Services and as deemed necessary by the Design-Builder prior to the commencement of Construction in accordance with Good Engineering and Construction Practice. Such access shall be subject to SAWS' prior approval, which shall not be unreasonably withheld, as to time and scope, and shall be subject to all SAWS procedures and requirements regarding Project Sites security and any applicable easement or right of way restrictions. The Design-Builder shall perform all such activities in accordance with the Contract Standards, including the specific requirements set forth in Appendix 2 and Appendix 5, and shall provide SAWS with all reports or analyses generated by such activities promptly after such reports or analyses are generated. Except to the extent provided in Section 6.4 with respect to Regulated Site Conditions, the Design-Builder shall assume all risks associated with such activities and shall indemnify, defend and hold harmless SAWS Indemnitees in accordance with and to the extent provided in Article 15 from and against all Loss-and-Expense resulting therefrom. Following the issuance of the Notice to Proceed with Phase II Services and for the duration of the Phase II Services Period, the Design-Builder shall have all Project Sites access rights as are necessary for the performance of the Design-Build Work in accordance with the Contract Documents. Notwithstanding any of the foregoing, the Design-Builder shall at all times comply with the Project Sites access requirements and restrictions set forth in the Contract Documents, including Appendix 5, and shall coordinate the Design-Build Work and interface with all Separate Contractors in accordance with Section 6.11.

(D) **Finished Water Transmission Pipelines Right of Ways and PRV Facilities Sites.** SAWS shall acquire all easements necessary for the Finished Water Transmission Pipelines Right of Ways and the PRV Facilities Sites by no later than May 31, 2018. Upon such acquisition, SAWS shall notify the Design-Builder, and the Design-Builder shall thereafter have access rights in respect thereof in accordance with Section 4.3(C). SAWS shall use all reasonable efforts to inform the Design-Builder of its progress toward acquiring such easements and identify easements that may be available before the deadline established by this subsection. The Design-Builder shall be entitled to Uncontrollable Circumstance relief, as and to the extent provided in Article 14, in the event SAWS fails to acquire all easements necessary for the Finished Water Transmission Pipelines Right of Ways and the PRV Facilities Sites by the deadline established by this subsection.

(E) **Project Sites Signage.** The Design-Builder shall provide all Project Sites signage, including directional, safety, information, and warning signs in accordance with the Contract Standards.
SECTION 4.4. INFORMATION PROVIDED BY OR ON BEHALF OF SAWS.

(A) Generally. SAWS makes no representation or warranty with respect to any information provided to the Design-Builder by or on behalf of SAWS in connection with this Design-Build Contract except as specifically provided in subsection (B) of this Section. The Design-Builder shall assess all risks related to the Project and independently verify and confirm all information supplied to it by or on behalf of SAWS and upon which the Design-Builder elects to rely in connection herewith. Except as otherwise provided in subsection (B) of this Section and as may reasonably be requested by the Design-Builder, agreed upon by SAWS in its discretion, and expressly established in the GMP Amendment or any Early Work Package Amendment, the Design-Builder shall have no right to relief hereunder or to make any claim against SAWS, or to seek any adjustment to the Contract Compensation, the Scheduled Mechanical Completion Date or the Scheduled Acceptance Date as the result of any error, omission or insufficiency relating to any information provided to the Design-Builder by or on behalf of SAWS in connection with this Design-Build Contract.

(B) Limited Reliance by Design-Builder. Notwithstanding anything to the contrary provided in subsection (A) of this Section, the Design-Builder shall have the right to rely solely on the following information supplied to it by or on behalf of SAWS:

1. Distribution System Hydraulic Modeling;
2. WTPA Water Quality;
3. Finished Water Compatibility Modeling;
4. Historical and Environmental Evaluation;
5. Tank Condition Assessments; and
6. Pipeline Condition Assessment Recommendations.

If the Design-Builder establishes that any error, omission or insufficiency relating to the information provided to the Design-Builder specified in this subsection directly and materially impacts the Design-Builder’s cost or time of performance, then the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14.

SECTION 4.5. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance with Applicable Law Generally. The Design-Builder shall, and shall cause all Subcontractors to, perform the Contract Obligations in accordance with Applicable Law and all other applicable Contract Standards. The Design-Builder shall provide all notices required by Applicable Law and the Contract Standards. The incorporation, reference or citation of specific statutes or other parts of Applicable Law in the Contract Documents is not intended, nor shall it be construed, to limit the generality of the Design-Builder’s and all Subcontractors’ obligations to comply with Applicable Law (whether or not specifically incorporated or referenced in the Contract Documents).

(B) Compliance with Conditions in Governmental Approvals. The Design-Builder shall comply with all conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the performance of the Contract Obligations, including SAWS Managed Governmental Approvals. The Design-Builder shall report to SAWS, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law.
pertaining to the Project. SAWS, in its capacity as the counterparty to the Design-Builder under this Design-Build Contract, shall have the right independently to enforce compliance with this Design-Build Contract regarding the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body. The Design-Builder shall comply with and perform all Environmental Mitigation Measures in a timely manner to the extent required under applicable Governmental Approvals. Any violations of or noncompliance with any Governmental Approval caused by the Design-Builder violating or not being in compliance with a Governmental Approval shall be at the sole risk of the Design-Builder and shall not be a basis for Uncontrollable Circumstance relief under this Design-Build Contract.

(C) Fines, Penalties and Remediation. In the event that the Design-Builder or any Subcontractor fails at any time to comply with Applicable Law with respect to the Design-Build Work, the Design-Builder shall:

(1) Promptly respond to any notice of non-compliance, warning letter, notice of violation or other enforcement action and seek amicable resolution of the issues;

(2) Immediately correct such failure and resume compliance with Applicable Law;

(3) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;

(4) Indemnify, defend and hold harmless SAWS Indemnitees in accordance with and to the extent provided in Article 15 from and against all Loss-and-Expense resulting therefrom;

(5) Make all changes in performing the Contract Obligations which are necessary to assure that the failure of compliance with Applicable Law will not recur; and

(6) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Design-Builder to comply with Applicable Law.

SECTION 4.6. ENGAGEMENT OF SAWS REPRESENTATIVES.

The Design-Builder shall fully cooperate with the Owner Representative and any other representative designated by SAWS from time to time. The services of the Owner Representative and other SAWS-designated representatives may include the following:

(1) Reviewing drawings, plans and specifications for compliance with the Contract Documents;

(2) Reviewing proposed changes to the Baseline Design Documents;

(3) Determining the completion of specified portions of the Design-Build Work and reviewing the release of funds to the Design-Builder pursuant hereto;

(4) Reviewing and monitoring Construction progress, scheduling, payments and procedures;
(5) Monitoring Commissioning activities and the Acceptance Test undertaken by the Design-Builder to determine whether any Acceptance Standard has been satisfied;

(6) Assisting SAWS in reviewing the validity of the Design-Builder’s written notice that an Uncontrollable Circumstance has occurred; and

(7) Reviewing and advising SAWS with respect to material changes to the Project during the Term.

It is understood that the services intended to be provided by the Owner Representative shall be of an observational and review nature only, and that the Owner Representative shall not have authority to interfere with, halt or delay in any way the construction of the Project or to require or approve changes to the Design-Builder’s Baseline Design Documents or plans and specifications made in accordance therewith. Any fees of the Owner Representative shall be paid by SAWS. Nothing in this Section 4.6 shall be construed to limit the right of any SAWS personnel or representative having the authority to protect the health and safety from inspecting the Project or otherwise exercising any power permitted under Applicable Law.

SECTION 4.7. OWNERSHIP AND USE OF DOCUMENTS AND INFORMATION.

(A) SAWS Ownership and Use of Deliverable Material. The Design-Builder hereby assigns to SAWS all right, title, and interest, including any copyrights, patents, or any other Intellectual Property rights (but excluding Pre-Existing Intellectual Property, as defined in Section 17.7(D)), in all Deliverable Material and all ideas, methods or information specifically developed for such Deliverable Material. All such documents and information, including all ideas or methods represented by such information, may be used as SAWS determines and shall be delivered to SAWS at no additional cost to SAWS as required hereunder, upon request, upon Project completion or upon termination of this Design-Build Contract. SAWS’ use of any such Deliverable Material or information for any purpose other than the Project shall be at its own risk and the Design-Builder shall have no liability therefor.

(B) Design-Builder Use of Deliverable Material. The Design-Builder may make and retain copies of the Contract Documents and Deliverable Material for information, reference and use by Design-Builder Persons solely with respect to the performance of the Design-Build Work. No Design-Builder Person may use the Contract Documents or Deliverable Material for any other purpose without the prior specific written consent of SAWS. No conference presentations regarding the Project shall be made by any Design-Builder Person without the prior specific written consent of SAWS.

SECTION 4.8. MONTHLY PROGRESS REPORTS.

The Design-Builder shall provide SAWS and the Owner Representative with monthly written reports ("Monthly Progress Report") prepared in accordance with the Contract Standards, covering the Project and addressing work performed during the past month, percentage of work completion and compliance with the Project Schedule. The Design-Builder shall describe Project issues, problems or concerns that SAWS should be made aware of and how the Design-Builder proposes to address them in each Monthly Progress Report. The Monthly Progress Report shall include a description of the work planned for the next three months. SAWS’ and the Owner Representative’s receipt or acceptance of the Monthly Progress Report (or any revised Monthly Progress Report) shall not bind SAWS in any manner. Thus, SAWS’ and the Owner Representative’s receipt or acceptance of the Monthly Progress Report (or any revised Monthly Progress Report) shall not imply SAWS approval or consent to any of the
matters set forth therein and shall not limit or otherwise affect the Design-Builder’s obligations to achieve Mechanical Completion by the Scheduled Mechanical Completion Date, Acceptance by the Scheduled Acceptance Date and Final Completion by the date specified in Section 8.9(A).

SECTION 4.9. TIME OF THE ESSENCE.

(A) Time is of the Essence. The parties agree that time is of the essence in the achievement of each of the Interim Construction Milestones. Without limiting any other requirement set forth herein, the Design-Builder shall achieve each of the Interim Construction Milestones in accordance with the Phase II Services Schedule most recently accepted by SAWS.

(B) Interim Construction Milestones. The completion of each Project component that is specified in this subsection (B) shall constitute an “Interim Construction Milestone” under this Design-Build Contract.

    No.:  Project Component:
    1.  Ground storage tanks (GST) at the Terminus Facility Site and the Bitters Pump Station Improvements Site
    2.  Pipeline repairs and pipeline disconnects
    3.  36” pipeline to Knight’s Cross
    4.  Stone Oak Pump Station Improvements
    5.  Terminus Facility
    6.  48” pipeline from existing 48” pipeline near Aspen Well to Bitters Pump Station Improvements Site
    7.  Maltsberger Pump Station Improvements electrical modifications
    8.  54” pipeline from Terminus Facility Site to connection with existing 48” at Voigt Drive and Sagecrest Drive intersection
    9.  Bitters Pump Station Improvements GST rehabilitation

(C) Remediation Plan and Recovery Schedule. Without limiting any other requirement of this Design-Build Contract and subject to Uncontrollable Circumstance relief as and to the extent provided hereunder, should any update to the Project Schedule submitted by the Design-Builder hereunder indicate that any Interim Construction Milestone will not be achieved in accordance with subsection (A) of this Section, or should the Design-Builder actually fail to achieve any Interim Construction Milestone in accordance with subsection (A) of this Section, the Design-Builder shall promptly submit to SAWS a remediation plan, including a recovery schedule prepared in accordance with Appendix 5, indicating the manner in which the Design-Builder will mitigate delays and achieve Mechanical Completion by the Scheduled Mechanical Completion Date and Acceptance by the Scheduled Acceptance Date. Any such remediation plan shall be subject to review, comment and acceptance by SAWS, acting reasonably. SAWS’ acceptance of any remediation plan pursuant to this Section shall not serve to transfer any liability for the performance of the Design-Build Work from the Design-Builder to SAWS or otherwise relieve the Design-Builder from any obligation hereunder. The Design-Builder shall promptly and diligently carry out any remediation plan accepted by SAWS pursuant to this Section and shall not be entitled to any Change Order in respect thereof. The Design-Builder acknowledges and agrees that it has a material obligation to promptly provide SAWS with an acceptable remediation plan pursuant to this Section and to promptly and
diligently carry out and complete any remediation plan accepted by SAWS pursuant to this Section.
ARTICLE 5

PHASE I SERVICES

SECTION 5.1. SCOPE OF THE PHASE I SERVICES.

(A) Generally. The Design-Builder shall render and perform the Phase I Services to and for SAWS in accordance with Appendix 2 and the terms and conditions of this Design-Build Contract. The Design-Builder’s responsibility to perform the Phase I Services shall include the employment of or the subcontracting for all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Phase I Services, and the performance of all services reasonably inferable from the Contract Documents.

(B) Phase I Services Tasks; Notice to Proceed. The Design-Builder acknowledges that the Phase I Services are divided into discrete Phase I Services Tasks identified in Appendix 2 and associated with the advancement of the Phase I Services. The Design-Builder shall commence performing the Phase I Services only upon the issuance by the SAWS Contract Representative of a Notice to Proceed with the Phase I Services. In no event shall the Design-Builder be entitled to compensation for the performance of the Phase I Services prior to the issuance by SAWS of a Notice to Proceed with the Phase I Services.

SECTION 5.2. CHANGES TO THE SCOPE OF THE PHASE I SERVICES.

(A) Generally. SAWS shall have the right to make changes to the scope of the Phase I Services set forth in Appendix 2 at any time, in its discretion, by written notice to the Design-Builder, subject to the terms and conditions of this Section. Changes to the scope of the Phase I Services may be made by SAWS to account for an Uncontrollable Circumstance or any other reason determined by SAWS.

(B) Additional Phase I Services. Except as otherwise specifically provided in this Section, the Design-Builder shall be entitled to an equitable adjustment to the Phase I Services Fee and the Phase I Services Schedule in the event of any expansion of the scope of the Base Phase I Services pursuant to this Section (the “Additional Phase I Services”). Any expansion of the scope of the Base Phase I Services under this subsection (B) and the corresponding equitable adjustment to the Phase I Services Fee and the Phase I Services Schedule shall be reflected in a Change Order or a Contract Amendment. The Design-Builder shall not be entitled to compensation for any Additional Phase I Services beyond the scope of the Base Phase I Services unless, prior to the performance of any such Additional Phase I Services, the Design-Builder shall have received express written authorization from SAWS to perform the Additional Phase I Services. In the absence of any SAWS-directed change to the scope of the Base Phase I Services reflected in a Change Order or a Contract Amendment, the Design-Builder shall have no obligation to perform work outside the scope of the Base Phase I Services.

(C) Additional Phase I Services Resulting From Delay. Extra costs resulting from delays caused by Uncontrollable Circumstances, shall be deemed to be costs resulting from Additional Phase I Services, provided the Design-Builder demonstrates that the costs claimed (1) resulted from time or expenses actually incurred in performing the Phase I Services, (2) were incurred by Design-Builder as a direct result of the delay and not otherwise within the scope of the Phase I Services, and (3) are documented to SAWS’ reasonable satisfaction.

(D) Exclusions from Additional Phase I Services. Additional Phase I Services shall not include work or services necessary because of errors, omissions or conflicts of any
type in the Design-Builder’s plans and specifications or other Phase I Services Deliverable
Material. All such work or services shall constitute Base Phase I Services and shall be
performed at no cost to SAWS, and shall include any required corrections or revisions to
reports, plans or specifications.

(E) Changes that Reduce the Scope of the Phase I Services. SAWS shall have
the right to reduce the scope of the Phase I Services at any time by written notice to the
Design-Builder. Changes to the Phase I Services that reduce the scope of the Phase I Services
shall be effective upon the delivery of the written notice by SAWS pursuant to this subsection
(E). Any reduction in the scope of the Phase I Services shall result in an appropriate reduction
in the Phase I Services Fee and an adjustment to the Phase I Services Schedule, as
appropriate, which shall be reflected in a Change Order or a Contract Amendment.

SECTION 5.3. PHASE I SERVICES SCHEDULE.

A preliminary Phase I Services Schedule is set forth in Attachment 2A and shall
be updated as provided in Appendix 2. The Design-Builder acknowledges that time is of the
essence in the performance of the Phase I Services and agrees to complete the Phase I Services
in a diligent, efficient and timely manner. The Design-Builder shall complete the various
Phase I Services Tasks under this Design-Build Contract in accordance with the Phase I
Services Schedule. The Design-Builder acknowledges and agrees that any delays in the
Design-Builder’s completion of its Phase I Services under this Design-Build Contract or
performance beyond the number of days agreed to herein for completion of a Phase I Services
Task will cause injury and damage to SAWS.

SECTION 5.4. COORDINATION WITH SAWS.

(A) Meetings and Reports Generally. The Design-Builder shall hold periodic
meetings and conferences with SAWS during the Phase I Services Period, at least weekly in
accordance with Appendix 2, to verify and confirm that the development of the Project (1) has
the full benefit of SAWS’ experience and knowledge of existing needs and facilities, (2) is
consistent with SAWS’ current policies and standards, and (3) is proceeding in accordance with
the Phase I Services Schedule. The Design-Builder shall also keep SAWS regularly informed as
to the progress of the Phase I Services through the submittal of Monthly Progress Reports in
accordance with the requirements set forth in Section 4.8 and Appendix 2. The Monthly
Progress Report shall present Project budget information and indicate amounts billed by
Phase I Services Task by the Design-Builder for the past month, cumulatively to date and the
amount of funds remaining. The Monthly Progress Report shall include a section on the
progress of the design and list any concerns, actions, changes, and reviews and approvals from
SAWS that the Design-Builder requires. The Design-Builder shall indicate any Governmental
Body or Utility requirements and issues that SAWS should be aware of, and if there are SAWS
requirements for interacting with such Governmental Bodies, Utilities or other groups.

(B) Information Provided by SAWS. SAWS shall make available for the
Design-Builder’s use in the performance of the Phase I Services all existing plans, maps, field
notes, statistics, computations, and other data in SAWS’ possession relating to the Project, as
reasonably requested in writing by the Design-Builder, at no cost to the Design-Builder. All
such information is provided to the Design-Builder for the sole purpose of the Design-Builder’s
convenience and for use in relation to the performance of the Phase I Services, may not be
relied upon by the Design-Builder, except as otherwise provided under Section 4.4, and must
be verified by the Design-Builder as provided in subsection (C) of this Section. The Design-
Builder shall promptly notify SAWS in writing when it reasonably believes or suspects that
information provided by SAWS is not accurate or cannot be checked. Any and all information
provided by SAWS shall remain the property of SAWS and shall be returned promptly to SAWS upon written request.

(C) Required Design Information. Notwithstanding the provisions of subsection (B) of this Section, the Design-Builder shall be responsible for obtaining and verifying all information required as further described in Appendix 2 in order to properly design the Project so that it is designed, constructed and performs in accordance with Applicable Law and the Contract Standards.

SECTION 5.5. PROJECT DESIGN.

(A) Design Considerations. The design for the Project undertaken and performed by the Design-Builder shall:

(1) Be undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the design, as of the date of this Design-Build Contract, and the Design-Builder shall appoint a design team that:

(a) Is so qualified;

(b) Includes (as required by Applicable Law, including Texas Local Government Code § 271.904) licensed or registered professional engineers and architects; and

(c) Has sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner to the standard set out in this Design-Build Contract;

(2) Include specific consideration of “constructability” and “life cycle” cost issues at all stages of design, as appropriate; and

(3) Include consideration of efficient and cost-effective operation and maintenance.

(B) Design-Builder Assumption of Full Design Liability. The Design-Builder acknowledges and agrees that, as provided in Section 6.6, if and when a GMP Amendment is executed by the parties (and with respect to any Early Work Package work, when an Early Work Package Amendment is executed by the parties), the Design-Builder will have the sole and exclusive responsibility and liability for the design, construction and performance of the Project in accordance with and subject to the terms and conditions of the Contract Documents. Accordingly, the Design-Builder shall have the right and the responsibility to develop and provide the Phase I Design Documents and to perform the Phase I Services under this Design-Build Contract in a manner that would permit a design-build contractor, acting reasonably and having the experience and qualifications required to successfully undertake and complete the design and construction of a project similar in scale and complexity to the Project, to assume such responsibility and liability. In particular, the Design-Builder shall not propose or agree to any element of the Baseline Design Documents or other work product to be incorporated in any GMP Amendment or Early Work Package Amendment that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.
SECTION 5.6. EARLY WORK PACKAGES.

(A) Early Work Packages. The parties anticipate that there may be some phases of the Design-Build Work that are ready for commencement before it is appropriate to arrive at an overall agreed-upon Base Guaranteed Maximum Price in accordance with Section 5.8. The Design-Builder shall recommend such phases or elements of the Design-Build Work ("Early Work Packages") to the SAWS Contract Representative, as appropriate, through the performance of the Phase I Services, based on Early Work Package submittals ("Early Work Package Submittals"). SAWS shall have the discretion to authorize the commencement of Design-Build Work associated with an Early Work Package pursuant to this Section. The agreement of the parties as to an Early Work Package shall be effectuated through a Contract Amendment authorizing the Design-Build Work associated with the Early Work Package and specifying the terms and conditions of compensation payable to the Design-Builder and the completion dates associated with such Design-Build Work (an "Early Work Package Amendment"). All work performed pursuant to an Early Work Package Amendment shall constitute Design-Build Work hereunder and shall be performed in accordance with the Contract Standards. SAWS shall have no obligation to enter into an Early Work Package Amendment. All Early Work Package Amendments agreed upon in accordance with this subsection (A) shall be taken into consideration in the preparation of the Initial GMP Submittal submitted in accordance with Section 5.7 and the GMP Submittal submitted in accordance with Section 5.8. The Design-Builder shall furnish a Performance Bond and a Payment Bond with a penal sum equal to the guaranteed maximum price or lump sum amount applicable to the Early Work Package, in compliance with the requirements set forth in Section 16.2 prior to SAWS' issuance of a construction NTP for the Early Work Package.

(B) Early Work Package Submittals. An Early Work Package Submittal shall include and be based upon the Acceptance Standards, the applicable Baseline Design Documents and all other specifications, information, analysis, findings and reports developed by the Design-Builder during the performance of the Phase I Services as developed to the date of submittal, and shall be prepared in accordance with the Contract Standards. An Early Work Package Submittal shall include the following:

Price Submittal:

(1) a proposed lump sum or guaranteed maximum price, as authorized by SAWS, including the terms and conditions of payment, focused solely on the Design-Build Work associated with the Early Work Package and prepared in accordance with subsection (E) of this Section, together with a description of how such price will impact overall Project costs;

Technical Submittal:

(2) A detailed description of the Design-Build Work associated with the Early Work Package Submittal and the associated Baseline Design Documents;

(3) A proposed schedule for completion of the Design-Build Work associated with the Early Work Package, together with a description of how such work will impact the Project Schedule;

(4) A listing of any assumptions, clarifications or qualifications made by the Design-Builder in providing the Early Work Package Submittal that are material to any part thereof, including a statement as to what information supplied by SAWS (if any) the Design-Builder proposes to use as the basis of any portion of its Early Work Package Submittal; and
Any other information reasonably requested by SAWS prior to the due date for the Early Work Package Submittal as necessary or appropriate to negotiate and complete the Early Work Package Amendment.

(C) **Early Work Package Submittal Revisions.** The Design-Builder shall provide SAWS with at least seven days’ notice prior to submitting an Early Work Package Submittal for review. SAWS will act reasonably in considering any proposed Early Work Package in light of the schedule requirements under this Design-Build Contract. In the event the Early Work Package Submittal does not comply with the Contract Standards, SAWS may provide written notice to the Design-Builder of any additions, corrections or revisions required to achieve such compliance. In such event, the Design-Builder, without any increase in the Phase I Services Fee, shall promptly take all necessary rectification action, making multiple resubmittals if required.

(D) **Negotiation and Execution.** If SAWS agrees to authorize the commencement of a portion of the Design-Build Work under an Early Work Package Submittal, the Design-Builder and SAWS shall negotiate and enter into an Early Work Package Amendment. An Early Work Package Amendment at a minimum shall incorporate and definitively address all of the items identified in subsection (B) of this Section, and shall contain any other commercial terms and conditions specific to the Early Work Package, including the rights of SAWS to terminate the work being performed pursuant to the Early Work Package Amendment and the right of SAWS to direct the Design-Builder to continue performance of the Early Work Package in the event the parties do not enter into a GMP Amendment. Early Work Packages may be structured in a manner that provides for the commencement of the related Design-Build Work at any time determined by the parties.

(E) **Complete Early Design-Build Work Package Pricing.** It is the intention of the parties that each Early Work Package Submittal, and any associated Early Work Package Amendment, include complete pricing for the Design-Build Work to be performed thereunder, including: (1) a reasonable fee, that shall not exceed the Design-Builder Fee, attributable to profit, risk, mark-up and general and indirect overhead with respect to such Design-Build Work; (2) a separately identified general conditions amount, to be administered in the same manner as the General Conditions Fee; and (3) pricing based on a contingency amount for such Design-Build Work, to be administered in the same manner as the Design-Builder Contingency.

(F) **Compensation Payable in Connection With Early Work Packages.** SAWS shall pay the Early Work Package Price to the Design-Builder for Design-Build Work properly performed and completed pursuant to the terms of the Early Work Package Amendment in accordance with, and subject to the limitations contained in, Appendix 8, notwithstanding the fact that no GMP Amendment will be in effect at the time the parties execute an Early Work Package Amendment.

(G) **Design-Builder Representations in an Early Work Package Amendment.** The execution of any Early Work Package Amendment will be deemed to constitute representations by the Design-Builder with respect to the Early Work Package to the same effect as the representations made in Section 5.9(H) with respect to the GMP Amendment, with references to Design-Build Work referring to the Early Work Package and references to the Base Guaranteed Maximum Price referring to the Early Work Package Price.

(H) **Limited Authorization to Proceed; Commencement of Early Work Package.** If the parties agree to an Early Work Package Amendment, SAWS shall issue a limited Notice to Proceed with the Design-Build Work associated with the Early Work Package, subject to this Section. Notwithstanding the issuance of a limited Notice to Proceed with an
Early Work Package, the Design-Builder shall not commence any Construction at the Project Sites in connection with such Early Work Package until the Design-Builder has satisfied the following requirements:

(1) The Design-Builder shall have provided a Performance Bond and a Payment Bond for the Early Work Package, and certified that such Performance Bond and Payment Bond are in full force and effect and in compliance with the requirements set forth in Section 16.2;

(2) The Design-Builder shall have provided SAWS with certificates for all Required Insurance in accordance with Section 13.1 and certified that all such policies are in full force and effect and in compliance with the requirements of Section 13.1 and Appendix 10;

(3) The Design-Builder shall have satisfied all requirements of Applicable Law with respect to the commencement of construction and shall have obtained all Governmental Approvals required for the commencement of the Construction of the Early Work Package and provided copies of such Governmental Approvals to SAWS. All such Governmental Approvals shall be in full force and effect; and

(4) The Design-Builder shall have provided SAWS with the final, approved Health and Safety Plan in accordance with the Contract Standards.

The foregoing requirements are in addition to any other preconditions to the commencement of Construction established by the Contract Documents. In the event SAWS obtains TWDB funding for the Project, the issuance of a limited Notice to Proceed with an Early Work Package may be further subject to the approval of TWDB.

SECTION 5.7. INITIAL GMP SUBMITTAL.

(A) Phase I Services and Initial GMP Submittal. As part of the Phase I Services, the Design-Builder is obligated to develop the design of the Project to the 30% completion level and make the Initial GMP Submittal. The advancement of the design of the Project to the 30% completion level and the Initial GMP Submittal constitutes Phase I Services Tasks 4 and 5 and shall be completed and submitted to SAWS on a timely basis as required under Appendix 2. The Initial GMP Submittal shall include and be based upon the 30% Drawings and Specifications, the Acceptance Standards and all other specifications, information, analysis, findings and reports developed by the Design-Builder during the performance of the Phase I Services prior to the Initial GMP Submittal, and shall be prepared in accordance with the Contract Standards. Without limiting the requirements of Appendix 2, the Initial GMP Submittal shall include the following:

(1) A proposed Base Guaranteed Maximum Price (the “Initial GMP”), together with all supporting information required by subsection (B) of this Section; and

(2) A proposed lump sum price to provide all Design Professional Services necessary to advance the design of the Project from the 60% complete level (based upon completion of the Base Phase 1 Services in accordance with this Design-Build Contract) to the fully complete level (the “Design Completion Fee”).

(B) Derivation of Initial GMP. The Initial GMP Submittal shall include a detailed and comprehensive description of how the Initial GMP was derived and the material factors on which it was based, including any Early Work Packages, all in compliance with the requirements for establishing the Initial GMP set forth in Appendix 2, together with any other
related information required pursuant to this Section. All costs, bids, quotes, estimates and other information supporting the Initial GMP shall be made available to SAWS upon request. The Initial GMP and the other elements of the Initial GMP Submittal shall be based upon the risk allocation established by this Design-Build Contract as of the Contract Date.

(C) Elective Continuance of the Project by SAWS on Other Bases. The Initial GMP will establish the parties’ expectations in terms of the upper limit of the Base Guaranteed Maximum Price. The Design-Builder’s subsequent proposed Base Guaranteed Maximum Price in its GMP Submittal shall not exceed the Initial GMP absent material changes in the Design-Build Work or the Project required by SAWS. Without limiting any other right of SAWS hereunder, SAWS may, following its receipt of the Initial GMP, direct the Design-Builder, by issuance of a Change Order, to provide all Design Professional Services necessary to advance the design of the Project to the fully complete level so that the Project may be procured and constructed on a design-bid-build or other alternative basis. Under such circumstances, SAWS shall pay the Design-Builder the Design Completion Fee in the manner and subject to the terms and conditions set forth in this Design-Build Contract regarding the Phase I Services Fee, and such fee, when earned, shall be the Design-Builder’s entire compensation and reimbursement for the performance of the work necessary to advance the design of the Project to the fully complete level, inclusive of all costs, expenses and disbursements paid or incurred by the Design-Builder, as well as all overhead, administration, risk and profit.

SECTION 5.8. GMP SUBMITTAL.

(A) Phase I Services and GMP Submittal. As part of the Phase I Services, the Design-Builder is obligated to develop the design of the Project to a level sufficient to make the GMP Submittal. The GMP Submittal constitutes Phase I Services Task 7, shall be completed and submitted to SAWS on a timely basis as required under Appendix 2, and shall remain a firm offer by the Design-Builder for at least 90 days; provided that SAWS shall respond to the Design-Builder regarding the GMP Submittal in accordance with Appendix 2. The Design-Builder shall not condition the GMP Submittal by inclusion of any requirement that a GMP Amendment be entered into by the parties or that a Notice to Proceed with Phase II Services be issued by SAWS prior to the expiration of such 90 day period. The GMP Submittal shall include and be based upon the Baseline Design Documents, Acceptance Standards and all other information, analysis, findings and reports developed by the Design-Builder during the performance of the Phase I Services, and shall be prepared in accordance with the Contract Standards. Without limiting the requirements of Appendix 2, the GMP Submittal shall include a price submittal, a technical submittal and an additional information submittal, as follows:

Price Submittal:

1. A proposed Base Guaranteed Maximum Price, subject to Section 5.7(C), to be incorporated in Section 8.7.2 of Appendix 8, together with all supporting information required by subsection (B) of this Section;

2. A proposed cost loaded Phase II Services Schedule with interface handoff, Interim Construction Milestones and training/Commissioning activities identified for each segment of the Phase II Services;

3. A proposed Schedule of Values and a proposed Design-Builder Contingency, to be prepared in accordance with, and attached as part of Attachment 8C to Appendix 8;
(4) A cash flow forecast based on the cost loaded Phase II Services Schedule, Schedule of Values and proposed Base Guaranteed Maximum Price, to be incorporated in Appendix 8;

(5) If applicable and requested by SAWS, a list of any proposed allowance items, alternate prices and unit prices;

Technical Submittal:

(1) Proposed Baseline Design Documents, to be incorporated in and to constitute Appendix 4 of this Design-Build Contract;

(2) The final and complete list of required Governmental Approvals for the Project (including Governmental Approval Application Dates and Assumed Approval Issuance Dates, all as required by Appendix 2, to be incorporated in Appendix 3 of this Design-Build Contract;

(3) A description of any Change-in-Law that has occurred between the Contract Date and the date of the GMP Submittal;

(4) A proposed Maintenance of Operations During Construction Plan prepared in accordance with the requirements of Section 6.11(A) and Appendix 5, to be included as part of the GMP Amendment;

(5) An updated and finalized description of the Project Sites;

Additional Information Submittal:

(1) A proposed final Subcontracting Plan;

(2) The names of additional proposed Subcontractors (other than any existing Approved Subcontractors) and descriptions of their roles for approval by SAWS as Approved Subcontractors;

(3) A description of the manner in which any Early Work Packages will be integrated into the final Design-Build Work, including price, schedule and performance considerations;

(4) A letter from a surety qualified under Section 16.2 confirming the intent of the surety to provide the Payment Bond and Performance Bond required under such Section on the GMP Amendment Date;

(5) A listing of any assumptions, clarifications or qualifications made by the Design-Builder in providing its GMP Submittal that are material to any part thereof, including a statement as to what information supplied by SAWS (if any) the Design-Builder proposes to use as the basis of any portion of its GMP Submittal; and

(6) Any other information reasonably requested by SAWS prior to the due date for the GMP Submittal as necessary or appropriate to negotiate and complete the GMP Amendment.

(B) Derivation of Proposed Base Guaranteed Maximum Price. The GMP Submittal shall include a detailed and comprehensive description of how the proposed Base Guaranteed Maximum Price was derived and the material factors on which it was based, all in
compliance with the requirements for establishing the Base Guaranteed Maximum Price set forth in Appendix 2 and subject to Section 5.7(C), together with any other related information required pursuant to this Section. All costs, bids, quotes, estimates and other information supporting the GMP Submittal shall be made available to SAWS upon request. The proposed Base Guaranteed Maximum Price and the other elements of the GMP Submittal shall be based upon the risk allocation established by this Design-Build Contract as of the Contract Date, unless SAWS, in its discretion, agrees to changes in such risk allocation.

SECTION 5.9.  GMP AMENDMENT.

(A)  Non-Compliant GMP Submittal. In the event the GMP Submittal does not comply with the requirements of this Design-Build Contract, SAWS shall provide written notice to the Design-Builder of any additions, corrections or revisions required to achieve such compliance. In such event, the Design-Builder, at its cost and expense, and without any increase in the Phase I Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required. The failure of the Design-Builder to furnish the Phase I Services and provide the GMP Submittal in accordance with the Contract Standards shall be a material breach of this Design-Build Contract.

(B)  Negotiation and Execution of the GMP Amendment. SAWS and the Design-Builder acknowledge and agree that each intends to negotiate and enter into a Contract Amendment for the performance of all Construction and all other Design-Build Work necessary to achieve Final Completion (the “GMP Amendment”) based on the GMP Submittal and the completion of the other Phase I Services. The principles for negotiating the Base Guaranteed Maximum Price are set forth in subsection (C) of this Section. The GMP Amendment at a minimum shall incorporate and definitively address all of the items identified in Section 5.8(A). In the event the parties elect to execute the GMP Amendment, the date of execution and delivery thereof shall constitute the “GMP Amendment Date” hereunder, and thereupon the Phase II Services Period shall commence. Without limiting anything set forth in this Design-Build Contract, the parties may enter into a GMP Amendment that includes a fixed lump sum price for completion of the Design-Build Work in lieu of a Base Guaranteed Maximum Price and such GMP Amendment shall include modifications to the terms and conditions specified herein necessary to effectuate payment for Design-Build Work based upon the fixed lump sum price.

(C)  Base Guaranteed Maximum Price Negotiating Principles. Each party acknowledges that it intends to negotiate the Base Guaranteed Maximum Price taking into account the following:

1. The reasonably estimated costs of completing the design and construction of the Project (including costs payable under Early Work Packages) and achieving Mechanical Completion, Acceptance and Final Completion in accordance with the Contract Standards and the cost elements set forth in Appendix 2. Considerations of risk shall be taken into account separately, pursuant to item (2) below. Such costs shall be the basis of the items constituting the Schedule of Values.

2. An amount reasonably attributable to indeterminable costs that, considered individually and valued in the aggregate based on agreed-upon probability-of-occurrence models adapted specifically to the Project, may be incurred should the risks assumed by the Design-Builder (including the Design-Builder’s assumption of risk for all surface and subsurface conditions at the Project Sites under Section 6.3(A)) in performing the Design-Build Work occur. Such costs shall be the basis of establishing the Design-Builder Contingency. The risks assumed by the Design-Builder shall be identified in the risk register prepared as part of the Phase I Services, and include:
(a) The risks identified as excluded from the definitions of “Uncontrollable Circumstances”;

(b) The risk of Subcontractor delay or non-performance;

(c) Changes in the scope or cost of Design-Build Work that may occur as the design is advanced from the level set forth in the Baseline Design Documents to a fully complete level;

(d) The risk that inflation in the cost of commodities, materials, equipment, labor and services necessary for the completion of the Design-Build Work will exceed the level assumed by the parties in establishing the Base Guaranteed Maximum Price under item (1) above;

(e) The risk that it may be necessary to incur additional capital and operating expenses in connection with and following Commissioning and performance of the Acceptance Test in order to meet the Acceptance Standards and achieve Mechanical Completion and Acceptance; and

(f) Any other risk specifically referred to herein as a risk to be borne by the Design-Builder in performing the Design-Build Work.

(3) The fact that costs associated with Uncontrollable Circumstances are separately compensable from the Design-Build Costs that are limited by the Base Guaranteed Maximum Price. Such costs shall be borne by SAWS as and to the extent provided in Article 14 and shall not be included in the Design-Builder Contingency.

(D) Obligations of the Design-Builder Relating to the GMP Amendment. In connection with a potential GMP Amendment, the Design-Builder shall be obligated (1) to make a complete bona-fide GMP Submittal in accordance with this Section and Section 5.8, and (2) to negotiate in good faith toward a GMP Amendment based on the GMP Submittal, if and to the extent SAWS elects pursuant to subsection (E) of this Section to enter into and continue such negotiations. The Phase I Services do not include negotiating a GMP Amendment, and the Design-Builder represents that the Phase I Services Fee does not include consideration for the costs and expenses of negotiating the GMP Amendment. The Design-Builder shall bear all such negotiating costs and expenses, whether paid or incurred concurrently with or upon completion of the performance of the Phase I Services and the preparation and delivery of the GMP Submittal.

(E) No Obligation of SAWS to Enter Into a GMP Amendment. Notwithstanding the intent of the parties as expressed in subsection (B) of this Section, SAWS has no obligation whatsoever to negotiate with the Design-Builder to enter into a GMP Amendment. SAWS, in its discretion, may elect not to commence or continue negotiations and not to enter into and execute a GMP Amendment for any reason. The Design-Builder acknowledges and agrees that no failure by SAWS to negotiate or to enter into the GMP Amendment shall entitle the Design-Builder to make any claim for damages or compensation as a result of any such failure, and all such claims are hereby waived and released by the Design-Builder. The Design-Builder acknowledges and agrees that neither the intent of the parties to negotiate and enter into the GMP Amendment, nor the conduct or discontinuance of any such negotiations, shall be construed to limit or affect SAWS’ right to terminate this Design-Build Contract for its convenience at any time as provided in Section 12.6.

(F) Elective Continuance of the Project by the Parties on Other Bases. SAWS at any time may request a proposal from the Design-Builder or the lead design Subcontractor
acting as Engineer-of-Record to provide professional engineering and other services necessary to advance the design of the Project (either partially or to the fully complete level) so that the Project may be procured and constructed on a design-bid-build or other alternative basis. The Design-Builder shall make a bona fide proposal to enter into such services on terms and conditions substantially identical to the terms and conditions of this Design-Build Contract pertaining to the design services element of the Phase I Services, and to negotiate in good faith to enter into a Change Order with SAWS to provide such services. At SAWS’ request, the Design-Builder shall cause the lead design Subcontractor to make such proposal and to negotiate in good faith to enter into a separate agreement with SAWS to provide such services.

(G) Elective Continuance of the Project by SAWS with Other Contractors; Project Documents. SAWS shall have the right at any time in its discretion to proceed to develop and implement the Project with other contractors and service providers. SAWS may exercise such right during the performance of the Phase I Services, upon termination of this Design-Build Contract or upon any failure of the parties to execute a GMP Amendment. SAWS shall have the further right in connection therewith, based on its ownership of the Phase I Services Deliverable Material as provided in Section 4.6, to use any Phase I Services Deliverable Material in any manner it chooses to complete the design and construction of the Project. In such event, the Design-Builder shall be liable for the Phase I Services Deliverable Material solely to the extent of errors or omissions in the Phase I Services Deliverable Material, as determined based on the developmental stage of the Phase I Services Deliverable Material at the time of transfer to SAWS and a standard of care ordinarily used by members of the subject profession, having experience with projects similar in scope and complexity and practicing in major United States urban areas. This limitation as to the Design-Builder’s liability for the Phase I Services Deliverable Material is applicable only to the extent SAWS determines not to enter into the GMP Amendment or otherwise terminates this Design-Build Contract and is intended to recognize SAWS’ investment in the Phase I Services Deliverable Material in such circumstances, while recognizing that the Design-Builder will not have control over the use of the Phase I Services Deliverable Material in such circumstances. The Design-Builder acknowledges and agrees that such limitation will have no applicability if the parties enter into the GMP Amendment and proceed with the Phase II Services.

(H) Design-Builder Representations in a GMP Amendment. In the event the parties execute a GMP Amendment, the GMP Amendment shall be deemed to constitute a representation by the Design-Builder that:

1. It has examined, carefully studied, and thoroughly understands the Contract Documents associated with the Design-Build Work;

2. It has thoroughly reviewed and verified all information provided to or obtained by the Design-Builder through the performance of the Phase I Services, including:

   a. Reports of explorations and tests of subsurface conditions at or contiguous to the Project Sites and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Project Sites which have been identified or made available by SAWS; and

   b. Reports as to Regulated Substances, if any, at the Project Sites which have been identified or made available by SAWS;
(3) It has become familiar with and is satisfied as to the general, local, and Project Sites conditions that may affect cost, progress, and performance of the Design-Build Work;

(4) It is familiar with and is satisfied as to all Applicable Law that may affect cost, progress, and performance of the Design-Build Work;

(5) It is aware of the nature of the Related Projects and is satisfied that the Design-Build Work can be performed in accordance with the requirements concerning the Related Projects, as set forth in the Contract Documents;

(6) It has considered the information known to the Design-Build, including information commonly known to designers and contractors doing business in the locality of the Project Sites; information and observations obtained from visits to the Project Sites; and the Project Sites-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:

(a) The cost, progress, and performance of the Design-Build Work;

(b) The means, methods, techniques, sequences, and procedures of construction to be employed by the Design-Build, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and

(c) Design-Build’s health and safety precautions and programs;

(7) Based on all of the foregoing and the performance of the Phase I Services, the Project Sites constitute acceptable and suitable sites for the performance of the Design-Build Work;

(8) It does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into the GMP Amendment for the performance of the Design-Build Work for the Base Guaranteed Maximum Price on or before the Scheduled Mechanical Completion Date and the Scheduled Acceptance Date, and in accordance with the other terms and conditions of this Design-Build Contract;

(9) The Baseline Design Documents and Acceptance Standards are sufficient to enable the Design-Build to determine the Base Guaranteed Maximum Price; and

(10) Subject to the terms and conditions of this Design-Build Contract, the Design-Build Work can be completed in accordance with the Contract Standards for the Base Guaranteed Maximum Price by the Scheduled Mechanical Completion Date and the Scheduled Acceptance Date.

(I) **Performance Bond and Payment Bond.** The Design-Build, as provided in Section 5.6(A) and in Section 16.2, shall provide the Performance Bond and the Payment Bond concurrently with the execution of the GMP Amendment.
ARTICLE 6
DESIGN-BUILD WORK

SECTION 6.1. DESIGN-BUILD WORK GENERALLY.

(A) Authorization to Proceed; Commencement and Completion of the Design-Build Work. SAWS shall issue a Notice to Proceed with the Phase II Services concurrently with the occurrence of the GMP Amendment Date, and following issuance of such Notice to Proceed with Phase II Services the Design-Builder shall promptly proceed to undertake, perform and complete the Design-Build Work in accordance with the Contract Standards; provided, however, that the Design-Builder shall not commence Construction of the Project until the Construction Commencement Date. The Design-Builder shall be paid the Design-Build Price pursuant to Article 9 as its entitlement to payment of portions of the Design-Build Price arise thereunder.

(B) Elements of the Design-Build Work. In performing the Design-Build Work generally, the Design-Builder shall, in accordance with the Contract Standards:

1. Apply for, obtain and maintain all Governmental Approvals required for the Design-Build Work (other than SAWS Managed Governmental Approvals), and assist SAWS in obtaining SAWS Managed Governmental Approvals;

2. Perform all necessary Project Sites preparation and excavation activities;

3. Demolish and remove any existing improvements at the Project Sites, as and to the extent required by the Baseline Design Documents;

4. Modify, re-route, repair or replace any Utilities, as and to the extent required by the Contract Documents;

5. Remove from the Project Sites and dispose of any demolition or construction debris resulting from the Design-Build Work and any unused soil excavated therefrom in an environmentally safe manner;

6. Complete the design and construct the Project;

7. Conduct Commissioning, including compliance with the Commissioning and Acceptance Test Plan and training of SAWS employees in accordance with the Training Plan;

8. Prepare and provide the Operation and Maintenance Manual;

9. Operate and maintain the Project throughout Commissioning and until the achievement of Mechanical Completion;

10. Achieve Mechanical Completion;

11. Assist SAWS in the conduct the Acceptance Test and achieve Acceptance;

12. Achieve Final Completion; and

13. Perform any Warranty Work required hereunder,
all so that the Project is suitable and adequate for the purposes hereof.

(C) **Sequencing and Staging of Design-Build Work.** The Design-Builder shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. SAWS understands and acknowledges that the Design-Builder intends to complete the Design-Build Work in stages, whereby particular segments of the Design-Build Work will be designed and built prior to the completion of the design of the Project as a whole. Although this Design-Build Contract does not require the Design-Builder to fully complete the entire design of the Project prior to proceeding with particular segments of the Construction of the Project, the Design-Builder shall comply with all requirements of Applicable Law in performing the Design-Build Work and shall further comply with the design submittal requirements set forth in Section 6.6(C).

(D) **Construction Work Hours.** Without limiting any other requirement hereunder, the Design-Builder shall not perform Construction work between 5 PM and 8 AM, or on Sundays, holidays or Saturdays without specific permission from SAWS. The parties acknowledge that compliance with the Project Schedule is critical, and SAWS agrees to act reasonably and cooperate with the Design-Builder in an effort to accommodate reasonable Design-Builder requests to perform Construction work during the hours specified in the preceding sentence to the extent consistent with Applicable Law.

(E) **Laydown Areas.** Laydown and staging areas for construction materials required for the Design-Build Work shall be located on the Project Sites or at other locations approved by SAWS and shall be identified in the Baseline Design Documents.

(F) **Phase II Services Schedule and Reports.** The initial Phase II Services Schedule shall be prepared in accordance with Appendices 2 and 5 during performance of the Phase I Services. Throughout the Phase II Services Period, the Design-Builder shall further update and maintain the Phase II Services Schedule in accordance with Appendix 5. The Design-Builder shall provide Monthly Progress Reports, which shall include updates to the Phase II Services Schedule, in accordance with the requirements set forth in Section 4.8 and Appendix 5. The Design-Builder acknowledges and agrees that it has a material obligation to provide SAWS with, and to update, maintain and revise, the Phase II Services Schedule throughout the Phase II Services Period in accordance with the Contract Standards.

(G) **On-Site Meetings and Design and Construction Review.** During the Phase II Services Period, the Design-Builder, SAWS and the Owner Representative shall conduct regular progress and management meetings as set forth in Appendix 5. Such meetings shall take place at the Terminus Facility Site in a field office to be provided by the Design-Builder in accordance with Appendix 5 or as otherwise directed by SAWS. The Monthly Progress Report shall be prepared by the Design-Builder and provided to SAWS and the Owner Representative at least five days prior to each monthly meeting.

(H) **Utilities.** The Design-Builder shall provide, make all arrangements necessary to secure the availability of, and construct all connections for, all Utilities necessary for the performance of the Design-Build Work and shall be responsible for modifying all existing Utilities at the Project Sites in order to support the construction, commissioning and operations of the Project in the capacities required hereunder in accordance with the specific requirements that shall be set forth in the Baseline Design Documents. The Design-Builder shall be responsible for the payment of all Utility bills in a timely manner in connection with all Design-Build Work performed from the issuance of the Notice to Proceed with Phase II Services until the Mechanical Completion Date.
(I) **Process Control Systems.** The Design-Builder’s obligation to perform the Design-Build Work includes the obligation to design, construct and program functional, reliable and maintainable instrumentation and control systems for the Project in accordance with the Baseline Design Documents. The Design-Builder shall be responsible for ensuring that all instrumentation and controls connect to and are fully compatible with SAWS’ existing control system for the SAWS Distribution System and will allow for the integration of Finished Water into the SAWS Distribution System. In order to ensure compliance with the obligations set forth in this subsection (I), the Design-Builder shall engage a systems integrator in accordance with Section 7.4(J).

(J) **Quality Assurance and Quality Control.** The Design-Builder shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan. Without limiting any other requirement hereunder, the Design-Builder shall perform quality control inspection and testing services to assure compliance with the Contract Standards.

(K) **State and Local Sales Tax.** SAWS qualifies for exemption from State and local sales tax and will furnish the Design-Builder with a tax exemption certificate. It is the Design-Builder’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 State Comptroller of Public Accounts. Certain construction equipment that is owned or rented by the Design-Builder may be subject to State and local sales tax. The Design-Builder is responsible for taking full advantage of all tax exemptions applicable to the Project. SAWS will deduct from Payment Requests and the Final Completion Payment Request any taxes paid for materials and services that were entitled to tax exemption, as determined by the taxing authority to which the sales taxes were paid.

(L) **Title and Risk of Loss.** Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Project shall pass to SAWS upon incorporation in the Project or payment therefor by SAWS, whichever first occurs, free and clear of all Encumbrances as provided in subsection (M) of this Section. Except to the extent provided in Section 6.17(E), however, the Design-Builder shall bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until the Acceptance Date, regardless of the extent to which the loss was insured or the availability of insurance proceeds. The procedures set forth in Section 6.17 shall be applicable in the event of any damage to, loss or the destruction of the Design-Build Work at the Project. Notwithstanding anything set forth in this subsection (L) or Section 6.17, the Design-Builder shall bear all risk of loss concerning any structures, improvements, fixtures, machinery, equipment or materials required for the Design-Build Work and stored at any location other than the Project, regardless of whether SAWS has paid for any such structures, improvements, fixtures, machinery, equipment or materials.

(M) **Encumbrances.** The Design-Builder shall not directly or indirectly create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance or Lien (other than Permitted Encumbrances) arising in relation to the Project or the Design-Build Work. The Design-Builder’s Subcontracts with all materialmen, suppliers, and Subcontractors shall provide that the sole recourse for such materialmen, suppliers, and Subcontractors for non-payment shall be against the Payment Bond.

(N) **Notice of Default.** The Design-Builder shall provide to SAWS, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval, Subcontract, Security Instrument or other transaction agreement pertaining to the Contract Obligations.
(O) **Required Design-Build Manager Certification.** Any notice, certification, report or application delivered by the Design-Builder to SAWS in connection with the Design-Build Work, or payment therefor, under this Article, Article 8, Article 9 or any Appendix relating to the performance of the Design-Build Work shall be accompanied by a signed certificate of the Design-Build Manager affirming the accuracy thereof to the best of his or her knowledge. The form of certification required pursuant to this subsection (O) shall comply with all requirements of Applicable Law.

(P) **Partnering Requirements.** The Design-Build Work shall be subject to SAWS’ formal partnering requirements, as set forth in Appendix 5.

(Q) **Temporary Project Sites Facilities.** The Design-Builder shall be responsible for ensuring that adequate temporary facilities are provided as necessary to enable Subcontractors to perform their work and that provisions have been made for all Project Sites facilities necessary for the Design-Builder to manage, inspect and supervise the Design-Build Work, including all facilities and services the cost of which constitutes a General Conditions Cost.

(R) **Citizen Complaints.** It is the intention of SAWS to be sensitive to the needs and concerns of the citizenry. It is the Design-Builder's responsibility to adhere to this policy to the best of its ability. The Design-Builder shall, whenever possible, address citizen inquiries about the Project in coordination with SAWS, provide names and numbers of SAWS personnel, immediately inform SAWS of any citizen complaints, and provide for continuous access to all private property affected by the Design-Build Work.

**SECTION 6.2. CONSTRUCTION COMMENCEMENT DATE.**

(A) **Construction Commencement Date Generally.** Except with respect to Early Work Packages as provided in Section 5.6, in no event shall the Design-Builder commence with the Construction of the Project prior to the “Construction Commencement Date” established pursuant to this Section. The Construction Commencement Date shall not occur prior to the satisfaction of the following “Construction Commencement Date Conditions,” each of which must be and remain satisfied as of the Construction Commencement Date:

1. The Design-Builder shall have certified that it has completed all pre-construction requirements set forth in Appendix 5 and shall have provided SAWS with an updated Phase II Services Schedule in accordance with Appendix 5, a final, approved Maintenance of Operations During Construction Plan and Health and Safety Plan.

2. The Design-Builder shall have satisfied all requirements of Applicable Law with respect to the commencement of construction and shall have obtained all Governmental Approvals required for the commencement of the Construction of the Project and provided copies of such Governmental Approvals to SAWS. All such Governmental Approvals shall be in full force and effect.

3. The Design-Builder shall have provided SAWS with certificates for all Required Insurance in accordance with Section 13.1 and certified that all such policies are in full force and effect and in compliance with the requirements of Section 13.1 and Appendix 10;

4. The Design-Builder shall have submitted the Document Submittal Protocol in accordance with the requirements of Appendix 7 and shall have complied
with the design submittal requirements set forth in Section 6.6(C) to the extent necessary to commence with the Construction of the Project.

(5) The Design-Builder shall have held pre-construction conferences with SAWS and its representatives in accordance with Appendix 5.

The foregoing requirements are in addition to any other preconditions to the commencement of Construction established by the Contract Documents. In the event SAWS obtains TWDB funding for the Project, the issuance of the Notice to Proceed with Construction may be further subject to the approval of TWDB.

(B) Establishment of the Construction Commencement Date. In no event shall the Construction Commencement Date be established prior to the satisfaction by the Design-Builder of the Construction Commencement Date Conditions. The Design-Builder shall provide 10 days’ written notice to SAWS as to the satisfaction of the Construction Commencement Date Conditions and the date it proposes to establish as the Construction Commencement Date hereunder. SAWS shall issue a Notice to Proceed with Construction on the Construction Commencement Date proposed by the Design-Builder upon satisfaction of the Construction Commencement Date Conditions. In the event SAWS determines that the Design-Builder has not satisfied the Construction Commencement Date Conditions, notwithstanding the Design-Builder’s notice pursuant to this subsection, the SAWS Contract Representative, by written notice to the Design-Builder delivered not later than three days prior to the Construction Commencement Date proposed by the Design-Builder, shall notify the Design-Builder of SAWS’ determination and state which conditions the Design-Builder has failed to satisfy. The Design-Builder shall satisfy all such conditions prior to the establishment of the Construction Commencement Date. Without limiting any of the foregoing, SAWS, in its discretion, may issue a limited Notice to Proceed with Construction pending satisfaction by the Design-Builder of all Construction Commencement Date Conditions and the specific terms and conditions under which the Design-Builder is authorized to proceed with Construction shall be specified in such Notice to Proceed.

(C) Effect of the Establishment of the Construction Commencement Date. Upon the issuance by SAWS of the Notice to Proceed establishing the Construction Commencement Date, the Design-Builder shall have the right to proceed with the Construction of the Project. Absent the occurrence of Uncontrollable Circumstances as and to the extent provided in this Design-Build Contract, no delay in the establishment of the Construction Commencement Date shall entitle the Design-Builder to any price, schedule or performance relief hereunder.

SECTION 6.3. SURFACE AND SUBSURFACE CONDITIONS.

(A) Design-Builder Risk. Based on the investigations of the Project Sites and other inquiries made by the Design-Builder prior to the Contract Date and during performance of the Phase I Services, which the Design-Builder acknowledges to be sufficient for this purpose, and except with respect to Regulated Site Conditions as and to the extent provided in Section 6.4 and subject to subsection (B) of this Section, the Design-Builder assumes the risk of all surface and subsurface conditions at the Project Sites as they may affect the Design-Builder’s performance of the Design-Build Work, including the structural suitability of the Project Sites and the Design-Builder’s excavation or Construction costs or schedules, and agrees that any such surface and subsurface conditions revealed during the Design-Build Work which has such an affect shall not be an Uncontrollable Circumstance and the Design-Builder shall not be entitled to relief on account thereof and shall bear all cost, schedule and performance risk in connection therewith.
(B) Reconsideration in Connection with GMP Amendment. Based on the investigations of the Project Sites made by the Design-Build during performance of the Phase I Services, the Geotechnical Report and the contingency included in the GMP Submittal corresponding to the Design-Build’s assumption of risk for all subsurface conditions at the Project Sites under subsection (A) of this Section, SAWS may, in its discretion, agree to a change in such risk allocation. Any amount included as contingency in respect of subsurface conditions at the Project Sites shall be consistent with Good Engineering and Construction Practice and clearly identified in the GMP Submittal. Any agreement by SAWS to a change in the risk allocation provided under subsection (A) of this Section shall be set forth in the GMP Amendment.

SECTION 6.4. REGULATED SITE CONDITIONS.

(A) Design-Build Responsibilities. In performing the Design-Build Work, the Design-Build shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition after the location and existence of such Regulated Site Condition has been disclosed to the Design-Build or becomes actually known by the Design-Build through physical observation. Notwithstanding anything to the contrary in this Section, the Design-Build shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to:

(1) Any Regulated Substance present at, on, in or under, or migrating or emanating to or from the Project Sites, that was generated by or brought or caused to be brought on the Project Sites by any act or omission of the Design-Build or any Subcontractor; and

(2) The creation of any Regulated Site Condition due to Design-Build Fault, or the exacerbation of any Regulated Site Condition due to Design-Build Fault once the location and existence of such Regulated Site Condition becomes actually known to the Design-Build.

All remediation costs resulting from Regulated Substances or Regulated Site Conditions for which the Design-Build bears responsibility pursuant to this subsection (A) shall constitute Unallowable Costs borne solely by the Design-Build. The Design-Build shall indemnify, defend and hold harmless SAWS Indemnitees in accordance with and to the extent provided in Article 15 from and against all Loss-and-Expense resulting from Regulated Substances or Regulated Site Conditions for which the Design-Build bears responsibility pursuant to this subsection (A).

(B) Cultural Resources. The Design-Build shall not remove or disturb, or cause to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. If the Design-Build discovers any of these items, the Design-Build shall immediately notify the SAWS Contract Representative and comply with all Applicable Law. The Design-Build shall protect such cultural resources from further disturbance until professional examination can be made or until clearance to proceed is authorized in writing by the SAWS Contract Representative.

(C) Endangered Species. Should either threatened or endangered plant or animal species (as determined under Applicable Law) be encountered in the performance of the Design-Build Work, the Design-Build shall cease work immediately in the area of encounter, notify the SAWS Contract Representative and comply with all Applicable Law. The Design-Build shall not resume Design-Build Work in the affected area until authorized to do so by the SAWS Contract Representative.
(D) Remediation of Regulated Site Conditions. If the Design-Builder encounters any materials or substances on-site that it reasonably believes to be Regulated Site Conditions at the Project Sites, it shall stop work immediately in the affected part of the Design-Build Work to the extent required to avoid any safety or health hazard and violation of Applicable Law. The Design-Builder shall promptly, upon encountering any Regulated Site Conditions at the Project Sites, notify the SAWS Contract Representative and, if required by Applicable Law, all Governmental Bodies with jurisdiction over the Project or Project Sites. If SAWS determines that a Regulated Site Condition does not exist, Design-Build Work in the affected area will be resumed upon receipt of written notification from SAWS, subject to the Design-Builder’s right to initiate dispute resolution procedures in accordance with Section 11.1. If SAWS determines that a Regulated Site Condition exists, Design-Build Work in the affected area may not be resumed except by Change Order or Work Change Directive, and only if the resumption of such Design-Build Work would not violate Applicable Law. To the extent the existence of a Regulated Site Condition causes or is reasonably expected to cause an increase in the cost or time required for performance of the Design-Build Work, the Design-Builder shall be entitled to a Change Order as and to the extent provided in subsection (E) of this Section. During the period of any investigation and remediation efforts authorized by Change Order pursuant to this Section, the Design-Builder shall take, or cause a Subcontractor to take, all necessary measures required to ensure that Regulated Site Conditions are remediated or rendered harmless in accordance with Applicable Law. The Design-Builder shall, prior to proceeding with any such work:

1. Obtain all environmental site assessments of the affected property and submit copies of such assessments to SAWS for its approval;

2. Develop remediation plans for the Regulated Substances, subject to SAWS’ approval; and

3. Obtain all applicable Governmental Approvals to implement such plans. During the period of any investigation and remediation efforts hereunder, the Design-Builder shall take all necessary measures to isolate and contain such Regulated Substances from the unaffected parts of the Design-Build Work, and shall continue the Design-Build Work to the maximum extent possible on unaffected parts of the Design-Build Work.

(E) Uncontrollable Circumstance Relief. Without limiting the Design-Builder’s obligations under subsection (D) of this Section, if the Design-Builder establishes that the actual conditions encountered during Construction:

1. Meet the criteria for Regulated Site Conditions, and

2. Directly and materially impact the Design-Builder’s cost or time of performance, then the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14.

(F) Generator Liability. Nothing contained herein is intended to identify the Design-Builder as the generator of any pre-existing Regulated Substance, except as provided by Applicable Law. Except with respect to those Regulated Substances identified in subsection (A) of this Section as to which the Design-Builder bears responsibility, SAWS shall execute, as generator, Hazardous Waste manifests required in order for the Design-Builder to fulfill its obligations under this Section, as and to the extent required under Applicable Law.
SECTION 6.5. PERMITTING RESPONSIBILITIES AND SCHEDULE.

(A) Design-Builder Governmental Approval Responsibility, Generally. The Design-Builder shall, except for SAWS Managed Governmental Approvals, obtain and maintain all Governmental Approvals necessary to commence, continue and complete the Design-Build Work and achieve Acceptance. In connection therewith, the Design-Builder shall:

(1) Prepare and complete all required filings, applications and reports;

(2) Develop and furnish all necessary data, information, plans, documentation and supporting material;

(3) Familiarize itself with all applicable terms and conditions;

(4) Attend all required meetings and hearings;

(5) Cooperate with and assist SAWS in carrying out any of SAWS' responsibilities hereunder with respect to the SAWS Managed Governmental Approvals as and to the extent provided in subsection (D) of this Section;

(6) Pay all required permit and filing fees; and

(7) Take all other action necessary in obtaining, maintaining, renewing, extending and complying with the terms of all Governmental Approvals.

The Design-Builder shall be responsible for identifying, obtaining and maintaining any Governmental Approvals required for the performance of the Design-Build Work that are not SAWS Managed Governmental Approvals.

(B) Application Process. SAWS shall be notified by the Design-Builder prior to any application, data submittal, or other communication by the Design-Builder with any Governmental Body regarding Governmental Approvals. The Design-Builder 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 any unreasonable cost or unreasonable burden on SAWS or that would materially contravene any SAWS policies with respect to the matters contained therein. SAWS reserves the right, after reasonable notification and consultation with the Design-Builder, to modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Design-Builder which would have the effect described in the preceding sentence. The final terms and conditions of any Governmental Approval shall be subject to SAWS’ approval, which approval shall not be unreasonably withheld or delayed. The Design-Builder shall deliver to SAWS, promptly after the Design-Builder’s receipt, a copy of each Governmental Approval, and shall provide a listing of the status of all Governmental Approvals in its Monthly Progress Report.

(C) SAWS Governmental Approval Responsibility. SAWS shall:

(1) Be responsible for obtaining the SAWS Managed Governmental Approvals, subject to the Design-Builder’s obligations under subsection (D) of this Section;

(2) Cooperate with and, upon the reasonable request of the Design-Builder, provide reasonable assistance to the Design-Builder in obtaining from Governmental Bodies the Governmental Approvals (including any modifications, renewals and
extensions of existing Governmental Approvals from Governmental Bodies) required to be obtained by the Design-Builder under this Section;

(3) Where necessary to obtain, renew, replace, extend the validity of, or arrange necessary amendments to any Governmental Approval and within a reasonable period of time after being requested to do so by the Design-Builder:

   (a) Execute Governmental Approval applications and related documents, either in its own name or jointly with the Design-Builder, as and to the extent required under Applicable Law or the administrative practices of the applicable Governmental Body;

   (b) Provide for attendance by appropriate SAWS staff at public hearings and meetings of applicable Governmental Bodies; and

   (c) Provide the Design-Builder 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.

To the extent Applicable Law or the administrative practice of the applicable Governmental Body requires that Governmental Approvals that are required to be obtained by the Design-Builder pursuant to this Section be applied for or issued in the SAWS’ name or that SAWS directly coordinates with such Governmental Bodies, the Design-Builder shall, at its own cost and expense, provide all necessary support and efforts to apply for and obtain such Governmental Approvals, including preparing all application and related documents for execution by SAWS. SAWS’ obligation to assist and cooperate pursuant to this Section shall be subject to the Design-Builder’s obligations under this Section and shall not require SAWS to:

   (1) Staff the Design-Builder’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 Governmental Approvals required to be obtained by the Design-Builder hereunder;

   (2) Take a position which it believes to be inconsistent with the Contract Documents, the Contract Standards, or SAWS policy (except policies that are incompatible with the contracting methodology associated with this Design-Build Contract or are inconsistent with the express obligations of SAWS hereunder);

   (3) Take a position that is not usual and customary for SAWS to take in addressing similar circumstances affecting its own projects (except for usual and customary arrangements that are incompatible with the contracting methodology associated with this Design-Build Contract or are inconsistent with the express obligations of SAWS hereunder); and

   (4) Refrain from concurring with a position taken by a Governmental Body if SAWS believes that position to be correct.

(D) Design-Builder Responsibility For SAWS Managed Governmental Approvals. In connection with the SAWS Managed Governmental Approvals, the Design-Builder shall cooperate with and assist SAWS in carrying out any of SAWS’ responsibilities hereunder with respect to the SAWS Managed Governmental Approvals, including:

   (1) Preparing and completing all required filings, applications and reports;
(2) Developing and furnishing all necessary data, information, plans, documentation and supporting material;

(3) Familiarizing itself with all applicable terms and conditions;

(4) Attending all required meetings and hearings; and

(5) Take all other action reasonably necessary in accordance with Good Engineering and Construction Practice to assist SAWS in obtaining, maintaining, renewing, and extending all SAWS Managed Governmental Approvals.

(E) **Schedule Adjustment Based on Delays Affecting Governmental Approvals.** If in seeking to obtain a Governmental Approval:

1. The Design-Builder has complied with the requirements of this Design-Build Contract;

2. The Design-Builder has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Governmental Approval;

3. The Design-Builder has in all respects used its best efforts to obtain the Governmental Approval; and

4. There has been a failure to issue the Governmental Approval by the “**Assumed Approval Issuance Date**” set forth in the Governmental Approvals Schedule Table;

then an Uncontrollable Circumstance shall be deemed to have occurred and the Design-Builder shall be entitled to an adjustment to the Scheduled Mechanical Completion Date and Scheduled Acceptance Date in accordance with Article 14 and to the extent provided therein and in this subsection (E).

(F) **Terms and Conditions.** The Design-Builder shall be entitled to claim Uncontrollable Circumstance relief in accordance with and to the extent provided in Article 14 in the event that: (1) a Governmental Body imposes terms and conditions in connection with a SAWS Managed Governmental Approval after the GMP Amendment Date that require a Baseline Design Requirements Change; or (2) a Governmental Body fails to comply with Applicable Law with respect to the imposition of arbitrary and capricious terms and conditions in connection with a Governmental Approval.

### SECTION 6.6. **FINAL DESIGN RESPONSIBILITIES AND RISK ASSUMPTION.**

(A) **Performance of the Design Work.** Following the issuance of the Notice to Proceed with Phase II Services, the Design-Builder agrees to undertake, perform, and complete the designs and plans for the Project in accordance with the Contract Standards and to prepare all Phase II Design Documents necessary or appropriate to carry out and complete the Design-Build Work. All Design-Builder working and final Phase II Design Documents shall comply with the Baseline Design Documents and shall ensure that the Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Baseline Design Documents. The Design-Builder shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Phase II Design Documents and shall, without additional compensation, correct or revise
any errors, omissions or other deficiencies in the Baseline Design Documents or the Phase II Design Documents.

(B) Sole Responsibility and Liability. The Design-Builder shall have the sole and exclusive responsibility and liability for the design, construction, and performance capability of the Project hereunder in accordance with the Contract Standards, notwithstanding (1) the fact that the RFP included certain design criteria, requirements and performance standards for the Design-Build Work, and (2) SAWS’ role in defining the nature and extent of the Phase I Services, reviewing and commenting on the Phase I Services Deliverable Material, and negotiating and agreeing upon the GMP Amendment; except that, the parties agree that nothing in this subsection shall limit the Design-Builder’s right to claim Uncontrollable Circumstance relief on account of items (c), (n) and (o) of the list of “Inclusions” in the definition of Uncontrollable Circumstances. Without limiting the Design-Builder’s right to claim relief in the event of Uncontrollable Circumstances as and to the extent provided in this Design-Build Contract, all risks relating to the design, construction and performance capability of the Project, including all risks of design defects, constructability and efficacy, have been transferred to the Design-Builder under this Design-Build Contract.

(C) SAWS Review and Comment on Phase II Design Documents. The Design-Builder shall provide SAWS with the Document Submittal Protocol in accordance with the specific requirements set forth in Appendix 7. SAWS shall have the right to review and comment on all Phase II Design Documents within the time frames specified in Appendix 7 in order to confirm the compliance and consistency of the Phase II Design Documents with the Contract Documents. In no event shall the Design-Builder proceed with the Construction of any particular segment of the Design-Build Work without first complying with the requirements of the Document Submittal Protocol and Appendix 7. The Design-Builder shall give due consideration and provide written responses, in the time and manner provided in Appendix 7, to any comments delivered by SAWS or its representatives as to the Design-Builder’s design submittals. Neither compliance by the Design-Builder with the Baseline Design Documents, nor review and comment by SAWS or the Owner Representative on the Design-Builder’s Phase I Design Documents or Phase II Design Documents, nor any failure by SAWS or the Owner Representative to comment on any design submittals shall in any way relieve the Design-Builder of full responsibility for the design, construction and performance capability of the Project, as demonstrated through the Acceptance Test, in accordance with the Contract Standards. The parties acknowledge and agree that the review and comment rights of SAWS under this subsection (C) are intended for the informational purposes of SAWS and for SAWS to determine whether the Phase II Design Documents comply with the Baseline Design Documents.

(D) Documents at the Terminus Facility Site. The Design-Builder shall maintain at the Terminus Facility Site all Phase II Design Documents, including a complete set of record drawings, in accordance with the Contract Standards. These documents shall be available to SAWS for reference, copying and use, and a complete set thereof shall be delivered to SAWS upon completion of the Design-Build Work.

SECTION 6.7. CHANGES TO THE BASELINE DESIGN DOCUMENTS AT DESIGN-BUILDER REQUEST.

(A) SAWS Consent Required. The Design-Builder acknowledges SAWS’ material interest in each provision of the Baseline Design Documents, and agrees that, subject to Section 6.8, no material change to the Baseline Design Documents shall be made except with the consent of SAWS, which may be withheld or conditioned in its discretion. Any such changes shall be evidenced by a Contract Amendment or Change Order, as applicable.
(B) Notice and Information as to Proposed Change. Without limiting anything under subsection (A) of this Section, the Design-Builder shall give SAWS written notice of, and reasonable opportunity to review and approve, any Baseline Design Requirements Change proposed to be made at the Design-Builder’s request. The notice shall contain sufficient information for SAWS to determine that the proposed Baseline Design Requirements 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 Design-Builder to fulfill its obligations under this Design-Build Contract;
4. Will not result in a conflict with SAWS operating and maintenance procedures for its capital assets;
5. Will not interfere with or impair the ongoing operations of the SAWS Distribution System; and
6. Is feasible.

SECTION 6.8. OTHER CHANGES TO THE BASELINE DESIGN DOCUMENTS.

(A) Changes Made Due to Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance after the GMP Amendment Date, the Design-Builder shall promptly proceed, subject to the terms, conditions and procedures set forth in Article 14 and subject to SAWS’ approval, to make or cause to be made all Baseline Design Requirements Changes reasonably necessary to address the Uncontrollable Circumstance. The Design-Builder shall consult with SAWS concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance. The parties shall use all reasonable efforts to address Baseline Design Requirements Changes required due to Uncontrollable Circumstances in a manner that will not impact the critical path of planned Design-Build Work in the Phase II Services Schedule. The Design-Builder shall be entitled to schedule and price relief resulting from any such Baseline Design Requirements Change to the extent provided in Article 14. Without limiting the right of SAWS to issue a Work Change Directive under Section 6.10, any Baseline Design Requirements Change made on account of Uncontrollable Circumstances, and any related change in the terms and conditions of the Contract Documents, shall be reflected in a Change Order.

(B) Changes Required by Governmental Bodies. The parties recognize that a Governmental Body may impose terms and conditions in connection with a Governmental Approval after the GMP Amendment Date that require a Baseline Design Requirements Change. In the event of the imposition of any such additional terms and conditions imposed by a Governmental Body, the Design-Builder shall promptly proceed, subject to SAWS’ approval, to make or cause to be made all Baseline Design Requirements Changes reasonably necessary to comply with such additional terms and conditions, or SAWS may elect to contest any such additional terms and conditions if such terms and conditions are not acceptable to SAWS; provided that, if such contest by SAWS delays the performance of the Design-Build Work, the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14. Except to the extent provided in the preceding sentence and except as
otherwise provided under Section 6.5(F), the Design-Builder shall bear the risk of the imposition of any such additional terms and conditions imposed by a Governmental Body in connection with a Governmental Approval. Without limiting the right of SAWS to issue a Work Change Directive under Section 6.10, any such Baseline Design Requirements Change and any related change in the terms and conditions of this Design-Build Contract shall be reflected in a Change Order.

(C) **Changes Required by SAWS.** SAWS shall have the right to require the Design-Builder to make Baseline Design Requirements Changes at any time prior to Final Completion in its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Design-Build Contract so long as the Design-Builder’s rights are protected as provided in this subsection (C). The Design-Builder shall be entitled to a Change Order providing appropriate price, schedule, performance and other relief in the event of a Baseline Design Requirements Change made at the direction of SAWS under this subsection (C); provided, however, that the Design-Builder shall not be entitled to any such price, schedule, performance or other relief to the extent that any such Baseline Design Requirements Change is required due to Design-Builder Fault. SAWS shall have no obligation to make any Baseline Design Requirements Change on account of its rights under this subsection (C).

**SECTION 6.9. CHANGE PROCEDURES.**

(A) **Generally.** The sole means of providing for an adjustment to the Scheduled Mechanical Completion Date, the Scheduled Acceptance Date, the Contract Compensation or a Base Guaranteed Maximum Price Adjustment, or any other price, performance or schedule relief under this Design-Build Contract shall be through the issuance of a Change Order or Work Change Directive. All work authorized or modified pursuant to a Change Order shall constitute Design-Build Work hereunder and shall be completed in accordance with the Contract Standards. Each Change Order shall be specific and final as to prices and extensions of time with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order, except as provided in subsection (C) of this Section with respect to actual costs subject to Cost Substantiation. Price determinations associated with Change Orders and Work Change Directives shall be made in accordance with Section 9.7. The Design-Builder is not authorized to proceed with any contemplated change in the Design-Build Work prior to the Design-Builder’s receipt of a Change Order or Work Change Directive.

(B) **Design-Builder Change Order Proposal.** The SAWS Contract Representative may, in anticipation of possibly issuing a Change Order, request the Design-Builder to prepare a proposal of cost and time to perform the contemplated changes in the Design-Build Work, along with any other proposed changes to this Design-Build Contract. The Design-Builder’s written proposal shall be prepared in accordance with the Contract Standards on a proposal request form approved by the SAWS Contract Representative and shall be transmitted to the SAWS Contract Representative promptly, but not later than seven days (unless the SAWS Contract Representative agrees to a longer duration, in writing) after the Design-Builder’s receipt of the SAWS Contract Representative’s written request, and shall remain a firm offer for a period not less than 15 Business Days after receipt thereof by the SAWS Contract Representative, unless the parties agree to a longer duration, in writing.

(C) **Negotiation of Proposed Change Order.** The Design-Builder shall consult with SAWS and the Owner Representative concerning possible means of addressing any proposed Change Order, and the Design-Builder and SAWS shall cooperate in order to minimize any delay and lessen any additional cost associated with the Change Order. SAWS may negotiate the written proposal delivered pursuant to subsection (B) of this Section. If
SAWS accepts such written proposal without adjustment to its terms, SAWS may issue a Change Order for the written proposal within the firm-offer period specified in subsection (B) of this Section, and the parties’ signing of the written proposal shall be deemed equivalent to signing the Change Order. Change Orders may provide for a Base Guaranteed Maximum Price Adjustment based on (1) unit prices included in the GMP Amendment or otherwise agreed to by the parties; (2) negotiated lump sum pricing; (3) actual costs subject to Cost Substantiation in accordance with Section 9.8; or (4) a combination of the foregoing. A Change Order that reduces the scope of the Design-Build Work shall provide for a Base Guaranteed Maximum Price Adjustment reducing the Guaranteed Maximum Price, as determined in the same manner as provided for any increase to the Guaranteed Maximum Price. Except as otherwise directed by SAWS pursuant to Section 6.12, the Design-Builder shall, pending the negotiation of any Change Order, diligently proceed with the performance of all Design-Build Work not subject to such proposed Change Order.

(D) Effect of Design-Builder’s Signature. The signing of a Change Order by the Design-Builder indicates the Design-Builder’s acceptance and approval thereof, including any adjustment to the Scheduled Mechanical Completion Date, the Scheduled Acceptance Date or the Contract Compensation or other price, performance or schedule relief or change provided for therein. The signing of any Change Order by the Design-Builder shall constitute an acknowledgement and agreement that:

1. Any compensation paid in conjunction with the terms of a Change Order shall comprise the total compensation due the Design-Builder for the work or the change defined in the Change Order;

2. The stipulated compensation includes all payment for the Design-Build Work authorized by the Change Order, including all payment for the interruption of schedules, stop work orders, extended overhead, delay, or any other impact, claim or ripple effect;

3. The Change Order constitutes full accord and satisfaction for the change in the Design-Build Work;

4. The Design-Builder reserves no right to pursue any subsequent claim concerning the Change Order; and

5. All necessary amendments to the Contract Documents, including all necessary Baseline Design Requirements Changes, are reflected in the Change Order and no subsequent claim or amendment to the Contract Documents will arise out of or as a result of the Change Order.

SECTION 6.10. WORK CHANGE DIRECTIVES.

(A) SAWS Right to Issue. The parties intend to negotiate the terms of any Change Order providing for a Baseline Design Requirements Change prior to the Design-Builder incurring any costs with respect to any such change or adjustment. However, notwithstanding the foregoing, SAWS shall have the right to issue a written order directing a Baseline Design Requirements Change or other change to the Design-Build Work pursuant to this subsection (A), which order shall specify any appropriate price, performance or schedule relief, if any, associated with any such change (a “Work Change Directive”). No Work Change Directive shall be made that would be contrary to Applicable Law. Upon receipt of a Work Change Directive, the Design-Builder shall promptly proceed with the performance of any change in the Design-Build Work as instructed and shall promptly advise SAWS in writing of the Design-Builder’s agreement (or disagreement) with any price, performance or schedule
relief, if any, as may be proposed by SAWS in the Work Change Directive. If the Design-Builder receives a written communication signed on behalf of SAWS, which the Design-Builder believes is a Work Change Directive that is not so identified, it shall not proceed with the purported change in the Design-Build Work until it receives written confirmation from SAWS that such communication is in fact a Work Change Directive. A Work Change Directive that is signed by the Design-Builder and approved by SAWS in accordance with its procurement rules and regulations, reflecting the scope of work and any price, schedule and performance relief, if any, shall be deemed a Change Order.

(B) Disagreement with Terms of a Work Change Directive. If the Design-Builder disagrees in writing with the suggested price, schedule or performance relief, if any, set out in the Work Change Directive, the Design-Builder may elect to initiate dispute resolution procedures in accordance with Section 11.1. In such case, the Design-Builder shall proceed with the performance of the Design-Build Work in accordance with the Work Change Directive and shall keep and present, in such form as SAWS may request, an itemized accounting to go with the appropriate supporting data with respect to the Design-Builder's position, including all information necessary to substantiate any cost claimed by the Design-Builder. The Design-Builder shall provide notice of any disagreement pursuant to this subsection (B) within 15 days after receipt of the Work Change Directive. The failure of the Design-Builder to provide notice of any such disagreement in accordance with this subsection (B) shall constitute a waiver of any further right to dispute the terms and conditions of a Work Change Directive.

SECTION 6.11. INTERFACE AND COORDINATION.

(A) Maintenance of Operations During Construction. The Design-Builder shall undertake and execute the Design-Build Work in a manner which does not interfere with or impair the ongoing operations of the SAWS Distribution System. As part of the GMP Submittal, the Design-Builder shall provide, for SAWS' review and approval, a plan for the maintenance of operations during construction, Commissioning and Acceptance Testing (the "Maintenance of Operations During Construction Plan") prepared in accordance with this subsection (A) and Appendices 2 and 5. The Design-Builder shall provide a final Maintenance of Operations During Construction Plan, approved by SAWS, as a precondition to the establishment of the Construction Commencement Date under Section 6.2. The Design-Builder shall coordinate all Design-Build Work with SAWS in accordance with the Contract Standards, including the approved Maintenance of Operations During Construction Plan. The Design-Builder acknowledges that the operation of the SAWS Distribution System may require a stoppage of Design-Build Work on all or a portion of the Project Sites from time-to-time, subject to Section 6.12. The Design-Builder assumes the risk that the Design-Build Work can be accomplished in accordance with the Contract Standards in the manner required by this subsection (A).

(B) Related Projects Generally. The Design-Builder acknowledges that SAWS will be undertaking several other projects at the Project Sites and, without limiting any other obligation under this Design-Build Contract, agrees to coordinate the Design-Build Work with the work associated with such other projects in accordance with the Contract Standards, as well as Appendix 13 of the WTPA. Any other project SAWS may undertake at or in the vicinity of the Project Sites, together with the Vista Ridge Regional Supply Project being undertaken by Vista Ridge LLC, are referred to herein as the "Related Projects". Nothing in this Design-Build Contract shall be interpreted as granting the Design-Builder exclusive occupancy of the Project Sites. The Design-Builder must ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by SAWS in relation to its overall capital improvement program. The Design-Builder shall cause the Design-Build Work to be performed without damaging the work or property of any Separate Contractor and so as not to cause any unnecessary hindrance or delay to any Separate Contractors working at the
Project Sites. The Design-Builder agrees to reasonably cooperate and coordinate its activities with those of SAWS and all Separate Contractors so that the Project and any Related Project can be completed in an orderly and coordinated manner without unreasonable disruption. The Design-Builder agrees that it shall not be entitled to any price, performance or other Uncontrollable Circumstance relief hereunder due to any delay or hindrance to the extent caused by a failure of any Design-Builder Person to cooperate or coordinate its work with the work of any Separate Contractor.

(C) Interrelated Work. If part of the Design-Build Work depends on proper execution of construction or operations by SAWS or a Separate Contractor, the Design-Builder shall, prior to proceeding with that portion of the Design-Build Work, inspect the other work and promptly report to the SAWS Contract Representative any apparent discrepancies or defects in the other construction that would render it unsuitable for the proper execution of the Design-Build Work. The Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 in the event that defects in the work of SAWS or any Separate Contractor render the work unsuitable for the proper execution or result of any part of the Design-Build Work. However, failure of the Design-Builder to report apparent discrepancies or defects in the other construction shall constitute acknowledgment that SAWS’ or the Separate Contractor’s completed or partially completed construction is fit and proper to receive the Design-Build Work, except as to discrepancies or defects not then reasonably discoverable pursuant to Good Engineering and Construction Practice.

(D) Cutting and Patching. The Design-Builder shall be responsible for necessary cutting, fitting, and patching to accomplish the Design-Build Work and shall suitably support, anchor, attach, match, and trim or seal materials to the work of any Separate Contractor. The Design-Builder shall in accordance with the Contract Standards:

(1) Coordinate the Design-Build Work with the work of any Separate Contractor to minimize conflicts;

(2) Not endanger the work of any Separate Contractor by cutting, digging, or other action;

(3) Obtain the written consent of the SAWS Contract Representative and the affected Separate Contractor prior to cutting or altering the work of any Separate Contractor;

(4) Accurately locate and perform cutting, avoiding any unnecessary cutting;

(5) Perform or provide for the performance of patching by skilled mechanics experienced in the particular type of work involved and in a manner acceptable to the Separate Contractor whose work is affected;

(6) Leave all holes, chases, and other openings in its Construction required by any Separate Contractor for the installation of their work, provided such openings are accurately located by the party requiring them before the execution of the construction; and

(7) Afford Separate Contractors a reasonable opportunity to locate such openings.

(E) Disputes Associated with Separate Work. If the performance of any work by SAWS or a Separate Contractor is likely to be interfered with by the simultaneous performance of some other contract or contracts, SAWS shall decide which contractor shall
SECTION 6.12. SUSPENSION OF WORK.

SAWS may, through a written notice executed by the SAWS Contract Representative, order the Design-Builder to suspend, delay or interrupt all or any part of the Design-Build Work for such period of time as the SAWS Contract Representative may determine to be appropriate for the coordination of the Related Projects or otherwise for the convenience of SAWS. The Design-Builder shall have no entitlement to relief hereunder or any adjustment to the Scheduled Mechanical Completion Date, the Scheduled Acceptance Date or the Contract Compensation under circumstances of SAWS ordering the Design-Builder to suspend, delay or interrupt all or any part of the Design-Build Work due to Design-Builder Fault, including any failure of compliance by any Design-Builder Person with the Design-Builder's obligations under this Design-Build Contract in respect of the maintenance of operations during Construction, coordination in respect of Related Projects or any health and safety requirement. However, if SAWS exercises its right to suspend, delay or interrupt all or any part of the Design-Build Work pursuant to this Section under circumstances other than Design-Builder Fault, an Uncontrollable Circumstance shall be deemed to have occurred, subject to the terms and conditions of Article 14.

SECTION 6.13. CONSTRUCTION PRACTICE.

(A) Exclusive Responsibility of Design-Builder. The Design-Builder shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by the Contract Documents. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Design-Builder to provide the following construction requirements: supervision, tools, implements, machinery, labor, materials and accessories necessary and proper for the purpose; installation, periodic inspection, and removal of temporary site lighting, including specific task lighting and emergency lighting; temporary offices and construction trailers; installation, daily inspection, and removal of miscellaneous temporary barricades, fencing, partitions, and other means of temporary separation/isolation on the site during construction, including any temporary covered wooden walkways for sidewalks; required design certifications; required approvals; weather protection; dust control; noise abatement, barriers, etc.; miscellaneous de-watering requirements; clean-up and housekeeping of the Project Sites; construction trade management; temporary parking; vehicle traffic; health, safety and first aid facilities and equipment; correction of defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Project Sites; temporary Utilities; Utility relocations necessary or convenient to its performance of the Design-Build Work; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination. The use of explosives in connection with the performance of the Design-Build Work is permitted solely to the extent permissible under Applicable Law and with the prior written approval of SAWS, acting reasonably.

(B) Project Sites Debris, Trash and Waste. The Design-Builder shall keep the Project Sites reasonably free from debris, trash and construction wastes to permit the
Design-Build to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas and without causing complaints from Separate Contractors, adjacent property owners, local public officials or members of the public. The Design-Build shall be responsible for the maintenance of grass, shrubbery and trees located on the Project Sites, including any right of way. Upon Mechanical Completion and prior to Final Completion, the Design-Build shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Design-Build Work or applicable portions thereof (and not otherwise incorporated into the Project in accordance with the Contract Documents) to permit SAWS to occupy the Project for its intended use.

SECTION 6.14. RESPONSIBILITY FOR SAFETY AND SECURITY.

(A) Safety Manager. The Design-Build assumes responsibility for implementing and monitoring all health and safety precautions and programs related to the performance of the Design-Build Work. The Design-Build shall, prior to commencing construction, designate an individual with the qualifications and experience necessary under Good Engineering and Construction Practice to supervise the implementation and monitoring of all health and safety precautions and programs related to the Design-Build Work (the “Safety Manager”). The Safety Manager shall be an individual stationed at the Project Sites who shall have no other responsibilities with respect to the Project other than supervising the implementation and monitoring of all health and safety precautions and programs related to the Design-Build Work.

(B) Precautions and Protection; Project Sites Security. The Design-Build shall take all reasonable precautions for the health and safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

(1) All employees on the Project Sites and all other persons who may be affected thereby;

(2) All the Design-Build Work, whether in storage on or off the Project Sites, under the care, custody or control of Design-Build or any of its Subcontractors. Machinery and equipment shall have proper guards in place and all hazards shall be eliminated in accordance with the latest health and safety provisions of the OSHA Construction Industry Regulations 29 CFR, Parts 1910 and 1926; and

(3) Other property at the Project Sites or adjacent thereto, including plant facilities, trees, shrubs, lawns, walks, pavements, roadways, structures and Utilities not designated for removal, relocation or replacement in the course of construction.

The Design-Build shall develop and administer a security program for the Project Sites in coordination with the SAWS Security Department and as outlined in Appendix 12. The Design-Build shall cooperate with the SAWS Security Department in connection with SAWS’ program for the badging of all personnel and vehicles that require authorization for entry to the Project Sites.

(C) Health and Safety Inspections and Meetings. The Design-Build is solely responsible to inspect, survey, and assess the Project Sites and identify the existence of all permit-required confined spaces and non-permit confined spaces and comply with applicable OSHA regulations and standards. The Design-Build’s Project Sites assessment shall begin upon the initiation of Design-Build Work and continue throughout the duration of the Design-Build Period. The Design-Build shall comply with all health and safety requirements imposed by Applicable Law, including 29 CFR 1910.146, in the performance of the Design-Build Work. The Safety Manager shall make routine daily inspections of the Project.
Sites and shall hold weekly health and safety meetings with the Design-Builder’s personnel, Subcontractors and others as applicable. The Design-Builder shall provide minutes of each health and safety meeting to SAWS within five days of such meeting.

(D) Health and Safety Compliance Requirements. The Design-Builder shall, and shall cause all Subcontractors to, shall comply with:

(1) All Applicable Law relating to safety;

(2) The Health and Safety Plan; and

(3) Any SAWS-specific health and safety requirements provided to the Design-Builder.

The Design-Builder shall immediately report (no later than within 12 hours after its occurrence), in writing, any health and safety-related injury, loss, damage, accident or near miss arising from the Design-Build Work to SAWS and, to the extent mandated by Applicable Law, to all Governmental Bodies having jurisdiction over health and safety-related matters involving the Project. Where any dangerous condition or nuisance exists in and around the Project Sites, including equipment and supply storage areas or other areas in any way connected with the performance of the Contract Obligations, the Design-Builder shall provide and maintain reasonable warning of such danger or nuisance. The Design-Builder shall not create excavation, obstructions, or any dangerous condition or nuisance of any nature whatsoever in connection with the performance of this Design-Build Contract unless necessary to its performance, and in that event the Design-Builder shall provide and maintain at all times reasonable means of warning of any danger or nuisance created. The duties of the Design-Builder in this Section shall be nondelegable, and the Design-Builder’s compliance with any specific recommendations or requirements of SAWS as to the means of warning shall not excuse the Design-Builder from the faithful performance of these duties should such recommendations or requirements not be adequate or reasonable under the circumstances. SAWS, through the SAWS Contract Representative, shall have the right to suspend any or all Design-Build Work if the Design-Builder fails to comply with its obligations hereunder without any requirements of providing the Design-Builder with Uncontrollable Circumstance relief hereunder.

(E) Emergencies. The Design-Builder shall develop an emergency response plan in accordance with the requirements set forth in Appendix 5. The emergency response plan shall be subject to the approval of SAWS and shall establish the protocols for the Design-Builder in dealing with emergencies impacting the performance of the Design-Build Work. In case of an emergency which threatens immediate loss or damage to property or health and safety of life, the Design-Builder shall act immediately to prevent threatened loss, damage, injury or death. The Design-Builder shall notify SAWS of the situation and all actions taken immediately thereafter. If, in the opinion of the Design-Builder, immediate action is not required, the Design-Builder shall notify SAWS of the emergency situation and proceed in accordance with SAWS’ instructions. However, if any loss, damage, injury or death occurs that could have been prevented by the Design-Builder’s prompt and immediate action, Design-Builder shall be fully liable for all costs, damages, claims, actions, suits, attorneys’ fees and all other expenses arising therefrom or relating thereto. Prior to commencing its Design-Build Work and at all times during the performance of the Design-Build Work, the Design-Builder shall provide SAWS with two 24 hour emergency phone numbers where its representatives can be contacted.
SECTION 6.15. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) Observations and Design-Build Work Review Protocol. During the progress of the Design-Build Work through Final Completion, the Design-Builder shall at all times during normal working hours afford SAWS and its designated representatives, including the Owner Representative, every reasonable opportunity for observing all Design-Build Work at the Project Sites, and shall comply with the Design-Build Work review procedures set forth in Appendix 7. The Design-Builder shall provide sufficient, safe and proper facilities at all reasonable times for the observation and inspection of the Design-Build Work by SAWS and its designated representatives. During any such observation and inspection, all representatives of SAWS shall comply with all reasonable health and safety and other rules and regulations applicable to presence in or upon the Project Sites, and shall in no material way interfere with the Design-Builder’s performance of any Design-Build Work. The right of access provided for under this subsection (A) shall extend to all storage facilities associated with the Design-Build Work, whether located on or off the Project Sites.

(B) Factory Fabrication, Inspection and Testing. SAWS reserves the right to have its designated representatives, including the Owner Representative, witness any factory fabrication, inspection or testing. The Design-Builder shall provide SAWS with its anticipated schedule for such fabrication, inspection and testing at the initial Project meeting and shall provide 30 days’ advanced written notice of any actual factory fabrication, inspection or test. SAWS shall provide the Design-Builder with reasonable advance notice (at least 14 days) of its intention to witness any factory fabrication, inspection or test pursuant to this subsection (B), which notice shall indicate the identity and number of designated representatives of SAWS who will witness the fabrication, inspection or test.

(C) Independent Testing and Inspection. In accordance with Texas Government Code Section 2269.058, SAWS shall, independent of the Design-Builder, provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the Project by SAWS. SAWS intends to provide for such services through the Owner Representative but reserves the right to contract for such services through an independent testing firm. The Design-Builder shall coordinate and cooperate with any person designated by SAWS for such purpose and agrees that any such person shall have the same rights of access to the Design-Build Work as are provided to SAWS and its designated representatives pursuant to subsection (A) of this Section. The services of any person designated pursuant to this subsection (C) shall in no way serve to reduce or lessen the Design-Builder’s responsibility for the Design-Build Work in accordance with the Contract Documents, including its duty to establish and implement the quality management program. The Design-Builder shall remain fully and solely responsible for the construction of the Project in accordance with the Contract Documents, notwithstanding any independent inspection and testing services performed by any person pursuant to this subsection (C).

(D) Design-Builder Tests. The Design-Builder shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Design-Builder shall give SAWS and the Owner Representative reasonable advance notice (consistent with the approved Design-Build Quality Management Plan prepared in accordance with Appendix 6) of tests or inspections required by the Contract Standards prior to the conduct thereof. In no event shall the inability, failure, or refusal of SAWS or any of its representatives to attend or be present at or during any such test or inspection delay the conduct of such test or inspection, delay the performance of the Design-Build Work, or otherwise serve as the basis for relief from the Design-Builder’s obligations hereunder. The Engineer-of-Record shall conduct or witness any such test or inspection to the extent required by the Contract Standards. All analyses of test samples shall be conducted by persons
appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of SAWS, which approval shall not be unreasonably withheld or delayed. Commissioning and the Acceptance Test shall be conducted in accordance with Article 8 and Appendix 9.

(E) **Certificates and Reports.** The Design-Builder shall secure and deliver to SAWS promptly all required certificates of inspection, test reports, work logs, or approvals with respect to the Design-Build Work as and when required by the Contract Standards.

(F) **SAWS Tests, Observations and Inspections.** SAWS, its employees, agents, representatives and contractors (which may be selected in SAWS’ discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical or other tests as SAWS deems necessary or desirable to ascertain whether the Design-Build Work complies with the Contract Standards. The Design-Build Costs paid in connection with any of such test, observation or inspection shall result in a Change Order unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with the Contract Documents or Applicable Law, in which event the costs and expenses of such observation, inspection or test shall be Unallowable Costs borne solely by the Design-Builder. The Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14 in the event that any requested test, observation or inspection causes a delay in the critical path of the Phase II Services Schedule, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(G) **Notice of Covering Design-Build Work.** The Design-Builder shall give SAWS notice in the Monthly Progress Report of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period (at least seven days) before such covering and completion. SAWS shall give the Design-Builder reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion. If SAWS provides such notice, the Design-Builder shall afford SAWS a reasonable opportunity to conduct such tests or inspections, which SAWS shall promptly complete. At SAWS’ written request, the Design-Builder shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that SAWS’ right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by SAWS as to whether the disputed Design-Build Work complies with the requirements of the Contract Documents. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall:

(1) Be Unallowable Costs borne solely by the Design-Builder, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or for which SAWS was not provided reasonable advance notice hereunder, or prior to the date on which SAWS was to conduct any observation or test as to which SAWS has provided notice of its intention to conduct in accordance with this subsection (G); and

(2) In all other cases, as follows:

(a) Be Unallowable Costs borne solely by the Design-Builder, if such observation or test reveals that the Design-Build Work does not comply with the Contract Documents; or
(b) Be Design-Build Costs, if such observation or test reveals that the Design-Build Work complies with the Contract Documents, and shall result in a Change Order.

In the event such Design-Build Work does comply with the Contract Documents and the associated costs are determined to be Design-Build Costs pursuant to this subsection, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be costs for the account of SAWS in accordance with Article 14.

SECTION 6.16. CORRECTION OF WORK.

(A) Correction of Non-Conforming Design-Build Work. Throughout the Design-Build Period, the Design-Builder shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work that does not conform with the Contract Standards. The Design-Builder shall be solely responsible for the removal of defective work. In the event of a failure of the Design-Builder to correct any such nonconforming Design-Build Work in a timely manner, SAWS shall have the right, but not the obligation, to correct or provide for the correction of such nonconforming Design-Build Work and the costs and expenses reasonably incurred by SAWS in connection therewith shall be reimbursed by the Design-Builder to SAWS. SAWS shall provide the Design-Builder with seven days’ advance written notice prior to exercising its right to correct or provide for the correction of any nonconforming Design-Build Work pursuant to this subsection (A).

(B) Election to Accept Non-Conforming Design-Build Work. SAWS may elect by Change Order, at the Design-Builder’s request, to accept non-conforming Design-Build Work and charge the Design-Builder (through a Base Guaranteed Maximum Price Adjustment) for the amount agreed upon by the parties as reflecting the reduction in value of the Design-Build Work. SAWS shall have no obligation to accept non-conforming Design-Build Work pursuant to this subsection (B).

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Design-Builder’s specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Design-Builder under this Design-Build Contract. This Section is intended to supplement (and not to limit) the Design-Builder’s obligations under the Acceptance Standards and any other provisions of this Design-Build Contract or Applicable Law.

SECTION 6.17. PROPERTY DAMAGE DURING THE DESIGN-BUILD PERIOD.

(A) Damage Prevention. In performing the Design-Build Work, the Design-Builder shall use care and diligence, and shall take all appropriate precautions in accordance with the Contract Standards to protect the Design-Build Work from loss, damage or destruction.

(B) Restoration. During the Design-Build Period, in case of damage to the Design-Build Work, and regardless of the extent thereof or the estimated cost of restoration, and whether or not any insurance proceeds are sufficient or available for the purpose, the Design-Builder shall promptly undertake and complete restoration of the damage to the Design-Build Work to the character and condition existing immediately prior to the damage and in accordance with the procedures set forth herein, as applicable, regarding Uncontrollable Circumstances, Change Orders and Work Change Directives. SAWS shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Design-Builder in accordance with this Article. If the Design-Builder
fails to undertake restoration of the damage, or having so commenced fails to complete restoration in accordance with the Contract Documents, SAWS may (but shall not be obligated to) undertake or complete restoration at the Design-Builder's expense to the extent applicable in accordance with this Section. SAWS shall provide the Design-Builder with seven days' advance written notice prior to exercising its right to undertake or complete restoration pursuant to this subsection (B). Notwithstanding any of the foregoing, to the extent that Uncontrollable Circumstances cause damage to the Design-Build Work and insurance proceeds or other third-party payments are not sufficiently available to pay for restoration work pursuant to this subsection (B), the Design-Builder's obligation to perform such restoration work shall be subject to the receipt of reasonable assurances from SAWS of its ability to pay the costs for which it is financially responsible under this Section.

(C) Notice and Reports. In addition to the notification requirements set forth in Section 6.14(E), the Design-Builder shall notify SAWS and the insurers under any applicable policy of Required Insurance of any incident causing property damage to the Design-Build Work in excess of $5,000 or of any OSHA recordable injury accident on the Project Sites related to the Design-Build Work, as promptly as reasonably possible after the Design-Builder learns of any such damage or accident. As soon as practicable after learning of any such incident or accident (but in no event later than 72 hours), the Design-Builder shall submit a written report to SAWS. Such report shall be updated on a weekly basis and upon culmination of all tests, analysis and reviews, a final report incorporating all of the tests, analysis and reviews and the findings thereof shall be submitted to SAWS. The Design-Builder shall also submit to SAWS copies of all accident and other reports filed with (or given to the Design-Builder by) any insurance company, adjuster, or Governmental Body or otherwise prepared or filed in connection with the damage or accident.

(D) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each party shall assist each other in exercising such rights as it may have to effectuate such recovery. Each party shall provide the other with copies of all relevant documentation, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims; provided, however, that neither party shall be obligated pursuant to this subsection (D) to provide the other party with documents subject to the attorney-client privilege under the laws of the State.

(E) Payment for Restoration Work and Uninsured Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Design-Build Work, including proceeds from all policies of Required Insurance, shall be for the benefit of SAWS. SAWS shall pay the Design-Builder for restoration work required pursuant to this Section with such proceeds and recoveries and, as necessary, other funds of SAWS obtained pursuant to the Change Order provisions of this Article and the payment provisions of Article 9, as applicable. All costs not covered by insurance proceeds or third-party payments shall constitute Design-Build Costs; provided, however, that such costs shall be Unallowable Costs borne solely by the Design-Builder to the extent the loss, damage or destruction was caused by Design-Builder Fault or to the extent insurance proceeds are not available due to a failure of the Design-Builder to obtain or maintain any applicable policy of Required Insurance.

(F) Repair of SAWS and Private Property. The Design-Builder shall promptly at its sole cost and expense repair or replace all SAWS Property and all private property damaged by the Design-Builder or any officer, director, employee, representative, agent or Subcontractor of the Design-Builder in connection with the performance of, or the failure to perform, the Design-Build Work. The repair and replacement work shall restore the damaged
property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage. Nothing in this subsection (F) is intended to waive any rights of recovery under applicable policies of insurance.

SECTION 6.18. OPERATIONS AND MAINTENANCE MANUAL.

During the performance of the Phase II Services, the Design-Builder shall develop a comprehensive Operations and Maintenance Manual in accordance with the Contract Standards, including the specific requirements set forth in Appendix 5. The Operations and Maintenance Manual shall contain a detailed description of the means and methods of properly operating and maintaining the Project; shall integrate all equipment and systems service manuals; shall document standard operating procedures and predictive, preventive and corrective maintenance procedures, practices and schedules; and shall otherwise be sufficiently detailed to permit the Project to be operated and maintained by SAWS operations and maintenance staff. The Design-Builder shall submit preliminary, pre-final and final versions of the Operations and Maintenance Manual for SAWS’ review, comment and approval in accordance with Appendix 5. A pre-final Operations and Maintenance Manual meeting the specific requirements set forth in Appendix 5 shall be submitted to and approved by SAWS as a condition precedent to the achievement of Mechanical Completion in accordance with Section 8.2. A final Operations and Maintenance Manual meeting the specific requirements set forth in Appendix 5 shall be submitted to and approved by SAWS as a condition precedent to the achievement of Final Completion in accordance with Section 8.9.

SECTION 6.19. PUNCH LIST ITEMS.

(A) Punch List Requirements. The Design-Builder shall submit a proposed Punch List to SAWS and the Owner Representative when the Design-Builder believes that the Design-Build Work has achieved the requirements for Mechanical Completion in compliance with the Contract Documents. The “Punch List” shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work (excluding Commissioning and Acceptance Test activities), which in the Design-Builder’s opinion:

(1) The Design-Builder can complete before the date specified in subsection (B) of this Section, and with minimal interference to the occupancy, use and lawful operation of the Project; and

(2) Would represent, to perform or complete, a total cost of not more than 0.3% of the portion of the Guaranteed Maximum Price applicable to the construction of the Project (unless SAWS determines, in its discretion, that a higher percentage is acceptable, as evidenced by the written approval of the SAWS Contract Representative).

SAWS shall have the right to approve the Punch List in its discretion.

(B) Completion of Punch List Items. The Design-Builder shall complete all items on the Punch List within 90 days following the Mechanical Completion Date. All work associated with the Punch List items shall constitute Design-Build Work hereunder and shall be performed by the Design-Builder in accordance with the Contract Standards.
ARTICLE 7
MANAGEMENT, LABOR AND SUBCONTRACTORS

SECTION 7.1. MANAGEMENT.

(A) Design-Build Manager. The Design-Builder shall designate an employee of the Design-Builder, any Affiliate of the Design-Builder, or the Design-Builder's construction manager as the “Design-Build Manager”. When the Design-Builder or any Subcontractor is performing Design-Build Work, the Design-Build Manager (or designee reasonably acceptable to SAWS) shall be present at the Project Sites. The Design-Build Manager shall, among other things:

1. Be familiar with the Contract Obligations and all requirements of the Contract Documents;
2. Coordinate the Contract Obligations and give the Contract Obligations regular and careful attention and supervision;
3. Maintain a daily status log of the Design-Build Work when being performed; and
4. Attend all Project meetings (including meetings concerning scope, review, pre-bid, pre-construction, and construction matters) with SAWS and its representatives.

The Design-Builder represents and warrants that the Design-Build Manager shall be vested with the authority to act on behalf of the Design-Builder in connection with the performance of the Contract Obligations and to bind the Design-Builder with respect to any certification required under this Design-Build Contract to be made by the Design-Build Manager. The Design-Build Manager may be a different individual for the Phase I Services Period and the Phase II Services Period. The Design-Builder may change the person assigned as the Design-Build Manager solely in accordance with the provisions of subsection (B) of this Section.

(B) SAWS Rights With Respect to Key Personnel. The Design-Builder acknowledges that the identity of the Design-Build Manager and the other key management and supervisory personnel proposed by the Design-Builder and its Subcontractors in its Proposal was a material factor in the selection of the Design-Builder to perform this Design-Build Contract. Such personnel, their affiliations and their anticipated roles in the performance of the Contract Obligations are set forth in Appendix 11. The Design-Builder shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. “Good cause shown” shall not include performing services on other projects for the Design-Builder or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement, resignation or any job protected leave available under Applicable Law. In the event of any such permissible unavailability, the Design-Builder shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-site personnel change shall be proposed to SAWS with reasonable advance notice for its review and approval, which shall not be unreasonably withheld or delayed. The Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Contract Obligations if SAWS, acting reasonably, determines that an unworkable relationship has developed between SAWS and the individual.
SECTION 7.2. LABOR.

(A) Personnel Performance. The Design-Builder shall enforce discipline and good order at all times among the Design-Builder’s employees and all Subcontractors. All persons engaged by the Design-Builder for performance of the Contract Obligations shall have requisite skills for the tasks assigned. The Design-Builder shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Contract Obligations. The Design-Builder shall ensure that all persons performing Contract Obligations, including all Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body or otherwise under Applicable Law, including Design-Builder and Subcontractor employees.

(B) Training of Design-Builder and Subcontractor Employees. The Design-Builder shall provide training for all individuals employed by the Design-Builder or Subcontractors as a prerequisite to their entry to the Project Sites. The Design-Builder’s training program for such employees shall include orientation training, safety and awareness training, and any other training deemed necessary. In addition, the training program shall, to the extent applicable for each employee, provide training for the start-up, Commissioning and Acceptance Test activities, and transition management and administration of the Project.

(C) Labor Relations. The Design-Builder shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Design-Builder shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Design-Builder or its Subcontractors, whether pertaining to organization of the Design-Build Work, arrangement or subdivision of the Baseline Design Documents, employee hiring, or any other matters. SAWS shall have no responsibility whatsoever for any such disputes or issues and the Design-Builder shall indemnify, defend and hold harmless SAWS and SAWS Indemnitees in accordance with and to the extent provided in Section 15.1 from and against all Loss-and-Expense resulting from any such labor dispute.

(D) Notice of Labor Disputes. If the Design-Builder has knowledge of an actual or potential labor dispute that may affect any of the Contract Obligations, the Design-Builder shall promptly:

1. Give notice thereof to SAWS, including all relevant information related to the dispute of which the Design-Builder has knowledge; and

2. Take all reasonable steps to ensure that such labor dispute does not affect the performance of any of the Contract Obligations including by applying for relief to appropriate forums or courts.

(E) Prevailing Wage Rate. Chapter 2258 of the Texas Government Code applies to this Design-Build Contract. The Design-Builder shall, and shall cause all Subcontractors to, pay not less than the prevailing wage rate for all types and classifications of any of the Construction work, such rates being those determined under Section 2258.022 of the Texas Government Code and Appendix 13. The prevailing wage rates must be posted at the Project Sites. Failure to pay the prevailing wage rate is a material breach of this Design-Build Contract. If the Design-Builder or any Subcontractor fails to pay the prevailing wage rate, the Design-Builder shall pay to SAWS sixty dollars for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this Design-Build Contract in accordance with Section 2258.023 of the Texas Government Code. The Design-Builder shall, and shall cause each Subcontractor to, keep a record showing:
(1) The name and occupation of each worker employed by the Design-Builder or Subcontractor in the Construction work; and

(2) The actual per diem wages paid to each worker. The record shall be available at all reasonable hours for inspection by SAWS.

Additionally, the Design-Builder shall track and report to SAWS as to compliance with the requirements of this subsection (E) utilizing the LCP Tracker system in accordance with subsection (F) of this Section. SAWS will address complaints concerning alleged violations and withhold amounts due under this Design-Build Contract in accordance with Chapter 2258 of the Texas Government Code. The performance of the Contract Obligations is further subject to the SAWS wage and labor standard provisions set forth in Appendix 13.

(F) Labor Compliance Software. The Design-Builder shall utilize the LCP Tracker labor compliance software to track all certified payrolls. The Design-Builder and all Subcontractors must submit certified payrolls and labor compliance documentation electronically utilizing the LCP Tracker starting with the first Certified Payroll Report (CPR) and every CPR thereafter. SAWS will provide the Design-Builder and each Subcontractor with a User ID and password to access the SAWS LCP Tracker reporting system. Training on the use of the system will be coordinated by SAWS through the use of LCP Tracker telephone support and online webinars. Electronic submittal of certified payrolls requires the data entry of weekly payroll information including employee identification, work classification, total hours worked, wage rate, overtime, if any, and fringe benefit rates paid. Specific information on the LCP Tracker System is available through the following website: www.lcptracker.com.

(G) Non-Discrimination. The Design-Builder and its 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 with this subsection (G) occurs, the Design-Builder, upon written notification by SAWS, shall commence compliance procedures within 30 days. The Design-Builder shall indemnify, defend and hold harmless SAWS and the SAWS Indemnities from and against all Loss and Expense which any of them may incur arising from any claim of harassment, including sexual harassment, arising from the conduct of the Design-Builder or any Design-Builder Person. In the event of a harassment complaint against the Design-Builder or any Design-Builder Person, the Design-Builder shall take immediate and appropriate action in response to such complaint, including termination or appropriate discipline of any officer, employee, agent or Subcontractor. This is a continuing obligation that survives the expiration or earlier termination of this Design-Build Contract.

(H) Drug-Free and Smoke-Free Workplace.

(1) During the performance of this Design-Build Contract, the Design-Builder agrees to (a) provide a drug-free workplace for the Design-Builder’s employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Design-Builder’s workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder that the
Design-Builder maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every Subcontract of over $10,000, so that the provisions will be binding upon each Subcontractor. For the purposes of this Section, “drug-free workplace” means a site for the performance of Contract Obligations performed in conjunction with this Design-Build Contract. The Design-Builder’s employees, in accordance with this Section, are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Design-Build Contract. The Design-Builder shall adhere to and certify that its employees comply with this substance abuse program.

(2) Smoking is prohibited on SAWS Property, including the Project Sites. The Design-Builder may submit to SAWS a request for the designation of smoking areas on the Project Sites for SAWS’ approval, which may be withheld or conditioned in its discretion. Any such request shall specify the proposed locations of the designated smoking areas.

SECTION 7.3. SUBCONTRACTING GENERALLY.

(A) Right to Subcontract. The Design-Builder may carry out the Design-Build Work and other Contract Obligations by contracting such obligations to one or more Subcontractors in accordance with the requirements of this Article. The Design-Builder shall retain full responsibility to SAWS under this Design-Build Contract for all matters related to the Contract Obligations, notwithstanding the execution of, or the terms and conditions contained in, any Subcontract. Subcontracts entered into by the Design-Builder for the performance of the Contract Obligations shall neither supersede nor abrogate any of the terms or provisions of this Design-Build Contract.

(B) Approval Required. The Subcontractors identified in Appendix 11 are approved by SAWS for the performance of the specific Contract Obligations identified therein, subject to the rights of SAWS under this Section. The Design-Builder shall retain such Subcontractors to perform such services, unless otherwise agreed to in writing by SAWS. All other Subcontractors shall be subject to the approval of SAWS, which approval shall not be unreasonably withheld. The Design-Builder shall replace any Subcontractor at the request of SAWS, after notice and a reasonable opportunity for corrective action, in the event that SAWS determines, acting reasonably, that an unworkable relationship has developed between SAWS or the Design-Builder and the Subcontractor. SAWS’ approval of any Subcontractor performing Contract Obligations shall be subject to the terms and conditions of Section 7.4.

(C) Performance Failure. The Design-Builder shall retain full responsibility to SAWS under this Design-Build Contract for all matters related to the Contract Obligations. No failure of any Subcontractor used by the Design-Builder in connection with the provision of the Contract Obligations shall constitute an Uncontrollable Circumstance or otherwise relieve the Design-Builder from its obligations hereunder to perform the Contract Obligations, except as provided in items (k) and (m) of the list of “Inclusions” in the definition of Uncontrollable Circumstances. The Design-Builder shall be responsible for settling and resolving with all Subcontractors all claims including those:

(1) Arising out of delay, disruption, interference, hindrance, schedule extension caused by the Design-Builder;

(2) Arising from the actions or inactions of the Design-Builder or a Subcontractor; or
(3) Inflicted on the Design-Builder or a Subcontractor by the actions of another Subcontractor.

The Design-Builder shall provide to SAWS, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Subcontract that may have a material and adverse effect on performance by the Design-Builder of its obligations under the Contract Documents.

(D) Restricted Persons. In providing the Contract Obligations, the Design-Builder shall not contract with, or allow any of its Subcontractors to contract with, any person that, in the reasonable opinion of SAWS, is a Restricted Person.

(E) Subcontractor Licensing. All trade Subcontractors shall possess a valid contractor license as required by Applicable Law for the classification required for the work to be performed by the Subcontractor at the time of the Subcontract and throughout the duration of the Subcontract. Section 7.2(A) shall be applicable to all Subcontractors performing Design Professional Services.

(F) Availability of Material Subcontractors and Key Personnel. At the request of SAWS, the Design-Builder shall make the key representatives of Material Subcontractors available for meetings between SAWS and the Design-Builder concerning design review, construction progress, Commissioning, Mechanical Completion, Acceptance or any other matter relating to the performance of the Design-Build Work. The Design-Builder shall provide SAWS with periodic human resource allocation summary reports concerning the personnel of the Material Subcontractors, which reports shall include anticipated personnel allocations for all ongoing and planned projects and shall demonstrate human resource sufficiency.

(G) Assignability. All Subcontracts entered into by the Design-Builder with respect to the Project shall be assignable to SAWS, solely at SAWS’ election and without cost or penalty, upon any early termination of this Design-Build Contract, including convenience termination under Section 12.6.

(H) Small, Minority, Women and Veteran-Owned Business Opportunities. The Design-Builder acknowledges that it is the policy of SAWS to assist in increasing the competitiveness and qualifications of small, minority, woman and veteran-owned businesses (“SMWVB”) to afford greater opportunity for such groups to obtain and participate in SAWS contracts. In engaging Subcontractors for the performance of the Contract Obligations, the Design-Builder shall comply with its obligations under Appendix 14. The Design-Builder agrees to establish SMWVB outreach and goals for the Project similar to those employed by the SAWS SMWVB Program. Facilitation of reasonable outreach to SMWVB firms shall be accomplished by the following:

(1) Diversity Coordinator. Appointment by the Design-Builder of a diversity coordinator, who, along with his or her other duties, will work with the SAWS SMWVB Program Manager to monitor and facilitate the Design-Builder’s progress in meeting its SMWVB 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 Design-Builder 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 SMWVB firms, which shall be accomplished through a corporate sponsorship agreement between Design-Builder and the South Central Texas Regional Certification Agency. The Design-Builder’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 SMWVB Program Manager.

(3) **SMWVB Participation Goals.** The Design-Builder shall take reasonable steps to achieve 30% SMWVB participation on the design component of the Design-Build Work and 30% SMWVB participation on the construction phase of the Design-Build Work for the duration of the Term. The SMWVB goal is expressed as a percentage of the total dollar amount involved in each of the two such categories of work.

(4) **Compliance.** SMWVB firms must be certified through the South Central Texas Regional Certification Agency. Actual SMWVB participation is the percent of SMWVB participation that is actually awarded to Subcontractors that are awarded contracts in the two work categories. Within five days of a contract award and throughout the Design-Build Period, the Design-Builder shall report relevant SMWVB information to SAWS.

(5) **Reporting.** On a bi-annual basis, the Design-Builder will provide SAWS with a SMWVB plan showing how the SMWVB goals are intended to be achieved for the appropriate ongoing phase of the Project (i.e., design and construction). Each bi-annual report will document how the SMWVB plan goals were achieved through certification, contracts and actual payment evidence.

(I) **Reporting of Payments.** The Design-Builder shall report the actual payments to all Subcontractors, utilizing the S.P.U.R. System, in the time intervals and format prescribed by SAWS. This information will be utilized for SMWVB participation tracking purposes. Any unjustified failure to comply with the committed SMWVB levels may be considered a breach of this Design-Build Contract. The Design-Builder reporting requirement will begin with the first SAWS payment for services under this Design-Build Contract, and with every payment thereafter for the duration of the Term. Electronic submittal of monthly subcontractor payment information will be accessed through a link on SAWS’ “Business Center/ SMWVB at SAWS” web page. The Design-Builder and all Subcontractors will be provided unique log-in credentials and passwords to access the SAWS subcontractor payment reporting system. The link may also be accessed through the following internet address: [https://saws.smwbe.com/](https://saws.smwbe.com/). The Design-Builder and its Subcontractors may contact the SMWVB Program Manager at 210-233-3420 for assistance or clarification with issues specifically related to the SMWVB Program and S.P.U.R. System reporting.

(J) **Prompt Payment.** The Design-Builder shall pay its Subcontractors in accordance with Applicable Law. Any reduction of retention by SAWS to the Design-Builder under Article 9 shall result in a corresponding reduction to Subcontractors who have performed satisfactory work. The Design-Builder shall pay Subcontractors the reduced retention within 10 days after the payment of the reduction of the retention to the Design-Builder. No contract between the Design-Builder and its Subcontractors may materially alter the rights of any Subcontractor to receive prompt payment and retention reduction as provided herein. If the Design-Builder fails to make payments in accordance with this Section, SAWS may take any one or more of the following actions and the Design-Builder agrees that SAWS may take such actions:
(1) To declare the Design-Builder in breach of this Design-Build Contract;

(2) Withhold future payments, including retention, until proper payment has been made to Subcontractors in accordance with this Section; or

(3) Terminate this Design-Build Contract for an Event of Default by the Design-Builder under Section 12.2(B).

The Design-Builder shall include prompt payment provisions consistent with this Section and the requirements of Applicable Law in every Subcontract, including procurement of materials and leases of equipment entered into in connection with this Design-Build Contract. Nothing contained in this Section or otherwise in this Design-Build Contract shall provide a basis for any Subcontractor claim against SAWS.

(K) Subcontractor Claims. The Design-Builder shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective Subcontracts and the requirements of this Article. The Design-Builder acknowledges that its indemnity obligations under Article 15 shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Design-Build Work. No Subcontractor shall have any right or claim against SAWS for labor, services, materials or equipment furnished for the Contract Obligations. Subcontractors, including suppliers and any other persons claiming to have furnished any labor, services, materials or equipment in connection with the Design-Build Work, and who claim not to have received proper compensation from the Design-Builder or any Subcontractors for same, shall be instructed by SAWS and the Design-Builder that written and documented claims must be sent directly to the Design-Builder and its Surety in accordance with Chapter 2253 of the Texas Government Code. SAWS will furnish to claimants, in accordance with Chapter 2255 of the Texas Government Code, a copy of the Payment Bond and this Design-Build Contract as provided therein upon claimant's written request. SAWS shall further furnish a statement to claimants that claimants are cautioned that no legal or equitable lien exists on SAWS funds yet unpaid to the Design-Builder, and that reliance on notices sent only to SAWS may result in loss of claimant's rights to timely perfect recovery against the Design-Builder or its Surety. SAWS 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 SAWS to the contrary.

SECTION 7.4. SELF-PERFORMANCE AND SUBCONTRACTOR SELECTION.

(A) Self-Performed Construction Work Generally. Construction work on the Project shall not be performed by the Design-Builder, or its Affiliates, except with the approval of SAWS given in its discretion pursuant to subsection (G) of this Section. The parties agree that, during the performance of the Phase I Services, specific aspects of the Construction may be proposed for self-performance by the Design-Builder, any Affiliate of the Design-Builder or by an Approved Subcontractor. SAWS agrees to allow for such self-performance if the Design-Builder demonstrates to SAWS' satisfaction that providing for such self-performance is in the best interest of the Project and that the pricing therefor will be fair, reasonable and consistent with industry standards for similar services. SAWS, in its discretion, may require that any such demonstration be supported by an independent cost estimate.

(B) Subcontractor Selection Generally. Subcontractors shall be selected on a competitive basis, unless SAWS approves otherwise in accordance with subsection (G) of this Section.
(C) **Subcontracting Plan.** A proposed final Subcontracting Plan shall be prepared during performance of the Phase I Services and proposed by the Design-Builder as part of the GMP Submittal, and negotiated and agreed upon by the parties as part of the GMP Amendment.

(D) **Division of Work.** The Design-Builder shall coordinate and develop with the SAWS Contract Representative bid packages and work scope descriptions for each separate bid category that represents the entirety of the scope of the Design-Build Work for each phase and stage of the Project. The Design-Builder shall be responsible for determining the Baseline Design Documents that are applicable to each Subcontractor performing Design-Build Work, including all trade Subcontractors and Suppliers. The Design-Builder shall be responsible for the assembly, reproduction and distribution of all documents defining the scope of work for each Subcontractor.

(E) **Pre-Bid Conferences.** The Design-Builder shall schedule and conduct pre-bid or pre-proposal conferences with trade Subcontractors and Suppliers for the purpose of generating interest in the Project among potential Subcontractors. The Design-Builder shall coordinate such pre-bid conferences with SAWS Contract Representative and shall record and preserve conference minutes.

(F) **Competitive Procedures for Construction Work.** Except as may otherwise be approved in writing by the SAWS Contract Representative in accordance with subsection (G) of this Section, the Design-Builder shall enter into fixed-price Subcontracts for the performance of all Construction work and, in connection therewith, shall utilize a competitive bidding or competitive sealed proposal process in substantial compliance with the requirements of Subchapter C or Subchapter D, as applicable, of Chapter 2269 of the Texas Government Code. In connection with any such procurement, the Design-Builder shall, in accordance with the Contract Standards:

   1. Develop procurement procedures in consultation with the SAWS Contract Representative and prepare all necessary procurement documents;
   2. Publicly advertise and receive bids or proposals;
   3. Open and review all bids or proposals in a manner that does not disclose the contents of the bids or proposals to persons not employed by the Design-Builder, SAWS or the Owner Representative;
   4. Evaluate the bids or proposals in accordance with the selection criteria established in the procurement documents; and
   5. Recommend a bid or proposal for approval by the SAWS Contract Representative in accordance with such evaluation.

Any Subcontract awarded for the performance of Construction work shall be subject to SAWS’ approval and shall have terms and conditions and a risk allocation substantially identical to that established by this Design-Build Contract. The SAWS Contract Representative’s approval of a bid or proposal recommended by the Design-Builder in accordance with this Section shall not be unreasonably withheld. Without limiting any of the foregoing, the Design-Builder acknowledges and agrees that SAWS and the Owner Representative shall have the right to: (i) review and comment on all procurement documents; (ii) attend any bid or proposal openings; (iii) attend any meetings with prospective Subcontractors or Suppliers, including scope review meetings; (iv) review all bids, proposals, and other information developed or otherwise resulting
from any competitive procurement, including the Design-Builder’s tabulation, scoring or evaluation materials; and (v) otherwise participate in the negotiation and contract award process. Upon contract award, the Design-Builder shall provide the SAWS Contract Representative with a description of the competitive process undertaken in connection with such contract award, together with copies of all material documents used in connection therewith and agreements resulting therefrom.

(G) Alternative Procedures for Construction Work. The Design-Builder may propose to the SAWS Contract Representative alternative procedures for the procurement of Construction work, including performance of Construction work by labor forces of the Design-Builder, any Affiliate of the Design-Builder or by an Approved Subcontractor as indicated in subsection (A) of this Section. The SAWS Contract Representative’s approval of any such alternative procedure shall be in the SAWS Contract Representative’s discretion. The Design-Builder recognizes that, if the Designer-Builder wishes to perform Construction work with its own labor forces or the labor forces of an Affiliate or an Approved Subcontractor, the SAWS Contract Representative may, but is not obligated to, require that the Design-Builder, Affiliate or Approved Subcontractor submit a bid or proposal for the work on a competitive basis, as contemplated by subsection (F) of this Section. If the Design-Builder or any Affiliate of the Design-Builder intends to submit a competitive bid or proposal for Construction work, the Design-Builder shall notify the SAWS Contract Representative in writing prior to the issuance of procurement documents for the work, and the SAWS Contract Representative shall have the right to require the submittal of all bids or proposals directly to SAWS (and not to the Design-Builder) for review, evaluation and selection. Any decision by the SAWS Contract Representative to approve the performance of Construction work without obtaining competitive bids or proposals shall be subject to an “open book” process to provide the SAWS Contract Representative with sufficient information to determine whether the proposed pricing of the work is fair, reasonable and consistent with industry standards for similar services.

(H) Application of Design-Builder Fee in Connection with Agreed Upon Lump Sum Amounts. Any agreed-upon lump sum amount for any portion of Construction work to be performed by the Design-Builder or any Affiliate of the Design-Builder pursuant to this Section, whether or not subject to competitive bidding or proposing, shall be inclusive of all costs, expenses and disbursements paid or incurred by the Design-Builder, as well as all overhead, administration, risk and profit (at an amount not to exceed the Design-Builder Fee), and the Design-Builder shall not be entitled to any separately applied Design-Builder Fee in connection therewith; provided that, if such Construction work is subject to a competitive bidding or proposal process, the Design-Builder Fee applicable to bids or proposals competing with the Design-Builder or its Affiliate shall be taken into account for comparison purposes during the evaluation so that the bid or proposal of the Design-Builder or Affiliate (in each case, inclusive of the Design-Builder Fee) will be compared to the sum of: (1) the price of each competing bid or proposal; plus (2) the Design-Builder Fee. Any agreed-upon lump sum amount for any portion of Construction work to be performed by Approved Subcontractors pursuant to this Section, without obtaining competitive bids or proposals, shall also be inclusive of all costs, expenses and disbursements paid or incurred by the Design-Builder, as well as all overhead, administration, risk and profit (at an amount not to exceed the Design-Builder Fee), and the Design-Builder shall not be entitled to any separately applied Design-Builder Fee in connection therewith.

(I) Procurement of Subcontractors Prior to the GMP Amendment Date. The Design-Builder, during the Phase I Services Period, in the development of the proposed Base Guaranteed Maximum Price to be submitted to SAWS in the GMP Submittal (1) may conduct discussions with and obtain indicative pricing information from potential Construction Subcontractors, and (2) may initiate, subject to the approval of SAWS given in its discretion,
the formal procurement process for selecting Construction Subcontractors. Any such formal procurement process shall be conducted in accordance with the requirements of this Section. No Subcontract resulting from such procurement process shall be executed prior to the GMP Amendment Date without SAWS’ consent given in its discretion.

(J) Systems Integration Subcontract. In subcontracting for systems integration services, the Design-Builder shall select a systems integrator in consultation with SAWS and in a manner consistent with Texas Government Code § 2254.003. Systems integration work may be self-performed by the Design-Builder, rather than subcontracted to a third party, if SAWS, in its discretion, agrees to have such work performed by the Design-Builder.

(K) Security for Construction Subcontractor Performance. Security for the performance of Subcontractors under Construction Subcontracts shall be provided in a manner agreed to by the parties, and the costs therefor shall constitute Design-Build Costs. Such security may include Subcontractor Default Insurance.

SECTION 7.5. TERMINATION, AMENDMENT, ASSIGNMENT AND REPLACEMENT OF MATERIAL SUBCONTRACTS.

(A) Termination, Amendment and Assignment. Unless the Design-Builder has, at its earliest practicable opportunity, submitted to SAWS notice of the proposed course of action (and any relevant documentation) and SAWS has consented in writing to such course of action, such consent not to be unreasonably withheld or delayed, the Design-Builder shall not:

(1) Terminate, or agree to, or permit the termination of, any Material Subcontract;

(2) Make, or agree to, or permit the making of (a) any material amendment of any Material Subcontract; or (b) any departure by any party from any material provision of any Material Subcontract; or

(3) Permit any Material Subcontract party to assign or transfer to any person any of such Material Subcontract party’s rights or obligations under a Material Subcontract.

(B) Replacement. If any Material Subcontract 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 Material Subcontract are no longer reasonably required for the Project, the Design-Builder 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). If at any time any amendment is made to any Material Subcontract, or a replacement Material Subcontract (or any agreement which materially affects the interpretation or application of any Material Subcontract) is entered into, the Design-Builder shall deliver to SAWS a copy of each such amendment or agreement within 14 days of the date of its execution or creation, certified as a true copy by the Design-Build Manager.
ARTICLE 8
MECHANICAL COMPLETION, ACCEPTANCE AND FINAL COMPLETION

SECTION 8.1. COMMISSIONING.

(A) Commencement of Commissioning. The Design-Builder may commence Commissioning on elements of the Project at its election at any time prior to the achievement of Mechanical Completion; provided, however, that:

(1) Prior to the commencement of Commissioning, the Design-Builder shall:

(a) Have obtained SAWS approval of the Commissioning and Acceptance Test Plan in accordance with Section 8.4(A),

(b) Have satisfied all preconditions to the commencement of Commissioning set forth in Appendix 9,

(c) Be authorized by all appropriate Governmental Bodies to commence Commissioning under Applicable Law, and

(d) Have obtained SAWS approval of the Training Plan prepared in accordance with Appendix 5; and

(2) All Commissioning necessary to achieve Mechanical Completion shall be complete on or before the Scheduled Mechanical Completion Date.

The Design-Builder shall give SAWS at least 14 days’ prior written notice of the expected date of commencement of Commissioning, which notice shall include a certification of compliance with this subsection (A).

(B) Performance of Commissioning. The Design-Builder shall perform all Commissioning activities in accordance with the Contract Standards, including the Commissioning and Acceptance Test Plan and all requirements set forth in Appendix 9. The Design-Builder shall also be responsible for sequencing, staging and performing Commissioning in a manner that enables SAWS to continue to operate the SAWS Distribution System. The Design-Builder shall comply with the approved Maintenance of Operations During Construction Plan in the performance of all Commissioning activities.

(C) Training of SAWS Employees. During Commissioning, the Design-Builder shall train designated SAWS employees in accordance with the Contract Standards and the approved Training Plan, in order to enable such SAWS employees to assume operation and maintenance responsibility for the Project upon Mechanical Completion.

(D) Water Availability. The Design-Builder shall inform SAWS of its expected water needs prior to Commissioning to enable SAWS to arrange for water (whether from the SAWS Distribution System or WTPA Water) to be available in quantities and at the times required by the Design-Builder for start-up, wet testing and all other Commissioning activities. The Design-Builder shall coordinate the acceptance of such water and the delivery of Finished Water to the SAWS Distribution System with SAWS in order to enable SAWS to manage the SAWS Distribution System and the demands of its customers. The Commissioning and Acceptance Test Plan shall include an operating protocol for the acceptance of WTPA Water and the delivery of Finished Water to the SAWS Distribution System following the Mechanical Completion Date, which shall address such matters as operational and informational
communications between the parties, the establishment of flow rates for Finished Water deliveries, the adjustment or modification of flow rates, emergency procedures and all other practices, procedures and protocols necessary or useful in coordinating the activities of the parties with respect to the delivery of Finished Water to the SAWS Distribution System.

SECTION 8.2. MECHANICAL COMPLETION.

(A) Mechanical Completion Procedures. Mechanical Completion shall be determined on the basis of the Mechanical Completion Procedures set forth in Appendix 9.

(B) Conditions Precedent to Mechanical Completion. “Mechanical Completion” shall occur only when the Design-Builder 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, all of the following conditions:

1. Physical Completion. All pipelines, facilities, materials and equipment for the Project have been installed in accordance with the requirements of the Contract Documents 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 Design-Builder have been installed and tested; and the Project has been flushed, cleaned out and disinfected as necessary and required by the TCEQ and SAWS;

2. Project Equipment. The Project equipment is installed in a manner that does not void any Subcontractor or Supplier warranties and such Project equipment can be operated in a safe and prudent manner;

3. Certificates of Proper Installation. The Design-Builder 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 9 and further developed during the Phase I Services Period;

4. Dry Testing. The Design-Builder has performed all the dry testing and all other Commissioning activities identified in the Commissioning and Acceptance Test Plan and necessary for the Project equipment to be ready to conduct wet testing set forth in item (5) of this subsection (B);

5. Wet Testing. The Design-Builder has performed all the wet testing and all other Commissioning activities identified in the Commissioning and Acceptance Test Plan, and necessary for the verification of operational preparedness set forth in item (8) of this subsection (B);

6. Commissioning. The Design-Builder has completed Commissioning of the Project in accordance with Appendix 9;

7. Equipment, Instrumentation and Controls Readiness Verification. The Design-Builder has delivered to SAWS certificates of system readiness that certify that all the identified Project systems, subsystems, equipment, instrument, or control systems have been completed, tested and reviewed by the Design-Builder and are ready and able to undergo sustained continuous operation in accordance with the Contract Standards;
(8) **Verification of Operational Preparedness.** The Project is ready to physically commence Acceptance Testing and operations in accordance with the Contract Standards;

(9) **Verification of Governmental Approval Compliance.** The Design-Builder shall provide documentation that all activities and conditions have been met to comply with all the Governmental Approvals and all Governmental Approvals necessary to commence Acceptance Testing have been obtained;

(10) **Instrument Calibration.** The Design-Builder has demonstrated that all instrument calibration activities that are required to assure all Project instrumentation provide accurate readings within manufacturer’s tolerance have been completed;

(11) **SCADA.** Without limiting anything in item (7) of this subsection (B), the Project SCADA System is operational and provides the input and output to and from the SAWS Distribution System’s SCADA System, permitting SAWS access to all Project operations data and information as required by the Contract Documents;

(12) **All Other Conditions to Mechanical Completion.** The Design-Builder has completed all other obligations set forth in Appendix 9 with respect to the achievement of Mechanical Completion;

(13) **Operation and Maintenance Manual.** The Design-Builder has delivered to SAWS and SAWS has approved in writing, such approval not to be unreasonably withheld or delayed, the pre-final Operations and Maintenance Manual in accordance with the requirements set forth in Appendix 5;

(14) **Certificate of Occupancy.** A temporary or final certificate of occupancy, if required by Applicable Law, has been issued for any occupied portion of the Project;

(15) **No Encumbrances.** There are no Encumbrances registered or recorded on the Project Sites or any part of the Project other than Permitted Encumbrances;

(16) **Equipment Warranties and Manuals.** The Design-Builder shall be in possession of, and shall have delivered to SAWS, copies of the warranties of machinery, equipment and fixtures constituting a part of the Project, together with copies of all related operating manuals supplied by the equipment supplier;

(17) **Training Complete.** The Design-Builder shall have satisfied its training obligations with respect to SAWS operations and maintenance staff in accordance with the approved Training Plan and the specific requirements of Appendix 5;

(18) **Punch List.** The Design-Builder and SAWS have agreed in writing upon the Punch List (or, if they are unable to agree, SAWS shall have prepared and issued the Punch List to the Design-Builder within 30 days of the Design-Builder having submitted its proposed Punch List to SAWS); and

(19) **No Event of Default.** The Design-Builder shall have certified that there is no Event of Default by the Design-Builder existing under this Design-Build Contract, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Design-Builder hereunder.
(C) Notice of Mechanical Completion. The Design-Builder shall give SAWS at least 30 days’ prior written notice of the expected date of Mechanical Completion.

(D) Continuity of Service and Technical Support. The Design-Builder Operations Manager shall be available at the Project on a full-time basis, at the request and direction of SAWS, to provide operational assistance and support to SAWS from the Mechanical Completion Date until the later to occur of (1) the date that is 60 days following the commencement of the Acceptance Test or (2) the Acceptance Date.

SECTION 8.3. THE SCHEDULED MECHANICAL COMPLETION DATE AND EFFECT OF UNEXCUSED DELAY.

(A) Schedule for Achieving Mechanical Completion. It is agreed that time is of the essence in the completion of the Design-Build Work. The Design-Builder shall achieve Mechanical Completion by the Scheduled Mechanical Completion Date, as such date may be extended due to the occurrence of Uncontrollable Circumstance as and to the extent provided in Article 14. The Design-Builder shall pay liquidated damages for delays in the achievement of Mechanical Completion beyond the Scheduled Mechanical Completion Date as and to the extent provided in Section 8.8(A).

(B) SAWS’ Right to Complete Design-Build Work. In the event the Design-Builder fails to achieve Mechanical Completion by the Mechanical Completion Longstop Date, without limiting any other right of SAWS hereunder, SAWS shall have the right, but not the obligation, to engage others to complete performance of the Design-Build Work, at the risk and cost of the Design-Builder, and SAWS may deduct such cost from any amount remaining to be paid against the Design-Build Price or deduct and retain an amount equal to such cost from the retainage held pursuant to Section 9.3(F). If the cost of such completion of the Design-Build Work by SAWS exceeds the cost of such Design-Build Work, as specified in the Schedule of Values prepared in accordance with Appendix 8, then the Design-Builder shall reimburse SAWS for all such excess costs and expenses reasonably incurred by SAWS in connection therewith. SAWS shall provide the Design-Builder with seven days’ advance written notice prior to exercising its right to complete the Design-Build Work pursuant to this subsection (B). The Design-Builder acknowledges that if SAWS exercises its right to complete the Design-Build Work pursuant to this subsection (B), SAWS shall have the right to take possession of and utilize such materials, appliances and equipment on the Project Sites that SAWS deems necessary or useful in completing the Design-Build Work. The right of SAWS to complete the Design-Build Work specified in this subsection (B) shall not be construed to establish any limitation with respect to any obligations or liabilities of the Design-Builder under this Design-Build Contract. This subsection (B) is intended to supplement (and not to limit) the Contract Obligations otherwise applicable to the Design-Build Work.

SECTION 8.4. ACCEPTANCE TESTING.

(A) Commissioning and Acceptance Test Plan. The Design-Builder shall prepare and submit to SAWS for its approval a detailed Commissioning and Acceptance Test Plan in accordance with the requirements of Appendix 9. The schedule requirements for the submittal and review of the Commissioning and Acceptance Test Plan are set forth in Appendix 9. If the Design-Builder and SAWS are unable to agree upon the Commissioning and Acceptance Test Plan within a reasonable period following submission (not to exceed 45 days), either party may elect to initiate dispute resolution procedures in accordance with Section 11.1.
(B) Notice of Commencement of the Acceptance Test. The Design-Builder shall provide SAWS with at least 15 days’ prior written notice of the expected initiation of any portion of Acceptance Test in accordance with the requirements of Appendix 9. At least seven days prior to the actual commencement of the Acceptance Test, the Design-Builder shall certify in writing that it is ready to begin the Acceptance Test in accordance with the requirements of this Section and the applicable Acceptance Test requirements and Appendix 9.

(C) Design-Builder Operations Manager. The Design-Builder shall appoint an operations manager that is reasonably acceptable to SAWS (the “Design-Builder Operations Manager”), employed at the Project on a full-time basis from the Mechanical Completion Date until the date specified in Section 8.2(D), that will lead the Design-Builder’s operations and maintenance team and have authority for the planning, coordination and execution of the Acceptance Testing activities. The Design-Builder Operations Manager shall hold all operator licenses or registrations required by Applicable Law and possess a minimum of 10 years relevant experience in commissioning, operating and maintaining water treatment facilities. The Design-Builder Operations Manager will coordinate all aspects of Project operations with the SAWS Operations Manager during all Project operations and maintenance activities occurring prior to Acceptance.

(D) SAWS Operating and Maintenance Staff. All daily operations and maintenance activities of the Project prior to the achievement of Acceptance (including during the performance of the Acceptance Test), shall be provided by SAWS staff that have been trained by the Design-Builder in accordance with Section 8.1(C). The Design-Builder Operations Manager shall coordinate and work with SAWS’ designated Project operations manager (the “SAWS Operations Manager”) to provide coordinated operation and maintenance activities for the Project prior to Acceptance. All SAWS’ personnel will report to the SAWS Operations Manager. The Design-Builder Operations Manager shall communicate directly with the SAWS Operations Manager on all issues pertaining to Project staffing, operations and maintenance.

(E) Conditions to Commencement of the Acceptance Test. The Acceptance Test shall not commence until the following events have occurred:

(1) Mechanical Completion has occurred;

(2) The Design-Builder and SAWS are authorized by all appropriate Governmental Bodies to perform the procedures necessary to achieve Acceptance and to conduct the Acceptance Tests under Applicable Law, and such authorization has not been withdrawn, revoked, suspended, superseded, or materially impaired or amended;

(3) The Design-Builder has met with SAWS at least 60 days prior to the scheduled Acceptance Test to provide a forecast of expected Finished Water production and availability, discuss the intended management of WTPA Water production and availability, described the intended management of Finished Water and off-specification Finished Water, and reviewed such forecast and intended management with SAWS staff responsible for operating and maintaining the Project and the introduction of water into the SAWS Distribution System;

(4) SAWS has provided the necessary operating and maintenance personnel for the Project to perform the Acceptance Test, as required by subsection (D) of this Section; and
(5) The Design-Builder has certified that it has complied with all pre-Acceptance Test requirements included in Appendix 9.

(F) **Conduct of the Acceptance Test.** In accordance with the Commissioning and Acceptance Test Plan and Appendix 9, SAWS shall conduct the Acceptance Test in coordination with and under the supervision of the Design-Builder. The Owner Representative and any other designated representatives of SAWS shall be permitted to inspect the preparations for the Acceptance Test and to be present for the conduct of the Acceptance Test for purposes of ensuring compliance with the Commissioning and Acceptance Test Plan and the integrity of the Acceptance Test results.

(G) **Acceptance Test Report.** Within 30 days following completion of the Acceptance Test, the Design-Builder shall furnish SAWS and the Owner Representative with an Acceptance Test report in Adobe Acrobat electronic format, indexed and fully-searchable (with five copies provided on compact disc) consistent with the requirements specified in Appendix 9, certified as true, complete and correct by the Design-Build Manager and the Engineer-of-Record. The Acceptance Test report shall describe and certify:

1. Each system and subsystem test conducted;
2. The results of the Acceptance Test;
3. The level to which the results met or exceeded the Acceptance Standards relating thereto; and
4. The level of satisfaction of all Acceptance Date Conditions set forth in Section 8.5.

The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the Acceptance Test, and copies of laboratory reports conducted in conjunction with the Acceptance Test, including all laboratory sampling and test results. No failure of the Design-Builder to furnish the certified Acceptance Test report within the 30-day period following the conclusion of the Acceptance Test shall operate to adjust the Scheduled Acceptance Date or extend the Acceptance Longstop Date.

(H) **Insufficiency of WTPA Water Supply.** In the event that during performance of the Acceptance Test, the Vista Ridge Regional Supply Project does not produce a supply of WTPA Water sufficient to enable the Design-Builder to meet the Acceptance Standards, such WTPA Water supply insufficiency shall constitute an Uncontrollable Circumstance and the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14; provided that, SAWS shall have the right, but not the obligation, to modify the Acceptance Standards to account for such WTPA Water supply insufficiency, in which case the insufficiency shall not constitute an Uncontrollable Circumstance.

(I) **Non-Compliance with Specified WTPA Water Quality Parameters.** If it is determined that the Project failed the Acceptance Tests and the Design-Builder successfully demonstrates that such failure was due to the failure to receive WTPA Water within the Specified WTPA Water Quality Parameters, such failure shall constitute an Uncontrollable Circumstance and the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Article 14.
SECTION 8.5. ACCEPTANCE DATE CONDITIONS.

The following conditions shall constitute the “Acceptance Date Conditions”, each of which must be satisfied in all material respects by the Design-Builder in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date:

1. Mechanical Completion. Mechanical Completion has been achieved (and all conditions of Mechanical Completion continue to be satisfied) and all equipment and facilities necessary for the operation of the Project have been properly constructed, installed, erected, insulated and protected where required, and correctly adjusted;

2. Achievement of Acceptance Standards. The Acceptance Test shall have been completed and such test shall have demonstrated that the Project has met all of the Acceptance Standards, including full compliance with the Performance Guarantees, as certified by the Design-Builder pursuant to Section 8.4(G) and agreed to by SAWS pursuant to Section 8.6(A);

3. Governmental Approvals. All Governmental Approvals required under Applicable Law and this Design-Build Contract to be obtained by the Design-Builder which are necessary for the continued routine operation of the Project shall be in full force and effect and certified copies of all such Governmental Approvals shall have been delivered to SAWS;

4. Required Warranty Bond. The Design-Builder has obtained and delivered to SAWS the Warranty Bond pursuant to Section 16.2(C); and

5. No Default. The Design-Builder shall have certified that there is no Event of Default by the Design-Builder existing under this Design-Build Contract, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Design-Builder hereunder.

SECTION 8.6. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.

(A) Acceptance Date Concurrence. The Acceptance Date shall be the day on which the Acceptance Date Conditions have been achieved, as determined in accordance with this Section. If the Design-Builder certifies in its written report delivered pursuant to Section 8.4(G) that the Acceptance Date Conditions have been achieved, SAWS shall determine, within 30 days following its receipt of such report, whether it concurs in such certification. If SAWS states in writing that it concurs with the Design-Builder’s certification, the Project shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on the date of the Design-Builder’s original certification.

(B) Acceptance Date Disagreement. If SAWS determines at any time during such 30-day review period that it does not concur with the Design-Builder’s certification of Acceptance, SAWS shall immediately send written notice to the Design-Builder of the basis for its disagreement. In the event of any such non-concurrence by SAWS, either party may elect to initiate dispute resolution procedures in accordance with Section 11.1. Acceptance shall not be deemed to have been achieved unless the Acceptance Test, conducted in a unified and continuous manner as provided in the Commissioning and Acceptance Test Plan and in Appendix 9, demonstrate that all of the Acceptance Standards have been met, including the Performance Guarantees. In the event the Acceptance Standards are not successfully met during performance of the Acceptance Test, the Design-Builder shall, at its sole cost and
expensive, take all action necessary (including making all capital investments, improvements or
modifications, repairs and replacements and operating and management practices changes) in
order for the Project to comply with the Acceptance Standards and the parties shall re-test the
Project in accordance with Appendix 9. Any capital investment, improvement or modification
required to be made pursuant to this subsection (B) and reasonably expected to result in a
change to the Baseline Design Documents, shall be subject to SAWS’ rights under Section 6.7.

SECTION 8.7. THE SCHEDULED ACCEPTANCE DATE AND EFFECT OF
UNEXCUSED DELAY.

(A) Schedule for Achieving Acceptance. It is agreed that time is of the
essence in the completion of the Design-Build Work. The Design-Builder shall achieve
Acceptance by the Scheduled Acceptance Date, as such date may be extended due to the
occurrence of Uncontrollable Circumstance as and to the extent provided in Article 14. The
Design-Builder shall pay liquidated damages for delays in the achievement of Acceptance
beyond the Scheduled Acceptance Date as and to the extent provided in Section 8.8(B).

(B) SAWS’ Right to Complete Design-Build Work. In the event the Design-
Builder fails to achieve Acceptance by the Acceptance Longstop Date, without limiting any
other right of SAWS hereunder, SAWS shall have the right, but not the obligation, to engage
others to complete performance of the Design-Build Work, at the risk and cost of the Design-
Builder, and SAWS may deduct such cost from any amount remaining to be paid against the
Design-Build Price or deduct and retain an amount equal to such cost from the retainage held
pursuant to Section 9.3(F). If the cost of such completion of the Design-Build Work by SAWS
exceeds the cost of such Design-Build Work, as specified in the Schedule of Values prepared in
accordance with Appendix 8, then the Design-Builder shall reimburse SAWS for all such excess
costs and expenses reasonably incurred by SAWS in connection therewith. SAWS shall provide
the Design-Builder with seven days’ advance written notice prior to exercising its right to
complete the Design-Build Work pursuant to this subsection (B). The Design-Builder
acknowledges that if SAWS exercises its right to complete the Design-Build Work pursuant to
this subsection (B), SAWS shall have the right to take possession of and utilize such materials,
appliances and equipment on the Project Sites that SAWS deems necessary or useful in
completing the Design-Build Work. The right of SAWS to complete the Design-Build Work
specified in this subsection (B) shall not be construed to establish any limitation with respect
to any obligations or liabilities of the Design-Builder under this Design-Build Contract. This
subsection (B) is intended to supplement (and not to limit) the Contract Obligations otherwise
applicable to the Design-Build Work.

SECTION 8.8. DELAY LIQUIDATED DAMAGES.

(A) Mechanical Completion Delay Liquidated Damages. Subject to relief in
accordance with the terms and conditions of this Design-Build Contract in the event of
Uncontrollable Circumstances and subject to Section 12.3(B), if the Mechanical Completion
Date occurs subsequent to the Scheduled Mechanical Completion Date, the Design-Builder
shall pay to SAWS delay liquidated damages for each day that the Mechanical Completion Date
falls after the Scheduled Mechanical Completion Date in the amount of:

(1) $20,000 per day during the period commencing with the first day
following the Scheduled Mechanical Completion Date and ending January 16, 2020 (for
purposes of this Section, the ‘first damage period’);

(2) $40,000 per day for the period commencing January 17, 2020 and
ending March 26, 2020 (for purposes of this Section, the ‘second damage period’); and
(3) $240,000 per day commencing March 27, 2020 and for each day of delay thereafter (for purposes of this Section, the “third damage period”); provided that:

(a) The periods established in this subsection (A) shall only be subject to adjustment with an adjustment to the Scheduled Mechanical Completion Date hereunder as follows:

(i) The first damage period shall be the initial 30 day period commencing with the first day following the adjusted Scheduled Mechanical Completion Date;

(ii) The second damage period shall be the 30 day period commencing on the day immediately following the expiration of the first damage period; except that, if the expiration of the first damage period occurs more than 30 days prior to March 27, 2020, the second damage period shall commence on the day immediately following the expiration of the first damage period and end on March 26, 2020; and

(iii) The third damage period shall commence on the day immediately following the expiration of the second damage period determined pursuant to item (3)(a)(ii) of this subsection (subject to subsection (C) of this Section);

(b) The first damage period will be extended on a day for day basis for each day of delay in the achievement of WTPA Substantial Completion under the WTPA and, in such event, the second damage period will commence on the achievement of WTPA Substantial Completion;

(c) Except to the extent caused by a delay by the Design-Builder in the achievement of Mechanical Completion beyond the Scheduled Mechanical Completion Date hereunder, the second damage period will be extended on a day for day basis for each day of delay in the achievement of the WTPA Commercial Operation Date under the WTPA and, in such event, the third damage period will commence on the date immediately succeeding the end of such extended period; and

(d) The amount of any delay liquidated damages payable by the Design-Builder during the third damage period shall be subject to adjustment on a proportionate basis to the extent of the capability of the Project to accept deliveries of WTPA Water, as described in subsection (C) of this Section.

(B) Acceptance Delay Liquidated Damages. Subject to relief in accordance with the terms and conditions of this Design-Build Contract in the event of Uncontrollable Circumstances and Section 12.3(B), if the Acceptance Date occurs subsequent to the Scheduled Acceptance Date, the Design-Builder shall pay to SAWS delay liquidated damages, without duplication of any delay liquidated damages payable on any day pursuant to subsection (A) of this Section, for each day that the Acceptance Date falls after the Scheduled Acceptance Date in the amount of $240,000 per day for each day of delay thereafter; provided that, the amount of any such delay liquidated damages payable by the Design-Builder shall be reduced on a proportionate basis to the extent of the capability of the Project to accept deliveries of WTPA Water, as described in subsection (C) of this Section.
(C) Adjustment to Liquidated Damages for Acceptance of WTPA Water. Subject to subsections (A) and (B) of this Section, if the Mechanical Completion Date occurs subsequent to the Scheduled Mechanical Completion Date or the Acceptance Date occurs subsequent to the Scheduled Acceptance Date but the Project is capable of accepting deliveries of WTPA Water, the maximum daily delay liquidated damage amount (for purposes of the calculation below, the “Max LD”) payable by the Design-Builder during the third damage period under subsection (A) of this Section and subsequent to the Scheduled Acceptance Date under subsection (B) of this Section will be determined pursuant to the following calculation:

\[
\text{Max LD} = \$240,000 - (\$240,000 \times (\text{AC divided by RC})) + \$20,000.
\]

Where:

- AC = the actual capacity of the Project to accept WTPA Water on any day, expressed in terms of MGD; and
- RC = the required capacity of the Project to accept deliveries of WTPA Water, expressed in terms of MGD and as established by the Acceptance Standards.

(D) Payment of Delay Liquidated Damages. Any delay liquidated damages payable by the Design-Builder pursuant to this Section shall be due on the first day of each month following the month during which such delay liquidated damages were incurred by the Design-Builder pursuant to this Section.

(E) Sole Damages for Delay. This Section provides for the payment by the Design-Builder of liquidated damages in certain circumstances associated with unexcused delays in achieving Mechanical Completion and Acceptance. Each party agrees that SAWS’ actual damages in each such circumstance of unexcused delay would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance of unexcused delay are intended to place SAWS in the same economic position as it would have been had the unexcused delay not occurred. Such liquidated damages shall constitute the only damages payable by the Design-Builder to SAWS to compensate SAWS for unexcused delays in achieving Mechanical Completion by the Scheduled Mechanical Completion Date and Acceptance by the Scheduled Acceptance Date, as applicable, regardless of legal theory. This limitation, however, is not intended to limit any of the other remedies for breach specifically provided for in this Design-Build Contract, including SAWS’ remedies associated with an Event of Default by the Design-Builder under Section 12.2. The parties acknowledge and agree that the additional remedies specifically provided for in this Design-Build Contract 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 liquidated damages payable under this Design-Build Contract are not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the circumstances of unexcused delay; and

2. That, in recognition of the acknowledgments above, the Design-Builder is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty or that they are not enforceable.
Notwithstanding anything to the contrary set forth in Article 15, the Design-Builder shall not be required to indemnify or defend any SAWS Indemnitee for Loss-and-Expense related to claims of Vista Ridge LLC under the WTFPA to the extent such Loss-and-Expense is attributable to unexcused delay by the Design-Builder in achieving Mechanical Completion by the Scheduled Mechanical Completion Date or Acceptance by the Scheduled Acceptance Date, as applicable, it being the understanding of the parties that the liquidated damages provided for in this Section are intended to address any such Loss-and-Expense.

SECTION 8.9. FINAL COMPLETION.

(A) Requirements. The Design-Builder shall achieve Final Completion within 90 days following the Acceptance Date. “Final Completion” shall be deemed to have occurred when all of the following conditions have been satisfied:

(1) **Design-Build Work Completed.** All Design-Build Work (including the Punch List items, all repairs identified during or required due to the performance of Commissioning and Acceptance Testing and all clean up and removal of construction materials, demolition debris and temporary facilities and excluding Warranty Work) is complete and in all respects is in compliance with the Contract Documents;

(2) **Deliverable Material.** The Design-Builder shall have delivered to SAWS all Deliverable Material required by the Contract Documents;

(3) **Final Operations and Maintenance Manual.** The Design-Builder shall have delivered to SAWS the final, approved Operations and Maintenance Manual in accordance with Section 6.18 and Appendix 5;

(4) **Final Record Drawings.** The Design-Builder shall have delivered to SAWS a final and complete reproducible set of “as-built” construction record drawings, as required by Appendix 7;

(5) **Spare Parts In Storage.** All spare parts required by the applicable Contract Documents have been delivered and are in storage at the Project Sites or other area designated by SAWS;

(6) **Input into Asset Management Database.** The Design-Builder shall have provided a complete list of all mechanical, electrical and instrumentation equipment incorporated into the Project and shall have submitted equipment data sheets in an electronic format compatible with SAWS’ asset management system in accordance with the requirements of the Contract Documents;

(7) **Final Completion Payment Requirements.** The Design-Builder shall have satisfied all requirements associated with payment for Final Completion, as set forth in Section 9.5; and

(8) **Certification.** The Design-Builder has submitted written certification that all of the foregoing conditions have been satisfied and SAWS has approved the Design-Builder’s certification, which approval shall be effective as of the date of the Design-Builder’s certification.

(B) Notice and Report of Final Completion. When the Design-Builder believes that it has achieved Final Completion, it shall deliver to SAWS 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 with sufficient detail to enable SAWS to determine the completion by the Design-Builder of all Design-Build Work to be performed under this Design-Build Contract, 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 shall, in consultation with the Owner Representative, within 20 days following receipt of the Notice of Final Completion, inspect the Project, review the report submitted by the Design-Builder and either (1) deliver a written certificate to the Design-Builder stating that all conditions set forth in subsection (A) of this Section have been satisfied, or (2) notify the Design-Builder in writing that Final Completion has not been achieved, stating in detail the reasons therefor. In the event that SAWS determines that Final Completion has not been achieved, the Design-Builder shall promptly take such action or perform such Design-Build Work as will achieve Final Completion and shall issue to SAWS another Notice of Final Completion pursuant to (B) of this Section. Such procedure shall be repeated as necessary until Final Completion is achieved. If SAWS, in its written certificate delivered in accordance with this subsection, states that it concurs that all conditions set forth in subsection (A) of this Section have been satisfied, the Project shall be deemed to have achieved Final Completion and Final Completion shall be deemed to have been established on the date of the Design-Builder's most recent Notice of Final Completion.
ARTICLE 9

CONTRACT COMPENSATION

SECTION 9.1. COMPENSATION FOR PHASE I SERVICES.

(A) Compensation for Base Phase I Services. SAWS shall pay the Design-Builder the Phase I Services Fee in the manner and subject to the terms and conditions set forth in this Design-Build Contract and in Appendix 2. The Design-Builder agrees that the Phase I Service Fee, when earned, shall be the Design-Builder’s entire compensation and reimbursement for the performance of the Phase I Services, inclusive of all costs, expenses and disbursements paid or incurred by the Design-Builder, as well as all overhead, administration, risk and profit. The Phase I Services Fee shall be subject to adjustment solely in accordance with Section 5.2.

(B) Compensation for Additional Phase I Services. The Design-Builder shall be compensated for any Additional Phase I Services on a time and materials or lump sum basis, agreed to in writing through a Change Order or a Contract Amendment executed by SAWS and the Design-Builder. Compensation for Additional Phase I Services may consist of compensation on the basis of Design-Builder’s and Subcontractors’ billing rates approved by SAWS. The Change Order or Contract Amendment, as applicable, may set forth additional compensation and Payment Request requirements.

(C) Payment Requests and Payment. The Design-Builder shall provide SAWS with a Payment Request for the performance of the Phase I Services on a monthly basis in accordance with the specific requirements set forth in Appendix 2. The Payment Request shall state the amount payable for the month and the total amount paid against the Phase I Services Fee through the date of the Payment Request, along with a Monthly Progress Report regarding the performance of the Phase I Services and such other information or documentation as SAWS may reasonably require. SAWS shall make payment to the Design-Builder of all properly supported invoiced amounts within 30 days of receipt of the Payment Request, subject to the terms and conditions of this Design-Build Contract. Payments of the Phase I Services Fee shall not be subject to retainage holdback or, except as provided in subsection (E) of this Section, offset.

(D) Non-Compliant Phase I Services. Nothing contained in this Design-Build Contract shall require SAWS to pay for any unsatisfactory or duplicative Phase I Services or for Phase I Services that are not in compliance with the terms and conditions of this Design-Build Contract. SAWS shall not be required to pay the Phase I Services Fee to the Design-Builder at any time the Design-Builder is in breach or default under this Design-Build Contract.

(E) Billing Statement Disputes. If SAWS disputes in good faith any Payment Request for Phase I Services, SAWS shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Design-Builder with a written objection indicating the amount being disputed and the reasons then known to SAWS for the dispute. In the event that the Design-Builder 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 Design-Builder. If the Design-Builder is unable to reach agreement with SAWS as to the payment dispute, the Design-Builder may elect to initiate dispute resolution procedures in accordance with Section 11.1. When any billing dispute is finally resolved, if payment by SAWS to the Design-Builder 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 9.9 of this Design-Build Contract.
SECTION 9.2. DESIGN-BUILD PRICE.

SAWS shall pay the Design-Builder the Design-Build Price for properly performed and completed Design-Build Work during the Phase II Services Period. The Design-Build Price and the components thereof are defined in Appendix 8. SAWS’ obligation to pay the Design-Build Price is subject to the Guaranteed Maximum Price and the terms and conditions of this Article and Appendix 8. Except with respect to (1) payments of the Phase I Services Fee in accordance with Section 9.1, and (2) Design-Build Work performed pursuant to an Early Work Package Amendment, the Design-Builder shall not be entitled to any compensation for costs or expenses incurred, or Design-Build Work performed, prior to the issuance by SAWS of the Notice to Proceed with Phase II Services. Any amount payable for Design-Build Work performed pursuant to an Early Work Package shall, upon the GMP Amendment Date, be part of the Design-Build Price and subject to the Guaranteed Maximum Price and all other terms and conditions of this Article and Appendix 8.

SECTION 9.3. DESIGN-BUILD PRICE PAYMENT PROCEDURE.

(A) Progress Payments. The Design-Builder shall be paid the Design-Build Price on a progress payment basis in accordance with the Schedule of Values and the cost loaded Phase II Services Schedule and the terms and conditions of this Section. The Design-Builder shall prepare and submit to SAWS for its approval preliminary and final drafts of the Schedule of Values in accordance with the Contract Standards. After the final Schedule of Values is accepted by SAWS, it shall be used to assist in the estimating of the value of the Design-Build Work performed for payment purposes. The Design-Builder shall not submit requests for progress payments of the Design-Build Price unless a final Schedule of Values and cost loaded Phase II Services Schedule has been approved, except as otherwise agreed to by SAWS, in its discretion.

(B) Payment Request. Subject to subsection (C) of this Section, the Design-Builder shall be entitled to submit Payment Requests to SAWS on a monthly basis and to receive from SAWS the payments, which (1) shall be made on a percent complete basis in accordance with the Schedule of Values; (2) shall be subject to the Guaranteed Maximum Price limitations; and (3) shall be subject to the conditions to payment set forth in this Article. Each Payment Request shall be in a form reasonably acceptable to SAWS and must be accompanied by a monthly requisition report, which shall include:

(1) A reasonably detailed description of all Design-Build Work actually completed to date;

(2) Revisions to the Phase II Services Schedule, which shall reflect changes in the Design-Builder’s cost loaded, critical path schedule since the date of the last Payment Request and any changes to the Schedule of Values;

(3) A certificate of the Design-Build Manager and the Design-Builder Contract Representative certifying (a) the portion of the Design-Build Price payable to the Design-Builder for completed Design-Build Work; (b) that the Design-Builder is neither in default under this Design-Build Contract nor in breach of any material provision of this Design-Build Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default; and (c) that all items applicable to the Design-Build Work entitling the Design-Builder to the requested payment under the Schedule of Values have been completed in accordance therewith and with the Contract Documents;
(4) Notice of any Encumbrances which have been filed together with evidence that the Design-Build has discharged any such Encumbrances or made timely notification to the Payment Bond Surety regarding such Encumbrances; and

(5) Any other documents or information relating to the Design-Build Work or this Design-Build Contract reasonably requested by SAWS or the Owner Representative or as may be required by Applicable Law, this Design-Build Contract or generally accepted accounting practices or principles, including payrolls, receipts, fully detailed invoices with check vouchers or other evidence of Design-Build Costs incurred which SAWS or the Owner Representative deems necessary to support the amount requested in the Payment Request.

The General Conditions Fee shall be shown as a separate line item on each Payment Request in accordance with Appendix 8. In determining the percentage of completion of the Design-Build Work, the parties shall use the lesser of the percentage of the Design-Build Work actually completed for each classification on the Schedule of Values or the percentage of the Guaranteed Maximum Price allocable to that item which has been actually incurred and demonstrated as a Design-Build Cost by the Design-Build. The Design-Build Fee shall also be shown as a separate line item on each Payment Request. The Design-Build shall identify the dollar amount of the total expected Design-Build Fee in each Payment Request based on the total expected Design-Build Costs to which the Design-Build Fee applies in accordance with Appendix 8. The amount requested for the Design-Build Fee in each Payment Request shall be in the same proportion to the total expected Design-Build Fee as the amount requested for the applicable Design-Build Costs bears to the total expected Design-Build Costs to which the Design-Build Fee applies, subject to the Guaranteed Maximum Price.

(C) SAWS’ CPMS Project Management System. SAWS’ projects are administered through its internet-based project management system (hereinafter referred to as “CPMS”). The Design-Build shall conduct all of its invoicing and billing to SAWS through CPMS and, except for Subcontractor payment monitoring activities, which shall be conducted as described in Section 7.2(F) and Section 7.3(l), the Design-Build shall perform all contract and billing related functions using the CPMS system to submit and process all documentation to be generated, received or used in the performance of the Contract Obligations, including Payment Requests and processing of payments for the Contract Obligations. SAWS administers the CPMS software, and provides CPMS training to those Project team members who have reasonable need for access to it. SAWS will make the software accessible via the internet to all such Design-Build Project team members. The Design-Build shall designate a member of its key personnel to be the sole responsible party for the Design-Build for receiving and implementing all software updates and to manage all Project documentation through the CPMS. SAWS will schedule training sessions with the Design-Build’s designated personnel on the CPMS.

(D) Review and Payment. Prior to submitting a Payment Request for the Design-Build Price to SAWS, the Design-Build shall submit a draft Payment Request to the SAWS Contract Representative and the Owner Representative, including all information required pursuant to this Section. The Owner Representative shall have no fewer than 10 days to review each draft Payment Request. Within such 10-day period, the Owner Representative shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Design-Build’s certification that the Design-Build has achieved the level of progress indicated and is entitled to payment. If the Owner Representative determines that the Design-Build Work has progressed as indicated in the draft Payment Request, the Owner Representative shall notify SAWS and the Design-Build, and the Design-Build shall submit a final, certified Payment Request to SAWS, which may not contain any material change from the draft Payment Request reviewed by the Owner Representative, in accordance with...
subsection (C) of this Section. SAWS shall pay the Design-Builder the requisitioned amount included in the final, certified Payment Request within 30 days following receipt, subject to subsection (E) of this Section and SAWS’ rights to withhold payments under Section 9.4. Disputes regarding payments of the Design-Build Price shall be resolved in accordance with subsection (E) of this Section. Any undisputed amounts of the Design-Build Price shall be paid within 30 days after receipt of the Design-Builder’s final, certified Payment Request.

(E) Payment Dispute Procedures. If SAWS determines that the Design-Build Work required for any payment has not progressed as indicated by the Design-Builder in the draft Payment Request, or otherwise disputes any Payment Request, SAWS shall provide prompt written notice to the Design-Builder as to SAWS’ reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Design-Builder may make the necessary corrections and resubmit the Payment Request, or SAWS may agree on a revised amount, in which case the Design-Builder shall promptly submit a final, certified Payment Request to SAWS as to any undisputed amount. If the Design-Builder is unable to reach agreement with SAWS as to the progress of the Design-Build Work or the payment dispute, the Design-Builder may exercise its right to contest SAWS’ determination in accordance with the dispute resolution procedures set forth in Section 11.1. Any proceedings undertaken to resolve a dispute arising under this subsection (E) shall immediately terminate if (1) the Design-Builder demonstrates to SAWS that the Design-Build Work has progressed as indicated in the Payment Request giving rise to the dispute and that the disputed Payment Request is correct, and (2) SAWS concurs with such demonstration. The Design-Builder shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection (E); provided, however, that SAWS shall pay all requisitioned amounts which are not in dispute in accordance with subsection (C) of this Section. In the event that upon resolution of any such dispute, it is determined that the Design-Builder was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Design-Builder shall be entitled to receive, promptly following such resolution, such disputed amount plus interest on such disputed amount as and to the extent provided under Section 9.9.

(F) Retainage. Each Design-Build Price payment will be subject to a 5% retainage holdback. SAWS shall release to the Design-Builder 90% of the accumulated funds retained from all prior drawdown payments upon Final Completion in accordance with Section 9.5. The Design-Builder acknowledges and agrees that the performance of the Design-Build Work, including the Warranty Work, under this Design-Build Contract is not complete until the expiration of the Warranty Period. Accordingly, the remaining 10% of the accumulated funds shall continue to be held by SAWS to secure the performance of any Warranty Work required during the Warranty Period in accordance with Section 10.2(B)). Any amount that has not been charged to cover the cost of corrective work performed by or on behalf of SAWS pursuant to Section 10.2(B)) as of the expiration of the Warranty Period shall be paid to the Design-Builder in accordance with Section 9.5(D). Notwithstanding any of the foregoing, in the event SAWS obtains TWDB funding for the Project, retainage may not be paid to the Design-Builder absent authorization from TWDB. Any interest earned on the retainage holdback provided for under this subsection (F) shall be for SAWS’ benefit only.

(G) Cost Control and Reporting. The Design-Builder shall implement a Cost/Schedule Status Report (CSSR) program for Design-Build Work cost control, which system shall be disclosed to and reviewed and approved by SAWS and the Owner Representative prior to the GMP Amendment Date. The Design-Builder shall develop cash flow reports and forecasts as reasonably requested or required by SAWS and the Owner Representative, including a good faith calendar quarterly estimate of payments of the Design-Build Price throughout the Phase II Services Period, specifying the range of minimum and maximum monthly payments, which shall not exceed the Guaranteed Maximum Price or any
line item on the Schedule of Values. The Design-Builder shall promptly (within seven days) after acquiring such information, identify and report to SAWS and the Owner Representative all variances between estimated costs and actual costs of the Design-Build Work, including any proposed corrective action to be taken by the Design-Builder.

(H) Certification of Amounts Due. Whenever requested by SAWS or the Owner Representative, the Design-Builder shall submit a sworn statement certifying all amounts then due (or yet to become due) the Design-Builder for the Design-Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the Design-Builder and any Subcontractor.

SECTION 9.4. PERMISSIBLE WITHHOLDINGS.

In addition to the amounts required to be retained pursuant to Section 9.3(F), SAWS may disapprove and withhold and retain all or any portion of any payment requested in any Payment Request for Design-Build Work in an amount equal to the sum of:

1. Any liquidated damages or reimbursement payments which are due and owing to SAWS hereunder;
2. Any indemnification amounts which are due and owing to SAWS hereunder and with respect to which a claim has been filed against a SAWS Indemnitee by a third party in accordance with Applicable Law;
3. Any amount determined pursuant to Section 13.1(E) and Appendix 10;
4. Any other deductions which are required by Applicable Law;
5. Any payments with respect to which documents to be delivered in connection therewith are not correct and complete;
6. Any payments to the extent that the Design-Build Work covered by such Payment Request (or any previous Payment Request) does not comply with this Design-Build Contract;
7. Damage to the work of a Separate Contractor to the extent caused by the Design-Builder or any Subcontractor;
8. Any payments with respect to which any person has filed a Lien resulting from the acts or omissions of the Design-Builder in performing the Design-Build Work and such Lien remains unreleased or unbonded;
9. All requisitioned payments if an Event of Default of the Design-Builder has occurred under Section 12.2; and
10. In the event the Design-Builder fails to pay any Taxes, assessments, penalties or fees imposed by any Governmental Body, then the Design-Builder authorizes SAWS to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body.

In addition, SAWS may withhold payment for persistent and uncured Design-Builder noncompliance with the administrative provisions of this Design-Build Contract, including failure to electronically submit monthly Subcontractor payment information utilizing the S.P.U.R. System and required certified payrolls. In the event of any permissible withholding
under this Section, SAWS shall notify the Design-Builder in writing at least seven days prior to the date payment is otherwise due. The notice shall indicate the specific amounts SAWS intends to withhold, the reasons and contractual basis for the withholding, and the specific measures the Design-Builder must take to rectify SAWS’ concerns. Any dispute associated with any such withholding shall be handled in accordance with Section 9.3(E).

SECTION 9.5. PAYMENT UPON FINAL COMPLETION.

(A) Final Completion Payment Request. In connection with the achievement of Final Completion in accordance with Section 8.9, the Design-Builder shall prepare and submit to SAWS and the Owner Representative a Final Completion Payment Request. The Final Completion Payment Request shall enclose:

1. A notarized affidavit in duplicate stating under oath that all Subcontractors, vendors, and other persons or firms who have furnished or performed labor or furnished materials for the Design-Build Work have been fully paid or satisfactorily secured; and if requested by SAWS, the Design-Builder shall submit further proof including waiver or release of lien or claims from any Subcontractors or Suppliers;

2. A certificate of the Surety for both the Performance Bond and the Payment Bond certifying that the Surety consents to payment for Final Completion and agrees that such payment shall not relieve the Surety of any of its obligations under the Performance Bond or the Payment Bond;

3. A general release executed by the Design-Builder waiving, upon receipt of payment for Final Completion, all claims arising out of or resulting from the Design-Build Work, except those claims made in writing to SAWS and remaining unsettled at the time of such payment, which claims shall be specifically listed in an attachment to the general release, identifying the claimant and the nature of the claim; and

4. Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of this Design-Build Contract.

(B) Final Completion Payment. If based on the Owner Representative’s observation of the Design-Build Work, (2) final inspection, and (3) review of the Final Completion Payment Request and other documents required by subsections (A) and (C) of this Section and Section 8.9, the Owner Representative is satisfied that the conditions for Final Completion have been achieved, the Owner Representative shall, within 15 days after receipt of the Final Completion Payment Request, furnish to SAWS and the Design-Builder the Owner Representative’s recommendation of payment for Final Completion. If the Owner Representative is not satisfied, the Owner Representative shall return the Final Completion Payment Request to the Design-Builder, indicating in writing the reasons for not recommending payment, in which case the Design-Builder shall either (1) exercise its right to contest the Owner Representative’s determination in accordance with Section 9.3(E), or (2) make the necessary corrections and resubmit the Final Completion Payment Request.

1. SAWS Concurrence. If SAWS concurs with the Owner Representative’s recommendation of payment for Final Completion, SAWS shall, within 15 days, file a written notice of Final Completion and notify the Design-Builder of such concurrence. As soon as reasonably practicable (but in no event later than 45 days after SAWS’ original receipt of the Design-Builder’s Final Completion Payment Request, subject to SAWS’ right to dispute payment in accordance with this Design-Build Contract and Applicable Law) after filing such notice, SAWS shall pay to the Design-Builder the
balance of the Design-Build Price, subject to any withholdings and any other provisions governing final payment specified herein.

(2) **SAWS Non-Concurrence.** If SAWS does not concur with the Owner Representative’s determination, SAWS shall return the Payment Request to the Design-Builder, indicating in writing its reasons for refusing payment for Final Completion. The Design-Builder shall promptly make the necessary corrections and resubmit the Payment Request to SAWS and the Owner Representative. SAWS’ written determination shall bind the Design-Builder, unless the Design-Builder delivers to SAWS written notice of a claim within 30 days after receipt of SAWS’ determination.

Payment for Final Completion does not constitute a waiver by SAWS of any rights relating to the Design-Builder’s obligations under this Design-Build Contract. Except as specifically provided in subsection (A) of this Section with respect to exceptions taken in the Design-Builder’s general release, payment for Final Completion constitutes a waiver of all claims by the Design-Builder against SAWS, including all claims associated with Uncontrollable Circumstances, relating to the Design-Build Work, the payment of the Design-Build Costs or otherwise in connection with the Design-Build Period.

(C) **Final Determination and Approval of Design-Build Price.** Notwithstanding any of the foregoing, SAWS shall have no obligation to make payment for Final Completion hereunder until a final accounting of the Design-Build Costs has been submitted by the Design-Builder and has been verified by SAWS and the Owner Representative. Such accounting shall be provided by the Design-Builder in connection with the Final Completion Payment Request. The aggregate total of payments to the Design-Builder with respect to the Design-Build Price (including amounts retained pursuant to Section 9.3(F)) shall not exceed the total of the actual Design-Build Costs, as verified by SAWS and the Owner Representative from the Design-Builder’s final accounting, plus the Design-Builder Fee and the General Conditions Fee, which together shall not exceed the Guaranteed Maximum Price. If payments to the Design-Builder exceed that which is due and owing the Design-Builder pursuant to this Article, the Design-Builder shall promptly refund the excess to SAWS. The Design-Builder acknowledges and agrees that SAWS shall have the right to withhold and retain amounts from payment for Final Completion in accordance with Section 9.4. In the event SAWS obtains TWDB funding for the Project, payment for Final Completion to the Design-Builder may be further subject to the approval of TWDB.

(D) **Completion of Design-Build Work.** Notwithstanding payment for Final Completion pursuant to this Section, the Design-Builder acknowledges and agrees that the performance of the Design-Build Work is not complete until the expiration of the Warranty Period, and that the Design-Builder shall have the continuing obligation to perform Warranty Work pursuant to the terms and conditions of Article 10 until the expiration of the Warranty Period. To the extent the Design-Builder is entitled to payment of any amount retained by SAWS pursuant to Section 9.3(F) upon expiration of the Warranty Period, the Design-Builder shall provide SAWS with a final Payment Request in a form reasonably acceptable to SAWS, and SAWS shall pay the amount due within 30 days following receipt of the final Payment Request.

**SECTION 9.6. NO ACCEPTANCE, WAIVER OR RELEASE.**

Unless other provisions of this Design-Build Contract specifically provide to the contrary, none of the following, without limitation, shall be construed as (i) SAWS’ acceptance of any Design-Build Work which is defective, incomplete, or otherwise not in compliance with this Design-Build Contract, (ii) SAWS’ release of the Design-Builder from any obligation under
this Design-Build Contract, (iii) SAWS’ extension of the Design-Builder’s time for performance, (iv) an estoppel against SAWS, or (v) SAWS’ acceptance of any claim by the Design-Builder:

(1) SAWS’ payment to the Design-Builder or any other person with respect to performance of the Design-Build Work;

(2) The review, consent, approval or acceptance, as applicable, of any submissions, permit applications, punch lists, other documents, certifications, or Design-Build Work of the Design-Builder or any Subcontractor by SAWS, the Owner Representative or any other person;

(3) The review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Design-Build Work by SAWS, the Owner Representative or any other person;

(4) The entry at any time on the Project Site (including any area in which the Design-Build Work is being performed) by SAWS, the Owner Representative or any other person;

(5) Any observation, inspection or testing of (or failure to observe, inspect or test) any Design-Build Work (whether finished or in progress) by SAWS, the Owner Representative or any other person;

(6) The failure of SAWS, the Owner Representative or any other person to respond in writing to any notice or other communication of the Design-Builder; or

(7) Any other exercise of rights or failure to exercise rights by SAWS hereunder.

SECTION 9.7. CHANGES IN DESIGN-BUILD PRICE.

(A) Determination of Base Guaranteed Maximum Price Adjustment. Without limiting any requirement of Article 14, any Base Guaranteed Maximum Price Adjustment included in a Change Order or Work Change Directive shall be determined as follows:

(1) Where unit prices set forth in the Contract Documents are applicable to the Design-Build Work that is the subject of the Change Order or Work Change Directive, by application of such unit prices to the quantities of the items involved;

(2) To the extent unit prices are not applicable, by a mutually agreed lump sum; and

(3) To the extent unit prices are not applicable and the parties are unable to reach agreement on a lump-sum value, on the basis of the actual cost of performing the applicable Design-Build Work (subject to Cost Substantiation and excluding any cost attributable to Design-Builder Fault), plus the Design-Builder Fee and a Subcontractor mark-up determined in accordance with this Section.

(B) Design Professional Services. Without limiting anything in subsection (C) of this Section and subject to any unit rates specified in the Contract Documents, for purposes of determining the amount payable for Design Professional Services included in any Change Order or Work Change Directive, the rates payable for Design-Builder personnel and personnel of Subcontractors providing Design Professional Services shall not exceed their then currently applicable rates for similar services on projects of similar size and scope to the Design-Build

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Work. The Design-Builder shall use commercially reasonable efforts to use available Design-
Builder personnel for additional work hereunder before using Subcontractors.

(C) Construction Subcontractor’s Maximum Mark-Up on Subcontracted Construction Work. The price payable to all Subcontractors for work performed under Construction Subcontracts, including Construction Subcontractor overhead and mark-ups for risk and profit, shall be commercially reasonable. A Change Order or Work Change Directive may provide for a mark-up payable to Construction Subcontractors for their Subcontractor risk, profit, administration, and all other overhead where Construction work that is the subject of the Change Order or Work Change Directive is performed through such Construction Subcontractors. Any such Construction Subcontractor mark-up shall not exceed 15% of the costs incurred by such Construction Subcontractor in respect of labor, materials, equipment, supplies and any lower-tier Construction Subcontract.

SECTION 9.8. COST SUBSTANTIATION.

(A) Required Substantiation. Without limiting anything in Appendix 8, the Design-Builder shall substantiate the Design-Build Costs and any other costs for which it claims compensation hereunder, other than (1) the Phase I Services Fee or (2) the Design-Builder Fee, each of which was proposed and negotiated on a lump sum basis, and any other costs that are part of a negotiated lump sum price. In incurring costs which are or may be subject to Cost Substantiation, the Design-Builder shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing bids, quotes, proposals or estimates for costs expected to be in excess of $50,000), 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.

(B) Cost Substantiation Certificate. Any Payment Request for compensation relating to costs requiring Cost Substantiation shall be accompanied by a certificate stating that the Design-Build Costs or other costs being invoiced (1) are properly payable under this Design-Build Contract, and specifying the provisions of this Design-Build Contract under which compensation is due; and (2) are equal to amounts paid by the Design-Builder for Design-Build Work that has been properly performed. The Cost Substantiation certificate shall describe the competitive or other process utilized by the Design-Builder to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required pursuant to this Design-Build Contract. Each Cost Substantiation certificate shall be accompanied by copies of all documentation reasonably necessary to demonstrate that the Design-Build Costs have been paid and are reasonable. Such documentation shall be in a format and level of detail reasonably acceptable to SAWS. To the extent reasonably necessary to confirm the payment of costs that are subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be provided.

SECTION 9.9. INTEREST ON OVERDUE OBLIGATIONS.

Except as otherwise provided for herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.
SECTION 9.10. RETENTION AND AUDIT OF BOOKS AND RECORDS.

(A) Books and Records. The Design-Builder shall, and shall cause its Subcontractors to, prepare and maintain proper, accurate and complete books and records regarding the Contract Obligations and all transactions related thereto, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, 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, any Subcontract or any operations or transactions in which SAWS has or may have a financial or other material interest hereunder (collectively, “Books and Records”). The Design-Builder and its Subcontractors shall produce such Books and Records for inspection, audit and reproduction within 15 days of request by SAWS. All financial records of the Design-Builder and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and generally accepted auditing standards. The Design-Builder and its Subcontractors shall maintain such Books and Records in accordance with subsection (E) of this Section. The provisions of this Section shall survive the expiration or earlier termination of this Design-Build Contract.

(B) SAWS Rights to Audit and Examine Payments Other than Lump Sum Payments. All payments whatsoever by SAWS to the Design-Builder (other than lump sum payments, including lump sum payments of the Phase I Services Fee or any lump sum payments of Design-Build Costs) and all Contract Obligations shall be subject to audit at any time by SAWS. The Design-Builder shall provide all evidence necessary to support Cost Substantiation as required under this Design-Build Contract, and allow SAWS access to the Design-Builder’s Books and Records. The Design-Builder shall require all Subcontractors to comply with the provisions of this Section and include the requirements hereof in the written contract between the Design-Builder and the Subcontractor. The Design-Builder shall also require all Subcontractors to include the requirements of this Section in any lower tier Subcontracts relating to the Project.

(C) Notice and Process. Upon written notice by SAWS, the Design-Builder shall, and shall cause its Subcontractors to, promptly (in no event later than 15 days following the notice) make available at its office at all reasonable times the Books and Records for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five days’ prior notice of the examination or audit. SAWS may take possession of such Books and Records by reproducing such Books and Records for off-site review or audit. When requested in SAWS’ written notice of examination or audit, the Design-Builder shall provide SAWS with copies of electronic and electronically stored Books and Records in a reasonably usable format that allows SAWS to access and analyze all such Books and Records. For Books and Records that require proprietary software to access and analyze, the Design-Builder shall provide SAWS with two licenses with maintenance agreements authorizing SAWS to access and analyze all such Books and Records. If the Design-Builder is unable to provide the licenses, the Design-Builder shall provide SAWS with access to the Design-Builder’s accounting system whereby SAWS can obtain applicable Books and Records, including job cost reports, material distribution reports, labor cost reports, labor productivity reports, standard time/overtime analysis reports, manhour reports, and the like.

(D) Selection of Auditor or Examiner and Determination of Scope. SAWS has discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

(E) Preservation of Books and Records. The Design-Builder shall preserve all of its Books and Records, and SAWS may examine, audit, or reproduce Books and Records, from the Contract Date until the later of four years after:
(1) Final payment under this Design-Build Contract;

(2) Final settlement of a termination for convenience under Section 12.6; or

(3) The final resolution of any dispute.

The failure by the Design-Builder to make available to SAWS Books and Records in accordance with this Section or the Design-Builder’s refusal to cooperate with a notice of audit or examination shall be deemed a material breach of this Design-Build Contract and grounds for termination.

(F) **Overpayment.** In the event an audit by SAWS determines that the Design-Builder cannot document a cost or expense for which payment has been made, or that SAWS has overpaid the Design-Builder, the Design-Builder, upon demand, shall refund to SAWS the amounts overpaid or undocumented. If the overpayment exceeds 1% of the total amount that should have been properly paid by SAWS during the period audited, then the Design-Builder shall, in addition, reimburse SAWS for any and all fees and costs incurred in connection with the inspection or audit. Payments to the Design-Builder, or approval by SAWS of any requisition for payment submitted by the Design-Builder, shall in no way affect the Design-Builder’s obligation hereunder or the right of SAWS to obtain a refund of any payment to the Design-Builder which is in excess of that to which it was lawfully entitled.

**SECTION 9.11. AMOUNTS SUBJECT TO APPROPRIATIONS.**

The Design-Builder agrees that SAWS has projected costs for this Design-Build Contract and SAWS expects to pay all obligations of this Design-Build Contract from projected revenues of SAWS. All obligations of SAWS are subject to annual appropriations by its Board of Trustees. It is understood that neither this Design-Build Contract, nor any representation by any SAWS employee or officer creates any obligation to appropriate or make monies available for the purpose of this Design-Build Contract. Accordingly, notwithstanding anything in this Design-Build Contract to the contrary, in the event that SAWS fails to appropriate funds to pay any of SAWS’ obligations under the terms of this Design-Build Contract, then SAWS’ obligations under this Design-Build Contract shall terminate, and the Design-Builder’s sole option and remedy shall be to terminate this Design-Build Contract by written notice to SAWS, and neither SAWS nor the Design-Builder shall have any further duties or obligations hereunder, except as otherwise provided herein. SAWS agrees to use good faith efforts to provide written notice to the Design-Builder when funds have been appropriated for expenditure under this Design-Build Contract, and if expected funds are requested and not appropriated, SAWS agrees to use good faith efforts to provide written notice to the Design-Builder of the non-appropriation.
SECTION 10.1. PROJECT WARRANTIES

(A) Project Warranties Defined. The Design-Builder warrants to SAWS that the Design-Build Work, including all completed materials, equipment, systems and structures comprising the Project, shall: (i) be new, of recent manufacture and of good quality; (ii) conform to the requirements of the Contract Documents; (iii) be free of material faults or defects; and (iv) be suitable for its intended purposes, as established by the Contract Documents (the “Project Warranties”). The Project Warranties are further subject to the following:

(1) Inclusions. The Project Warranties include remedy for damage or defect caused by (a) Commissioning and Acceptance Test performed by the Design-Builder or performed by SAWS as directed by the Design-Builder; and (b) any defects or errors in the Operations and Maintenance Manual prepared by the Design-Builder pursuant to this Design-Build Contract.

(2) Exclusions. The Project Warranties exclude remedy for damage or defect caused by capital modifications not undertaken or executed by the Design-Builder under this Design-Build Contract. In addition, except as provided in Item (1), above, the Project Warranties exclude remedy for damage or defect caused by improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

(B) Term of the Project Warranties. The Project Warranties set forth in this Article shall be in full force and effect for the period of time beginning on the Acceptance Date and, subject to Section 10.2(D), continuing for two years following the Acceptance Date (the “Warranty Period”).

SECTION 10.2. WARRANTY WORK.

(A) “Call-Back” Obligations. If, at any time during the Warranty Period, the Project or any of the Design-Build Work is found to be malfunctioning, defective or otherwise not in accordance with the requirements of the Project Warranties, the Design-Builder shall correct the condition promptly after receipt of written notice from SAWS to do so. SAWS shall provide such notice promptly after discovery of the condition. The Design-Builder shall respond to critical or emergency service calls from SAWS within four hours and to non-critical or non-emergency calls within eight hours. Such response shall require that a competent representative or representatives of the Design-Builder familiar with the Project, including its specific equipment, design and operational requirements, inspect the Project and, while on site, either correct the problem or initiate a course of action that will fully correct the problem within a reasonable period of time in accordance with Good Engineering and Construction Practice and the specific requirements of this subsection (A). In critical or emergency situations, the correction shall be made the minimum amount of time required in accordance with Good Engineering and Construction Practice.

(B) Right of SAWS to Proceed with Corrective Action; Design-Builder Liability. If the Design-Builder fails to commence and complete the steps set forth in subsection (A) of this Section within the required time frames, in addition to any other remedies provided under this Design-Build Contract, the Security Instruments or Applicable Law, SAWS may commence and complete the correction of such nonconforming Design-Build Work with its own forces or with third party contractors. If SAWS does perform such corrective work, the Design-Builder shall be responsible for all costs reasonably incurred in performing such correction. SAWS shall have the right to charge any cost reasonably incurred by SAWS in
performing corrective action pursuant to this subsection (B) against the funds retained to secure the Warranty Work pursuant to Section 9.3(F); provided, however, that the amount retained by SAWS pursuant to Section 9.3(F) shall in no way be deemed to constitute a limit of liability to the Design-Builder for the performance of Warranty Work, and the Design-Builder shall be required to reimburse SAWS for all costs reasonably incurred in performing corrective action pursuant to this subsection (B) to the extent such costs exceed the retained funds.

(C) No Period of Limitation on Other Obligations. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations that the Design-Builder has under this Design-Build Contract or under Applicable Law with respect to the Design-Build Work, including warranties and obligations with respect to latent defects. The Warranty Period relates only to the specific obligations of the Design-Builder to respond to notices from SAWS under the Project Warranties, and has no relationship to the time within which the obligation of the Design-Builder to comply with this Design-Build Contract may be enforced, nor the time within which proceedings may be commenced to establish the Design-Builder’s liability with respect to its obligations under this Design-Build Contract.

(D) Extension of Warranties. The “call-back” obligations set forth in this Section shall apply to all Design-Build Work re-done or corrected pursuant to this Design-Build Contract. The “call-back” obligations for re-done or corrected elements of the Design-Build Work shall extend beyond the Warranty Period, if necessary, to provide a minimum one-year period following acceptance by SAWS of such re-done or corrected Design-Build Work; provided, however, that in no event shall such “call-back” obligations extend beyond one year following the expiration of the Warranty Period.

(E) Manufacturers’ Warranties. During the Warranty Period, the Design-Builder (or SAWS) shall be permitted to enforce all warranties provided by manufacturers, suppliers and other third parties with respect to the Design-Build Work. However, as provided in Section 10.4(A), no such warranty shall relieve the Design-Builder of any obligation with respect to the Project Warranties.

(F) Performance of Warranty Work. The Design-Builder acknowledges that time is of the essence in the performance of all Warranty Work required under this Section in light of the Project’s essential public purpose. Accordingly, all Warranty Work shall be performed in accordance with the Contract Standards and within the minimum amount of time required in accordance with Good Engineering and Construction Practice. The Design-Builder shall perform or cause to be performed all Warranty Work performed under this Section in a manner that will minimize interference with the ongoing operations of the Project and the SAWS Distribution System. The Design-Builder shall provide a written plan for all proposed Warranty Work (unless expressly waived by SAWS).

(G) Responsibility for Costs. The Design-Builder shall be fully responsible for the costs associated with all Warranty Work, and shall reimburse SAWS for its costs resulting from a breach of the Project Warranties, subject to the terms and conditions of this Design-Build Contract.

SECTION 10.3. PROJECT WARRANTIES NOT EXCLUSIVE.

The Design-Builder acknowledges and agrees that the Project Warranties are in addition to, and not in limitation of, any other warranties, rights and remedies available under this Design-Build Contract or Applicable Law, and shall not limit the Design-Builder’s liability or responsibility imposed by this Design-Build Contract or Applicable Law with respect to the Design-Build Work, including liability for design defects, latent construction defects, strict
liability, negligence or fraud. The provisions of this Section shall survive the expiration or earlier termination of this Design-Build Contract.

SECTION 10.4. MANUFACTURERS’ WARRANTIES.

(A) Manufacturers’ Warranties Generally. Without limiting any of the Project Warranties, the Design-Build shall, for the protection of SAWS, obtain from all Subcontractors (including vendors, suppliers and other persons from which the Design-Build procures structures, improvements, fixtures, machinery, equipment and materials) such warranties and guarantees as are normally provided with respect thereto and as may be specifically required by the Contract Standards, each of which is hereby assigned to SAWS to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Design-Build of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Guaranteed Maximum Price or otherwise excuse the Design-Build from the performance of any Design-Build Work or Warranty Work obligations, unless such failure is itself attributable to an Uncontrollable Circumstance.

(B) No Limitation on Third Party Warranties. Nothing in this Design-Build Contract is intended to limit any third party warranty that provides SAWS with greater warranty rights than those provided under the Project Warranties, as set forth in this Design-Build Contract.
ARTICLE 11
DISPUTE RESOLUTION

SECTION 11.1. DISPUTE RESOLUTION PROCEDURES.

(A) Generally. Except as provided in subsection (G) of this Section, each party shall follow the dispute resolution procedures set forth in this Section to attempt to resolve and settle disputes between themselves concerning the rights, obligations and liabilities of the parties. The dispute resolution procedures set forth in this Section are intended to encourage a negotiated resolution of disputes in a prompt and efficient manner without resort to litigation, which should be a last resort.

(B) Informal Negotiations. Representatives of SAWS and the Design-Builder with day-to-day involvement in the administration of this Design-Build Contract and the performance of the Contract Obligations shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning this Design-Build Contract. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Project and this Design-Build Contract. At SAWS' request, the Design-Builder shall involve senior representatives of any of its Subcontractors in such negotiations. Upon the expenditure of reasonable efforts towards resolution of a dispute through such informal negotiations without reaching agreement, a party may declare that the informal negotiations have been exhausted and such party may request Non-Binding Mediation or request a SAWS Contract Representative's Final Decision in accordance with this Section.

(C) SAWS Contract Representative's Final Decision. If a dispute has not been resolved through direct, informal negotiations as provided in subsection (B) of this Section, then, upon the written request of the Design-Builder, the SAWS Contract Representative or his or her designee (other than any personnel assigned to the Project) shall review the dispute and issue his or her determination of the dispute (the “SAWS Contract Representative’s Final Decision”). The SAWS Contract Representative’s Final Decision shall be issued in writing within 30 days following the date of the request for review. If the Design-Builder disagrees with the SAWS Contract Representative’s Final Decision, or if the SAWS Contract Representative fails to issue a SAWS Contract Representative’s Final Decision within such 30-day period, then the Design-Builder shall have the right to initiate Legal Proceedings concerning the dispute, subject to Section 11.2. If the Design-Builder fails to initiate Legal Proceedings concerning the dispute within 60 days following the earlier to occur of the issuance of the SAWS Contract Representative’s Final Decision or the expiration of the 30-day period specified above in this subsection (C), then the Design-Builder shall:

(1) Be deemed to have accepted the SAWS Contract Representative’s Final Decision;

(2) Shall have waived its rights to any further relief for the matters covered by such SAWS Contract Representative’s Final Decision; and

(3) Shall have waived its rights to initiate Legal Proceedings in accordance with Section 11.2 and in accordance with this Design-Build Contract for the matters in dispute between the parties.
(D) Rights to Request and Decline Non-Binding Mediation. Subject to the requirements of subsection (B) of this Section, either party may request Non-Binding Mediation of any dispute arising under this Design-Build Contract, whether technical or otherwise. Non-Binding Mediation is voluntary and will not be a condition precedent to initiating the institution of Legal Proceedings by either party. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of such Non-Binding Mediation shall be divided equally between SAWS and the Design-Builder.

(E) Procedure. The Mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator’s program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

(F) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Design-Build Contract. No Mediator shall be empowered to render a binding decision.

(G) Relation to Judicial Legal Proceedings. Except as provided in subsection (C) of this Section with respect to the SAWS Contract Representative’s Final Decision, nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Design-Build Contract by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 11.2. FORUM FOR DISPUTE RESOLUTION.

It is the express intention of the parties that all Legal Proceedings related to this Design-Build Contract or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas, having appropriate jurisdiction therefor. The Design-Builder and SAWS each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

SECTION 11.3. CONTINUANCE OF PERFORMANCE DURING DISPUTE.

Unless otherwise directed in writing by SAWS, at all times during the course of any dispute resolution procedure or Legal Proceeding, the Design-Builder shall continue with the performance of the Contract Obligations in a diligent manner and in accordance with the applicable provisions of this Design-Build Contract. SAWS shall continue to satisfy its uncontested payment obligations to the Design-Builder during the pendency of any such dispute, subject to the terms and conditions of this Design-Build Contract. Records of the Contract Obligations performed during such time shall be kept in accordance with the applicable provisions of this Design-Build Contract.
ARTICLE 12

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 12.1. REMEDIES FOR BREACH.

(A) Generally. The parties agree that, except as otherwise provided in this Section, in the event that either party breaches this Design-Build Contract, the other party may exercise any legal rights it may have under this Design-Build Contract and under Applicable Law. Neither party shall have the right to terminate this Design-Build Contract except as expressly provided in this Article.

(B) No Effect On Contract Obligations. The exercise by SAWS of any of its rights under this Article shall not reduce or affect in any way the Design-Builder’s responsibility hereunder to perform the Contract Obligations.

(C) No Duplicative Recovery; Express Remedy. Every right to claim compensation, indemnification or reimbursement under this Design-Build Contract shall be construed so that recovery is without duplication to any other amount recoverable under this Design-Build Contract. Without prejudice to any legal right or entitlement of the Design-Builder to specific performance or injunctive relief, the Design-Builder’s sole remedy in relation to matters for which an express right or remedy is stated in this Design-Build Contract shall be that express right or remedy, and the Design-Builder shall have no additional right or remedy arising by common law, by statute or otherwise.

SECTION 12.2. EVENTS OF DEFAULT BY THE DESIGN-BUILDER.

(A) Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Design-Builder upon which SAWS, by notice to the Design-Builder, may terminate this Design-Build Contract without any requirement of having given notice previously or of providing any further cure opportunity:

1. Failure to Achieve Mechanical Completion. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Design-Builder to achieve Mechanical Completion prior to the end of the Mechanical Completion Longstop Date;

2. Failure to Achieve Acceptance. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Design-Builder to achieve Acceptance prior to the end of the Acceptance Longstop Date;

3. Failure to Achieve Final Completion. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Design-Builder to achieve Final Completion by the date set forth in Section 8.9(A);

4. Security for Performance. The failure of the Design-Builder to obtain and maintain in full force and effect in accordance with the requirements of this Design-Build Contract any Security Instrument required by Article 16 as security for the performance of this Design-Build Contract;

5. Required Insurance. The failure of the Design-Builder to obtain and maintain in full force and effect in accordance with the requirements of this Design-Build Contract any Required Insurance required by Article 13 and Appendix 10;
(6) **Assignment or Transfer Without Consent.** The Design-Builder assigns or transfers this Design-Build Contract or any right or interest therein without SAWS’ prior written consent;

(7) **Insolvency.** The insolvency of the Design-Builder or the Guarantor, as determined under the Bankruptcy Law;

(8) **Voluntary Bankruptcy.** The filing by the Design-Builder or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Law; the consenting of the Design-Builder or the Guarantor to the filing of any bankruptcy or reorganization petition against the Design-Builder or the Guarantor under the Bankruptcy Law; or the filing by the Design-Builder or the Guarantor of a petition to reorganize the Design-Builder or the Guarantor pursuant to the Bankruptcy Law; or

(9) **Involuntary Bankruptcy.** The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Design-Builder or the Guarantor, or of a major part of the property of the Design-Builder or the Guarantor, or the filing against the Design-Builder or the Guarantor of a petition to reorganize the Design-Builder or the Guarantor pursuant to the Bankruptcy Law, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing.

(B) **Events of Default Requiring Previous Notice and Cure Opportunity for Termination.** It shall be an Event of Default by the Design-Builder upon which SAWS may terminate this Design-Build Contract, by notice to the Design-Builder and subject to the Design-Builder’s cure rights set forth in subsection (C) of this Section, if:

(1) Any representation or warranty in this Design-Build Contract made by the Design-Builder, or in any certificate, schedule, report, instrument, agreement or other document delivered by or on behalf of Design-Builder to SAWS pursuant to this Design-Build Contract, is false, misleading or inaccurate in any material respect when made or omits material information when made;

(2) The Design-Builder fails, refuses or otherwise defaults in its duty to pay any amount required to be paid to SAWS under this Design-Build Contract within 60 days following the due date for such payment;

(3) The Design-Builder suspends, ceases, stops or abandons the Design-Build Work or fails to continuously and diligently prosecute the Design-Build Work, exclusive of work stoppages due to an Uncontrollable Circumstance;

(4) The Design-Builder fails to resume performance of the Design-Build Work which has been suspended or stopped within a reasonable time after receipt of notice from SAWS to do so or (if applicable) after cessation of the event preventing performance;

(5) The Design-Builder fails materially to comply with any Applicable Law or fails unreasonably to comply with the instructions of SAWS consistent with this Design-Build Contract; or

(6) The Design-Builder commits a material breach of this Design-Build Contract or otherwise fails to perform any other material obligation under this Design-Build Contract (unless such breach or failure is excused by an Uncontrollable Circumstance as and to the extent provided herein).
C) Notice and Cure Opportunity. The Design-Builder acknowledges that SAWS has an immediate termination right upon the occurrence of any of the defaults listed in subsection (A) of this Section and that the Design-Builder has no further right of notice or cure in such circumstances of default. Conversely, no default listed in subsection (B) of this Section shall constitute an Event of Default giving SAWS the right to terminate this Design-Build Contract for cause under this Section unless:

1. SAWS has given prior written notice to the Design-Builder stating that a specified default has occurred which gives SAWS a right to terminate this Design-Build Contract for cause under this Section, and describing the default in reasonable detail; and
2. The Design-Builder has not initiated within a reasonable time (in any event not more than 10 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If the Design-Builder shall have initiated and continued with due diligence to carry out to completion all actions required under item (2), above, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as the Design-Builder shall continue with due diligence to carry out to completion all such actions.

D) Other Remedies Upon Design-Builder Event of Default. The right of termination provided under this Section upon an Event of Default by the Design-Builder is not exclusive. If this Design-Build Contract is terminated by SAWS for an Event of Default by the Design-Builder, SAWS shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Design-Build Contract, under the Security Instruments and under Applicable Law. The Design-Builder shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for an Event of Default under this Section.

E) Relationship to Liquidated Damages. Termination by SAWS pursuant to this Section shall not relieve the Design-Builder or its Surety from liability for the liquidated damages provided for under this Design-Build Contract. The parties acknowledge and agree that such liquidated damages are intended solely to compensate SAWS for costs and expenses associated with unexcused delay in the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that SAWS is likely to suffer in the event of a Design-Builder Event of Default under this Article. Accordingly, except with respect to damages relating solely to the specific circumstances of unexcused delay for which liquidated damages are provided under this Design-Build Contract, the payment of any such liquidated damages by the Design-Builder shall not serve to limit or otherwise affect SAWS’ right to pursue and recover damages under subsection (D) of this Section.

SECTION 12.3. LIMITATION ON DESIGN-BUILDER LIABILITY.

A) Design-Builder Liability Limit. Subject to subsection (B) of this Section, the Design-Builder’s aggregate liability under this Design-Build Contract and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to damages of any kind payable to SAWS arising out of the performance or unexcused nonperformance of the Design-Build Work as a consequence of a claim or suit initiated by SAWS shall not exceed an amount equal to: (1) the aggregate value of Early Work Package Prices for all Early Work Packages and the Phase I Services Fee, during the period commencing on the Contract Date and ending on
the GMP Amendment Date; and (2) the Guaranteed Maximum Price commencing on the GMP Amendment Date and at all times thereafter.

(B) **Liquidated Damages Sub-Limit.** The aggregate liability of the Design-Builder, with respect to any liquidated damages payable pursuant Section 8.8, shall not exceed an amount equal to 10% of the Guaranteed Maximum Price. The payment by the Design-Builder of any such liquidated damages shall reduce commensurately the liability limit set forth in subsection (A) of this Section.

**SECTION 12.4. APPLICABILITY AND INTERPRETATION OF THE LIMITATION ON LIABILITY.**

The limitation on Design-Builder liability provided for in Section 12.3 applies solely to the liability of the Design-Builder and the Guarantor for damages to SAWS arising out of the performance or unexcused nonperformance of this Design-Build Contract as a consequence of a claim or suit initiated by SAWS. The limitation on liability provided for in Section 12.3 shall not apply in the event the Design-Builder abandons the Project, and does not apply to any other liability, loss, damage, cost or expense that may be incurred by the Design-Builder or the Guarantor in connection with this Design-Build Contract, including any of the following liabilities, losses, damages, costs or expenses:

1. Any loss, cost or expense incurred by any Design-Builder Person in the performance of the Design-Build Work or in seeking to cure or prevent any breach of this Design-Build Contract by the Design-Builder;
2. Any fines or penalties levied or imposed by any Governmental Body;
3. Any indemnity payment (resulting from third party claims) made by the Design-Builder or the Guarantor to SAWS;
4. Payment of any defense costs, including attorney’s fees, to, for, or on behalf of SAWS with respect to any third party claim;
5. Any payments made in connection with any Required Insurance under this Design-Build Contract, including the proceeds of Required Insurance and the payment of any deductible or self-insured retention; and
6. Any claims, losses, penalties or settlement payments paid to SAWS in connection with any tort claim by SAWS against the Design-Builder based on gross negligence, willful misconduct, fraud, misrepresentation or false claims.

**SECTION 12.5. EVENTS OF DEFAULT BY SAWS**

(A) **Events of Default Permitting Termination.** The failure, refusal or other default by SAWS in its duty to pay any undisputed amount required to be paid to the Design-Builder under this Design-Build Contract within 30 days following the due date for such payment shall constitute an Event of Default by SAWS upon which the Design-Builder, by notice to SAWS, may terminate this Design-Build Contract, subject to the terms and conditions of this Section.

(B) **Notice and Cure Opportunity.** No such default described in subsection (A) of this Section shall constitute an Event of Default giving the Design-Builder the right to terminate this Design-Build Contract for cause under this subsection (B) unless:
(1) The Design-Builder has given prior written notice to SAWS stating that a specified default has occurred which gives the Design-Builder a right to terminate this Design-Build Contract for cause under this Section, and describing the default in reasonable detail; and

(2) SAWS has neither challenged in an appropriate forum the Design-Builder’s conclusion that such default has occurred nor initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If SAWS shall have initiated and continued with due diligence to carry out to completion all actions required under item (2), above, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as SAWS shall continue with due diligence to carry out to completion all such actions.

(C) Other SAWS Breaches Constituting Uncontrollable Circumstances. Except for the SAWS Events of Default described in subsection (A) of this Section, the failure of SAWS to perform any other material obligation under this Design-Build Contract (unless such default is the due to Design-Builder Fault or excused by an Uncontrollable Circumstance as and to the extent provided herein), shall constitute an Uncontrollable Circumstance as and to the extent provided in Article 14, and the Design-Builder shall have no right to terminate this Design-Build Contract.

(D) Effect of Termination. If this Design-Build Contract is terminated by the Design-Builder for cause as a result of an Event of Default by SAWS, SAWS shall pay the Design-Builder the same amount which would be payable under Section 12.6 if this Design-Build Contract were terminated at the election of SAWS for convenience and without cause based on the date of termination. SAWS shall have no further liability to the Design-Builder for any Event of Default or termination under this Section.

SECTION 12.6. SAWS CONVENIENCE TERMINATION RIGHTS.

(A) Convenience Termination Right and Payment. SAWS shall have the right at any time following the Contract Date, exercisable in its discretion for any reason upon 30 days’ written notice to the Design-Builder, to terminate this Design-Build Contract.

(B) Convenience Termination Payment for Phase I Services. In the event of a convenience termination pursuant to this Section of the Phase I Services, the Design-Builder shall not be entitled to a convenience termination settlement payment, but shall be entitled to payment of that portion of the Phase I Services Fee that has been earned by the terms hereof as of the Termination Date but not yet paid by SAWS. No other compensation shall be payable by SAWS on account of SAWS’ convenience termination of the Phase I Services.

(C) Convenience Termination Payment for Phase II Services. In the event of a convenience termination pursuant to this Section of the Phase II Services (including Design-Build Work performed pursuant to an Early Work Package Amendment), the Design-Builder shall be entitled to a convenience termination settlement payment in an amount equal to the sum of:

(1) The difference between, (a) the value of all such Phase II Services performed up to the Termination Date, and (b) all payments already made to the Design-Builder pursuant to this Design-Build Contract; and
Subject to subsection (E) of this Section, the reasonable costs incurred by the Design-Builder in connection with the termination, including all actual and reasonable demobilization costs and amounts due in settlement of terminated Subcontracts.

In the event of a termination for convenience under this Section, the Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Phase II Services performed plus its settlement and closeout costs. Under no circumstances shall the Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Section.

(D) Early Work Packages. If the parties have entered into any Early Work Package Amendment prior to any convenience termination pursuant to this Section, SAWS shall have the right to:

1. Terminate the Design-Builder’s right to perform any Design-Build Work authorized by any such Early Work Package Amendment; or
2. Require the Design-Builder to complete performance of such Design-Build Work in accordance with the applicable Early Work Package Amendment.

If SAWS elects to terminate such Design-Build Work pursuant to clause (1) of this subsection (D), the Design-Builder shall be entitled to a termination settlement payment associated solely with the terminated Early Work Package Design-Build Work, as and to the extent provided in subsection (C) of this Section. Nothing in this subsection (D) shall provide grounds for adjustment of any applicable Early Work Package Price or limit SAWS’ rights to convenience terminate Design-Build Work authorized by an Early Work Package Amendment without terminating the Phase I Services or the Phase II Services.

(E) Settlement of Subcontracts. The obligation of SAWS to pay amounts due in settlement of Subcontracts under subsection (C) of this Section shall be limited to the reasonable costs incurred by the Design-Builder in settling and closing out Subcontracts that SAWS does not elect to have assigned to it pursuant to Section 12.7 and shall be subject to Cost Substantiation. Any convenience termination settlement payment under any Subcontract shall be calculated in the same manner as provided in subsection (C) of this Section with respect to the convenience termination settlement payment to the Design-Builder. In no event shall SAWS be responsible for anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages payable to any Subcontractor as a result of the termination of any Subcontract.

(F) Payment of Amounts Due as a Result of Convenience Termination. The Design-Builder shall submit a termination for convenience claim, in the form and with the certification prescribed by SAWS, promptly following the Termination Date but in any event not later than 60 days following the Termination Date. In the event of a failure of the Design-Builder to submit a termination for convenience claim within the time allowed pursuant to this subsection (F), SAWS may determine, on the basis of information available to SAWS, the amount, if any, due to the Design-Builder by reason of the convenience termination and shall thereupon pay to the Design-Builder the amount so determined, if any. In no event shall the amount payable to the Design-Builder pursuant to this Section exceed the Guaranteed Maximum Price as reduced by the amount of payments otherwise made. In addition, any amount payable to the Design-Builder pursuant to this Section shall be reduced in the amount of (1) any claim SAWS may have against the Design-Builder under this Design-Build Contract, and (2) the fair value, as determined by SAWS, of property which is destroyed, lost, stolen or
damaged so as to become undeliverable to SAWS, excluding normal spoilage and except to the extent that SAWS shall have otherwise expressly assumed the risk of loss with respect to such property hereunder. Any payment required to be made to the Design-Builder pursuant to this Section shall be made within 120 days following the Termination Date, subject to compliance by the Design-Builder with its obligations under Section 12.7. Any payment required to be made by the Design-Builder to SAWS pursuant to this Section shall be made within 120 days following the Termination Date. In the event of a dispute between the parties as to the amount of any payment required to be made pursuant to this Section, either party may elect to initiate dispute resolution procedures in accordance with Section 11.1.

(G) Completion or Continuation by SAWS. Without limiting any other SAWS right or remedy provided for under this Design-Build Contract, after the date of any termination under this Section, SAWS may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Obligations so terminated, including entering into contracts with other contractors.

(H) Convenience Termination Rights as Consideration. The right of SAWS to terminate this Design-Build Contract for its convenience and in its sole discretion in accordance with this Section constitutes an essential part of the overall consideration for this Design-Build Contract, and, except with respect to the determination as to the amount due the Design-Builder pursuant to this Section, the Design-Builder hereby waives any right it may have under Applicable Law to assert that SAWS owes the Design-Builder a duty of good faith dealing in the exercise of such right. The only compensation payable by SAWS upon the exercise of its convenience termination option shall be any amounts specified herein in connection therewith.

SECTION 12.7. OBLIGATIONS OF THE DESIGN-BUILDER UPON TERMINATION.

Upon any termination of the Design-Builder’s right to perform this Design-Build Contract, the Design-Builder shall, as applicable and subject to any written directions provided by SAWS:

(1) Stop any further Contract Obligations at the Project Sites or otherwise in connection with the Project;

(2) Cease incurring any further obligations or liabilities pertaining to the Contract Obligations;

(3) Promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities, and other property pertaining to the Project;

(4) Vacate possession of the Project Sites and turn possession of the Project Sites over to SAWS;

(5) Clean up and remove all debris and trash from the Project Sites;

(6) Promptly remove from the Project Sites all equipment, tools, or material owned by the Design-Builder, or its Subcontractors, agents or representatives;

(7) Promptly deliver a list of all suppliers, materials, machinery, equipment, property or other pending items being fabricated or on order for delivery to the Project but not yet delivered to the Project Sites or incorporated into the Design-Build Work, and comply with the written instructions of SAWS with respect to such matters;
(8) Deliver a complete copy of all books, notes, and records of the Design-Builder pertaining to Design-Build Contract performance or planned construction or design activities;

(9) Promptly provide a list of all files (and make available to SAWS for review or copying) all files pertaining to the Design-Build Work, including any and all access and security codes, and including instructions and demonstrations that show how to open and modify such codes;

(10) Promptly deliver complete copies of all Subcontracts to SAWS, together with a detailed report on the status of such Subcontracts (status of orders and work performed and not performed or delivered under each Subcontract); a record of proposals made and balances due under each Subcontract; any cancellation penalties pertaining thereto; and any further information required by SAWS, and furthermore assist SAWS in contacting such Subcontractors to verify such information or answer any questions of SAWS;

(11) Assign to SAWS any Subcontract that SAWS elects in writing, in its discretion, to have assigned to it, with SAWS assuming, and the Design-Builder being relieved of, all obligations under the Subcontract from the date of the assignment;

(12) Cancel or terminate all Subcontracts that SAWS does not elect to have assigned to SAWS, in accordance with the written instructions of SAWS;

(13) Promptly assign and transfer to SAWS all right, title, and interest of Design-Builder to any items ordered for the Contract Obligations (but not yet delivered to the Project Sites or incorporated into the Project), as requested by SAWS in its discretion; provided SAWS (or Surety) assumes responsibility for payment thereof;

(14) Promptly deliver and assign to SAWS all warranties or guarantees by any vendor, supplier, manufacturer, or subcontractor pertaining to the Project;

(15) Promptly notify SAWS (in writing) of any pending or threatened Legal Proceedings against the Design-Builder;

(16) Make arrangements with its employees to avoid any “successor clauses” or other similar provisions with respect to salaries or benefits, to allow SAWS to enter into new employment or independent contractor agreements with employees of the Design-Builder deemed available or necessary by SAWS to complete (or correct defects) in the Design-Build Work; and

(17) Promptly take such other action and execute such documents as requested by SAWS, and to assist in the transition of the Contract Obligations to the Surety or SAWS, or as reasonably deemed necessary or appropriate by SAWS, and avoid any action or conduct that would increase any expense or cost that would become an obligation or liability to SAWS unless requested or directed by the SAWS Contract Representative in writing.

With respect to any of the foregoing obligations that cannot reasonably be completed by the Termination Date, the Design-Builder shall complete such obligations as promptly as is practicable, but in no event later than 30 days following the Termination Date. Compliance with these obligations shall be conditions precedent to the payment of any sums otherwise due the Design-Builder by reason of the termination. If any Subcontracts are assigned to SAWS under this Section, SAWS shall not be directly liable to any Subcontractors for amounts owed.
to such parties for Design-Build Work performed prior to termination, and the Design-Builder shall remain liable to any such parties for such amounts.

SECTION 12.8. NO WAIVERS.

No action of SAWS or the Design-Builder pursuant to this Design-Build Contract (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party’s compliance with any term or provision of this Design-Build Contract. No course of dealing, failure or delay by SAWS or the Design-Builder in exercising any right, power or remedy under this Design-Build Contract shall operate as a waiver thereof or otherwise prejudice such party’s rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of SAWS or the Design-Builder under this Design-Build Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any breach of any provision of this Design-Build Contract will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 12.9. WAIVER OF CONSEQUENTIAL AND PUNITIVE DAMAGES.

To the fullest extent permitted by law, and notwithstanding any other provision of the Contract Documents, in no event, whether arising out of contract, breach of warranty (express or implied), tort (including negligence), strict liability, or any other cause of or form of action whatsoever, shall either party be liable to the other for any consequential damages (including damages for loss of use, loss of profits or anticipated profits, loss of revenue, and loss of business opportunity) or punitive damages arising out of or in connection with the performance or non-performance of its obligations under this Design-Build Contract; provided, however, that, except as provided in the next sentence, the waiver of the foregoing damages under this Section is intended to apply only to disputes and claims as between SAWS and the Design-Builder and, with respect to damages payable by the Design-Builder, the waiver of consequential or punitive damages applies only to the extent such damages are in excess of consequential or punitive damages covered or required to be covered by insurance. Nothing in this Section shall limit the indemnification obligations of the Design-Builder hereunder for any consequential or punitive damages payable to third parties resulting from any act or circumstance for which the Design-Builder is obligated to indemnify SAWS or the SAWS Indemnitees hereunder. In addition, the Design-Builder acknowledges and agrees that the foregoing waiver shall not apply to, serve as a limitation or defense in respect of, or otherwise limit any right of recovery SAWS may have respecting:

(1) Any damage, cost, loss or expense (including defense costs) to the extent (a) covered or required to be covered by the proceeds of Required Insurance, or (b) covered by the proceeds of insurance actually carried by or insuring Design-Builder under policies solely with respect to the Project, regardless of whether required to be carried pursuant to Appendix 10; and

(2) The Design-Builder’s obligation to pay any liquidated damages specifically provided for under this Design-Build Contract.
ARTICLE 13
INSURANCE

SECTION 13.1. INSURANCE.

(A) Required Insurance. At all times during the Term, the Design-Build shall obtain, maintain and comply with the terms and conditions of the Required Insurance in accordance with Appendix 10 and shall pay all premiums with respect thereto as the same become due and payable. The Required Insurance shall be provided concurrently with the execution and delivery of this Design-Build Contract (or as otherwise specified in Appendix 10) and remain in effect for the periods specified in Appendix 10. The Design-Build’s liability insurance, including professional liability, shall not include any design-build or similar exclusions that would compromise coverages because of the design-build nature of the work to be performed pursuant to this Design-Build Contract. Appendix 10 also includes notice and reporting requirements for the Required Insurance, including the required workers’ compensation insurance.

(B) Insurers, Deductibles and SAWS Rights. All insurance required by this Section shall be obtained and maintained from insurance companies, firms or entities that comply with the applicable requirements specified in Appendix 10. The insurers shall be selected by the Design-Build with the consent of SAWS, which consent shall not be unreasonably withheld, and authorized to write such insurance in the State. All deductibles or self-insured retention amounts included in the Required Insurance coverage shall be subject to the reasonable approval of SAWS. The Design-Build shall be responsible for the payment of any deductible amounts. The Design-Build shall also be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the Design-Build hereunder. All policies evidencing such insurance shall provide for:

1. Payment of the losses to SAWS, and to the Design-Build as their respective interests may appear;
2. At least 30 days’ prior written notice of the cancellation thereof to SAWS (except for cancellation resulting from non-payment of premium); and
3. At least 10 days’ prior written notice of cancellation thereof to SAWS in the event of cancellation resulting from non-payment of premium.

All policies of insurance provided by or on behalf of the Design-Build shall be primary and non-contributory with respect to any insurance or self-insurance carried by SAWS. SAWS shall have the right to fully participate in all insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld.

(C) Certificates, Policies and Notice. The Required Insurance, including any renewals thereof, shall be evidenced by certificates of insurance as provided herein and in Appendix 10. No later than 30 days prior to the issuance date of each policy of Required Insurance, including any renewals thereof, the Design-Build shall provide SAWS with a draft certificate of insurance for review and approval, and shall deliver the final, approved certificate of insurance to SAWS promptly following its issuance. All policies of Required Insurance shall be made available for review by SAWS’ outside legal counsel, who will conduct the review solely for the purposes of providing SAWS’ legal advice as to whether the Design-Build’s policies meet Required Insurance requirements hereunder. The Design-Build shall certify to SAWS that the policies being provided for review are a complete, true and correct compilation of all
relevant polices evidencing insurance required under Appendix 10, recognizing that SAWS and its designated representatives will rely on such certification. SAWS agrees that it shall instruct and require that its outside legal counsel will not disclose or provide to SAWS access to such insurance policies or the specific terms or conditions thereof, without the express prior written consent of the Design-Builder. SAWS’ outside legal counsel’s legal advice shall be limited to only confirming whether such policies of insurance comply with the insurance requirements in this Design-Build Contract, or generally describing the nature of any deficiency observed in such policies. In its submission, the Design-Builder may claim confidentiality with respect to its insurance policies to protect the same against disclosure under the Public Information Act, and in such event SAWS will take reasonable action (up to seeking an attorney general opinion regarding exceptions that may apply) to seek to preserve the confidentiality of the information about the Design-Builder’s insurance policies in the possession of SAWS’ outside legal counsel, pursuant to the attorney client privilege and any other applicable exception to disclosure under the Public Information Act that SAWS in its sole discretion determines to assert. In addition, upon conducting such review, if SAWS’ outside legal counsel determines that policies of Required Insurance contain deficiencies that cause such policies not to comply with the requirements of this Design-Build Contract, the Design-Builder shall remedy the defect and, without limiting any other SAWS right or remedy provided for under this Design-Build Contract, in the event of a failure of compliance with the Required Insurance, the Design-Builder shall reimburse SAWS for the cost and expense incurred by SAWS in connection with SAWS’ outside legal counsel attempting to resolve such policy deficiencies by modification or endorsement thereof to achieve compliance with the requirements hereunder.

(D) Subcontractors. Whenever a Subcontractor is utilized, the Design-Builder shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Appendix 10.

(E) Maintenance of Insurance Coverage. If the Design-Builder fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Design-Builder fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at SAWS’ election (but without any obligation to do so), SAWS, following notice to the Design-Builder, may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by SAWS the amount thereof shall be immediately reimbursed to SAWS by the Design-Builder. The Design-Builder shall not perform Design-Build Work during any period when any policy of Required Insurance is not in effect. The Design-Builder shall comply with all Insurance Requirements and take all steps necessary to assure that the Project remains continuously insured in accordance with the requirements of this Design-Build Contract. The failure of the Design-Builder to obtain and maintain any Required Insurance shall not relieve the Design-Builder of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the Design-Builder shall indemnify, defend and hold harmless the SAWS Indemnities in accordance with and to the extent provided in Article 15 from and against all Loss-and-Expense arising out of such failure. The purchase of the Required Insurance to satisfy the Design-Builder’s obligations under this Section shall not be a satisfaction of any Design-Builder liability under this Design-Build Contract or in any way limit, modify or satisfy the Design-Builder’s indemnity obligations hereunder.

(F) Compliance with Insurer Requirements. The Design-Builder shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Design-Builder shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(G) Reductions for Insurance Proceeds. Whenever this Design-Build Contract obligates SAWS to pay any amount to the Design-Builder in respect of an event or
circumstance for which, or with respect to the consequences of which, an insurance claim may be made by the Design-Build under the Required Insurance, the amount which SAWS is obligated to pay will be reduced by the amount of insurance proceeds which the Design-Build recovers or would have been entitled to recover if it had complied with the requirements of this Design-Build Contract or any policy of Required Insurance.
ARTICLE 14
UNCONTROLLABLE CIRCUMSTANCES

SECTION 14.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Design-Builder. If an Uncontrollable Circumstance occurs, the Design-Builder may be entitled to relief from its obligations, extensions of time and compensation, as and to the extent provided in this Article and subject to all terms and conditions in any of the Contract Documents. Such relief shall be available irrespective of whether an obligation of this Design-Build Contract expressly states that it is excused by Uncontrollable Circumstances.

(B) Mitigation Given Effect. Any relief to which the Design-Builder 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 Design-Builder in compliance with its duty to mitigate under Section 17.8.

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Design-Builder of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Design-Build Contract in compliance with Applicable Law.

(D) Contract Obligations Not Affected; Resumption of Performance. The occurrence of an Uncontrollable Circumstance shall not excuse the Design-Builder from performing any obligation hereunder not directly affected by the occurrence of the Uncontrollable Circumstance. Upon the occurrence of an Uncontrollable Circumstance, the Design-Builder shall promptly use all reasonable efforts to eliminate the cause thereof and resume performance of the affected Contract Obligations.

SECTION 14.2. UNCONTROLLABLE CIRCUMSTANCE CLAIM PROCEDURES.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Design-Builder shall give notice of the occurrence of the Uncontrollable Circumstance to SAWS as soon as practicable, and in any event within 14 days of the date the Design-Builder has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Design-Build Contract. The Design-Builder’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 Design-Builder’s obligations under this Design-Build Contract; and

4. Indicating the nature and scope of the Design-Builder’s potential entitlement to relief.

(B) Updates. The Design-Builder 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 subsection (A) of this Section. In particular, the Design-Builder 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 Design-Builder 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 (the “Relief Request Notice”), promptly after becoming aware of such occurrence, but not more than 30 days after SAWS’ receipt of the notice required under subsection (A) of this Section; provided that, if the specific relief cannot reasonably be ascertained within such period, the Design-Builder shall furnish the Relief Request Notice within such longer period as is reasonably necessary to detail the event and ascertain such relief; however, in any event, such Relief Request Notice shall be submitted to SAWS not more than 91 days after SAWS’ receipt of the notice required under subsection (A) of this Section. Each Relief Request Notice shall include all information required in this Article with respect to the specific relief being requested.

(D) Delay in Notification. The Design-Builder acknowledges that any delay by the Design-Builder in submitting to SAWS any Uncontrollable Circumstance notice or any information required under this Section, beyond the applicable time period required under this Section may adversely affect SAWS, and agrees that the relief to be provided in respect of any Uncontrollable Circumstance shall be reduced or limited to the extent of any such adverse effect, as reasonably determined by SAWS. The Design-Builder shall be deemed to have become aware of the occurrence of an Uncontrollable Circumstance if such occurrence could reasonably have been known, identified, discovered or observed by the Design-Builder through the employment of procedures consistent with Good Engineering and Construction Practice. Without limiting any of the foregoing, if the Design-Builder fails to submit a Relief Request Notice within 91 days after SAWS’ receipt of the notice required under subsection (A) of this Section or to notify SAWS of the occurrence of an Uncontrollable Circumstance within 91 days following the occurrence, then the Design-Builder shall be deemed to have irrevocably and forever waived and released any and all claim or right with respect to the subject Uncontrollable Circumstance.

(E) Multiple and Overlapping Claims. The Design-Builder may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) Burden of Proof and Mitigation. The Design-Builder 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 Design-Builder complied with its mitigation obligations under Section 17.8.

(G) SAWS Response. SAWS may, but shall have no obligation to, respond to the Design-Builder’s initial notice concerning the occurrence of an Uncontrollable Circumstance under subsection (A) of this Section. Within 30 days after receipt of a Relief Request Notice pursuant to subsection (C) of this Section, SAWS shall issue a written determination as to the extent, if any, to which it concurs with the Design-Builder’s request and the reasons therefor.

(H) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Design-Builder on account of an Uncontrollable Circumstance shall be evidenced by a Change Order, a Contract Amendment or other written agreement between the parties. Either party may refer any dispute for resolution in accordance with Section 11.1.

(I) Certifications. Each submittal made under this Section by the Design-Builder shall be accompanied by a certification of the Design-Builder Contract Representative
that the submittal is made in good faith; that the supporting data are complete and accurate at
the time of the submittal to the best knowledge of the Design-Builder; and that the requested
relief accurately reflects the relief to which the Design-Builder reasonably believes it is entitled
hereunder. The Design-Builder shall have no entitlement to relief for uncertified claims.

SECTION 14.3. UNCONTROLLABLE CIRCUMSTANCES RELIEF.

If and to the extent that an Uncontrollable Circumstance interferes with, delays or increases the cost to the Design-Builder performing the Design-Build Work in accordance herewith, the Design-Builder shall, subject to Section 14.4, be entitled to:

(1) Relief from its performance obligations;

(2) An adjustment to the Scheduled Mechanical Completion Date and the Scheduled Acceptance Date;

(3) An adjustment to the Contract Compensation for such costs (including the costs reasonably incurred in connection with mitigation measures undertaken by the Design-Builder pursuant to Section 17.8); or

(4) A Base Guaranteed Maximum Price Adjustment (except as and to the extent provided in this Section, Section 14.2 and Article 15);

or any combination thereof, each of which properly reflects the interference with performance, the time lost as a result thereof, or the amount of the increased cost, in each case only to the minimum extent necessary to compensate the Design-Builder or provide performance or schedule relief and only to the extent directly attributable to the Uncontrollable Circumstance. Any cost reduction achieved, or which should have been achieved, through the mitigation measures undertaken by the Design-Builder pursuant to Section 17.8 shall be reflected in a reduction of the amount of the additional Contract Compensation or Base Guaranteed Maximum Price Adjustment as appropriate to reflect such mitigation measures. The Design-Builder shall not be entitled to any price relief on account of any costs incurred as the result of Design-Builder Fault or an act, event or circumstance that the Design-Builder is obligated to insure against under Article 13, irrespective of any limits of coverage and of any deductible applicable under any policy of insurance maintained or required to be maintained thereunder.

SECTION 14.4. SCHEDULE RELIEF AND RELATED PRICE RELIEF.

(A) Conditions to Schedule Relief.

(1) Float in the Phase II Services Schedule. The parties acknowledge and agree that “float” in the Phase II Services Schedule:

(a) Means the amount of time that any given activity or logically connected sequence of activities shown on the Phase II Services Schedule may be delayed before it delays the occurrence of a scheduled completion milestone; and

(b) Is an expiring resource available to the Project for the benefit of both parties, available to each of them as needed to absorb delays in achieving the scheduled completion milestones, whether such delays are caused by Uncontrollable Circumstances or otherwise.

(2) Required Demonstration for Schedule Relief. Without limiting any other requirement of this Article, the Design-Builder shall not be entitled to any adjustment
to the Scheduled Mechanical Completion Date, the Scheduled Acceptance Date, the number of days allowed for the achievement of Final Completion or any other schedule adjustment under this Design-Build Contract, unless the Design-Builder demonstrates:

(a) That an Uncontrollable Circumstance has occurred and, subject to the time impact analysis requirements of Appendix 5, that the Uncontrollable Circumstance impacts one or more critical path activities in the Phase II Services Schedule, as updated, maintained and revised by the Design-Builder in accordance with the Contract Standards, such that the Uncontrollable Circumstance will consume all available float and extend the time required to achieve the scheduled milestone from which relief is being sought;

(b) The Design-Builder, in view of all circumstances, exercised reasonable efforts to avoid the delay; and

(c) The delay was not caused by the Design-Builder or any other Design-Builder Person.

(B) Compensable Uncontrollable Circumstance Delay. Price relief for schedule delays caused by Uncontrollable Circumstances shall be limited to a reasonable and equitable Base Guaranteed Maximum Price Adjustment, which shall not exceed a reasonable daily value (to be based on the Design-Builder’s General Conditions Costs that are directly related to demobilization and remobilization for the Design-Build Work, temporary services, equipment rental which cannot be practically suspended and temporary protection measures which are unusual but necessary) multiplied by the number of days of compensable Uncontrollable Circumstance delay.

(C) Concurrent Delay. The Design-Builder’s entitlement to price relief for Uncontrollable Circumstance delays under subsection (B) of this Section shall be limited to the extent of any concurrent delay by the Design-Builder or to the extent performance was, or would have been, suspended, delayed, or interrupted by another cause for which the Design-Builder is responsible.

(D) Acceleration in Lieu of Schedule Adjustment. Without limiting anything set forth in this Design-Build Contract, in the event an Uncontrollable Circumstance occurs, the parties may agree to maintain the Project Schedule and not adjust the Scheduled Mechanical Completion Date or the Scheduled Acceptance Date, as applicable, and in such circumstances the parties shall enter into a Change Order that includes compensation to the Design-Builder on account of any required Construction acceleration costs.

SECTION 14.5. UNUSUALLY SEVERE AND ABNORMAL CLIMACTIC EVENTS. If the Design-Builder intends to seek Uncontrollable Circumstance relief on the basis of unusually severe and abnormal climactic events, the Design-Builder shall, in addition to fulfilling all other requirements of this Article, demonstrate that the actual weather encountered was unusually severe and abnormal compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration San Antonio International Airport Station for the time of year and locality of the Project Sites.

SECTION 14.6. RELEASE.

The Design-Builder’s acceptance of any performance, price or schedule adjustment under this Article shall be construed as a release of SAWs by the Design-Builder (and all persons claiming by, through or under the Design-Builder) from any and all losses or expenses resulting from, or otherwise attributable to, the event giving rise to the adjustment claimed.
ARTICLE 15

INDEMNIFICATION

SECTION 15.1. DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY.

The Design-Builder shall indemnify, defend and hold harmless the City and SAWS, and their respective elected officials, trustees, members, appointed officers, employees, representatives, agents, attorneys, financial advisors, and contractors, including the Owner Representative (each a “SAWS Indemnitee”), from and against (and pay the full amount of) any and all Loss-and-Expense that any SAWS Indemnitee may sustain in connection with any claim made by one or more third parties (including claims for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any SAWS Indemnitee, arising by reason of (or alleged to result from or in connection with) any:

(1) Design-Builder Fault;

(2) Non-compliance by the Design-Builder or any other Design-Builder Person with any of the provisions of this Design-Build Contract or any Subcontract or any document, instrument or agreement delivered to SAWS as required under this Design-Build Contract;

(3) Activities on the Project Sites, as and to the extent provided in Section 4.3(C);

(4) Non-compliance with Applicable Law, as provided in Section 4.5(C);

(5) Release of Regulated Substances by the Design-Builder or any other Design-Builder Person, as provided in Section 6.4(A);

(6) Labor disputes, as provided in Section 7.2(B);

(7) Subcontractor claims, as provided in Section 7.3(K);

(8) Intellectual Property claims, as provided in Section 17.7(A);

(9) Failure by the Design-Builder to advise SAWS of any potential infringement or unauthorized use resulting from a SAWS-directed Change Order, as provided in Section 17.7(C);

(10) Any claims of harassment arising from the conduct of the Design-Builder or any other Design-Builder Person;

(11) Breach by the Design-Builder or any other Design-Builder Person of, or non-compliance by the Design-Builder or any other Design-Builder Person with, any Governmental Approval or Applicable Law, or the failure of the Design-Builder or any other Design-Builder Person to obtain all necessary Governmental Approvals in accordance with this Design-Build Contract; or

(12) Any other act, event or circumstance as to which the Design-Builder is obligated to provide an indemnity hereunder;
except to the extent caused by SAWS Fault or the negligence or willful misconduct of a Separate Contractor or as otherwise provided under Section 8.8(E). The Design-Builder’s indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Design-Builder which is intended to respond to such events. Notwithstanding the foregoing, SAWS Indemnities’ right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by SAWS Indemnities. This Section may be relied upon by SAWS Indemnites and may be enforced directly by any of them against the Design-Builder in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Design-Builder.

SECTION 15.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a SAWS Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that SAWS Indemnitee is, or may become entitled to, indemnification or compensation under this Design-Build Contract in respect of the entire claim, SAWS Indemnitee shall give notice in writing to the Design-Builder as soon as reasonably practicable.

(B) Consolidation of Claims. If a notice of claim is given pursuant to subsection (A) of this Section by more than one SAWS Indemnitee relating to the same facts or circumstances, the Design-Builder may, in its discretion, require the consolidated administration and coordination of all such noticed claims by common counsel.

(C) Design-Builder Right to Dispute Claim. If notice is given as provided in subsection (A) of this Section, the Design-Builder shall be entitled to dispute the claim in the name of the SAWS Indemnitee at the Design-Builder’s own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. SAWS Indemnitee will give the Design-Builder all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Design-Builder pursuant to subsection (C) of this Section:

(1) The Design-Builder shall keep SAWS Indemnitee fully informed and consult with it about material elements of the conduct of such defense;

(2) The Design-Builder shall demonstrate to the SAWS Indemnitee, at the reasonable request of SAWS Indemnitee, that the Design-Builder has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

(3) The Design-Builder shall have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of SAWS, or otherwise having a direct effect upon its continuing operations, shall (1) contain a full release of SAWS and (2) be subject to the consent of SAWS, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Design-Builder, SAWS (with the approval of the Board of Trustees, given in its discretion) shall, at the sole cost and expense of the Design-Builder, cooperate with the Design-Builder and its counsel in contesting any claim which the Design-Builder elects to contest.
(E) **SAWS Indemnitee Rights to Conduct Defense.** A SAWS Indemnitee may take conduct of any defense, dispute, compromise or appeal of any claim subject to the Design-Builder’s indemnification obligations hereunder, including any incidental negotiations, if

1. The Design-Builder fails to notify the SAWS Indemnitee of its intention to take conduct of the relevant claim within 14 days of the notice from the SAWS Indemnitee under subsection (A) of this Section or notifies the SAWS Indemnitee that it does not intend to take conduct of the claim;

2. The SAWS Indemnitee reasonably determines that a conflict exists between it and the Design-Builder which prevents or potentially prevents the Design-Builder from presenting a full and effective defense; or

3. The Design-Builder fails to comply in any material respect with subsection (D) of this Section.

(F) **Transfer of Conduct of Claim to SAWS Indemnitee.** A SAWS Indemnitee may at any time, give notice to the Design-Builder that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which subsection (E) of this Section applies. On receipt of such notice the Design-Builder will promptly take all steps necessary to transfer the conduct of such claim to the SAWS Indemnitee, and will provide to the SAWS Indemnitee all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(G) **Design-Builder Responsibility for Costs.** If a SAWS Indemnitee is entitled and elects to conduct its own defense pursuant to subsection (E) of this Section, all Fees and Costs incurred by the SAWS Indemnitee in investigating, defending and conducting the claim for which it is entitled to indemnification hereunder shall constitute an indemnified loss subject to the Design-Builder’s indemnification obligations hereunder.
ARTICLE 16
SECURITY FOR PERFORMANCE

SECTION 16.1.  GUARANTOR.

(A)  Guaranty Agreement.  The Design-Builder, concurrently with the execution and delivery of this Design-Build Contract, has caused the Guaranty Agreement to be provided by the Guarantor in the form attached hereto as a Transaction Form.

(B)  Reports and Notifications Concerning the Financial Condition of the Guarantor.  The Design-Builder shall provide to SAWS, within 180 days after the end of each fiscal year of the Guarantor, the consolidated balance sheet and income statement for the Guarantor attached to the audited year-end financial statements for that fiscal year reported upon by the independent public accountant of the Guarantor.  If applicable, the Design-Builder shall also furnish SAWS with copies of the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission.  If the Guarantor is not required to file quarterly reports with the Securities and Exchange Commission, the Design-Builder, at the request of SAWS, shall provide SAWS with unaudited quarterly financial statements of the Guarantor within 60 days following the end of each quarter based on the fiscal year of the Guarantor.  In addition, the Design-Builder shall provide reasonable notice to SAWS of any change to the financial condition of the Guarantor that would reasonably be anticipated to have a material adverse effect on the Project or impair the ability of the Guarantor to meet its obligations under the Guaranty Agreement.

SECTION 16.2.  BONDS.

(A)  Security Bond.  No later than 10 days following the Contract Date, the Design-Builder shall provide a Security Bond covering the Design-Builder's performance of the Phase I Services in accordance with this Design-Build Contract, including the Design-Builder's and the Surety's obligation to deliver a Performance Bond and a Payment Bond securing the Design-Builder's faithful performance and payment obligations pursuant to any Early Work Package Amendment and the GMP Amendment, as required by subsection (B) of this Section.  The penal sum of the Security Bond shall be in an amount equal to $10,000,000.  The Security Bond shall be in the form set forth in Transaction Form B and shall be issued by a Surety meeting the requirements set forth in subsection (G) of this Section.  The Security Bond shall be effective until: (a) the Surety and the Design-Builder deliver to SAWS a Performance Bond and a Payment Bond in an amount equal to the Base Guaranteed Maximum Price in conjunction with the GMP Amendment, as required by subsection (B) of this Section, and (b) the occurrence of the GMP Amendment Date; provided, however, that the Security Bond shall expire and be of no further force or effect on the date that is 18 months from the date that the Design-Builder furnishes its GMP Submittal to SAWS, unless, prior to such date, SAWS provides notice to the Surety of its intent to exercise its rights under the Security Bond.

(B)  Performance and Payment Bonds.  Performance Bonds and Payment Bonds for the Design-Build Work shall be provided as follows:

(1)  Early Work Packages Bonds.  If SAWS authorizes an Early Work Package, then the Design-Builder shall provide to SAWS, on or before the Early Work Package Amendment Date, a Performance Bond and a Payment Bond covering the Design-Builder's faithful performance of such Early Work Package Amendment and the payment of its obligations arising thereunder.  The penal sum of each such bond shall be in an amount equal to the Early Work Package Price applicable to the Early Work
Package. Such bonds shall be in the forms set forth in Transaction Forms C and D and shall be issued by a Surety meeting the requirements set forth in subsection (G) of this Section. If SAWS authorizes additional Early Work Packages, then the Design-Builder shall, on or before each subsequent Early Work Package Amendment Date, provide to SAWS, for each subsequent Early Work Package, an amendment to the above-referenced Performance Bond and Payment Bond, executed by both the Design-Builder and the Surety, that: (a) increases the penal sum of each bond by an amount equal to the Early Work Package Price of such Early Work Package; and (b) affirmatively states that the obligations under such bonds encompass the Design-Builder’s performance and payment obligations under each Early Work Package Amendment.

(2) Amendment of Early Work Package Bonds on GMP Amendment Date. If a Performance Bond and a Payment Bond have been provided pursuant to item (1) above, then the Design-Builder shall, on or before the GMP Amendment Date, provide to SAWS an amendment to the Performance Bond and the Payment Bond, executed by both Design-Builder and the Surety, that: (a) increases the penal sum of each bond to an amount equal to the Base Guaranteed Maximum Price; and (b) affirmatively states that such bonds cover faithful performance of this Design-Build Contract and payment of obligations arising thereunder.

(3) New Design-Build Work Performance and Payment Bonds on GMP Amendment Date. If the Performance Bond and the Payment Bond have not been provided pursuant to item (1) above, then the Design-Builder shall, on or before the GMP Amendment Date, provide to SAWS a Performance Bond and a Payment Bond that are in the penal sum of an amount equal to the Base Guaranteed Maximum Price and cover faithful performance of this Design-Build Contract and payment of obligations arising hereunder. The forms of such bonds are set forth in Transaction Forms E and D and shall be issued by a Surety meeting the requirements set forth in subsection (G) of this Section.

(4) Example Penal Sum Determination. The following example is intended to illustrate the operation of the above, on the assumption that there are two Early Work Package Amendments before the GMP Amendment:

(a) The parties enter into an Early Work Package Amendment for Scope X with a lump sum price of $10 million. The Performance Bond and the Payment Bond will each have a penal sum of $10 million, and such bonds will cover the performance and payment obligations of the Design-Builder for Scope X.

(b) The parties enter into another Early Work Package Amendment for Scope Y with a lump sum price of $15 million. The Performance Bond and the Payment Bond will be amended to have a penal sum of $25 million, and such bonds will cover the performance and payment obligations of Design-Builder for Scope X and Y.

(c) The parties enter into the GMP Amendment, with a Base Guaranteed Maximum Price of $100 million, inclusive of the lump sum pricing for Scopes X and Y. The Performance Bond and the Payment Bond will be amended to have a penal sum of $100 million, and such bonds will cover all performance and payment obligations of the Design-Builder under this Design-Build Contract, inclusive of Scope X, Y and all other Design-Build Work under this Design-Build Contract.
(5) **Base Guaranteed Maximum Price Adjustments.** The amount of the Performance Bond and the Payment Bond shall be increased by the Design-Builder to reflect any Base Guaranteed Maximum Price Adjustments at the time such adjustment is implemented by the parties and as a condition to its entitlement to the adjustment.

(6) **Term of Bonds.** The Payment Bond shall be security for the payment of all persons supplying labor and material in the prosecution of the Design-Build Work and shall remain open until Final Completion. The Performance Bond shall secure the performance of the Design-Build Work and shall remain open until Final Completion.

(C) **Warranty Bond.** The Design-Builder shall deliver to SAWS a Warranty Bond covering the Design-Builder's faithful performance of all Warranty Work obligations under this Design-Build Contract arising after the Acceptance Date, including specifically the Design-Builder's correction, replacement, or restoration of any portion of the Design-Build Work which is found to be not in compliance with requirements of this Design-Build Contract during the Warranty Period. The penal sum of such bond shall be in an amount equal to 10% of the Guaranteed Maximum Price (as determined on the Acceptance Date). The Warranty Bond shall be in the form set forth in Transaction Form F and shall be issued by a Surety meeting the requirements set forth in subsection (G) of this Section. The Warranty Bond shall be effective until one year from the date of Acceptance and shall automatically renew for additional one year terms if the Design-Builder has any outstanding Warranty Work obligations upon completion of any such one year term. To the extent required by Applicable Law, the Design-Builder shall provide such further performance and payment bonds as may be necessary under Applicable Law to secure the performance of any Warranty Work; and such performance and payment bonds shall comply with the requirements of Applicable Law and this Section.

(D) **Bond Forms.** Each bond given or tendered to SAWS pursuant to this Design-Build Contract must be on SAWS forms (Transaction Forms B through F), with no changes made by the Design-Builder or the Surety, and must be dated, executed, and accompanied by a power of attorney stating that the attorney in fact executing the bond has requisite authority to execute such bond. The bonds must be dated and must be no more than 30 days old when delivered to SAWS.

(E) **Payment Bond Information.** The Design-Builder shall furnish information to a Payment Bond beneficiary as required by Chapter 2253 of the Texas Government Code.

(F) **Delivery of Bonds.** The Design-Builder shall deliver required bonds to SAWS within the time limits specified in this Section.

(G) **Surety Requirements.** The bonds required to be provided pursuant to this Section shall be issued by a Surety:

(1) Approved by SAWS having a rating of A- or better in the latest revision of the A.M. Best Company’s Insurance Report;

(2) Listed in the United States Treasury Department’s Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies”;

(3) Holding a certificate of authority to transact surety business in the State; and
(4) In compliance with the requirements of Article 7.19-1 of the Texas Insurance Code.

If a bond is given or tendered to SAWS pursuant to this Design-Build Contract in an amount greater than 10 percent of Surety’s capital and surplus, the Surety shall provide certification that the Surety has reinsured that portion of the risk that exceeds 10 percent of the Surety’s capital and surplus. The reinsurance must be with one or more reinsurers who are duly authorized, accredited, or trusted to do business in the State. The amount reinsured by any reinsurer may not exceed 10 percent of the reinsurer’s capital and surplus. The amount of allowed capital and surplus must be based on information received from the State Board of Insurance.

(H) Monitoring of Sureties. The Design-Builder shall be responsible throughout the Term for monitoring the financial condition of any Surety issuing bonds under this Design-Build Contract and for making inquiries no less often than annually to confirm that each such Surety complies with the qualification requirements and maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing Surety falls below such minimum level, or if any Surety is declared bankrupt or becomes insolvent or has the rights to do business in the State terminated, the Design-Builder shall promptly notify SAWS of such event and shall promptly take steps to ensure continued compliance with this Section by furnishing or arranging for the furnishing of a substitute or additional bond of a Surety whose rating and other qualifications satisfy all above requirements, unless SAWS agrees to accept the Surety that no longer satisfies the minimum rating level specified above, or agrees to an alternative method of assurance. Upon such notice by the Design-Builder of such an event, SAWS shall not unreasonably withhold its approval of such assurance.

(I) Completion of Work. Without limiting any other right or remedy provided for under the Performance Bond, if this Design-Build Contract is terminated by SAWS for an Event of Default and the Surety fails to pursue completion of the Contract Obligations with reasonable speed, SAWS may arrange for completion of the Contract Obligations and deduct the cost thereof from any amount otherwise due to the Design-Builder under this Design-Build Contract, including the cost of additional SAWS administration and consultant services made necessary by such default or neglect. In such event, no further payment shall then be made by SAWS until all costs of completing the Contract Obligations shall have been paid.
ARTICLE 17
MISCELLANEOUS PROVISIONS

SECTION 17.1. OWNERSHIP OF THE PROJECT.

The Project shall be owned by SAWS at all times. The Design-Builder shall perform the Contract Obligations provided for herein as an independent contractor and shall not have any legal, equitable, tax beneficial or other ownership or leasehold interest in the Project. Additionally, SAWS is and shall remain the owner of all WTPA Water and Finished Water. The Design-Builder shall not use the Project for any purpose other than the purposes contemplated by this Design-Build Contract or to serve or benefit any person other than SAWS.

SECTION 17.2. RELATIONSHIP OF THE PARTIES.

The Design-Builder is an independent contractor of SAWS and the relationship between the parties shall be limited to performance of this Design-Build Contract 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 Design-Build Contract 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 Design-Build Contract or the performance thereof.

SECTION 17.3. AFFILIATE TRANSACTIONS.

If any costs to be reimbursed by SAWS to the Design-Builder under this Design-Build Contract arise from a transaction between the Design-Builder and any Affiliate of the Design-Builder, the Design-Builder shall notify SAWS of the specific nature of the contemplated transaction, including the identity of the Affiliate, the nature of the work to be performed by the Affiliate and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. The Design-Builder shall not enter into any such transaction, nor incur any such cost, absent the written approval of SAWS in its sole discretion.

SECTION 17.4. CONTRACT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the performance of this Design-Build Contract. 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 the matters at issue in such communications, 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 Design-Build Contract.

(B) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Design-Build Contract between the parties that do not require a Contract 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 Design-Builder 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 Design-Build Contract in particular circumstances or conditions;
2. Calculations required to be made;
3. Notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and
4. Other similar routine contract administration matters.

(C) 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 Design-Builder Contract Representative and the SAWS Contract Representative, and, at the request of SAWS, co-signed by a Senior Supervisor for the Design-Builder. SAWS and the Design-Builder each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the Contract Amendments and all other documents relating to the administration and performance of this Design-Build Contract.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Design-Build Contract. Any material change, alteration, revision or modification of this Design-Build Contract, however, shall be effectuated only through a formal Contract Amendment in accordance with Section 17.5.

SECTION 17.5. CONTRACT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 17.4 but without limiting any approval authority delegated to the SAWS Contract Representative pursuant to Section 17.6(B), no material change, alteration, revision or modification of the terms and conditions of this Design-Build Contract shall be made except through a written amendment to this Design-Build Contract (a "Contract Amendment"), duly authorized, approved or ratified by the Board of Trustees (unless otherwise delegated) and duly authorized by the Design-Builder.

(B) Procedure. Contract Amendments shall be serially numbered, dated and signed by a Senior Supervisor for the Design-Builder and by the SAWS Contract Representative or an authorized signatory of SAWS for SAWS, as determined in accordance with Section 17.6(B). SAWS and the Design-Builder each shall maintain a parallel, identical file of all Contract Amendments, separate and distinct from the Contract Administration Memoranda and all other documents relating to the administration and performance of this Design-Build Contract.

SECTION 17.6. CONTRACT REPRESENTATIVES.

(A) Design-Builder Contract Representative and Senior Supervisors. The Design-Builder shall appoint and inform SAWS in writing from time to time of the identity of (1) the individual with the responsibility and power from time to time to administer this Design-Build Contract and to bind the Design-Builder with respect to any Contract Administration Memorandum, Change Order and Contract Amendment (which may be the same or different
individual with respect to the Phase I Services and the Phase II Services) (the “Design-Builder Contract Representative”), and (2) the corporate officials of the Design-Builder with senior supervisory responsibility for the Project and the performance of this Design-Build Contract (the “Senior Supervisors”). The Design-Builder shall promptly notify SAWS in writing of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with SAWS in any reviews of the performance of the Design-Build Manager and the Design-Builder Contract Representative which SAWS may undertake from time to time, and shall give full consideration to any issues raised by SAWS in conducting such performance reviews.

(B) **SAWS Contract Representative.** SAWS shall appoint an individual or individuals to act as the “SAWS Contract Representative” for this Design-Build Contract. Such appointment shall be in writing and include a specific description of the extent of the SAWS Contract Representative’s power to administer this Design-Build Contract, including specific dollar limitations of his or her authority. The Design-Builder shall be entitled to a copy of any such written appointment. The Design-Builder understands and agrees that any delegation to the SAWS Contract Representative may provide only limited authority with respect to the implementation of this Design-Build Contract, which may or may not include the authority to bind SAWS with respect to any Change Order, Work Change Directive or Contract Amendment. Within such limitations, the Design-Builder shall be entitled to rely on the written directions of the SAWS Contract Representative. The SAWS Contract Representative shall have the right at any time to issue the Design-Builder a written request for information relating to this Design-Build Contract. Any written request designated as a “priority request” shall be responded to by the Design-Builder within three Business Days.

(C) **SAWS Approvals and Consents.** When this Design-Build Contract requires any approval or consent by SAWS to a Design-Builder submission, request or report, the approval or consent shall, within the limits of the authority of subsection (B) of this Section, be given by the SAWS Contract 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 Design-Build Contract and the Document Submittal Protocol, and except for requests, reports and submittals made by the Design-Builder that do not, by their terms or the terms of this Design-Build Contract, require a response or action, if SAWS does not find a request, report or submittal acceptable, it shall provide written response to the Design-Builder 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 Design-Builder may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by SAWS pursuant to some specific term of this Design-Build Contract shall be deemed acceptable to SAWS if SAWS shall not have objected thereto within 30 days of the receipt thereof.

**SECTION 17.7. PROPERTY RIGHTS.**

(A) **Protection from Infringement.** The Design-Builder shall pay all royalties and license fees in connection with the Contract Obligations during the Term. Except as provided in subsection (C) of this Section, the Design-Builder shall indemnify, defend and hold harmless SAWS Indemnities in accordance with and to the extent provided in Section 15.1 from and against 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 Contract Obligations. The Design-Builder’s indemnity pursuant to this Section shall apply only when infringement occurs or is alleged to occur from the intended use for which the Deliverable Material, process or equipment was provided by the Design-Builder pursuant to this Design-Build Contract.
(B) **Substitutes for Deliverable Material, Process or Equipment.** Except as provided in subsection (C) of this Section, in the event the Design-Builder or SAWS is enjoined from using any Deliverable Material, process or equipment, the Design-Builder, at its sole cost and expense, shall:

1. Acquire the right to legally use such infringing Deliverable Material, process or equipment (or any affected Design-Build Work) under infringed patents or copyrights; or

2. Modify or replace such Deliverable Material, process or equipment (or any affected Design-Build Work) with un-infringed Deliverable Material, process or equipment (or any affected Design-Build Work) equivalent in quality, performance, useful life and technical characteristics and development; provided, however, that any such modification or replacement shall be subject to SAWS’ approval, which shall not be unreasonably withheld or delayed.

(C) **Exceptions to Infringement Protection.** Unless otherwise agreed to by the parties, the Design-Builder’s obligations under this Section shall not apply to:

1. Infringement resulting from SAWS-directed Change Orders and Work Change Directives issued under Section 6.8(C) or Section 6.10;

2. Infringement resulting from unauthorized additions, changes or modifications to the Deliverable Material, process or equipment made or caused to be made by SAWS subsequent to delivery by the Design-Builder; or

3. Any claimed infringement which is settled without the consent of the Design-Builder.

The Design-Builder shall promptly advise SAWS as to whether any SAWS-directed Change Order or Work Change Directive issued under Section 6.8(C) or Section 6.10 may result in any infringement or unauthorized use and, in the event of any failure by the Design-Builder to so advise SAWS, the Design-Builder will indemnify SAWS for any Loss-and-Expense resulting from any such infringement or unauthorized use.

(D) **Pre-Existing Intellectual Property.** SAWS acknowledges and agrees that in the performance of Contract Obligations under this Design-Build Contract, the Design-Builder may use proprietary algorithms, software, hardware, databases, other background technology, and other proprietary information that the Design-Builder developed or licensed from third parties prior to the Contract Date (“Pre-Existing Intellectual Property”). Without limiting SAWS’ rights with respect to the Deliverable Material, the Design-Build Work or the Project, the Design-Builder will retain all right, title, and interest in such Pre-Existing Intellectual Property. However, SAWS shall have the irrevocable, perpetual, and unrestricted right from and after the Contract Date to use (or permit use of) all Pre-Existing Intellectual Property incorporated in the Deliverable Material, the Design-Build Work or the Project, all oral information received by SAWS in connection with the Design-Build Work, and all ideas or methods represented by Pre-Existing Intellectual Property incorporated in the Deliverable Material or the Project, in each case without additional compensation. The Design-Builder hereby licenses such irrevocable, perpetual, and unrestricted rights to SAWS. SAWS’ use of such license rights for any purpose other than the Project shall be at its own risk, and the Design-Builder shall have no liability for or relating to any such use.

(E) **Protection of Proprietary Rights of SAWS.** The Design-Builder agrees and covenants to protect any and all proprietary rights of SAWS in any material provided to the Design-Builder. Such protection of proprietary rights by the Design-Builder shall include the
insertion in any copy intended for publication of a copyright mark reserving all rights to SAWS in any such material provided by SAWS to the Design-Builder. Additionally, any materials provided to the Design-Builder by SAWS shall not be released to any third party without the written consent of SAWS and shall be returned intact to SAWS upon completion or termination of this Design-Build Contract. The provisions of this subsection shall not apply to material in the public domain on the Contract Date or material that subsequently comes into the public domain by other than an unauthorized disclosure.

SECTION 17.8. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Design-Builder. In all cases where the Design-Builder 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 Design-Builder shall use all reasonable efforts to mitigate such amount required to be paid by SAWS to the Design-Builder under this Design-Build Contract, or the length of the extension of time. Upon request from SAWS, the Design-Builder shall promptly submit a detailed description, supported by all such documentation as SAWS may reasonably require, of the measures and steps taken by the Design-Builder to mitigate and meet its obligations under this Section.

(B) Mitigation by SAWS. In all cases where SAWS is entitled to receive from the Design-Builder 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 Design-Builder to SAWS under this Design-Build Contract, 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 liquidated damages it is entitled to receive hereunder.

SAWS shall have no obligation to mitigate, implied or otherwise, except as set forth in this Section or as expressly provided in this Design-Build Contract. Upon request by the Design-Builder, SAWS shall promptly submit a detailed description, supported by all such documentation as the Design-Builder may reasonably require, of the measures and steps taken by SAWS to mitigate and meet its obligations under this Section.

SECTION 17.9. ASSIGNMENT OF ANTI-TRUST CLAIMS.

Upon Final Completion, the Design-Builder agrees to assign to SAWS all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) arising from purchases of goods, services, or materials pursuant to this Design-Build Contract.

SECTION 17.10. ACTIONS OF SAWS IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Design-Build Contract 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 to protect the environment), or as limiting
the right of the Design-Builder to bring any action against SAWS, not based on this Design-Build Contract, arising out of any act or omission of SAWS in its governmental capacity.

SECTION 17.11. ASSIGNMENT.

(A) By the Design-Builder. The Design-Builder shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Design-Build Contract, its right to execute the same, or its right, title or interest in all or any part of this Design-Build Contract or any monies due hereunder whatsoever prior to their payment to the Design-Builder, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of SAWS. Any such approval given in one instance shall not relieve the Design-Builder of its obligation to obtain the prior written approval of SAWS to any further assignment. Any such assignment of this Design-Build Contract which is approved by SAWS, shall require the assignee of the Design-Builder to assume the performance of and observe all obligations, representations and warranties of the Design-Builder under this Design-Build Contract which shall remain in full force and effect during this Design-Build Contract. The approval of any assignment, transfer or conveyance shall not operate to release the Design-Builder in any way from any of its obligations under this Design-Build Contract unless such approval specifically provides otherwise. In the event of any assignment or subletting without the prior written approval of SAWS, SAWS may, in addition to any other remedy provided herein, withhold any further payment of Contract Compensation.

(B) By SAWS. SAWS may not assign its rights or obligations under this Design-Build Contract without the prior written consent of the Design-Builder, which may be given or withheld in the Design-Builder’s reasonable discretion. SAWS may, however, assign its rights and obligations under this Design-Build Contract, without the consent of the Design-Builder, to another Governmental Body if such assignee assumes, and is legally capable of discharging the duties and obligations of SAWS hereunder.

SECTION 17.12. CONFIDENTIALITY.

(A) Confidential Nature of Information. The Design-Builder shall treat all confidential information obtained from SAWS in the performance of this Design-Build Contract as confidential and proprietary to SAWS to the extent permitted by law. “Confidential Information”, for purposes of this covenant, means any information and materials which is clearly identified or marked as being “confidential” or “proprietary” or otherwise marked in accordance with applicable federal law by the disclosing party. Confidential Information does not include information which: (1) was in the public domain at the time of a disclosing party’s communication thereof to the receiving party; (2) entered the public domain through no fault of the receiving party subsequent to the time of the disclosing party’s communication thereof to the receiving party; (3) was in the receiving party’s possession free of any obligation of confidence at the time of the disclosing party’s communication thereof to the receiving party, as evidenced in the receiving parties records; (4) was rightfully communicated by a third party to a receiving party free of any obligation of confidence subsequent to the time of the disclosing party’s communication thereof to the receiving party; (5) was developed by employees or agents of the receiving party independently of and without reference to any proprietary information or other information that the disclosing party has disclosed in confidence to the receiving party; (6) is approved for release by written authorization of the disclosing party; or (7) the receiving party reasonably believes on advice of legal counsel it is legally obligated to disclose by law, rule, regulation, court order, or other compulsory process of a court or other governmental body, provided, however, that in such case, the receiving party shall immediately notify the disclosing party of its intention to disclose (unless the receiving party reasonably believes based on the advice of legal counsel that providing such notice would violate applicable law, rule, regulation, court order, or other compulsory process of a court or other governmental body) so
that the disclosing party can take such legal action as it deems necessary or appropriate to prevent such disclosure.

(B) Limitation on Use and Disclosure. The Design-Builder shall not use any Confidential Information obtained as a consequence of the performance of the Contract Obligations for any purpose other than the performance of the Contract Obligations in accordance with this Design-Build Contract. The Design-Builder shall not disclose any information obtained from SAWS or obtained as a consequence of the performance of the Contract Obligations to any person other than its own employees, agents or Subcontractors who have a need for the information for the performance of work under this Design-Build Contract, unless such disclosure is specifically approved in writing by SAWS, which approval may be withheld in the sole and absolute discretion of SAWS.

(C) Texas Public Information Act. In the event the Design-Builder is subject to the Public Information Act upon receipt of a request for any information obtained by the Design-Builder in the performance of this Design-Build Contract, the Design-Builder shall provide written notice to SAWS of the request along with a copy of the request, and give SAWS the opportunity to respond to the request prior to its release by the Design-Builder.

SECTION 17.13. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Design-Builder shall comply with its obligations under agreements of the Design-Builder, which are material to the performance of its obligations under this Design-Build Contract. SAWS shall comply with its obligations under agreements of SAWS, which are material to the performance of its obligations hereunder.

SECTION 17.14. ETHICS REQUIREMENTS.

(A) Design-Builder’s Warranty. Except to the extent permitted by Applicable Law, the Design-Builder warrants that neither it nor any of its Affiliates nor any Design-Builder Person has employed or retained any company or person other than a bona fide employee working solely for the Design-Builder or any of its Affiliates, to solicit or secure this Design-Build Contract, and that neither it nor any of its Affiliates nor any Design-Builder Person has for the purpose of soliciting or securing this Design-Build Contract, paid or agreed to pay any company or person, other than a bona fide employee working solely for the Design-Builder 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 Design-Build Contract.

(B) Interest in SAWS Agreements Prohibited. No member of the Board of Trustees, nor any officer, agent or employee of the Board of Trustees, 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 Design-Builder 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.

(C) 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.

(D) Ethics Hotline. The SAWS Ethics Hotline for reporting suspected ethics violations is 1-800-687-1918.
SECTION 17.15. DUTY TO DOCUMENT.

SAWS, as a public entity, has a duty to document the expenditure of public funds. The Design-Builder acknowledges this duty on the part of SAWS and agrees to document all costs compensable by SAWS under this Design-Build Contract in accordance with the terms and conditions of this Design-Build Contract.

SECTION 17.16. BINDING EFFECT.

This Design-Build Contract shall inure to the benefit of and shall be binding upon SAWS and the Design-Builder and any assignee acquiring an interest hereunder consistent with Section 17.11.

SECTION 17.17. AMENDMENT AND WAIVER.

(A) Contract Amendments. This Design-Build Contract may not be amended except by a written agreement signed by the parties in accordance with Section 17.5.

(B) Waiver. Any of the terms, covenants, and conditions of this Design-Build Contract may be waived at any time by the party entitled to the benefit of such term, covenant or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

SECTION 17.18. NOTICES.

(A) Procedure. All notices, consents or approvals or written communications (unless otherwise provided in the communication plan required to be developed pursuant to Appendix 2) given pursuant to the terms of this Design-Build Contract shall be:

(1) In writing and delivered in person;

(2) Transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or

(3) Given by email transmission, if a signed original of the emailed letter or other communication is deposited in the United States Mail within two days after transmission.

Notices shall be deemed given only when actually received at the address first given below with respect to each party; provided, however, that email transmissions shall be deemed given only when the signed original of the emailed letter or other communication is received at such address. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

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

San Antonio Water System
2800 U.S. Hwy 281 North
San Antonio, TX 78212
Attn: President and Chief Executive Officer
Telephone No.: (210) 233-5268
Email: robert.puente@saws.org
with a copy to:

San Antonio Water System  
2800 U.S. Hwy 281 North  
San Antonio, TX  78212  
Attn: General Counsel  
Telephone No.: (210) 233-4587  
Email: nancy.belinsky@saws.org

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

Black and Veatch Corporation  
14100 San Pedro Avenue, Suite 410  
San Antonio, TX 78232  
Attn: David Timmermann, P.E.  
Telephone No.: (469) 513-3220  
Email: timmermannda@bv.com

With copies to SAWS at the addresses provided in (B) above.

(D) **Design-Builder Notice Address.** Notices required to be given to the Design-Builder shall be addressed as follows:

Kiewit Infrastructure South Co.  
3555 Farnam Street  
Omaha, NE 68131  
Attn: Scott Cassels  
President  
Telephone No.: (402) 342-2052  
Email: scott.cassels@kiewit.com

With a copy to:

Kiewit Infrastructure South Co.  
160 Inverness Drive West  
Englewood, CO 80112  
Attn: Randy Sanman  
Vice President  
Telephone No.: (303) 979-9330  
Email: randy.sanman@kiewit.com

With a copy to:

Kiewit Infrastructure South Co.  
3555 Farnam Street  
Omaha, NE 68131  
Attn: Mark P. Keating, Esq.  
Assistant General Counsel  
Telephone No.: (402) 943-1347  
Email: mark.keating@kiewit.com
SECTION 17.19. NOTICE OF LITIGATION.

In the event the Design-Builder or SAWS receives notice of or undertakes the defense or the prosecution of any Legal Proceedings 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 17.20. FURTHER ASSURANCES.

SAWS and Design-Builder each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Design-Build Contract. SAWS and the Design-Builder, in order to carry out this Design-Build Contract, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Design-Build Contract and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties have caused this Design-Build Contract to be executed by their duly authorized representatives as of the day and year first above written.

SAN ANTONIO WATER SYSTEM

By: __________________________________________
Name: _______________________________________
Title: _______________________________________

KIEWIT INFRASTRUCTURE SOUTH CO.

By: __________________________________________
Name: _______________________________________
Title: _______________________________________

DRAFT
TRANSACTION FORMS

TO THE
DESIGN-BUILD CONTRACT
FOR THE
CENTRAL WATER
INTEGRATION PIPELINE

between

THE SAN ANTONIO WATER SYSTEM

and

KIEWIT INFRASTRUCTURE SOUTH CO.

Dated

September __, 2017
TRANSACTION FORM A

FORM OF GUARANTY AGREEMENT
GUARANTY AGREEMENT

from

KIEWIT INFRASTRUCTURE GROUP INC.

to

THE SAN ANTONIO WATER SYSTEM

Dated

September __, 2017
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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of September __, 2017, between Kiewit Infrastructure Group Inc., a corporation organized and existing under the laws of the State of Delaware (together with any permitted successors and assigns hereunder, the “Guarantor”), and the San Antonio Water System (“SAWS”), an agency of the City of San Antonio established and created pursuant to provisions of Ordinance No. 75686 of the City of San Antonio, Texas and Texas Local Government Code Sections 402.141 et seq., acting by and through its President and CEO, or his or her authorized representative.

RECITALS

SAWS and Kiewit Infrastructure South Co., a corporation organized and existing under the laws of State of Delaware (the “Design-Builder”), have entered into a Design-Build Contract for the Central Water Integration Pipeline, dated as of September __, 2017, as amended from time to time (the “Design-Build Contract”), whereby the Design-Builder has agreed to obtain governmental approvals for, design, construct, start up, commission, and acceptance test, certain storage, treatment, piping and pumping facilities, all as more particularly described therein.

The Design-Builder is an indirect subsidiary of the Guarantor.

Performance by SAWS and the Design-Builder of their obligations under the Design-Build Contract will result in a direct and substantial benefit to the Guarantor.

SAWS will enter into the Design-Build Contract only if, concurrently with its execution and delivery by the Design-Builder, the Guarantor guarantees the performance by the Design-Builder of all of the Design-Builder’s Obligations under the Design-Build Contract as set forth in this Guaranty Agreement.

In order to induce the execution and delivery of the Design-Build Contract by SAWS and in consideration thereof, the Guarantor agrees as follows:
ARTICLE 1
DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Design-Build Contract.

“Obligations” means the amounts payable by, and the covenants and agreements of, the Design-Builder pursuant to the terms of the Design-Build Contract.

“Transaction Agreement” means any agreement entered into by the Design-Builder or SAWS in connection with the transactions contemplated by the Design-Build Contract, including the Design-Build Contract, and any supplements thereto.

SECTION 1.2. INTERPRETATION.

In this Guaranty, unless the context otherwise requires:

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

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

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

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

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

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

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

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor’s liability beyond that expressly set forth herein.
(I) **Approvals.** All approvals, consents and acceptances required to be given or made by any party hereto shall be at the discretion of the party whose approval, consent or acceptance is required.

(J) **Payments.** All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.
ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.

The Guarantor hereby represents and warrants that:

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

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

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

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

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

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

(G) **Consent to Agreements.** The Guarantor is fully aware of and consents to the terms and conditions of the Design-Build Contract.

(H) **Consideration.** This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.
(I) **Applicable Law Compliance.** Except as disclosed in writing to SAWS, the Guarantor does not have knowledge of any material violation of any law, order, rule or regulation with respect to any facilities designed or constructed by the Guarantor, Design-Builder or any of their Affiliates.
ARTICLE 3
GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO SAWS.

The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to SAWS for the benefit of SAWS (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Design-Build Contract (including all amendments and supplements thereto) to, or for the account of, SAWS, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty and the combined liability of the Guarantor under this Guaranty and the Design-Build Contract shall be subject to the applicable limitations set forth in the Design-Build Contract.

SECTION 3.2. RIGHT OF SAWS TO PROCEED AGAINST GUARANTOR.

This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Design-Build to pay or perform any Obligation guaranteed hereunder, SAWS shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Design-Build or exhausting any other remedies against the Design-Build which SAWS may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that SAWS:

(1) File suit or proceed to obtain a personal judgment against the Design-Build or any other person that may be liable for the Obligations or any part of the Obligations;

(2) Make any other effort to obtain payment or performance of the Obligations from the Design-Build other than providing the Design-Build with any notice of such payment or performance as may be required by the terms of the Design-Build Contract or required to be given to the Design-Build under Applicable Law;

(3) Foreclose against or seek to realize upon any security for the Obligations; or

(4) Exercise any other right or remedy to which SAWS is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Design-Build or to the enforcement of remedies under the Design-Build Contract.

Upon any unexcused failure by the Design-Build in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Design-Build and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding SAWS’ right to proceed directly against the Guarantor, SAWS (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.
SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL.

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

(1) The extension or renewal of this Guaranty or the Design-Build Contract up to the specified Terms of each agreement;

(2) Any exercise or failure, omission or delay by SAWS in the exercise of any right, power or remedy conferred on SAWS with respect to this Guaranty or the Design-Build Contract except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;

(3) Any permitted transfer or assignment of rights or obligations under the Design-Build Contract or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Project or in, to or under any of the Transaction Agreements;

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

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

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

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

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

(9) Any failure on the part of the Design-Builder for any reason to perform or comply with any agreement with the Guarantor;

(10) The failure on the part of SAWS to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Design-Builder as a condition to the enforcement of Obligations pursuant to the Design-Build Contract;

(11) Any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Design-Builder or the Guarantor under any Transaction Agreement;

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

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

(14) The fact that entering into any Transaction Agreement by the Design-Builder or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Design-Builder pursuant to the terms of the Design-Build Contract and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty.

Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Design-Builder’s rights, benefits, duties or obligations under the Design-Build Contract. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Design-Builder’s Obligations, the Guarantor’s obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS.

Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Design-Builder may have under the Design-Build Contract or under Applicable Law (other than bankruptcy or insolvency of the Design-Builder and other than any defense which the Design-Builder has expressly waived in the Design-Build Contract or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Design-Builder is permitted to assert pursuant to the Design-Build Contract, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR.

The Guarantor hereby unconditionally and irrevocably waives:

(1) Notice from SAWS of its acceptance of this Guaranty;
(2) Notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of the Obligations;

(3) To the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Design-Builder required pursuant to the Design-Build Contract or Applicable Law as a condition to the performance of any Obligation;

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

(5) Any right to require a proceeding first against the Design-Builder;

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

(7) Any requirement that the Design-Builder be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;

(8) The requirement of, or the notice of, the filing of claims by SAWS in the event of the receivership or bankruptcy of the Design-Builder; and

(9) All demands upon the Design-Builder or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES.

The Guarantor agrees to pay SAWS on demand all Fees and Costs incurred by or on behalf of SAWS to enforce observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that SAWS incurs in performing any of its obligations under the Design-Build Contract, or other applicable Transaction Agreement where such obligations are a condition to performance by the Design-Builder of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS.

The Guarantor agrees that any right of subrogation or contribution which it may have against the Design-Builder as a result of any payment or performance hereunder is hereby fully subordinated to the rights of SAWS hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Design-Builder until the Design-Builder and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.
SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT.

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

SECTION 3.9. TERM.

This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Design-Builder have been fully paid and performed.
ARTICLE 4
GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than the Guarantor): (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of Texas; (b) delivers to SAWS an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (c) has a net worth at the time of any such transaction at least equal to the net worth of the Guarantor immediately prior to such time.

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

SECTION 4.2. ASSIGNMENT.

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

SECTION 4.3. QUALIFICATION IN TEXAS.

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

SECTION 4.4. CONSENT TO JURISDICTION.

The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the State or federal courts located in Bexar County, Texas, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.5. BINDING EFFECT.

This Guaranty shall inure to the benefit of SAWS and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.
SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS.

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

SECTION 4.7. LIABILITY.

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

SECTION 4.8. NOTICES.

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

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

San Antonio Water System  
2800 U.S. Hwy 281 North  
San Antonio, TX  78212  
Attn: President and Chief Executive Officer  
Telephone No.: (210) 233-5268  
Email: robert.puente@saws.org

with a copy to:

San Antonio Water System  
2800 U.S. Hwy 281 North  
San Antonio, TX  78212  
Attn: General Counsel  
Telephone No.: (210) 233-4587  
Email: nancy.belinsky@saws.org

(C) Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:
Kiewit Infrastructure Group Inc.
3555 Farnam Street
Omaha, NE 68131
Attn: Scott Cassels
   President
Telephone No.: (402) 342-2052
Email: scott.cassels@kiewit.com

with a copy to:

Kiewit Infrastructure Group Inc.
160 Inverness Drive West
Englewood, CO 80112
Attn: Randy Sanman
   Vice President
Telephone No.: (303) 979-9330
Email: randy.sanman@kiewit.com

with a copy to:

Kiewit Infrastructure Group Inc.
3555 Farnam Street
Omaha, NE 68131
Attn: Mark P. Keating, Esq.
   Assistant General Counsel
Telephone No.: (402) 943-1347
Email: mark.keating@kiewit.com

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

KIEWIT INFRASTRUCTURE GROUP INC., as Guarantor

By: ________________________________

Name: ______________________________
Title: ______________________________

ACCEPTED AND AGREED TO BY:

SAN ANTONIO WATER SYSTEM

By: ________________________________

Name: ______________________________
Title: ______________________________
TRANSACTION FORM B

FORM OF SECURITY BOND
[This Page Intentionally Left Blank]
FORM OF SECURITY BOND

BOND NO.________________

BOND AMOUNT: $10,000,000

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Kiewit Infrastructure South Co., as Principal ("Design-Builders"), and ________________________, a corporation duly organized and existing under the laws of the State of ________________________, with its principal place of business in the City of ________________________, and authorized under the laws of the State of Texas to act as surety on bonds for principals ("Surety"), do hereby acknowledge ourselves to be held and firmly bound to the San Antonio Water System ("SAWS"), an agency of the City of San Antonio established and created pursuant to provisions of Ordinance No. 75686 of the City of San Antonio, Texas and Texas Local Government Code Sections 402.141 et seq., acting by and through its President and CEO, or his or her authorized representative, in the sum of Ten Million Dollars ($10,000,000) ("Penal Sum") for the payment of which sum, well and truly to be made to SAWS, its successors and assigns, Design-Builders and Sureties do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally. The obligation of the Surety hereunder shall not exceed the Penal Sum.

WHEREAS, Design-Builders has entered into a Design-Build Contract for the Central Water Integration Pipeline dated September __, 2017 ("Agreement"), which Agreement is hereby referred to and made a part hereof as fully and completely as if set out in full herein, and initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement; and

WHEREAS, under the Agreement Design-Builders is to provide Phase I Services, including furnishing SAWS with a GMP Submittal that, if ultimately accepted by SAWS, will result in a GMP Amendment to the Agreement and the furnishing to SAWS of an executed Performance Bond and Payment Bond in a penal sum equal to the Base Guaranteed Maximum Price; and

WHEREAS, one of the conditions of the Agreement is that Design-Builders provide this duly executed instrument ("Security Bond").

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if: (a) SAWS and Design-Builders enter into a GMP Amendment; and (b) the Surety and Design-Builders deliver to SAWS an executed Performance Bond and Payment Bond for the Base Guaranteed Maximum Price in conjunction with the GMP Amendment, as required by the Agreement, 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 Design-Builders fail to faithfully and strictly perform the Phase I Services in accordance with the Agreement, or should Design-Builders and Surety fail to deliver an executed Performance Bond and Payment Bond for the Base Guaranteed Maximum Price in conjunction with the GMP Amendment, as required by the Agreement, then Surety shall be liable to SAWS for all damages, losses, expenses and liabilities to the same extent that Design-Builders would be liable to SAWS under the Agreement.

It is further understood and agreed that the Surety does hereby relieve SAWS or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Design-Builders with the terms of the Agreement, and the Surety hereby waives any notice to it of any default, or delay by the Design-Builders in the performance of the Phase I Services, and agrees that it, the Surety, shall be bound to take notice of and shall be held to
have knowledge of all acts or omissions of the Design-Builder in all matters pertaining to the Phase I Services.

It is further expressly agreed by Surety that SAWS or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Agreement and in the Contract Obligations to be performed thereunder, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Contract Obligations to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this Security Bond and undertaking or release the Surety therefrom.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Agreement, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

Notwithstanding any other provision in the Agreement or this Security Bond, the Surety’s obligations under this Security Bond shall be maintained, and remain in full force and effect, until: (a) the Surety and Design-Builder delivers to SAWS an executed Performance Bond and Payment Bond for the Base Guaranteed Maximum Price in conjunction with the GMP Amendment, as required by the Agreement, and (b) the occurrence of the GMP Amendment Date; provided, however, that this Security Bond shall expire and be of no further force or effect on the date that is eighteen (18) months from the date that Design-Builder furnishes its GMP Submittal to SAWS, unless, prior to such date, SAWS provides notice to the Surety of its intent to exercise its rights under this Security Bond.

IN WITNESS THEREOF, Design-Builder and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.
TRANSACTION FORM C

FORM OF PERFORMANCE BOND

[EARLY WORK PACKAGE AMENDMENT]
FORM OF PERFORMANCE BOND (EARLY WORK PACKAGE AMENDMENT)

BOND NO._______________

BOND AMOUNT: $_______________

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Kiewit Infrastructure South Co., as Principal ("Design-Builder"), and ________________, a corporation duly organized and existing under the laws of the State of ________________, with its principal place of business in the City of ________________, and authorized under the laws of the State of Texas to act as surety on bonds for principals ("Surety"), do hereby acknowledge ourselves to be held and firmly bound to the San Antonio Water System ("SAWS"), an agency of the City of San Antonio established and created pursuant to provisions of Ordinance No. 75686 of the City of San Antonio, Texas and Texas Local Government Code Sections 402.141 et seq., acting by and through its President and CEO, or his or her authorized representative, in the sum of ________________ Dollars ($______________) ("Penal Sum") for the payment of which sum, well and truly to be made to SAWS, its successors and assigns, Design-Builder and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally. The obligation of the Surety hereunder shall not exceed the Penal Sum.

WHEREAS, Design-Builder has entered into a Design-Build Contract for the Central Water Integration Pipeline dated September __, 2017 ("Agreement"), which Agreement is hereby referred to and made a part hereof as fully and completely as if set out in full herein, and initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement; and

WHEREAS, Design-Builder and SAWS have entered into an Early Work Package Amendment dated ________________ ("Early Work Package Amendment [1]"); and

WHEREAS, one of the conditions of the Agreement is that Design-Builder provide this duly executed instrument ("Bond") for Early Work Package Amendment [1]; and

WHEREAS, for purposes of this Bond, the term “Work” refers to all of Design-Builder’s obligations under the Agreement to perform Early Work Package Amendment [1].

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if Design-Builder shall faithfully and strictly perform the Work in accordance with the Agreement, 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 Design-Builder fail to faithfully and strictly perform the Work in accordance with the Agreement, including but not limited to the indemnifications under the Agreement, the Surety shall be liable for all damages, losses, expenses and liabilities that SAWS may suffer in consequence thereof, as more fully set forth herein, provided, however, that the Surety’s obligations to SAWS shall not be greater than the Design-Builder’s obligations to SAWS under the Agreement.

It is further understood and agreed that the Surety does hereby relieve SAWS or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Design-Builder with the terms of the Agreement, and the Surety hereby waives any notice to it of any default, or delay by the Design-Builder in the performance of the Work and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Design-Builder in all matters pertaining to the Work. The Surety understands and agrees that the provision in the Agreement that SAWS will retain certain amounts due the Design-Builder is intended for SAWS’ benefit, and SAWS will have the right to
pay or withhold such retained amounts or any other amount owing under the Agreement without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that SAWS or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Work, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work, and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

If SAWS gives Surety notice of Design-Builder’s default, Surety shall, within 45 days, take one of the following actions:

1. arrange for Design-Builder, with consent of SAWS, to perform and complete the Work;

2. take over and assume completion of the Work itself, through its agents or through independent contractors; or

3. waive its rights under Paragraphs 1 and 2 above, and reimburse SAWS the amount of its reasonable costs to complete the Work and pay SAWS any other amount for which the Surety is liable under this Bond.

If the Surety fails to take either of the actions set out above, it shall, after receipt of notice as set forth above, be deemed to have waived its right to perform and complete the Work and receive payment of any monies under the Agreement, and SAWS shall be entitled to enforce any remedies available at law, including but not limited to completing the Work itself and recovering its damages and any other relief from the Surety.

This Bond and all obligations created hereunder shall be performed in Bexar County, Texas. This Bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the express provisions of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Agreement, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

The Surety’s obligations under this Bond will be maintained, and shall remain in full force and effect, until Final Completion.

IN WITNESS THEREOF, Design-Builder and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.
TRANSACTION FORM D

FORM OF PAYMENT BOND
FORM OF PAYMENT BOND

BOND NO._______________

BOND AMOUNT: $_______________

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Kiewit Infrastructure South Co., as Principal ("Design-Builder"), and ________________, a corporation duly organized and existing under the laws of the State of ________________, with its principal place office in the City of ________________, and authorized under the laws of the State of Texas to act as surety on bonds for principals ("Surety"), do hereby acknowledge ourselves to be held and firmly bound to the San Antonio Water System ("SAWS"), an agency of the City of San Antonio established and created pursuant to provisions of Ordinance No. 75686 of the City of San Antonio, Texas and Texas Local Government Code Sections 402.141 et seq., acting by and through its President and CEO, or his or her authorized representative, in the sum of _________________ Dollars ($_______________) ("Penal Sum") for the payment of which sum, well and truly to be made to SAWS, its successors and assigns, Design-Builder and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally. The obligation of the Surety hereunder shall not exceed the Penal Sum.

WHEREAS, Design-Builder has entered into a Design-Build Contract for the Central Water Integration Pipeline dated September __, 2017 ("Agreement"), which Agreement is hereby referred to and made a part hereof as fully and completely as if set out in full herein, and initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement; and

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Design-Builder shall pay all claimants supplying labor and materials to Design-Builder or a Subcontractor in the prosecution of the work provided for in the Agreement, then, this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 10, Chapter 2253, as amended, of the Texas Government Code, and all liabilities on this bond shall be determined in accordance with the provisions of this Chapter, to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, or other waiver or amendment of the terms of the Agreement or to the work to be performed thereunder, nor any change in the method nor any change in the method or amount of payments stipulated to be made by SAWS under the Agreement, shall relieve Surety of its obligations hereunder, and Surety hereby waives notice of any such change, extension of time, waiver or amendment of the terms of the Agreement or to the work to be performed thereunder. This bond shall be automatically extended in time, without formal and separate amendment, to cover full and faithful performance of the Agreement in the event of modification of the Agreement, regardless of the length of time involved.

IN WITNESS THEREOF, Design-Builder and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.
TRANSACTION FORM E

FORM OF PERFORMANCE BOND

(GMP AMENDMENT)
FORM OF PERFORMANCE BOND (GMP AMENDMENT)

BOND NO._______________

BOND AMOUNT: $_______________

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Kiewit Infrastructure South Co., as Principal (“Design-Builder”), and ________________, a corporation duly organized and existing under the laws of the State of __________________, with its principal place of business in the City of __________________, and authorized under the laws of the State of Texas to act as surety on bonds for principals (“Surety”), do hereby acknowledge ourselves to be held and firmly bound to the San Antonio Water System (“SAWS”), an agency of the City of San Antonio established and created pursuant to provisions of Ordinance No. 75686 of the City of San Antonio, Texas and Texas Local Government Code Sections 402.141 et seq., acting by and through its President and CEO, or his or her authorized representative, in the sum of _________________ Dollars ($______________) (“Penal Sum”) for the payment of which sum, well and truly to be made to SAWS, its successors and assigns, Design-Builder and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally. The obligation of the Surety hereunder shall not exceed the Penal Sum.

WHEREAS, Design-Builder has entered into a Design-Build Contract for the Central Water Integration Pipeline dated September __, 2017 (“Agreement”), which Agreement is hereby referred to and made a part hereof as fully and completely as if set out in full herein, and initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement; and

WHEREAS, Design-Builder and SAWS have entered into a GMP Amendment dated ________________, with a Base Guaranteed Maximum Price of ________________ ($______________); and

WHEREAS, one of the conditions of the Agreement is that Design-Builder provide this duly executed instrument (“Bond”) for the GMP Amendment; and

WHEREAS, for purposes of this Bond, the term “Work” refers to all of Design-Builder's obligations under the Agreement to perform Design-Build Work.

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if Design-Builder shall faithfully and strictly perform the Work in accordance with the Agreement, 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 Design-Builder fail to faithfully and strictly perform the Work in accordance with the Agreement, including but not limited to the indemnifications under the Agreement, the Surety shall be liable for all damages, losses, expenses and liabilities that SAWS may suffer in consequence thereof, as more fully set forth herein, provided, however, that the Surety's obligations to SAWS shall not be greater than the Design-Builder's obligations to SAWS under the Agreement.

It is further understood and agreed that the Surety does hereby relieve SAWS or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Design-Builder with the terms of the Agreement, and the Surety hereby waives any notice to it of any default, or delay by the Design-Builder in the performance of the Work and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Design-Builder in all matters pertaining to the Work. The Surety understands and agrees that the provision in the Agreement that SAWS will retain certain amounts due the Design-Builder is intended for SAWS’ benefit, and SAWS will have the right to
pay or withhold such retained amounts or any other amount owing under the Agreement without changing or affecting the liability of the Surety hereon in any degree.

It is further expressly agreed by Surety that SAWS or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Work, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Work, and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

If SAWS gives Surety notice of Design-Builder’s default, Surety shall, within 45 days, take one of the following actions:

1. arrange for Design-Builder, with consent of SAWS, to perform and complete the Work;

2. take over and assume completion of the Work itself, through its agents or through independent contractors; or

3. waive its rights under Paragraphs 1 and 2 above, and reimburse SAWS the amount of its reasonable costs to complete the Work and pay SAWS any other amount for which the Surety is liable under this Bond.

If the Surety fails to take either of the actions set out above, it shall, after receipt of notice as set forth above, be deemed to have waived its right to perform and complete the Work and receive payment of any monies under the Agreement, and SAWS shall be entitled to enforce any remedies available at law, including but not limited to completing the Work itself and recovering its damages and any other relief from the Surety.

This Bond and all obligations created hereunder shall be performed in Bexar County, Texas. This Bond is given in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the express provisions of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Agreement, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

The Surety’s obligations under this Bond will be maintained, and shall remain in full force and effect, until Final Completion.

IN WITNESS THEREOF, Design-Builder and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.
TRANSACTION FORM F
FORM OF WARRANTY BOND
FORM OF WARRANTY BOND

BOND NO._______________

BOND AMOUNT: $_______________

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, Kiewit Infrastructure South Co., as Principal (“Design-Builder”), and ________________, a corporation duly organized and existing under the laws of the State of ________________, with its principal place office in the City of ________________, and authorized under the laws of the State of Texas to act as surety on bonds for principals (“Surety”), do hereby acknowledge ourselves to be held and firmly bound to the San Antonio Water System (“SAWS”), an agency of the City of San Antonio established and created pursuant to provisions of Ordinance No. 75686 of the City of San Antonio, Texas and Texas Local Government Code Sections 402.141 et seq., acting by and through its President and CEO, or his or her authorized representative, in the sum of _________________ Dollars ($_______________) (“Penal Sum”) for the payment of which sum, well and truly to be made to SAWS, its successors and assigns, Design-Builder and Surety do bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally. The obligation of the Surety hereunder shall not exceed the Penal Sum.

WHEREAS, Design-Builder has entered into a Design-Build Contract for the Central Water Integration Pipeline dated September __, 2017 (“Agreement”), which Agreement is hereby referred to and made a part hereof as fully and completely as if set out in full herein, and initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement; and

WHEREAS, one of the conditions of the Agreement is that Design-Builder provide this duly executed instrument (“Warranty Bond”).

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if Design-Builder shall faithfully and strictly perform the Warranty Work in accordance with the Agreement, 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 Design-Builder fail to faithfully and strictly perform the Warranty Work in accordance with the Agreement, the Surety shall be liable for all damages, losses, expenses and liabilities that SAWS may suffer in consequence thereof, provided, however, that the Surety’s obligations to SAWS shall not be greater than the Design-Builder’s obligations to SAWS under the Agreement.

It is further understood and agreed that the Surety does hereby relieve SAWS or its representatives from the exercise of any diligence whatever in securing compliance on the part of the Design-Builder with the terms of the Agreement, and the Surety hereby waives any notice to it of any default, or delay by the Design-Builder in the performance of the Warranty Work and agrees that it, the Surety, shall be bound to take notice of and shall be held to have knowledge of all acts or omissions of the Design-Builder in all matters pertaining to the Warranty Work.

It is further expressly agreed by Surety that SAWS or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Warranty Work, as provided in the Agreement, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the Warranty Work, and that such changes, if made, shall not in any way vitiate the obligation in this Bond and undertaking or release the Surety therefrom.

If SAWS gives Surety notice of Design-Builder’s default, Surety shall promptly, but, within 45 days, take one of the following actions:
1. arrange for Design-Builder, with consent of SAWS, to perform and complete the Warranty Work;

2. take over and assume completion of the Warranty Work itself, through its agents or through independent contractors; or

3. waive its rights under Paragraphs 1 and 2 above, and reimburse SAWS the amount of its reasonable costs to complete the Warranty Work and pay SAWS any other amount for which the Surety is liable under this Warranty Bond.

If the Surety fails to take any of the actions set out above, it shall, after receipt of notice as set forth above, be deemed to have waived its right to perform and complete the Warranty Work and receive payment of any monies under the Agreement, and SAWS shall be entitled to enforce any remedies available at law, including but not limited to completing the Warranty Work itself and recovering its damages and any other relief from the Surety.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Agreement, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

The Surety’s obligations under this Bond will be maintained, and shall remain in full force and effect, until one (1) year from the Acceptance Date and shall automatically renew for additional one (1) year terms if the Design-Builder has any outstanding Warranty Work obligations upon completion of any such one (1) year term.

IN WITNESS THEREOF, Design-Builder and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.
APPENDICES TO THE

DESIGN-BUILD CONTRACT FOR THE CENTRAL WATER INTEGRATION PIPELINE

between

THE SAN ANTONIO WATER SYSTEM

and

KIEWIT INFRASTRUCTURE SOUTH CO.

Dated as of

September __, 2017
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PROJECT AND PROJECT SITES
APPENDIX 1

PROJECT AND PROJECT SITES

1.1. PURPOSE

The purpose of this Appendix is to describe the Project, show the location of the Project Sites and identify the Vista Ridge Regional Supply Project.

1.2. PROJECT

The Project is being implemented by SAWS in order to allow SAWS to take delivery of WTPA Water from the Vista Ridge Regional Supply Project and treat the WTPA Water so that Finished Water can be introduced into the SAWS Distribution System.

The Project shall generally consist of new delivery point treatment facilities, new ground storage tanks, a new high service pumping station, new transmission pipelines, upgrades to existing pipelines, upgrades to existing pumping stations (including piping, control valves, pump replacement and SCADA System), instrumentation, electrical and rehabilitation/replacement of existing pipelines. The Design-Builder shall design and construct a multi-faceted and fully integrated delivery, treatment and distribution project.

The Project also includes the construction of permanent internal service roads necessary to provide access to the Project, and the provision of any and all interior fencing, security gates, lighting, surveillance equipment and other services as required to facilitate the proper operation of the Project on the Project Sites.

A general Project description follows in this Appendix. Further information regarding the Project is included in the Design Criteria Package which is a Reference Document to this Design-Build Contract.

The Project shall be more particularly and completely described in the Baseline Design Documents developed as part of the Phase I Services.

1.2.1 New Pipe Design and Installation

The Design-Builder will design and construct Finished Water Transmission Pipelines to convey Finished Water from the Terminus Facility to the existing SAWS pump stations along the alignment generally described in Figure 1-1 of this Appendix and the following:

- The distribution line from Terminus Facility to Knights Cross Drive will need to be constructed within a combination of public right-of-way and permanent and additional temporary construction easements. For the permanent easements, a maximum width of approximately 40-feet is anticipated to be procured. For the temporary easement, a maximum width of approximately 60-feet is anticipated to be procured. In some areas, these widths may need to be constricted.
- The transmission line from Terminus Facility to the connection with the existing 48-inch pipeline near the intersection of Voigt Drive and the south frontage road of 1604 is intended to be constructed to allow gravity flow from the Terminus Facility to the downstream pump stations. SAWS intends to procure a maximum permanent easement width of approximately 20-feet from the Terminus Facility to just south of the Northeast Independent School District (NEISD) property. From just south of the NEISD property to just north of the crossing of Sontera Boulevard, a maximum permanent easement width of approximately 60-feet is anticipated to be procured. No temporary easement is
anticipated to be procured. The remainder of construction to the intersection of Sigma Road and the north access road of 1604 is anticipated to be limited to the existing right-of-way. From Sigma Road to just west of the intersection of Stone Oak Parkway and the north access road of 1604, a maximum easement width of approximately 20-feet is anticipated to be procured. No temporary easement is anticipated to be procured.

- The transmission line from near the Aspen wells to the Bitters Pump Station site is intended to be constructed within existing SAWS property on the north side of Bitters Road. Where the alignment crosses Bitters Road onto private property, a maximum permanent easement width of approximately 50-feet is anticipated to be procured. Additionally, a temporary construction easement width of approximately 40-feet is anticipated to be procured to provide for a total width of approximately 90-feet (both permanent and temporary) during construction.

- The new transmission line connecting to the Basin Pump Station is intended to be constructed within existing joint use right-of-way. A maximum construction easement width of approximately 100-feet is anticipated to be procured.

- SAWS will provide adequate easement for construction of the PRV Facilities in collaboration with the Design-Builder.

- SAWS will provide adequate easement for construction of any bore pit access and exit shafts in collaboration with the Design-Builder.

SAWS will acquire all easements described in this Section 1.2.1 by the deadline specified in Section 4.3(D) of this Design-Build Contract. Any additional easements that are required will be in accordance with SAWS’ easement standards in collaboration with the Design-Builder.

In addition, the PRV Facilities, including miscellaneous small diameter pipeline interconnections, will be required to interconnect pressure zones as noted in Design Criteria Package.

Design-Builder services shall include:

- Alignment refinement and finalization, however, SAWS is in the process of obtaining easements.
- Assistance in obtaining pipeline easements for construction.
- Geotechnical services.
- Tunneling.
- Material selection.
- Permitting, however, the Owner Representative is currently evaluating any 404 and/or Nationwide permit requirements for the indicated alignments.

### 1.2.2 Existing Pipe Rehabilitation and Repairs

The Design-Builder may be required to:

- Perform pipe rehabilitation, repairs and/or replacement of sections of certain existing 48” and 30” ductile iron pipe and 36” and 30” pre-stressed concrete cylinder pipe (PCCP).
- Disconnect, connect, relocate, or realign existing Utilities to accommodate the installation of the new pipelines or rehabilitation of the existing pipelines.

### 1.2.3 Pump Station Improvements

The Design-Builder will design and construct the following Pump Station Improvements:

- Bitters Pump Station Improvements
  - Rehabilitation of the existing 5 MG ground storage tank (GST).
  - Replacement of existing horizontal pumps.
• Maltsberger Pump Station Improvements
  o Rehabilitation of the existing GST.
  o All required electrical, I&C, and SCADA connections for new equipment.
  o Upgrade existing electrical system throughout the site.
  o All necessary yard piping and valves.
  o 20” Flow control valve structure.

• Basin Pump Station Improvements
  o Rehabilitate the existing GST.
  o All required electrical, I&C, and SCADA connections for new equipment.
  o All necessary yard piping and valves.
  o 12” Flow control valve structure.

• Stone Oak Pump Station Improvements
  o A new 20 MGD pump station with four (4) 6.7 MGD horizontal centrifugal pumps (3 duty, 1 standby).
  o A new 14,300 gallon surge tank, compressors, and associated appurtenances to mitigate transients.
  o All necessary piping, valves, electrical, I&C, and SCADA components.

1.2.4 Terminus Facility

The Design-Builder will design and construct a treatment facility that will be hydraulically connected to the ground storage tank constructed at the Terminus Site by Vista Ridge LLC. The components of the Terminus Facility are:

• The delivery point treatment facilities include sodium hypochlorite system, carbon dioxide system, fluoride system, lime facilities, polymer systems, pressure filtration facilities, and residuals dewatering.
• One (1) 10 MG GST.
• Electrical, SCADA and Instrumentation.
  o Coordinate, design, and install required electrical, Instrumentation and Controls, and SCADA connections to the SAWS Distribution System.
  o Coordinate, design, and install SCADA connections to the “Vista Ridge LLC” project control panels.
  o Coordinate, design and install required radio communication systems and structures for connection of facilities and remote sites constructed by the Design-Builder to SAWS’ existing communication system.
  o Programming of controls systems for monitoring and control of the facilities and remote sites constructed by the Design-Builder.
• Finished site grading and drainage structures. The initial mass grading will be performed by Vista Ridge LLC.
• The temporary and final roads, driveways, and site concrete/flat work.
• All necessary yard piping, fencing, electrical and other miscellaneous appurtenances.
• Site drainage systems, security, landscaping, gates and all necessary support facilities.
Water will either be pumped out of the Terminus Site through the new Stone Oak Pump Station (PS) or flow by gravity to the existing pump stations downstream (i.e., the Bitters PS, Maltsberger PS, and Basin PS).

### 1.2.5 SAWS Distribution System Upgrades

The Design-Builder will design and install pressure reducing/sustaining valves, pipe, and/or other appurtenances, including SCADA and electrical, within the existing SAWS Distribution System to facilitate full integration of the Vista Ridge Regional Supply Project flows. The Design-Builder shall also program the automated operation of these facilities.

### 1.3. PROJECT SITES

The Project Sites are located in north central Bexar County, within the City limits and/or Extraterritorial Jurisdiction. The Terminus Site is located near the future intersection of Hardy Oak Blvd. and Huebner Road in Northern Bexar County, in San Antonio. Further information regarding the Project Sites is included in the Design Criteria Package which is a Reference Document to this Design-Build Contract.

See Figure 1-1 of this Appendix.

The description of the Project Sites shall be further developed as part of the Phase I Services and delineated as part of Appendix 4 on the GMP Amendment Date.
Figure 1-1 – Project Sites
1.4. **VISTA RIDGE REGIONAL SUPPLY PROJECT**

The Vista Ridge Regional Supply Project will deliver up to 50,000 ac-ft/yr of potable water. The Vista Ridge Regional Supply Project facilities include wells, collection pipelines, treatment facilities, tanks, pump stations, ground storage tanks, and the transmission pipeline, all as further described in the WTPA.

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 storage tank at the transmission pipeline Terminus Site.

See Figure 1-2 of this Appendix.
Figure 1-2 – Vista Ridge Regional Supply Project Overview
APPENDIX 2

PHASE I SERVICES
APPENDIX 2

PHASE I SERVICES

GENERAL REQUIREMENTS

Scope of Base Phase I Services. The Base Phase I Services shall consist of the following seven Phase I Services Tasks:

- Task #1: Project Management
- Task #2: Project Sites Conditions Review and Verification
- Task #3: Basis of Design Report
- Task #4: 30% Design Completion Documents
- Task #5: Initial GMP Submittal and Supporting Cost Estimates
- Task #6: 60% Design Completion Documents
- Task #7: GMP Submittal and Supporting Cost Estimates

Unless specifically excluded from this Design-Build Contract, the Design-Build shall provide to SAWS all architectural, engineering, geotechnical, landscape, Project management, cost estimating and other professional services necessary to perform the Base Phase I Services required by this Design-Build Contract.

Deliverable Material. Required Deliverable Material for each Phase I Services Task is identified in this Appendix. All Deliverable Material identified in this Appendix shall be reviewed with representatives of SAWS. The Design-Build shall promptly correct deficiencies in Deliverable Material and shall promptly make modifications to conform to Project requirements and modifications to achieve acceptability of the Deliverable Material to SAWS.

- Draft deliverables shall be provided to SAWS in Microsoft® WORD or EXCEL format.
- Unless specified otherwise, the Design-Build shall provide one original and six paper copies of each document submittal with electronic copies of all final deliverables in .pdf format, and CD copies as requested by SAWS.
- Submittals of the Project Schedule, and updates thereto, shall be provided in hardcopy, pdf and native P6 format.
- For draft and final design Drawing and Specification deliverables the Design-Build shall provide no fewer than 10 hard copies to SAWS. Drawing hardcopies shall be ½-size printed single sided on 11 x 17 paper and spiral bound.
- SAWS may reduce the requirements for hard copies and electronic and CD copies of submittals in consideration of access to information posted electronically.

Standards. The Phase I Services will include a review of SAWS’ standard design details and discussion as to the extent to which the standard design details, if any, should be made part of the Baseline Design Documents. The standard design details selected by SAWS and the Design-Build will be incorporated into the Design-Build’s Drawings and Specifications produced for the Project. Industry standards will also be incorporated into the Design-Build’s Drawings and Specifications produced for the Project.

SAWS Review Periods. With respect to any SAWS’ review period specified in this Appendix, in the event a submittal is made by the Design-Build after 5:00 pm on a Business Day (or is made by the Design-Build on any day that is not a Business Day), the period for SAWS’ review hereunder shall not commence until the next Business Day.
2.1. **PHASE I SERVICES TASK #1 - PROJECT MANAGEMENT**

2.1.1 **Project Management.**

The Design-Builders shall provide Project management of the Project team in terms of staffing, budget, schedule, scope and coordination with SAWS.

2.1.1.1 **Technical Workshops and Meetings.** This Phase I Services Task includes managing the scope of work, schedule and budget, and communication and coordination with SAWS. The Design-Builders will prepare invoices, progress reports, design progression, risk management and tracking log and design decision log updates on a monthly basis. Other activities include keeping SAWS informed and soliciting input from SAWS when making key decisions, coordination with Subcontractors, scheduling of staff, and coordinating the quality assurance effort. The Design-Builders shall also conduct weekly Project management meetings with the Design-Builders Project managers and SAWS Project managers. An agenda will be distributed to SAWS prior to the meetings and the Design-Builders will distribute meeting notes and action items within three days after each meeting. Each meeting agenda shall include:

(a) Ongoing activities
(b) Upcoming activities
(c) Scope/Change Management, schedule and budget
(d) Project risks and tracking status
(e) Issues
(f) Decisions and actions
(g) Health and safety

No fewer than fifteen technical workshops shall be included in the Base Phase I Services to address specific subjects and facilitate collaboration and development of ideas and decisions to be carried forward during design development. Each workshop will last approximately 3 hours in length, unless otherwise indicated herein, and will be facilitated by the Design-Builders and SAWS Project managers. Multiple workshops may be held in a day as approved by SAWS. The intent of the workshops is to facilitate face-to-face conversations to rapidly convey needs, intentions, requirements and schedules among key project stakeholders. An agenda (including desired outcomes) as well as technical background documents will be distributed to workshop attendees prior to the meetings. SAWS shall ensure that appropriate SAWS staff attend the meetings and workshops to effectuate timely decisions. The Design-Builders will document the outcome of each workshop and distribute meeting notes and action items within three days after each workshop. Technical workshops will be conducted on the following subjects:

(a) Project Kickoff;
(b) Partnering;
(c) Risk Management;
(d) Logistics;
(e) Constructability;
(f) Basis of Design Development;

(g) 30% Design Completion Documents;

(h) Initial GMP Submittal;

(i) 60% Design Completion Documents; and

(j) GMP Submittal.

2.1.1.2 Collaboration Center. Except as otherwise provided in the final paragraph of this Section 2.1.1.2, the Design-Builder shall provide a Project collaboration center ("Collaboration Center") in the San Antonio metropolitan area with dedicated workspace for colocated key Design-Builder personnel and five personnel from SAWS and the Owner Representative. The workspace for SAWS and Owner Representative personnel shall be similar in character to that provided for the Design-Builder’s staff, including telephone lines and broadband internet connections to support each of user.

The cost of Collaboration Center office furniture, fixtures, equipment, supplies, consumables, or telephone/internet service provider fees shall be borne by the Design-Builder. For basis of compensation purposes, the Design-Builder will fund the operation of the Collaboration Center from the date of receipt of the Notice to Proceed with Phase I Services until the end of the Phase I Services Period.

The Design-Builder will provide on-site IT support as may be required to support the IT needs of SAWS’, the Owner Representative’s and the Design-Builder’s personnel at the Collaboration Center. IT support will be limited to resolving issues with connectivity with the Design-Builder’s LAN, and will not be provided for routine application and hardware support for desktops and laptops owned by SAWS and Owner Representative staff.

The Design-Builder will provide office supplies and other materials to support SAWS, Owner Representative and Design-Builder staff assigned to the Collaboration Center, including paper, printers, scanners, full size plotters, white boards, flip charts, and other ordinary office materials.

SAWS may, at its election and without any obligation to do so, provide dedicated workspace (including furniture) at SAWS’ offices and relieve the Design-Builder of its obligations under this Section 2.1.1.2 to provide a Collaboration Center. In such case, an amount equal to $10,000, unless otherwise agreed upon by both parties, will be deducted from the Phase 1 Services Fee specified in Section 2.9.1 (Compensation for Base Phase I Services). The Design-Builder shall be required to provide computers, printers, plotters and other ordinary office materials for all Design-Builder staff members located at SAWS’ offices.

2.1.1.3 Document Control and Records Management. Within 10 days of the Notice to Proceed with Phase I Services, the Design-Builder shall submit a Document Control and Records Management Plan. The Document Control and Records Management Plan will establish a high level framework for the duration of the Design-Build Work, and shall be more comprehensive for Phase I Services so that documents are transmitted, processed and stored appropriately from the outset of the Design-Build Work.

(a) Document submittal and approval procedures shall be defined ("Document Submittal and Approval Procedures"). In addition, a listing of the key document submittal packages to be prepared by the Design-Builder and the expected submittal dates to SAWS shall be provided. The Document Submittal and Approval Procedures shall require the Design-Builder to distribute the document
submittals as directed by SAWS. The Document Submittal and Approval Procedures should identify the SAWS CPMS system and method for the Design-Builder to post document submittals and other reference information and ensure accessibility by SAWS and SAWS-designated representatives. The final Document Control and Records Management Plan, including the Document Submittal and Approval Procedures, shall be subject to SAWS’ approval.

(b) Document control processes shall identify how documents will be managed throughout the Project life cycle, including:

(i) Submittal and approval process;

(ii) Integration of document management processes and program records and data of the Design-Builder, SAWS and the Owner Representative;

(iii) The process of organizing, storing, protecting, and sharing documents; and

(iv) The management of both the hard copy and electronic repositories of documents, historical information, and a consistent approach to the creation, update and format of documents.

(c) The Design-Builder will utilize SAWS’ CPMS records management software system to facilitate work flow and transmit and store written documents associated with the Project. The system will be utilized by SAWS, the Owner Representative, the Design-Builder and its Subcontractors and vendors to transmit, review and respond, log, and store Project related documents. The records management system will incorporate the following:

(i) The SAWS-approved Work Breakdown Structure (WBS) which shall be the index for organization of all parts of the stored documents and related history

(ii) Overall Project tracking and monitoring of key performance indicators;

(iii) Meeting and workshops agendas, presentations, and notes;

(iv) Action items, issues, decision logs, and tracking;

(v) Budget and schedule tracking;

(vi) Risk tracking and mitigation;

(vii) Submitting and tracking requests for information (RFIs);

(viii) Document submittals and transmittals including Drawings;

(ix) Quality management documentation including comments, responses, and confirmations;

(x) Invoices and Monthly Progress Report;

(xi) Templates and tools;
(xii) Project related communication; and

(xiii) Dashboards of Project progress for SAWS.

2.1.1.4 Monthly Progress Report Requirements. The Design-Build shall submit Monthly Progress Reports during the Phase I Services Period which meet the requirements set forth in Section 4.7 of this Design-Build Contract.

2.1.2 Project Execution Plan.

2.1.2.1 Submission of Project Execution Plan. In accordance with the Phase I Services Schedule, the Design-Build shall develop and submit a Project Execution Plan to SAWS for review and comment. A Project Execution Plan shall serve as a Project management tool for SAWS and the Design-Build (including Subcontractors) and will include guidelines and procedures for execution of the work and issues resolution. The Project Execution Plan will be in compliance with the Contract Standards and include all plans and documents in this Section 2.1.2 of this Appendix.

2.1.2.2 Establishment and Compliance with Project Execution Plan. SAWS will review the draft Project Execution Plan and return comments in accordance with the Phase I Services Schedule. The Project Execution Plan will be accepted by SAWS only after the Design-Build has addressed all SAWS comments to the reasonable satisfaction of SAWS. Any subsequent amendments or updates to the Project Execution Plan will be submitted to SAWS for review and comment in the same manner as the initial Project Execution Plan. The Design-Build will implement and comply with the accepted Project Execution Plan, and any accepted amendments or updates thereto, in connection with the performance of the Design-Build Work.

2.1.2.3 Team Positions and Organization. Within the Project Execution Plan, the Design-Build shall describe its organization, roles, and responsibilities, and provide and maintain an organization chart and organization breakdown structure (OBS) showing lines of authority and reporting that identifies all key discipline design leads for the Project and the engineer-of-record for each discipline.

2.1.2.4 Scope and Change Management Plan. The Design-Build shall comply with the scope and change management process developed by SAWS and the Owner Representative. The Design-Build shall develop and maintain a Scope and Change Management Plan (included within the Project Execution Plan) that includes a project decision and change management log for use in documenting proposed and approved changes to the scope, price, schedule, or changes to the Contract Documents. At a minimum, the Scope and Change Management Plan shall include the following information:

(a) Description of the scope and change management process;

(b) Change identification number;

(c) Brief description of change;

(d) Status of change (pending, approved, rejected);

(e) Dates associated with change including initial proposal date and change acceptance date; and

(f) Back-up information including cost, schedule, and technical information.
Change management shall be a standing agenda item at Project management meetings. Following approval of the BDR, the change management log shall be used to track changes to the approved BDR and their associated cost and schedule impacts.

2.1.2.5 Schedule Management Plan. The Design-Builder shall develop a Schedule Management Plan (included within the Project Execution Plan), in conformance with Good Engineering and Construction Practice, that describes the criteria and activities for developing, monitoring, and controlling the Project Schedule, including:

(a) Project Schedule model development;
(b) Scheduling methodology and scheduling tools;
(c) Level of accuracy and the acceptable range used in determining realistic activity durations;
(d) Units of measure, such as staff hours, staff days, or weeks, as well as physical units of measurement;
(e) Organizational procedures links with activities tied to the approved records management system;
(f) Schedule model maintenance and the process used to update status and record progress of the Project during execution;
(g) Control thresholds, variance thresholds for monitoring schedule performance and agreed-upon amounts of variation to be allowed;
(h) Rules of performance management, such as earned value management rules, rules for establishing percent complete, control accounts, earned value measurement techniques, and schedule performance measurements;
(i) Reporting formats, including the formats of schedule reports;
(j) Procedures for performing time impact analyses and developing schedule recovery plans; and
(k) Descriptions of each of the schedule management processes.

2.1.2.6 Budget Management Plan. The Design-Builder shall develop a Budget Management Plan (included within the Project Execution Plan) that describes how the Project budget will be planned, structured, and controlled, including:

(a) Units of measure, the level of precision and accuracy;
(b) Coordination with approved records management system; and
(c) Control thresholds for monitoring budget performance, including the rules of performance measurement.

2.1.2.7 Communication and Stakeholder Engagement Plan. The Design-Builder shall develop a Communication and Stakeholder Engagement Plan (included within the Project Execution Plan) that identifies the management strategies required to effectively engage stakeholders, including:
(a) Stakeholder register and the desired and current engagement level of key stakeholders;

(b) Scope and impact of change to stakeholders, interrelationships and potential overlap between stakeholders;

(c) The method for updating and refining the stakeholder engagement plan;

(d) Project team contact information;

(e) Communication frequency and means;

(f) Public notices and meetings;

(g) Roles and responsibilities for external communications; and

(h) Process flow chart that identifies review and approval processes.

2.1.2.8 Building Information Modeling (BIM) / Computer-Aided Design and Drafting (CADD) Plan. The Design-Builder is to develop a BIM/CADD plan (included within the Project Execution Plan). CADD formatting for design and as-built Drawings shall conform to SAWS’ CADD drafting standards and CADD design standards. The use of BIM is not a requirement of this Design-Build Contract but may be used at the discretion of the Design-Builder. At a minimum, the BIM/CADD plan shall do the following:

(a) Identify software for BIM/CADD Drawings;

(b) Identify the BIM/CADD Drawing workflow and file management;

(c) Identify key staff roles and responsibilities;

(d) Identify and assign the facility numbering convention;

(e) Document BIM criteria identifying data requirements;

(f) Document 2D deliverable CADD standards including border and title block;

(g) Describe electronic and hard copy deliverable requirements;

(h) Identify data output (i.e., equipment list); and

(i) Identify how BIM 3-D output, if utilized, will be used for design reviews with SAWS staff.

2.1.2.9 Permitting and Regulatory Approvals Plan. The Design-Builder shall produce a Permitting and Regulatory Approvals Plan (included within the Project Execution Plan) that identifies all necessary information, applications, permits, documents and forms, as may be required by Governmental Bodies and Utilities required to secure the Governmental Approvals necessary to perform the Design-Build Work. The Permitting and Regulatory Approvals Plan shall also identify the entity responsible for obtaining the necessary approvals.

The Permitting and Regulatory Approvals Plan shall identify all required Governmental Approvals, the planned schedule for submitting applications, and the planned duration for regulatory approvals based on input from the Governmental Body or Utility. The plan shall
include a system to track the requirements of the Governmental Approvals and the status of the Governmental Approval application, shall identify roles and responsibilities in obtaining Governmental Approvals, and identify the method to communicate any changes to Governmental Approval requirements or changes in conditions affecting Governmental Approvals.

2.1.3 Design-Build Quality Management Plan.

The Design-Builder shall develop a Design-Build Quality Management Plan that meets the requirements set forth in Appendix 6. The Design-Builder shall submit its Design-Build Quality Management Plan for design services to SAWS in draft form for SAWS’ review within 30 days following the Contract Date. SAWS will provide comments on the Design-Build Quality Management Plan, and the Design-Builder shall make required changes.

2.1.4 Project Schedule and Updates.

2.1.4.1 Preparation. The Design-Builder shall prepare updates to the Project Schedule using Primavera P6 scheduling software (latest version), and shall submit the Project as electronic files (native and pdf) and hardcopy.

The following schedule delineates the SAWS proposed Phase I Services and Phase II Services milestone completion schedule for the Project. The Interim Construction Milestones will be subject to negotiation during the Phase I Services Period. However, the Scheduled Mechanical Completion Date and the Scheduled Acceptance Date will not be subject to negotiation.

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final BDR Submittal</td>
<td>10/31/2017</td>
</tr>
<tr>
<td>Draft Initial GMP (30%) Submittal</td>
<td>12/20/2017</td>
</tr>
<tr>
<td>Draft GMP (60%) Submittal</td>
<td>3/1/2018</td>
</tr>
<tr>
<td>Final GMP (60%) Submittal</td>
<td>3/22/2018</td>
</tr>
<tr>
<td>GSTs at Terminus Facility Site and Bitters Pump Station Improvements Site</td>
<td>4/1/2019</td>
</tr>
<tr>
<td>Pipeline repairs and pipeline disconnects</td>
<td>4/15/2019</td>
</tr>
<tr>
<td>36” pipeline to Knight’s Cross</td>
<td>5/1/2019</td>
</tr>
<tr>
<td>Stone Oak Pump Station Improvements</td>
<td>7/1/2019</td>
</tr>
<tr>
<td>Terminus Facility</td>
<td>9/1/2019</td>
</tr>
<tr>
<td>48” pipeline from existing 48” near Aspen Well to Bitters Pump Station Improvements Site</td>
<td>9/1/2019</td>
</tr>
<tr>
<td>Maltsberger Pump Station Improvements electrical modifications</td>
<td>11/1/2019</td>
</tr>
<tr>
<td>54” pipeline from Terminus Facility Site to connection with existing 48” at Voigt Dr. and Sagecrest Dr. intersection</td>
<td>12/18/2019</td>
</tr>
</tbody>
</table>
2.1.4.2 Phase I Services Schedule. The Phase I Services Schedule shall reflect the schedule, using critical path methodology (CPM) in a Gantt Chart, for all activities comprising the Phase I Services, and shall set forth all tasks and key subtasks in a logical and efficient work sequence that the Design-Builder intends to utilize in taking the Project from the Contract Date to the GMP Amendment Date. The Design-Builder shall update the Phase I Services Schedule on a monthly basis. The Design-Builder shall undertake and complete the Phase I Services in accordance with the Phase I Services Schedule. Updates on the Design-Builder’s compliance with the Phase I Services Schedule shall be submitted monthly with the Monthly Progress Report required by Section 2.1.1.4 of this Appendix and Section 4.7 of this Design-Build Contract.

2.1.4.3 Phase II Services Schedule. The Design-Builder shall create and update the Phase II Services Schedule during the Phase I Services Period in accordance with this Appendix. The Phase II Services Schedule shall meet the requirements set forth in this Appendix and Appendix 5. During the Phase II Services Period, the Design-Builder shall further update the Phase II Services Schedule in accordance with the requirements set forth in Section 5.2.2 of Appendix 5.

2.1.4.4 Minimum Project Schedule Requirements. At a minimum, the Project Schedule shall comply with CPM methodology with the required Primavera P6 scheduling software and generally include:

(a) Start date for each activity;
(b) Finish date for each activity;
(c) Major milestones;
(d) Meeting and workshop dates;
(e) Submittal dates including draft submission dates, SAWS review periods, and final submission dates;
(f) Identification of critical path;
(g) Incorporation of anticipated weather impacted delays in accordance with the designated local NOAA weather station; and
(h) Float.

2.1.4.5 SAWS Review. SAWS shall review the initial Phase I Services Schedule and Phase II Services Schedule, respectively, and provide comments as necessary. The Design-Builder shall provide prompt response to SAWS’ comments until such time as SAWS is satisfied and directs each schedule be locked into a baseline for future reporting. Until a baseline schedule is approved for either the Phase I Services Schedule and Phase II Services Schedule, SAWS will not be obligated to process Payment Requests for Phase I Services and Phase II Services, respectively.

SAWS shall review and comment on the update to the Project Schedule on a monthly basis. The review process shall include evaluation of missing logic, critical path, leads and lags, and float, percent complete, and changes in schedule logic or activity durations. Comments on the updates to the Project Schedule shall be discussed at the weekly Project management meeting following
receipt of any comments provided by SAWS. The Design-Builder shall provide a revised Project Schedule based on agreed-to changes at the next weekly Project management meeting.

**2.1.5 Computerized Maintenance Management System Integration.**

The Design-Builder shall integrate asset information into the existing SAWS computerized maintenance management system ("CMMS") in accordance with the Contract Standards. A plan to integrate information into the existing CMMS (the "CMMS Integration Plan") will be provided to SAWS not later than 200 days following the Contract Date.

In preparing the CMMS Integration Plan, the Design-Builder shall, in consultation with SAWS, develop a standardized equipment hierarchy, failure codes, and a preventive maintenance program, with detailed job plans. The definitive integration into the CMMS will be a part of the Phase II Services.

**2.1.6 Kickoff and Partnering Workshop.**

Within two weeks after the Notice to Proceed with Phase I Services, key staff members of SAWS, the Owner Representative and the Design-Builder will participate in a Project kick-off/partnering workshop. The workshop attendees, agendas, facilitation, and venue will be coordinated by SAWS and Design-Builder’s Project managers promptly following the Notice to Proceed with Phase I Services. A primary objective of this workshop will be to allow SAWS and the Owner Representative to present the Design Criteria Package (DCP) and the development processes used to create the DCP.

**2.1.7 Risk Management.**

The Design-Builder shall incorporate risk management into the delivery of the Project in accordance with the Contract Standards. A risk management workshop shall be conducted with SAWS within 30 days after the kick-off workshop. The risk management workshop shall be used to identify key Project risks and opportunities for avoiding and mitigating risks. A risk register shall be developed and maintained by the Design-Builder. The register shall be initially populated with risks identified in the risk management workshop. The risk register shall include the following information:

(a) Risk identification;
(b) Activities affected (tied to schedule activities);
(c) Risk description including qualitative categorization of risk;
(d) Estimated/calculated percent likelihood that risk may occur;
(e) Phase of Project that risk could impact;
(f) Potential schedule impact should risk occur;
(g) Potential cost impact should risk occur;
(h) Potential health and safety impacts should risk occur;
(i) Risk trigger;
(j) Risk owner; and
(k) Risk strategy (transfer, mitigate, accept, exploit).

Risks shall be reviewed at the weekly Project management meetings. The following three additional risk management workshops shall be conducted to provide for re-evaluation of overall risks, a deeper level of risk analysis for identified risks, identification of new risks, and review of risk avoidance, and mitigation measures:

(a) During the development of the Basis of Design Report (BDR);

(b) Upon submission of the 30% Design Completion Documents (DCD); and

(c) Upon submission of the 60% DCD.

Ongoing qualitative risk analysis shall be conducted by the Design-Builder with review and input from SAWS. Upon submission of the BDR, 30% DCD, and 60% DCD, the Design-Builder shall conduct quantitative risk analysis (Monte Carlo simulation or similar) to further analyze and understand the possible impacts due to risks. The Design-Builder shall present the findings of such quantitative risk analysis at the risk management workshops. The Design-Builder shall update the risk register to reflect any such findings.

2.1.8 Logistics and Constructability Reviews.

2.1.8.1 Basis of Design Stage. During preparation of the BDR, the Design-Builder shall develop a general sequencing plan for constructing the Project to achieve production milestones (the “Logistics Plan”). The Logistics Plan shall also include a plan for proposed site access, site utilization for storage of equipment and materials, site exit, temporary construction facilities (parking, staging, storage, stormwater controls, and trailers or alternative plans for housing Design-Builder’s staff, the Owner Representative’s staff and SAWS’ staff). The Logistics Plan will indicate proposed locations for SAWS’ operations staff and delivery vehicles, and SAWS employee parking for all months during construction. A schematic will be provided showing areas to be used by the Design-Builder for storage of construction materials and equipment, the location of a temporary construction trailer and for construction of new facilities including required setbacks and traffic flow for the construction vehicles entering and exiting the Project Sites. The Design-Builder shall conduct two workshops with SAWS to review logistics considerations and recommendations.

2.1.8.2 30% and 60% Design Stage Constructability Reviews. The Design-Builder shall provide for constructability reviews of the design at the 30% and 60% design submittal milestones as follows:

(a) Identify and establish a team of individuals among the Design-Builder team primarily responsible for Construction who will undertake constructability reviews on behalf of the Design-Builder;

(b) Submit 30% or 60% design submittal, as applicable, to Design-Builder’s constructability review team and to SAWS for constructability review;

(c) Schedule and conduct a constructability workshop with Design-Builder’s constructability review team and SAWS;

(d) Discuss recommendations with SAWS and conduct follow-up evaluations including cost, schedule, and risk impact analysis of any preliminary constructability comments that are tentatively agreed-to;
(e) Proceed with agreed-to changes; and

(f) Verify including of resulting changes in the ongoing design documents via a report signed by the Design Manager that lists each change and how the design team responded; which report shall be revised by SAWS’ and the Design-Builder’s review team to accept or reject the change response and any rejected changes will repeat this process until the review team is satisfied that all changes have been accomplished.

2.2. PHASE I SERVICES TASK #2 – PROJECT SITES CONDITIONS REVIEW AND VERIFICATION

2.2.1 Review and Verification, Generally.

The Design-Builder shall complete a comprehensive review of the Project Sites conditions, and contiguous areas that may be affected by the Project, including regulatory requirements that may affect the Project. All reviews performed under this Phase I Services Task shall be performed to the maximum extent reasonably possible in the circumstances and in a manner that provides a reasonable basis for the Design-Builder to undertake the risks assumed under Sections 6.3, 6.4 and 6.5 of this Design-Build Contract.

The Design-Builder shall coordinate all field investigations of the Project Sites with SAWS. The Design-Builder’s review shall include:

(a) The SAWS Distribution System, operations, maintenance, permits, requirements, regulations, constraints, and SAWS’ requirements and objectives for the Project.

(b) Project Sites ingress and egress requirements and restrictions, traffic conditions, time of work restrictions, and requirements of public and private authorities with jurisdiction over roadways to and from the Project Sites, parking, and any other restrictions or considerations that may affect the Design-Builder’s work.

(c) Existing conditions information for the SAWS Distribution System provided by SAWS, which may include available as-built information, geotechnical reports, engineering studies and reports, environmental studies, data, memos, reports, surveys, and site measurements.

(d) Environmental documents prepared by the Owner Representative, including mitigation requirements under the Governmental Approvals.

(e) Any other investigations deemed necessary by the Design-Builder to fully acquaint itself with existing conditions for purposes of performing the Base Phase I Services.

The Design-Builder will coordinate all field investigations of the Project Sites with SAWS. The Design-Builder will prepare a Technical Memorandum (TM) summarizing the pertinent information gathered during the review and requesting additional information or providing comments on existing information.

2.2.2 Underground Structures.

Based on the review of existing drawings provided by SAWS and supplemental discussions with SAWS, the Design-Builder shall incorporate into each design deliverable the locations of existing surface and subsurface Utilities at the Project Sites and the locations of man-made objects or
structures. For circumstances where existing information is either conflicting or not available, the Design-Builder will coordinate and engage the services of a Utility location Subcontractor for identifying, designating, locating, and mapping existing and abandoned Utility infrastructure. Identification techniques may include magnetic, sonic, and acoustic technologies, ground penetrating radar (GPR), and radio frequency detection.

The Design-Builder will report to SAWS in writing any additional information that is needed in order to complete the assessment of the existing conditions. SAWS shall respond to the Design-Builder requests for additional information and indicate whether or not requested information is available and if so when SAWS will provide it to the Design-Builder.

### 2.2.3 Geotechnical Investigations.

The Design-Builder shall conduct geotechnical investigations at the Project Sites. The results of the geotechnical investigations will be used to develop allowable bearing pressures and other critical design criteria used by the Design-Builder during preparation of the Drawings and Specifications for the Project.

The Design-Builder shall, at a minimum, perform the following geotechnical investigations at the Project Sites:

(a) **Terminus Site.** Fourteen borings will be performed to depths of 15 to 50 feet below existing grade with an estimated total drilling footage of 395 feet.

(b) **Bitters Pump Station.** Six borings drilled to depths of 35 to 55 feet, and one pavement boring to 10 feet will be performed resulting in a total drilling footage of 280 feet.

(c) **Maltsberger Pump Station.** Two borings drilled to depths of 15 to 25 feet below grade for a total drilling footage of 40 feet.

(d) **Basin Pump Station.** Two borings that will be advanced to depths of 15 and 25 feet with a total drilling footage of 40 feet.

(e) **Tunnel.** The tunnel is anticipated to be 25 to 80 feet below grade. The Design-Builder shall drill 8 borings to depths of 50 to 90 feet below existing grade. Total drilling footage will be 450 feet. Soil and rock samples will be collected for this phase of the project. Specialty testing of these samples will be performed to assist in selecting cutting heads, advancement techniques, and required tunnel support.

(f) **Pipeline.** The Design-Builder shall drill 15 borings to depths of 20 to 40 feet below existing grade at locations along the new pipeline alignments. A total drilling footage of 410 feet is planned along the alignment.

Laboratory testing will be performed on recovered samples selected by the geotechnical engineer to aid in soil classification and to measure engineering properties. Geotechnical reports will be prepared for each Project component outlined above.

#### 2.2.3.2 Geotechnical Field Exploration.** The Design-Builder will provide an experienced geologist or engineer to continuously observe the borings, log the subsurface conditions, collect representative soil samples, and transport all samples to the Design-Builder’s laboratory for further visual examination and testing. Before drilling, the local utility locating service will mark any underground Utilities at each exploration location. The Design-Builder may request assistance from SAWS to identify underground Utilities on SAWS owned sites. The
Design-Builder will obtain and comply with necessary encroachment permits and drilling permits prior to site exploration. SAWS will use all reasonable efforts to obtain rights of entry, if necessary, that will allow the Design-Builder to perform geotechnical investigations in the Finished Water Transmission Pipelines Right of Ways.

2.2.3.3 Geotechnical Laboratory Testing. The Design-Builder will have a series of geotechnical laboratory tests completed on selected soil and rock samples obtained from the geotechnical field explorations to evaluate the engineering and index properties of the Project Sites subsurface materials. Soil and rock samples will be stored for 30 days after submittal of the Design-Builder’s Geotechnical Report and then discarded unless SAWS requests longer-term storage.

2.2.3.4 Geotechnical Review and Report Preparation. To supplement the field exploration and laboratory testing programs, the Design-Builder will review various sources of geotechnical information concerning the Project Sites. Such sources will include geologic maps, seismologic literature, and other published documents. Any available soil logs and laboratory test results associated with previous subsurface explorations (as provided by SAWS) performed on or near the Project Sites will also be reviewed. Field exploration data, laboratory testing data, and research findings will be evaluated to develop conclusions and recommendations concerning the geotechnical aspects of the Project Sites. After analyzing the Project Sites conditions, a preliminary geotechnical engineering study (the “Geotechnical Report”) will be prepared for the Project. The Geotechnical Report will include, at a minimum, the following specific items:

(a) Site plan showing approximate exploration locations on a base map;
(b) Descriptive logs of subsurface explorations;
(c) Description of surface, soil, groundwater, and seismic conditions;
(d) Conclusions regarding on-site liquefaction potential;
(e) Conclusions regarding soil corrosivity;
(f) Recommended seismic design parameters;
(g) Recommendations for site preparation;
(h) Recommendations concerning utility trench excavations, including temporary slope angles;
(i) Recommendations concerning trench backfill;
(j) Design criteria for pipe restraint systems;
(k) Recommendations concerning temporary and permanent drainage systems;
(l) Recommended asphaltic and concrete pavement sections;
(m) Recommendations for construction monitoring;
(n) Explanation of report limitations; and
(o) Recommendations for further geotechnical study, if necessary.
Following preparation of the Geotechnical Report, the Design-Builder will review its BDR, 30% DCD and 60% DCD documents to ensure the Drawings and Specifications have incorporated the intent of the Geotechnical Report’s recommendations. The Design-Builder shall submit a draft Geotechnical Report for review and comment by SAWS. Any SAWS comments shall be discussed at the next monthly Project management meeting, and the Design-Builder shall prepare a final Geotechnical Report based upon the comments received.

2.2.4 Supplemental Geotechnical Services.

SAWS, in its discretion and in consultation with the Design-Builder, may identify additional geotechnical investigation work that will be performed in order to obtain additional information regarding subsurface conditions at the Project Sites. SAWS shall have the right, following such consultation, to issue a Change Order to the Design-Builder to perform the supplemental geotechnical services identified by SAWS in accordance with this Section 2.2.4 (each constituting a “Geotechnical Services Order”). Each Geotechnical Services Order shall be executed by a SAWS Contract Representative specifically authorized to execute Geotechnical Services Orders pursuant to Section 17.6(B) of this Design-Build Contract. The Design-Builder shall be entitled to payment for supplemental geotechnical services solely in accordance with Section 2.10 of this Appendix. In no event shall the Design-Builder commence any supplemental geotechnical services prior to the issuance of a Geotechnical Services Order. Nothing in this Section 2.2.4 shall be deemed to limit the Design-Builder’s obligations to perform the geotechnical investigation work expressly identified in this Appendix, which the Design-Builder acknowledges to be included in the Phase I Services Fee.

2.3. PHASE I SERVICES TASK #3 - BASIS OF DESIGN REPORT

2.3.1 Basis of Design Development.

2.3.1.1 Concept Refinement. The Design-Builder shall be responsible for developing and refining the conceptual design in coordination with SAWS. In an effort to expedite the development of the Design-Builder’s conceptual design, SAWS and the Owner Representative will be available to present and collaborate on the development of the design criteria package and the alternatives that were evaluated in its development. The Design-Builder shall conduct all evaluations, calculations, cost estimating, scheduling, workshops, and other services as needed to advance the conceptual design to the Basis of Design. The Design-Builder shall conduct a workshop (or workshops) addressing the following topics with SAWS to review the conceptual design and alternatives and develop a recommended approach.

(a) Primary Project components;
(b) Site civil engineering, parking and service access, and piping connections to existing Utilities;
(c) Site security including design guidelines, physical security facilities, electronic security features, and cyber security;
(d) Electrical supply and distribution (including emergency power);
(e) Instrumentation, controls, and SCADA System;
(f) Architectural and structural;
(g) HVAC, plumbing, fire protection;
(h) Operations room layout and programming;

(i) General description of Commissioning and Acceptance Testing;

(j) Permitting considerations;

(k) Interface with Related Projects;

### 2.3.2 Draft Basis of Design Report (BDR).

The Design-Builder shall prepare and submit to SAWS a draft BDR which will include the Design-Builder’s evaluation findings and specific recommended preliminary design for the Project. The draft BDR will explain how the proposed preliminary design will meet SAWS’ performance, operational, and maintenance requirements for the Project and comply with all regulatory requirements. The draft BDR will include information on alternatives considered and evaluated and information on the rationale or method by which the recommended design was selected. Information considered in the evaluation of alternatives and selection of a recommended design shall include: estimated capital, operations and maintenance costs; quality of Finished Water; reliability, robustness, and flexibility of the recommended processes and equipment; ease of SAWS operation and maintenance; flexibility, compliance with existing and future regulatory requirements; public safety; and SAWS environmental objectives and requirements. An updated draft Phase II Services Schedule will also be submitted in conjunction with the draft BDR.

The draft BDR shall be reviewed by SAWS and SAWS’ comments shall be addressed by the Design-Builder.

#### 2.3.2.1 Project Basis. The BDR will include information on:

(a) The basis for the Project, including Project production capacity and Finished Water quality characteristics; the capability of proposed design to produce and convey Finished Water supply sufficient to meet the production standards; and

(b) Construction conditions, including existing site conditions; geotechnical conditions; Hazardous Materials conditions, Project Sites constraints; traffic conditions; vehicular and pedestrian access, parking for the Design-Builder’s workforce and SAWS personnel and egress and materials and equipment staging area locations, size and security.

#### 2.3.2.2 Proposed Project Design. The Design-Builder will prepare a BDR representing approximately 15 percent design. The BDR shall include sections covering the major Project process and process elements, as well as sections covering each engineering discipline included in the Project. The BDR shall establish design criteria and governing codes; concisely define what is to be designed; and document the information necessary to design the Project. The BDR shall be complete, well organized, and in sufficient detail to be clearly understood. When the BDR is revised, the revision date should be shown in boldface near the issue date, and changes made in the text should be indicated by marks in the margin, underlining, italics, or other identification.

The information shall be presented in a concise form to reduce review time and confusion. All design and process criteria should be established before the BDR is published. Review of design alternatives or results of detailed investigations should be included in a separate design alternatives report such as a facilities plan, technical memoranda, or similar document. Alternatives should not be discussed in the BDR. Sketches, diagrams, and tables should be used as much as possible instead of lengthy verbal descriptions.
The information in a BDR shall include the following:

(a) **Project Description.** The location and a brief description of the scope of the Project and any relevant background information on the necessity of the Project.

(b) **Project Requirements.** List all applicable site or Project specific requirements such as:

   (i) Project benchmarks and survey control;
   (ii) Local flood levels;
   (iii) Geotechnical information;
   (iv) Special design requirements and applicable codes of the client;
   (v) Titles and dates of applicable reports;
   (vi) Special requirements that may differ from usual practices;
   (vii) Sources of Utilities; and
   (viii) Involvement by Governmental Bodies.

(c) **Existing Information.** When the Project component is an addition to an existing facility, pertinent information about the existing facility should be presented in the same manner as information developed for the new work.

(d) **Project Design Criteria.** Provide basic process and hydraulic design criteria for the Project.

(e) **Facility Design Criteria.** Provide complete facility descriptions and detailed design criteria for the proposed improvements, including:

   (i) Hydraulic profile information;
   (ii) Head and capacity of pumping equipment;
   (iii) Sizes and loadings for equipment;
   (iv) Sizes and capacities of chemical feed equipment;
   (v) Chemical storage capacities;
   (vi) Filter design criteria;
   (vii) Description of filter operation and controls;
   (viii) Description of metering and control equipment;
   (ix) Equipment nameplate data;
   (x) Identify equipment is to be abandoned or modified, if applicable;
(xi) Materials of construction;

(xii) Protective coatings;

(xiii) Acoustical design requirements;

(xiv) Chemical data expressed in commercially available concentration or terminology; and

(xv) Other pertinent information.

This information must be in sufficient detail to document the scope of the Project clearly and to enable the Design-Builder to proceed with all phases of the Design-Build Work. Where possible, information shall be presented in tabular form. Where applicable and on pumping station projects, pump curve versus system head curves shall be included.

(f) **Discipline Design Criteria.** Provide discipline specific chapters documenting the applicable codes, standards and design criteria to be used by that discipline in the completion of the design. The following chapters shall be included: (i) civil/site, (ii) architectural, (iii) structural, (iv) mechanical (building systems), (v) electrical, and (vi) instrumentation and control (I&C) – including control descriptions.

(g) **P&IDs.** Provide P&IDs illustrating process flow with types and quantities of process elements, preliminary line sizing, primary element function and I/O connections. The P&IDs shall correlate with the written control descriptions and general control strategy presented in the I&C design memorandum.

(h) **Diagrams and Drawings.** Diagrams and Drawing used in describing the work and defining the spatial basis for the design shall include the following:

(i) Process schematic diagrams (process flow diagrams) for both liquid and solid processes;

(ii) Preliminary site layout;

(iii) Preliminary hydraulic profile (show minimum, average design, & peak hydraulic flows);

(iv) Preliminary facility and building layouts (plans and major sections);

(v) Control system block diagram;

(vi) Power distribution functional diagram; and

(vii) Code classification table.

(i) **Supplemental Memoranda.** Other technical memoranda may be required to supplement the BDR. The Design-Builder shall identify and submit supplemental memoranda. Supplemental memoranda should be attached to the BDR as appendices. Examples may include the following:

(i) Preliminary geotechnical data;
(ii) Drafting memoranda;
(iii) Equipment tagging conventions;
(iv) Equipment lists;
(v) CMMS memoranda;
(vi) Operations & maintenance memoranda;
(vii) Alternative evaluations;
(viii) Site utility analysis;
(ix) Hydraulic evaluations; and
(x) Acoustical studies and design requirements.

2.3.2.3 Proposed Construction Organization, Work Plan and Schedule. The BDR will describe:

(a) To the extent not included in the Project Execution Plan, the Design-Builder’s proposed organization, including key construction managers and field superintendents, Subcontractors, and allocation of work among the proposed Subcontractors in preliminary OBS format.

(b) A draft Project Sites-specific Health and Safety Plan.

(c) The Design-Builder’s proposed draft Commissioning and Acceptance Test Plan, including dates, durations, test criteria, Project requirements for test conditions, personnel to be provided, and requested SAWS support.

(d) The Design-Builder’s preliminary estimate of cash flow requirements by month from commencement of construction work (including any Early Work Packages) and design completion from the 60% completion level through Final Completion based on a preliminary Primavera P6 schedule, also to be submitted in pdf and native format.

2.3.2.4 Regulatory Requirements. The BDR will include a description of regulatory conditions that apply to the proposed design, including:

(a) Legal restrictions and requirements;
(b) Approvals and limitations or constraints;
(c) Permits and constraints;
(d) Fees and assessments;
(e) Utility requirements and the Design-Builder’s plan for coordinating with all Governmental Bodies with jurisdiction over any of the work. In addition, the BDR will include a description of the work to be performed with respect to required permits and approvals and information regarding the Design-Builder’s proposed work activities and implementation and compliance with required Governmental
Approval mitigations as set forth in the Environmental Mitigation Measures Report.

The Design-Builder will work closely with SAWS on all permitting requirements from the onset of design through Construction.

2.3.2.5 Design-Build Work Project Cost Model Update. The Design-Builder will include within the BDR a preliminary opinion of construction costs (update of the Project cost model) for the Design-Build Work. The updated Project cost model will include:

(a) Preliminary cost model (in U.S. dollars) with supporting materials; and
(b) Basis of the cost model including assumptions regarding construction conditions, including the bidding climate and bidding/procurement strategies.

2.3.2.6 Projected O&M Costs. The BDR will include a preliminary estimate of the Project operations and maintenance costs following the SAWS-approved WBS structure. Such preliminary estimates shall include:

(a) Preliminary costs for operations and maintenance (including capital maintenance and major repairs and replacements) of the proposed completed Project and breakdown of costs, both annually and on a life-cycle basis;
(b) Major assumptions underlying projected O&M costs;
(c) Major factors that may influence projected O&M costs; and
(d) The Design-Builder will develop and describe the conceptual life cycle costs.

2.3.3 SAWS Review of Draft Basis of Design Report.

SAWS will review the draft BDR and will provide comments to the Design-Builder no later than five Business Days after SAWS’ and the Owner Representative’s receipt of the draft BDR from the Design-Builder.

2.3.4 Basis of Design Review Workshop.

Within two Business Days after delivery of SAWS’ comments on the draft BDR to the Design-Builder, the Design-Builder shall meet with SAWS and Owner Representative staff in a workshop to present a summary and discuss SAWS’ comments on the draft BDR. A log of review comments will be maintained by SAWS and the Design-Builder to ensure all design comments are addressed and incorporated into the final BDR, if appropriate.

2.3.5 Final Basis of Design Report.

Within five Business Days after the BDR review workshop conducted pursuant to Section 2.3.3 of this Appendix, the Design-Builder shall prepare and submit to SAWS and the Owner Representative a final BDR incorporating SAWS’ comments on the draft BDR. SAWS will notify the Design-Builder whether or not its comments have been satisfactorily addressed no later than five Business Days after SAWS’ and the Owner Representative’s receipt of the final BDR from the Design-Builder.
2.4. **PHASE I SERVICES TASK #4 – 30 PERCENT DESIGN COMPLETION DOCUMENTS**

2.4.1 **30% DCD, Generally.**

The Design-Builder shall submit the Deliverable Material required by the 30% Design Completion Documents (30% DCD) to SAWS in accordance with this Section 2.4.

2.4.2 **Minimum Requirements.**

The 30% DCD shall include the following (where applicable):

(a) Cover sheet, location map, vicinity map;
(b) Index of Drawings, general legend, abbreviations;
(c) Hydraulic profiles;
(d) Preliminary P&IDs for all process components for Finished Water treatment, pump stations, chemical feed facilities, ground storage tanks, pressure reducing, and flow control stations;
(e) Preliminary site plans for all sites;
(f) Plans for Terminus Site facilities, pump stations, ground storage tanks, pressure reducing/flow control stations, including major equipment and major piping layouts;
(g) Major facility/building sections;
(h) Preliminary pipeline alignments;
(i) Tunnel and boring details;
(j) Major electrical one-line diagrams;
(k) Power distribution functional diagrams;
(l) Control system block diagrams including wireless communication plan complete with paper study;
(m) Preliminary control descriptions;
(n) Basic architectural descriptions;
(o) Selected specification sections:
   (i) Sitework;
   (ii) Concrete;
   (iii) Major process and chemical feed equipment;
   (iv) Ground storage tanks;
(v) Major pumps; and
(vi) Major electrical.

The 30% DCD shall incorporate SAWS’ BDR requirements and shall include, in addition to the Drawings and Specifications set forth in this section, such additional information as needed to describe the Project. The 30% DCD shall indicate the basis for design choices, including initial costs, lifecycle costs, life expectancy, maintenance considerations, reliability, durability, and applicable requirements of Governmental Bodies having jurisdiction or private licensing, patent, easements, or other legal restrictions, as well as an explanation of how the design incorporates SAWS’ BDR objectives. The 30% DCD shall indicate any alternative designs, approaches, technologies, equipment or processes that the Design-Builder recommends be considered by SAWS if not included in the final BDR.

The 30% DCD will take the concepts developed in the BDR and advance them to preliminary engineering Drawings and Specifications.

Preliminary Specifications will be prepared to include a table of contents listing all anticipated Specification sections and preliminary Specification sections for major equipment items. Major equipment items include pumps, treatment equipment, ground storage tanks, SCADA System, engine generators, electrical switchgear, piping and valves.

2.4.3 Corrosion Engineering.

The Design-Builder’s corrosion experts will review the findings of the geotechnical investigation, conduct additional sampling and testing as needed, and develop details and Specifications for corrosion protection systems for the pipelines, equipment, and other metal items such as grating and guardrails. The following items are included in this Phase I Services Task:

2.4.3.1 Project Corrosivity Assessment. The Design-Builder’s corrosion engineers will review available information regarding potential corrosivity of Project components. In addition to the following tasks, the corrosion engineers shall recommend and perform as needed any needed supplemental analyses to appropriately assess corrosive conditions and the need for corrosion protection systems.

(a) Review the Drawings and Specifications for the Project prepared by the Design-Builder for construction details and proposed materials and determine the suitability of the proposed materials based on the collected field and laboratory data.

(b) Prepare a TM, which will provide a summary of the field data collected along with the chemical analysis of the soil samples and an analysis of this data. The potential for corrosion on the new pipelines will be determined based on the analysis and recommendations for the long-term prevention of corrosion and will be included for all pipe material options. All fieldwork and recommendations will be in compliance with applicable National Association of Corrosion Engineers (NACE) and local standards. The TM will also contain the design criteria for the proposed corrosion prevention systems for other metal systems in the Project.

(c) Prepare Drawings and Specifications for the recommended corrosion protection systems developed as part of the TM.
The recommendations specified in the TM will be incorporated by the Design-Builder in the 30% DCD and the TM will be submitted to SAWS and the Owner Representative concurrently with submittal of the 30% DCD by the Design-Builder.

2.4.4 Updated Project Cost Model.

The Design-Builder shall update its preliminary cost model presented in the BDR for the Project. The updated Project 30% DCD cost model shall include estimated costs for all services, equipment and materials and other fees that may be incurred by the Project including appropriate contingencies due to uncertainties regarding cost estimates, site conditions and other factors. The updated cost model shall be broken down into logical cost categories such as remaining design services, engineering services during construction, start up and testing, self-performed contractor work, procured Subcontractor work, major equipment purchases (engine generators, piping, etc.), major material purchases and other categories with appropriate supporting documentation that will assist SAWS in its evaluation of the Project cost model. The updated Project cost model shall be submitted to SAWS and the Owner Representative concurrently with submittal of the 30% DCD by the Design-Builder.

2.4.5 Updated Project Schedule.

The Design-Builder shall update its Project Schedule for the Design-Build Work. The updated Project Schedule shall indicate any changes to the key milestone dates (including the Interim Construction Milestones) for work completion from the final 30% DCD through start up, testing and Final Completion. The updated Project Schedule shall be accompanied by a memo or report that explains significant changes for key activities and Project milestones (including the Interim Construction Milestones). The updated Project Schedule shall be submitted to SAWS and the Owner Representative concurrently with submittal of the 30% DCD by the Design-Builder.

2.4.6 Subcontracting Plan.

The Design-Builder shall develop the Subcontracting Plan in accordance with this Section 2.4.6. The Subcontracting Plan shall identify the type of work or trades that will be required to complete the Project by the Scheduled Mechanical Completion Date and the Scheduled Acceptance Date, describes the methods the Design-Builder will utilize to engage local subconsultants and subcontractors, describes the methods the Design-Builder will utilize to engage with subconsultants and subcontractors classified as disadvantaged business enterprises, and provides a line item breakdown of the estimated costs of each subcontracting package.

At a minimum, the Subcontracting Plan shall incorporate the following:

(a) Anticipated self-performed work versus subcontracted work;
(b) Local participation and outreach;
(c) Subcontractor prequalification process;
(d) Subcontractor selection process;
(e) Process to meet TWDB requirements; and
(f) Procurement plan for subcontractors and vendors.

The Subcontracting Plan shall be submitted to SAWS and the Owner Representative concurrently with submittal of the 30% DCD by the Design-Builder.
2.4.6.1 Procurement Management Plan. The Design-Builder shall develop a Procurement Management Plan (included within the Subcontracting Plan) that describes how the Design-Builder will acquire goods or services from outside its organization, including:

(a) Identification of Design-Builder personnel and procurement managers responsible for procurement management, public outreach, qualifications review and selection for each type of procurement;

(b) Management of procurement processes from developing procurement documents through contract closure;

(c) Guidance for the types of contracts to be used and use of independent estimates and standardized documents; and

(d) Handling of long lead items and linking them into activity resources and schedule.

2.4.7 SAWS Review of Draft 30% DCD.

SAWS will review the draft 30% DCD and will provide comments to the Design-Builder no later than ten Business Days after SAWS’ and the Owner Representative’s receipt of the draft 30% DCD from the Design-Builder.

2.4.8 30% DCD Workshop.

Within two Business Days after delivery of SAWS’ comments on the draft 30% DCD to the Design-Builder, the Design-Builder shall meet with SAWS and Owner Representative staff in an approximate 8-hour workshop to present a summary and discuss SAWS’ comments on the draft 30% DCD. A log of review comments will be maintained by SAWS and the Design-Builder to ensure all design comments are addressed and incorporated into the final 30% DCD and the 60 percent design, if appropriate.

2.4.9 Design-Builder Response.

Within five Business Days after the 30% DCD review workshop conducted pursuant to Section 2.4.8 of this Appendix, the Design-Builder shall prepare and submit to SAWS a response to SAWS’ written comments and the log of review comments from the 30% DCD review workshop, including specifying how such comments will be addressed in the 60 percent design, if appropriate.

2.5. PHASE I SERVICES TASK #5 – INITIAL GMP SUBMITTAL AND SUPPORTING COST ESTIMATES

2.5.1 Initial GMP Submittal

Within five Business Days after the Design-Builder’s submittal of the draft 30% DCD to SAWS and the Owner Representative, the Design-Builder shall provide SAWS with a draft Initial GMP Submittal, which shall be prepared in accordance with the Contract Standards and meet the requirements set forth in Section 5.7 of this Design-Build Contract.

The Initial GMP Submittal shall incorporate all of the work performed as part of Phase I Services Task 4, set forth the proposed Initial GMP, and provide information on all engineering, procurement, materials, construction labor and equipment and other services necessary to perform the Design-Build Work as required under this Design-Build Contract. As part of its Initial GMP Submittal, the Design-Builder shall submit a proposed lump sum Design Completion
Fee to provide professional engineering and other services necessary to advance the design of the Project from the 30% complete level to the fully complete level, as required by Section 5.7 of this Design-Build Contract.

2.5.2 Basis of the Initial GMP.

The Design-Builder will prepare and include in the Initial GMP Submittal documentation supporting the proposed Initial GMP, including Subcontractor and equipment vendor bids and quotations, detailed cost estimating data, breakdown of general conditions, and definition of the Design-Builder’s contingency included in the Initial GMP. Such documentation will include the information specified in Section 2.7.2 of this Appendix, except that such information shall be based upon advancing the Project from the 30% design completion level.

2.5.3 Preparation of the Initial GMP Submittal.

The Design-Builder will start the development of the Initial GMP Submittal at the onset of the Project during the kick-off meeting to establish dialogue from early concept development through the 30 percent design. The Initial GMP Submittal shall follow the cost summary structure of the 30 percent design completion documents. The Design-Builder shall also provide an updated Project Schedule, cost loaded with the data contained in the Initial GMP Submittal, that also follows the structure and format of the 30% design completion documents Project Schedule submittal. During the design phase, the Design-Builder will maintain ongoing communication with SAWS to assess and analyze concept and design changes as they relate to the overall Project cost and schedule.

The Design-Builder shall utilize an “open book” approach to develop the Initial GMP Submittal, providing SAWS with full access to all the details that make up the Initial GMP Submittal.

Meetings will be held throughout the design and development of the Initial GMP Submittal with SAWS to assure the design and preconstruction phase work is completed in a transparent manner.

2.5.4 Initial GMP Submittal Workshop.

Within two Business Days after delivery of the draft Initial GMP Submittal to SAWS and the Owner Representative, the Design-Builder will meet with SAWS during an approximate 8-hour workshop to present, review, and answer questions about the content of the draft Initial GMP Submittal. A log of review comments will be maintained by SAWS and the Design-Builder to ensure all comments are addressed and incorporated into the final Initial GMP Submittal, if appropriate.

2.5.5 Re-Submittal of Initial GMP Submittal.

Concurrently with submittal of the Design-Builder’s response to SAWS’ comments to the 30% DCD submitted in accordance with Section 2.4.9 of this Appendix, the Design-Builder will finalize the Initial GMP Submittal, taking into account SAWS’ comments, and re-submit it to SAWS and the Owner Representative for final review and approval. SAWS will notify the Design-Builder whether or not it approves the re-submitted Initial GMP Submittal no later than five Business Days after SAWS’ and the Owner Representative’s receipt of the re-submitted Initial GMP Submittal from the Design-Builder.
2.6. **PHASE I SERVICES TASK #6 - 60 PERCENT DESIGN COMPLETION DOCUMENTS**

2.6.1 **60% DCD, Generally.**

The Design-Builder shall submit the Deliverable Material required by the 60% Design Completion Documents (60% DCD) to SAWS in accordance with this Section 2.6.

2.6.2 **Deliverables.**

The 60% DCD shall consist of CAD generated Drawings and Specifications in sufficient detail to cover all Design-Build Work required for the Project. The 60% DCD shall include all major elements of the Project design proposed for construction which complies with the final 30% DCD.

2.6.3 **Minimum Requirements.**

The 60% DCD shall include the following:

(a) Cover sheet, location map, vicinity map;

(b) Index of Drawings, general legend, abbreviations;

(c) Hydraulic profiles;

(d) Final P&IDs for all process components, Finished Water treatment, pump stations, chemical feed facilities, ground storage tanks, and pressure/flow control facilities;

(e) Site plans and underground Utilities Drawings for all sites;

(f) Grading plans for all sites;

(g) Complete plans for Terminus Site facilities, pump stations, ground storage tanks, pressure reducing/flow control stations;

(h) Facility/building sections;

(i) Pump station plans and sections;

(j) Pipeline plan and profile Drawings;

(k) Complete architectural plans and reflected ceiling plans;

(l) Architectural wall sections;

(m) Architectural roof plans;

(n) Structural plans and sections defining structural;

(o) Plumbing and fire protection system plans;

(p) HVAC plans;

(q) Power distribution functional diagram;
(r) Switchgear and MCC one-line diagrams;
(s) Plans indicating location of electrical distribution equipment;
(t) Lighting plans and fixture schedule;
(u) Control system block diagram including wireless communication plan complete with physical path studies;
(v) Complete instrument device schedule;
(w) Complete I/O list;
(x) Complete equipment control descriptions;
(y) Complete major and subprocess equipment Specifications;
(z) Specifications for major electrical distribution equipment (switchgear, transformers, MCCs);
(aa) Commodity Specifications (non-process equipment other than building mechanical, electrical, and I&C);
(bb) A Project Specifications document including general requirements, materials (concrete, masonry, metals, wood, plastics), thermal and moisture protection, architectural (doors and windows, finishes, interior features), equipment, special construction, mechanical, electrical, and instrumentation and control systems proposed, following Construction Specification Institute 2004 conventions, with Part 2 Products of each section completed, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; equipment selections; and types of structural, mechanical and electrical systems; and
(cc) Updated construction phasing recommendations.

2.6.4 Criteria.

The 60% DCD shall incorporate the final 30% DCD and shall include in addition to Drawings and Specifications set forth in this section such additional information as needed to describe the Project. The 60% DCD shall indicate the basis for design choices, including updated initial costs, lifecycle costs, life expectancy, maintenance considerations, reliability, durability, and applicable requirements of Governmental Bodies having jurisdiction or private licensing, patent, easements (as identified by SAWS), or other legal restrictions (as identified by SAWS), as well as an explanation of how the design incorporates the BDR objectives. The 60% DCD shall indicate any new alternative designs, approaches, technologies, equipment or processes that the Design-Builder recommends be considered by SAWS if not included in the final 30% DCD.

2.6.5 Updated Project Schedule.

The Design-Builder shall update its Project Schedule presented in the 30% DCD. The updated Project Schedule shall indicate any changes to key milestone dates (including the Interim Construction Milestones) for work completion from the final 60% DCD through Commissioning, Mechanical Completion, Acceptance and Final Completion. The updated Project Schedule shall be accompanied by a memo or report that explains significant changes from the 30% DCD for
key activities and Project milestones. In addition, the Project Schedule shall include and be based upon the Scheduled Mechanical Completion Date and the Scheduled Acceptance Date. The updated Project Schedule shall be submitted to SAWS and the Owner Representative concurrently with submittal of the 60% DCD by the Design-Builder.

2.6.6 Updated Permitting and Regulatory Approvals Plan.

In accordance with Section 2.1.2.9 of this Appendix, the Design-Builder shall produce an updated Permitting and Regulatory Approvals Plan (within the Project Execution Plan) necessary to perform the work shown in the 60% DCD. The updated Permitting and Regulatory Approvals Plan shall be submitted to SAWS and the Owner Representative concurrently with submittal of the 60% DCD by the Design-Builder.

2.6.7 SAWS Review of Draft 60% DCD.

SAWS will review the draft 60% DCD and will provide comments to the Design-Builder no later than ten Business Days after SAWS’ and the Owner Representative’s receipt of the draft 60% DCD from the Design-Builder.

2.6.8 60% DCD Workshop.

Within two Business Days after delivery of SAWS’ comments on the draft 60% DCD to the Design-Builder, the Design-Builder shall meet with SAWS and Owner Representative staff in an approximate 8-hour workshop to present a summary and discuss SAWS’ comments on the draft 60% DCD. A log of review comments will be maintained by SAWS and the Design-Builder to ensure all design comments are addressed and incorporated into the final 60% DCD, if appropriate.

2.6.9 Design-Builder Response.

Within five Business Days after the 60% DCD review workshop conducted pursuant to Section 2.6.8 of this Appendix, the Design-Builder shall prepare and submit to SAWS a response to SAWS’ written comments and the log of review comments from the 60% DCD review workshop, including specifying how such comments will be addressed in the final 60% DCD, if appropriate.

2.7. PHASE I SERVICES TASK #7 – GMP SUBMITTAL AND SUPPORTING COST ESTIMATES

2.7.1 GMP Submittal.

Within five Business Days after the Design-Builder’s submittal of the draft 60% DCD to SAWS and the Owner Representative, the Design-Builder shall provide SAWS with a draft GMP Submittal, which shall be prepared in accordance with the Contract Standards and meet the requirements set forth in Section 5.8 of this Design-Build Contract.

The GMP Submittal shall incorporate all of the work performed as part of Phase I Services Task 6, set forth the proposed Base Guaranteed Maximum Price for the Design-Build Work (including all services required for construction of the Project through Commissioning, Mechanical Completion, Acceptance and Final Completion), and provide information on all engineering, procurement, materials, construction labor and equipment and other services necessary to perform the Design-Build Work as required under the Contract Documents. As part of its GMP Submittal, the Design-Builder shall provide all submittals required by Section 5.8 of this Design-Build Contract.
2.7.2 Basis of the Proposed Base Guaranteed Maximum Price.

The Design-Builder will prepare and include in the GMP Submittal documentation supporting the proposed Base Guaranteed Maximum Price, including Subcontractor and equipment vendor bids and quotations, detailed cost estimating data, breakdown of general conditions, and definition of the Design-Builder’s contingency included in the Base Guaranteed Maximum Price. Such documentation will include the following information:

(a) Engineering services, including:
   (1) Engineering design from 60% to 100%;
   (2) Engineering construction support;
   (3) Engineering start up, testing and Commissioning;
   (4) Engineering procurement of major equipment; and
   (5) Training and documentation.

(b) Construction services and costs for:
   (1) Services during engineering design from 60% to 100%;
   (2) General Conditions Fee;
   (3) Site work, road improvements and traffic control;
   (4) Electrical and instrumentation;
   (5) Control system programming;
   (6) Piping and mechanical;
   (7) Waste disposal systems for sanitary wastes and spent chemicals;
   (8) Commissioning and Acceptance Testing;
   (9) Performance Bond and Payment Bond; and
   (10) Contingency.

(c) Labor, expenses, rental, overhead and mark-up costs, including:
   (1) Billing rates for all proposed classifications of engineering and construction services labor and related expense rates such as mileage charges, per diem for meals and lodging, office charges and personnel vehicle rentals;
   (2) Unburdened rental rates on construction equipment, trailers, storage containers or space and major tools;
   (3) Direct overhead on labor (benefits), indirect overhead on labor (general and administration or G&A), and profit rate on fully cost burdened labor rates;
(4) Proposed overhead markup rates and profit rates on expenses, materials, equipment rentals, Subcontractors, equipment supplied by vendors and consumables (supplies);

(5) The same cost and pricing information as requested in paragraphs (c) (1), (2) and (3) above for major Subcontractors; and

(6) Demonstrate that there are no significant tiered pricing markups so that major Subcontractors' overhead and profit markups are not duplicated to similar Design-Builder markups.

(d) Design-Builder shall also provide the following information:

(1) For engineering field services during construction, labor costs and expenses for a construction manager or resident engineer for overseeing construction work and related services;

(2) For engineering support during construction for review of construction Requests for Information ("RFIs"), submittals and proposed design or construction changes and costs, labor costs and expenses;

(3) All Base Guaranteed Maximum Price pricing assumptions and clarifications on terms and conditions used;

(4) All self-performed construction services;

(5) A breakdown of the Design-Builder Contingency, how it was determined and expected adequacy to cover costs not able to be determined accurately at the time of preparation of the GMP Submittal;

(6) A list of work activities, expenses and fees not included in the GMP which SAWS may be expected to pay for; and

(7) Any other key assumptions or conditions upon which the Base Guaranteed Maximum Price is based not covered in the preceding items in this Section 2.7.2.

2.7.3 Preparation of the GMP Submittal.

The Design-Builder will start the development of the GMP Submittal at the onset of the Project during the kick-off/partnering meeting to establish dialogue from early concept development through the 60 percent design. The GMP Submittal shall follow the cost summary structure of the 60 percent design completion documents. The Design-Builder shall also provide an updated Phase II Services Schedule, cost loaded with the data contained in the GMP Submittal, that also follows the structure and format of the 60% design completion documents schedule submittal. During the design phase, the Design-Builder will maintain ongoing communication with SAWS to assess and analyze concept and design changes as they relate to the overall Project cost and schedule.

The Design-Builder shall utilize an “open book” approach to develop the GMP Submittal, providing SAWS with full access to all the details that make up the final GMP Submittal.

Meetings will be held throughout the design and development of the GMP Submittal with SAWS to assure the design and preconstruction phase work is completed in a transparent manner.
The Project will not have 100% complete Drawings and Specifications at the time the final Base Guaranteed Maximum Price is agreed upon. Therefore, in order to get a more complete estimate of the scope, the Design-Builder will prepare "design gap analysis narratives" for all work items to provide the Design-Builder’s estimators and SAWS a clearer picture of what is included in the final GMP Submittal package.

During development of the GMP Submittal, the Design-Builder will perform value analysis and constructability reviews with design and construction team members as the plans are being prepared. The Design-Builder will also conduct "operability reviews" with SAWS’ operations staff, and “bid-ability” reviews with the Design-Builder’s estimators.

All of these efforts are designed to prepare the documents and estimates as accurately as possible and to keep SAWS fully informed and involved with the design and cost throughout the development of the GMP Submittal.

2.7.4 Governmental Approvals Schedule Table.

The Design-Builder shall identify all Governmental Approvals required for the Design-Build Work by name, issuing agency and permittee/approval holder. Based on such services and discussions with SAWS, the Design-Builder shall propose the Governmental Approval Application Dates and Assumed Approval Issuance Dates with respect to each Governmental Approval in the GMP Submittal, all as necessary to revise, confirm and complete the Governmental Approvals Schedule Table in Table 3-1 of Appendix 3 to this Design-Build Contract. The Assumed Approval Issuance Dates will be subject to the approval of SAWS and will provide for a reasonable period following the submittal of a completed Governmental Approval application in accordance with the Contract Standards. Such reasonable period will be established considering the requirements of Applicable Law, the administrative practices of the applicable Governmental Body, and SAWS’ past experience in connection with similar approvals.

The parties shall negotiate and finalize the terms of the Governmental Approvals Schedule Table as part of the GMP Amendment and the agreed-upon Governmental Approvals identified by the Design-Builder (including Governmental Approval Application Dates and Assumed Approval Issuance Dates) shall be the Governmental Approvals intended to be included in Table 3-1 of Appendix 3 to this Design-Build Contract. During such negotiations, the parties will review the Assumed Approval Issuance Dates and, without limiting anything set forth in Article 14 of this Design-Build Contract, the parties may agree to maximum amounts of price relief for any schedule delay associated with a Governmental Approval in the event Construction work (for which such Governmental Approval is required) has not yet commenced.

2.7.5 Maintenance of Operations During Construction Plan.

Pursuant to Section 6.11(A) of this Design-Build Contract, the Design-Builder shall prepare and propose a Maintenance of Operations During Construction Plan which identifies the plan and procedures for coordinating with SAWS’ requirements for ongoing operations of the SAWS Distribution System during construction of the Project and submit such draft Maintenance of Operations During Construction Plan as part of the GMP Submittal.

The parties shall negotiate and finalize the Maintenance of Operations During Construction Plan as part of the GMP Amendment.
2.7.6 Updated Subcontracting Plan.

The Design-Builder shall update the Subcontracting Plan prepared in accordance with Section 2.4.6 of this Appendix and include such updated Subcontracting Plan in the GMP Submittal.

2.7.7 GMP Submittal Workshop.

Within two Business Days after delivery of the draft GMP Submittal to SAWS and the Owner Representative, the Design-Builder will meet with SAWS during an approximate 8-hour workshop to present, review, and answer questions about the content of the draft GMP Submittal. A log of review comments will be maintained by SAWS and the Design-Builder to ensure all comments are addressed and incorporated into the final GMP Submittal, if appropriate.

2.7.8 Re-Submittal of GMP Submittal.

Concurrently with submittal of the Design-Builder’s response to SAWS’ comments to the 60% DCD submitted in accordance with Section 2.6.9 of this Appendix, the Design-Builder will finalize the GMP Submittal, taking into account SAWS’ comments, and re-submit it to SAWS and the Owner Representative for final review and approval. SAWS will notify the Design-Builder whether or not it approves the re-submitted GMP Submittal no later than five Business Days after SAWS’ and the Owner Representative’s receipt of the re-submitted GMP Submittal from the Design-Builder.

2.8. POTENTIAL ADDITIONAL PHASE I SERVICES

As provided in Section 5.2(B) of this Design-Build Contract, SAWS may request that the Design-Builder perform potential Additional Phase I Services, for which the Design-Builder shall be compensated on a negotiated basis.

2.9. PHASE I SERVICES FEE

2.9.1 Compensation for Base Phase I Services.

SAWS shall pay the Design-Builder a Phase I Services Fee in the fixed amount of $7,437,584. The Phase I Services Fee shall serve as the Design-Builder’s entire compensation for all Base Phase I Services performed as required under the Contract Documents, and shall include costs for any and all out-of-pocket disbursements for travel, lodging and other expenses incidental to the performance of the Base Phase I Services and any payments to third parties such as Subcontractors.

The Design-Builder shall earn its Phase I Services Fee progressively based upon the Design-Builder’s percentage completion of the Base Phase I Services as reasonably determined by SAWS, based on the following values:

<table>
<thead>
<tr>
<th>Phase I Services Task.</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Task #1 through Task #5 (inclusive of $322,000 for geotechnical investigation work, as described in Section 2.2.3 of this Appendix)</td>
<td>$5,499,669</td>
</tr>
</tbody>
</table>
2.9.2 Payment Requests.

The Design-Builder shall request monthly progress payments of the portion of the Phase I Services Fee payable with respect to each Phase I Services Task. All Payment Requests for progress payments shall require a written invoice from the Design-Builder in a form acceptable to SAWS. The Design-Builder shall submit all Payment Requests with appropriate evidence of performance, after which SAWS shall make payment at the earliest practicable time, but not later than 30 days following receipt of a proper Payment Request.

In order to facilitate the payment process and track progress of the Phase I Services Tasks, the Design-Builder shall provide SAWS with an itemization of its compensation according to a Work Breakdown Structure ("WBS") in a form SAWS supplies or approves (at SAWS’ option), that defines all Phase I Services Tasks (Design-Builder’s and Subcontractors’), along with a Phase I Services Schedule providing the timeline for each Phase I Services Task, a Project budget defining the planned man-hours and costs for each Phase I Services Task, and a schedule of deliverables providing the timeline for all Phase I Services Deliverable Material to be provided to SAWS. The WBS shall further define which tasks are to be performed by Subcontractors. The WBS shall not relieve the Design-Builder of its performance, schedule or other obligations under the Contract Documents.

2.9.3 Compensation for Additional Phase I Services.

In the event SAWS elects to request any Additional Phase I Services, compensation for the Additional Phase I Services shall be negotiated by SAWS and the Design-Builder in accordance with Section 5.3(B) of this Design-Build Contract.

2.10. ALLOWANCE FOR SUPPLEMENTAL GEOTECHNICAL SERVICES

The available allowance for the cost of performing supplemental geotechnical services pursuant to Error! Reference source not found. of this Appendix is $50,000 (the “Supplemental Geotechnical Services Allowance”). The Design-Builder shall be entitled to payment against the Supplemental Geotechnical Services Allowance solely following issuance and subject to the terms of a Geotechnical Services Order in accordance with Error! Reference source not found. of this Appendix. Each Geotechnical Services Order shall establish the cost of the supplemental geotechnical services and payment terms and conditions consistent with Section 2.9 of this Appendix. The aggregate amount of each Geotechnical Services Order shall not exceed the amount of the Supplemental Geotechnical Services Allowance, absent further approval of SAWS. Absent approval of SAWS, the amount of the Supplemental Geotechnical Services Allowance shall also not be increased. Any amount not expended against the Supplemental Geotechnical Services Allowance shall be for the account of SAWS.
ATTACHMENT 2A

PRELIMINARY PHASE I SERVICES SCHEDULE
[Note: The initial Phase I Services Schedule will be inserted here.]
[Note: The initial Phase I Services Schedule will be inserted here.]
APPENDIX 3

GOVERNMENTAL APPROVALS
APPENDIX 3

GOVERNMENTAL APPROVALS

3.1. PURPOSE

The purpose of this Appendix is to provide a list of the Governmental Approvals that are expected to be required with respect to the Contract Obligations. The Design-Build shall obtain and maintain all other Governmental Approvals (other than the SAWS Managed Governmental Approvals), irrespective of whether any such Governmental Approval is identified in this Appendix.

3.2. GOVERNMENTAL APPROVALS

The purpose of Table 3-1 is to indicate assumed approval and issuance dates of the Governmental Approvals in order to determine Uncontrollable Circumstance relief under Section 6.5(E) and Article 14 of this Design-Build Contract.

Table 3-1 will be finalized as part of the GMP Amendment.
Table 3-1 – Governmental Approvals Schedule

<table>
<thead>
<tr>
<th>Name of Governmental Approval</th>
<th>Issuing Agency</th>
<th>Governmental Approval Application Date (Number of days from GMP Amendment Date)</th>
<th>Assumed Governmental Approval Issuance Date (Number of days from Governmental Approval Application Date)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TPDES General Stormwater Construction Permit under TXR150000, on-site and off-site</td>
<td>TCEQ/SAWS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small MS4 General Permit, TXR040000, Operational Stormwater Permit</td>
<td>TCEQ/SAWS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Water System Plan Review</td>
<td>TCEQ</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utility Installation Permit to cross roads and install within TxDOT ROW, if necessary</td>
<td>TxDOT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permit to Construct Access Driveway Facilities on Highway Right of Way, Form 1058</td>
<td>TxDOT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texas Department of Licensing and Regulation – Elimination of Architectural Barriers Law</td>
<td>TDLR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pipeline/Transmission Crossings, if applicable</td>
<td>CPS Energy and other Gas/Electric Companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CLOMR/LORM or LOMA</td>
<td>FEMA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Antenna</td>
<td>FAA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>-----------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Edwards Aquifer Recharge Zone</td>
<td>TCEQ, EAA and SAWS</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX 4

BASELINE DESIGN DOCUMENTS
APPENDIX 4

BASELINE DESIGN DOCUMENTS

4.1. PURPOSE

The Baseline Design Documents will be specified in the GMP Amendment and shall set forth certain minimum technical requirements for the Project. Nothing in the Baseline Design Documents shall relieve the Design-Builder of its obligation to meet the Performance Guarantees.
APPENDIX 5

GENERAL DESIGN-BUILD WORK REQUIREMENTS
APPENDIX 5

GENERAL DESIGN-BUILD WORK REQUIREMENTS

5.1. PURPOSE

The purpose of this Appendix is to set forth certain requirements for the performance of the Design-Build Work. The Design-Builder shall perform the Design-Build Work in accordance with the Contract Standards, including the requirements set forth in this Appendix.

5.2. MANAGEMENT AND COORDINATION

5.2.1 Coordination

The Design-Builder shall hold meetings that are separate from and in addition to Construction progress meetings described in Section 5.4.2 of this Appendix, and shall prepare correspondence and make any other arrangements as necessary to coordinate the Design-Build Work. The Design-Builder shall coordinate its activities with other contractors performing work at or near the Project Sites. The Design-Builder shall identify other construction contracts that may be in progress in close proximity to or bordering on the Project. The Design-Builder shall coordinate all Construction activities that could impact existing Utility services and installations (e.g., conduits, pipelines, transmission mains and other Utility equipment and appurtenances) with the Utilities. Coordination meetings may include review of the Project Schedule and installation procedures of other contractors to identify potential conflicts, allocation of space on the Project Sites, drawing/design interchange among contractors, establishment and modification of schedules and sequences of Construction operations, and planning of future meetings.

5.2.2 Partnering Sessions.

SAWS and the Design-Builder shall use good faith efforts to promote the formation of a successful formal partnering relationship in order to effectively perform this Design-Build Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a formal partnering relationship will not change or modify the terms and conditions of this Design-Build Contract and will not relieve any party of the legal requirements of this Design-Build Contract.

SAWS and the Design-Builder shall implement the partnering relationship through at least one pre-Construction partnering workshop (“Partnering Sessions”). The purpose of the Partnering Sessions is to deepen working relationships, develop common goals and objectives for the Project, achieve a cooperative partnership environment among Project participants, and mutually develop a strategy for forming a successful partnering relationship. SAWS and the Design-Builder may participate in additional facilitated Partnering Sessions during the Term as they mutually agree is necessary and appropriate.

The scheduling of a Partnering Session, selection of the facilitator and workshop site, and other administrative details will be managed by the Design-Builder, in coordination with SAWS. The parties shall use good faith efforts to schedule the initial, pre-Construction Partnering Session and to select the facilitator for the workshop as soon as reasonably possible following the Contract Date.
5.3. **PHASE II SERVICES SCHEDULE**

5.3.1 Phase II Services Schedule.

All activities comprising the Design-Build Work shall be scheduled and monitored by use of Oracle Primavera P6© software which sets forth all tasks and key subtasks in a logical and efficient work sequence that the Design-Builder intends to utilize to plan, organize and execute design and Construction work in taking the Project from the Baseline Design Documents to Final Completion and SAWS operation, to record and report actual performance and progress, to show plans to complete all remaining activities as of the end of each progress report period, and to enable SAWS and the Owner Representative to monitor and evaluate work progress.

The Phase II Services Schedule shall be in the form of an activity oriented network diagram (Critical Path Method) and the principles and definitions of the terms used herein shall be as set forth in the Associated General Contractors of America (AGC) publication *The Use of CPM in Construction*, 1976, and the approved WBS and OBS prepared as part of the Phase I Services. In the event of discrepancies, this Appendix shall govern the development and utilization of the Phase II Services Schedule.

The Phase II Services Schedule shall be comprised of the cost and resource loaded Detailed Network Diagram and reports described herein. The Phase II Services Schedule shall show the sequence and interdependence of activities required for complete performance of all the work including design development and completion from the Baseline Design Documents, procurement, Construction, Commissioning, Mechanical Completion, Acceptance Testing and Final Completion. The Phase II Services Schedule shall begin with the Contract Date, include milestones representing release of design packages for Construction, include the Interim Construction Milestones, include milestones representing completion of Commissioning for each system, include a milestone for the achievement of Mechanical Completion (on the Scheduled Mechanical Completion Date), include a milestone for the achievement of Acceptance (on the Scheduled Acceptance Date) and conclude with a milestone representing Final Completion, in addition to any control milestones provided by SAWS.

The Phase II Services Schedule, prepared in accordance with the foregoing requirements and Appendix 2 shall be initially prepared and updated in accordance with Appendix 2 and further updated as required in accordance with this Appendix. The Design-Builder shall undertake and complete the Design-Build Work in accordance with the Phase II Services Schedule. The Design-Builder shall develop, revise and provide all information and input necessary for the Phase II Services Schedule required pursuant to this Appendix in accordance with the Contract Standards. The planning, scheduling, coordination and execution of the Design-Build Work are the sole responsibility of the Design-Builder. The Scheduled Mechanical Completion Date, the Scheduled Acceptance Date and the date for Final Completion shall not be changed in any updates without written permission from SAWS in accordance with the Contract Documents.

5.3.2 Detailed Network Diagram

The Phase II Services Schedule shall include a time-scaled "Detailed Network Diagram" based on calendar days. The Detailed Network Diagram shall be in Critical Path Method ("CPM") precedence format and shall show the sequence and interdependence of activities required for complete performance of all items of work. A calendar shall be shown on all sheets along the entire sheet length. Each activity shall be plotted so that the beginning (and completion dates) of the activity can be determined graphically (by comparison) with the calendar scale.

The Detailed Network Diagram shall be structured in compliance with the SAWS-approved WBS and include any lower level WBS expansions needed by the Design-Builder to manage its...
Suppliers and Subcontractors as well as its own Design-Build Work. The Detailed Network Diagram shall also comply with the SAWS-approved OBS and any expansions thereto by the Design-Build to effectively manage the Design-Build Work such that each activity shall have the OBS shown for the responsible party within the Design-Build team or outside contractors, Governmental Bodies or SAWS.

The Detailed Network Diagram shall provide sufficient detail and clarity of form and technique so that the Design-Build can plan, schedule, and control the Design-Build Work properly and SAWS and the Owner Representative can readily monitor and follow progress for all portions of the Design-Build Work. The Detailed Network Diagram shall include all activities of the Design-Build Work, including preliminary Phase II Services Schedule activities. The Design-Build shall analyze the activities outlined in the Detailed Network Diagram with respect to normal manpower and equipment requirements to determine activity time durations in units of whole working days. Critical path activities shall be identified, including critical paths for interim completion dates. Milestone events shall be identified and connected to the appropriate activity, denoting its start or completion, as applicable. Each start milestone event shall restrain the start of all dependent activities. Further, all activities included in the scope of work associated with a completion milestone event must be finished before that milestone event can occur. Interfaces and dependencies with preceding, concurrent, and follow-on work by others shall be included as milestone events.

The Detailed Network Diagram shall include the following information related to the activities:

- Activity number.
- Activity Description.
- Estimated duration in working days.
- Activity Cost matching/supporting the Schedule of Values.
- Manpower requirements in man-hours.
- Major equipment acquisition and arrivals/departures at/from the Project.

The degree of detail of the Detailed Network Diagram shall consider the following factors:

- Follow the SAWS-approved WBS for the Project.
- Normal weather delays per season that would delay or affect the work plan using identified schedule buffer activities in the logic chain to the next control milestone in the logic chain
- The type of work to be performed and the labor trades involved.
- All delivery activities for all major materials and equipment.
- A schedule for all submittals requiring outside or design Subcontractor approval, including allowed review response time, and logic linked to start of appropriate work items so that any resubmittal requirements shall adjust the start or ordering of the consequential work item(s)
- Submittal and approval of shop and working drawings and material samples.
- Efforts and activities for all Subcontract work by discrete Subcontractor.
- Access and availability to work areas.
- Test, submissions, and acceptance of test results.
- Coordination with ongoing existing operations.
- Planning for phased or total acceptance by SAWS.

Seasonal weather conditions shall be considered and included in the planning and scheduling of all work influenced by high or low ambient temperatures and/or precipitation to ensure completion of all Design-Build Work by the Final Completion date. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions based upon the
preceding ten year records published for the locality by the National Ocean and Atmospheric Administration based on the San Antonio International Airport reporting station.

The Design-Builder may use labor or equipment restraints separately noted to optimize and level labor and equipment requirements. The individual activities involved may be sequenced within the limits of total float to the next control milestone in the logic chain. When this technique is used in establishing the working schedule, it shall be reflected in the logic. Critical or near-critical paths developed from the use of labor restraints shall be kept to a minimum. Near-critical paths shall be defined as those paths having 14 calendar days or less of total float at time of initial submission.

The Design-Builder shall use the SAWS-approved WBS to number and differentiate design, procurement, Construction, quality control testing, Commissioning, maintenance, Acceptance Testing, other activities, and additional or modified activities resulting from design development and potential revision activities directed by SAWS.

The Detailed Network Diagram shall be accompanied by a report, in tabular format, listing all activities by activity number and also including precedent and successor relationships, lag, and lead-time. Each listing shall show activity number, description, location, responsibility, total duration in working days, applied calendar, early-start date, late-start date, early-finish date, late-finish date, total float, free float, cost, resources including man-hours and major equipment and status (whether critical or completed) for each activity.

The Phase II Services Schedule (and any updates thereto) shall be submitted to SAWS in hardcopy, pdf and native P6 format.

### 5.3.3 Phase II Services Schedule Updates.

The Design-Builder shall submit schedule updates to SAWS at each monthly progress review meeting, as further described in Appendix 7, but in no case later than the 25th of each month. Each schedule update shall include the following elements:

1. a six week look ahead schedule and a present to complete summary schedule and a milestone status report to include current and forecasted status of each milestone and submittal event in WBS start sort order; and

2. status for any weather schedule buffers shall be made on the number of observed and recorded weather delays that occurred to date for the schedule buffer timespan, which must be verifiable against the daily field reports for each work segment.

The Design-Builder shall, as required from time to time during the Design-Build Period, but no less than once per calendar month, in consultation with SAWS update the Phase II Services Schedule so that it is at all times an accurate, reasonable and realistic representation of the Design-Builder's plans for the completion of the Design-Build Work in accordance with the requirements of the Contract Documents. The updates shall include adjustments resulting from Uncontrollable Circumstances and Baseline Design Requirements Changes, if any, as permitted by this Design-Build Contract and as provided in Section 5.3.5 of this Appendix;

Logic chains shall be consistent throughout the Design-Build Work. The Design-Builder shall use retained logic option, calculate start to start lag by using early start option, calculate early start using contiguous activity duration option, and calculate total float using most critical option.
The Design-Builder shall deliver to SAWS and the Owner Representative on a monthly basis the updated Phase II Services Schedule. The monthly updated Phase II Services Schedule shall be accompanied by a report that (1) shows current work progress and the status of work completed for each task and subtask included in the Phase II Services Schedule; (2) contains information on the resources to be employed and work to be completed in the upcoming month, including a six week look-ahead that reflects all agreements made by the parties as to Phase II Services Schedule revisions in sufficient detail for SAWS to be able to verify agreed-upon work schedule and milestone date changes; and (3) describes conditions that have affected or may accelerate or decelerate the Phase II Services Schedule then in effect, together with proposed Phase II Services Schedule adjustments and mitigation measures.

Should any negative float items appear, the Design-Builder shall provide specific explanation of the causes of each and proposed remedies.

5.3.4 SAWS Review.

SAWS shall review the updated Phase II Services Schedule and advise the Design-Builder as to any of its concerns, along with proposed changes. SAWS shall have the right to reject any updated Phase II Services Schedule submittal that does not comply with the Contract Standards. Every three months, or more frequently if requested by SAWS, in addition to the weekly Construction progress meetings, the Design-Builder shall meet with SAWS to discuss Project progress and the updated Phase II Services Schedule. The Design-Builder shall respond to SAWS concerns and indicate how the proposed changes or revisions thereto can be made to satisfactorily address SAWS concerns. Upon SAWS approval, the changes shall be incorporated in the updated Phase II Services Schedule and replace the previous baseline Phase II Services Schedule. Phase II Services Schedule updates are for the purpose of providing the Design-Builder with flexibility in its work activity durations and sequences, but in no event shall such updates result in a change in the Scheduled Mechanical Completion Date, the Scheduled Acceptance Date or the date for Final Completion. The Scheduled Mechanical Completion Date and the Scheduled Acceptance Date shall be adjusted solely as provided in Sections 8.3 and 8.7, respectively, of this Design-Build Contract.

5.3.5 Events Affecting the Phase II Services Schedule.

No later than 15 days following the occurrence of an Uncontrollable Circumstance or a SAWS-directed Change Order, or delays are experienced that may impact the critical path, the Design-Builder shall submit a report containing a “Time Impact Analysis” illustrating the effects of such events on the current Phase II Services Schedule, including any new dates for work task and major subtasks, Interim Construction Milestones, Mechanical Completion, the Scheduled Mechanical Completion Date, Acceptance, the Scheduled Acceptance Date or the date for Final Completion. Each Time Impact Analysis shall include a fragment network analysis (“FNA”), demonstrating how the Design-Builder proposes to incorporate the change or delay into the Detailed Network Diagram. The Design-Builder shall present mitigation measures that were considered to offset potential work delays; those proposed for SAWS review and acceptance; and a revised Phase II Services Schedule incorporating the Design-Builder’s proposed changes.

Additionally, the analysis shall demonstrate the time impact based on the date that the Design-Builder was notified of the authorization of the change or the date that the delay began, the status of Construction at that point in time, and the event time computation of all affected activities. The event items used in the analysis shall be those included in the latest updated copy of the detailed progress schedule. Each Time Impact Analysis shall be submitted in triplicate. In cases in which the Design-Builder does not submit a Time Impact Analysis for a specific change within the time requirements established under this Section 5.3.5, then it is mutually agreed that that particular potential revision or delay has no time impact on any of the
scheduled completion dates and the Project’s critical path and no time extension will be granted. Subject to the terms and conditions of this Design-Build Contract, upon mutual agreement by both parties, FNAs illustrating the influence of the Uncontrollable Circumstance, Change Order or delay will be incorporated into the Detailed Network Diagram for an updated baseline prior to the next schedule update after agreement is reached.

5.4. CONSTRUCTION MEETINGS AND REPORTS

5.4.1 Pre-Construction Conferences.

The Design-Builder shall hold a pre-Construction conference prior to commencement of each Construction work package. The Design-Builder shall prepare an agenda which shall be reviewed with SAWS prior to the conference, and shall preside at the conference, contribute appropriate items for discussion, provide any data requested, record minutes to summarize significant proceedings and decisions, and distribute the minutes to all parties in attendance. The agenda shall include the status of the following items:

(a) Designation of responsible personnel during the Design-Build Period.
(b) Subcontractors, and their roles on the Design-Build Work.
(c) Coordination with other contractors and projects.
(d) Phase II Services Schedule.
(e) Design-Builder submittals and SAWS review.
(f) Schedule of Design-Builder submittals (from approved P6 baseline and current status).
(g) Requests for Information and Clarification.
(h) Required Insurance.
(i) Design-Builder’s site-specific Health and Safety Plan.
(j) Security.
(k) Housekeeping.
(l) Record Drawings.
(m) Proposed Construction Commencement Date.
(n) Governmental Approvals.
(o) Emergency telephone numbers.
(p) Temporary Utilities/Utilities coordination.
(q) Any other Design-Build Work-related items.

The pre-Construction conference shall be scheduled by the Design-Builder at a time reasonably acceptable to SAWS and shall be attended by the Design-Builder Manager, the Design-Builder’s
Construction Manager, the Design-Builder’s Construction Superintendent, and the Design-Builder’s principal Subcontractors’ project managers or superintendents and representatives of major Suppliers as the Design-Builder deems appropriate. Other attendees may include a representative from the Design-Builder’s executive team, the QA/QC Manager, the Design Manager, local police and fire departments and other Governmental Bodies with jurisdiction over the Design-Build Work, any other contractors whose work affects or is affected by Construction of the Project, and others as deemed appropriate by these parties. The Design-Builder shall conduct the conference at the Terminus Site and make all arrangements for space, facilities and food services and shall notify all participants of the arrangements.

5.4.2 Construction Progress Meetings - Scheduling and Attendance.

The Design-Builder shall schedule, hold, and facilitate regular weekly Construction progress meetings from the time mobilization for Construction commences through Final Completion, and at other times if requested by SAWS or as the Design-Builder deems necessary. The Construction progress meetings shall be attended by the Design-Builder Construction Manager, the Design-Builder Superintendent, the QA/QC Manager and the Design-Builder’s principal Subcontractors’ project managers or superintendents and representatives of major Suppliers, as the Design-Builder deems appropriate. The Design-Builder, Design-Build Manager and representatives from the Design-Builder’s executive team shall attend a monthly management meeting and also shall attend weekly Construction progress meetings periodically as requested by SAWS. Other attendees may include any other contractors whose work affects or is affected by Construction of the Project, and others deemed appropriate by these parties. SAWS and the Owner Representative shall attend the weekly Construction progress meetings and monthly management meetings. Construction progress meetings shall be held at the appropriate Project Sites.

5.4.3 Construction Progress Meetings - Agenda.

At such meetings, discussions shall be held concerning all aspects of the Design-Build Work including the Phase II Services Schedule, coordination of work with others, Baseline Design Requirements Changes, Governmental Approvals and Design-Build Work submittals, and any test results. The Design-Builder shall prepare an agenda, preside at meetings, record minutes to include significant proceedings and decisions, and distribute the minutes to all parties in attendance within three Business Days of the meeting. The agenda shall include the status of the following matters:

(a) Summary of previous meeting issues, actions and assignments.

(b) Progress since last meeting (Design-Builder and Subcontractors).

(c) Schedules, including updates on planned progress for next four to six weeks, off-site fabrication and delivery schedules; corrective action measures, if required and when to be implemented.

(d) Problems, issues and considerations.


(f) Status of submittals, including to be submitted, submitted, responses requiring corrective actions and resubmittal and approved.

(g) Requests for Information, including those to be submitted, submitted, responses and whether adequate or more information is required.
San Antonio Water System
Central Water Integration Pipeline

Appendix 5
General Design-Build Work
Requirements

(h) Quality standards and control.
(i) QA/QC reviews, findings, issues and actions.
(j) Coordination among parties.
(k) Safety program update, concerns, accidents, and injuries, if any.
(l) Visits by regulatory agencies.
(m) Public affairs and issues or concerns of nearby residents.
(n) Project Sites visits by SAWS, SAWS’ representatives, representatives of Governmental Bodies and Design-Builder’s representatives.
(o) Compliance with Governmental Approval mitigations and any environmental issues.
(p) Status of record Drawings and Specifications.
(q) Other business.
(r) Next meeting date.

5.4.4 Monthly Progress Reports.

Monthly Progress Reports required to be submitted by the Design-Builder shall include:

(a) A summary of Design-Build Work activities during the reporting month.
(b) A schedule of upcoming Design-Build Work activities.
(c) A listing of submittals delivered during the reporting month and their status;
(d) A listing of submittals scheduled for delivery the following month.
(e) The Design-Builder’s verification that the record documents have been updated as appropriate.
(f) A summary of activities involved with obtaining Governmental Approvals.
(g) A listing of any violations of Governmental Approvals or Applicable Law and actions taken or to be taken to eliminate any subsequent violations.
(h) A listing of issues needing resolution.
(i) A listing of all telephone calls received during the reporting month involving material inquiries or complaints.
(j) Phase II Services Schedule updates and Cost/Schedule Status Report (CSSR).
(k) the Design-Builder’s recovery plan for meeting the Scheduled Mechanical Completion Date and the Scheduled Acceptance Date should the Design-Builder’s progress-to-date indicate that the Design-Builder's Design-Build Work is behind
schedule and at risk of not being completed by the Scheduled Mechanical Completion Date and/or the Scheduled Acceptance Date (as adjusted for extensions of time permitted under this Design-Build Contract).

(l) Expenditures for the most recently completed month and for the Project to date, and a comparison to the Schedule of Values; explanations for significant deviations from the Schedule of Values for both over-expenditures and under-expenditures; corrective actions proposed by the Design-Builder to bring spending in-line with Schedule of Values or proposals to SAWS for an adjustment in the Schedule of Values or acceptance of the deviations.

(m) Progress Payment Requests as described in Article 9 of this Design-Build Contract. The format of the Payment Request shall be matched with the description of work activities completed for the reporting month and the Schedule of Values so that SAWS can easily relate the breakdown of the Payment Request to work progress on specific tasks and subtasks. Supporting documentation shall be provided so that SAWS can readily determine the basis for the requested payment amounts for Design-Build Work performed during the month by task or subtasks in terms of labor hours, construction equipment costs, capital improvements, equipment and materials expenditures, specialty Subcontractors including similar breakdowns for Subcontracts in excess of $500,000 and other Project costs incurred during the month. Current retainage and total retainage to date shall be included in the Monthly Progress Report. Payment Request information shall include similar information for changes made pursuant to Sections 6.7 through 6.9 of this Design-Build Contract.

The Monthly Progress Reports shall also provide a description of (1) any concerns or issues raised by SAWS or other parties regarding the Design-Build Work, and the Design-Builder’s approach to promptly addressing and resolving such concerns or issues, and (2) a section containing health and safety statistics and a description of any accidents or injuries that occurred and the follow up investigations as to cause and subsequent corrective actions to be taken or already implemented by the Design-BUILDER. The format of the Monthly Progress Reports for the Phase II Services shall be developed by the Design-Builder and approved by SAWS prior to the commencement of any Construction on the Project Sites.

5.4.5 Project Records.

The Design-BUILDER, in connection with the Design-Build Work generally, shall maintain and provide the following records:

(a) Record Drawings and Specifications: The Design-BUILDER shall:

(1) throughout the Construction, update the Phase II Design Documents (with respect to the Drawings, such update shall be in hard copy and “CAD” or other electronic format reasonably acceptable to SAWS), including approved shop drawings that are available from Subcontractors in CAD format, so as to produce accurate and complete record documents for the Project.

(2) as requested from time to time during the Construction, make available such record Drawings and Specifications to SAWS for review to permit SAWS to monitor the Design-BUILDER’s compliance with the requirements of this Section 5.4.5.
(3) provide two hard copies (in architectural D size and electronically in PDF format and current version of Bentley Microstation CAD file) of the completed record Drawings as a condition to Final Completion. The record Drawings shall not be deemed to have satisfied the condition to Final Completion unless reviewed and deemed final by SAWS.

(b) Equipment and Systems Manuals: The Design-Build shall:

(1) as a condition to Final Completion, and in accordance with Sections 5.9 and 5.10 of this Appendix, make available all operation and 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 Design-Build Work for review by SAWS; and

(2) organize and store such information in accordance with Section 6.6(D) of this Design-Build Contract;

(c) Design Records: The Design-Build shall retain records of the design development.

(d) Minutes of Meetings: The Design-Build shall retain minutes of meetings between SAWS and the Design-Build relating to the Design-Build Work, and shall circulate such minutes to SAWS and the Owner Representative for review and comment.

(e) Inspection Reports and Tests Results: The Design-Build 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 Design-Build shall retain Utility plans for the Project and the Project Sites.

(g) Landscape and Irrigation Plans: The Design-Build shall retain landscape and irrigation plans for the Project and the Project Sites.

(h) Copies of all Governmental Approvals: The Design-Build shall retain copies of all Governmental Approvals for the Construction and occupation of the Project.

(i) Signed Design-Build Quality Management Plan: The Design-Build shall retain a signed copy of the Design-Build Quality Management Plan for the design and Construction and all records of the quality assurance program implemented as required by the Contract Documents.

(j) Daily field logs recording the weather at each work site throughout the day, what contractors are on site and equipment/material deliveries as well as any events such as outages, work stoppage, accidents, material/equipment loss, and property damage.

The records referred to in this Section 5.4.5 shall be retained for at least five years following the Mechanical Completion Date.
5.5. CONSTRUCTION WORK GENERALLY

5.5.1 Geotechnical Work and Subsurface Exploration

As part of the Phase I Services, it is expected that the Design-Builder will conduct geotechnical and subsurface investigations of portions of the Project Sites and the results of these investigations will be presented in the Geotechnical Report. The Design-Builder shall conduct any additional subsurface investigations of the Project Sites as necessary in accordance with Good Engineering and Construction Practice to determine design requirements for Construction, including dewatering and foundation requirements. The Design-Builder shall employ a professional engineer, licensed in the State, to plan, oversee, and evaluate the results of all additional subsurface investigations and to determine requirements for the design of the Project, including foundations, superstructures, and dewatering systems, with regard to seismic conditions and existing soil conditions. The engineer shall provide recommendations for Construction requirements as to protecting the Design-Build Work and any existing structures and Utilities. The Design-Builder shall have the full responsibility for verifying the presence and location of all subsurface structures at the Project Site. The Design-Builder shall perform all geotechnical work and subsurface explorations in accordance with the Contract Standards.

5.5.2 Deliverable Material.

The Design-Builder shall deliver to SAWS all Deliverable Material required to be delivered under this Appendix, Appendix 6, Appendix 7 and Appendix 9.

5.5.3 Signs.

The Design-Builder shall provide and maintain temporary identification and information signs during the Design-Build Period in conformance with SAWS requirements and specifications. No signs shall be erected until their appearance, content, and location have been fully reviewed and approved by SAWS, which approval shall not unreasonably be withheld, conditioned or delayed. The Design-Builder shall remove temporary signs from the Project Sites when they are no longer necessary.

5.5.4 Laydown Areas and SAWS Construction Office Space.

Laydown and staging areas for construction materials shall be located at the Project Sites or at other locations arranged and paid for by the Design-Builder. The Design-Builder shall also provide construction office space for 10 individuals employed by SAWS or its representatives (including the Owner Representative) during the Design-Build Period, with a minimum of 1,800 square feet total (co-located with and similar in character to that provided for the Design-Builder’s staff), including telephone lines and broadband internet connections to support each of the 10 users. The cost of SAWS’ construction office furniture, fixtures, equipment, supplies, consumables, or telephone/internet service provider fees shall be borne by the Design-Builder.

5.5.5 Maintenance of the Project Sites.

During performance of the Design-Build Work, the Design-Builder shall be responsible for the overall maintenance of the Project Sites. The Design-Builder shall keep the Project Sites neat and orderly at all times, and shall clean up and remove all rubbish and construction debris from the Project Sites as they accumulate in accordance with the Contract Standards.
5.5.6 Temporary Utilities.

The Design-Builder shall supply all necessary temporary Utilities, including electricity, telecommunications services, potable water, fire protection, lighting, and sanitary facilities, during Construction, testing and start-up of the Project. Prior to the Mechanical Completion Date, the Design-Builder shall disconnect and arrange for the disconnection and removal of all temporary Utility connections and services. The Design-Builder shall coordinate with SAWS on all temporary Utilities.

5.5.7 Relocation of Existing Utilities.

The Design-Builder shall be responsible for all Construction activities required with regard to existing Utility services and installations (e.g., conduits, pipelines, transmission mains and other Utility equipment and appurtenances).

5.5.8 Noise Control.

The Design-Builder shall comply with all noise regulations required pursuant to Applicable Law.

5.6. COORDINATION OF CONSTRUCTION WORK AND OPERATIONS

5.6.1 SAWS Distribution System Shutdowns during Construction.

The Design-Builder shall plan and coordinate in advance with SAWS in order to obtain SAWS approval and schedule its Construction work which requires partial or complete shutdowns of any portions of the SAWS Distribution System. The Design-Builder shall make every effort to minimize the number and duration of partial or complete shutdowns.

5.6.2 Maintenance of Operations of SAWS Distribution System during Construction.

The Design-Builder shall take no actions during Construction that adversely affect operation of the SAWS Distribution System. The Design-Builder shall comply with the Maintenance of Operations During Construction Plan that is prepared by the Design-Builder and approved by SAWS in accordance with Section 6.11(A) of this Design-Build Contract.

5.6.3 Coordination with Related Projects

The Design-Builder shall take no actions during Construction that adversely affect the construction of the Related Projects.

5.7. CONSTRUCTION SAFETY AND SECURITY

5.7.1 Safety and Security.

The Design-Builder shall maintain safety and security at the Project Sites at all times at a level consistent with the Contract Standards. Without limiting the foregoing, the Design-Builder shall:

(a) Take appropriate precautions for the safety and security of the Design-Build Work and provide appropriate protection to prevent damage, injury or loss related to the performance of the Design-Build Work over the Design-Build Period for:

(1) Workers at the Project Sites and all other persons who may be involved with deliveries or inspections;
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(2) Visitors to the Project Sites;
(3) Passersby, neighbors and adjacent properties with respect to the Design-Build Work activities;
(4) Materials and equipment under the care, custody or control of the Design-Builder or Subcontractors on the Project Sites;
(5) Other property constituting part of the premises or the Project under construction; and
(6) SAWS Property;

(b) Establish and enforce appropriate safeguards for safety and protection, including posting danger signs and other warnings against hazards;
(c) Provide temporary fencing of all open or partially open trenches and excavations, all open or partially completed structures, and all work and storage areas at all times while unattended by workmen;
(d) Implement a comprehensive safety program in accordance with Applicable Law;
(e) Give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;
(f) Operate and maintain all equipment in a manner consistent with the manufacturer’s safety requirements;
(g) Provide for safe and orderly vehicular movements;
(h) Develop and implement a written Project Sites-specific Health and Safety Plan that includes management commitment, maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections;
(i) Designate an appropriately certified and experienced Safety Manager who shall:
   (1) Develop and sign the Project Sites-specific Health and Safety Plan, including all safety rules at the Project Sites; and
   (2) Be present during on-site Construction activities and be responsible for the implementation of safety rules at the Project Sites, the prevention of fires and accidents, monitoring compliance with the Project Sites-specific Health and Safety Plan, and the coordination of such activities as shall be necessary with SAWS and all Governmental Bodies related to health and safety; and
(j) Require all Subcontractors to work in accordance with and implement the Health and Safety Plan, comply with the Design-Builder's on-site safety requirements, and designate a qualified safety professional whose duty shall be the implementation of safety rules at the Project Sites and monitoring compliance of Subcontractor employees with the Project Sites-specific Health and Safety Plan.
5.7.2 Construction Site Security.

The Design-Builder shall develop, maintain and comply with a Project Sites security plan that complies with Appendix 12 is approved by SAWS and constitutes part of the Health and Safety Plan. The security plan shall assure the security of the Project Sites when perimeter fencing cannot be continuously maintained.

5.8. TRAINING PLAN REQUIREMENTS

The Design-Builder shall develop a Training Plan in accordance with the Contract Standards. SAWS’ approval of the Training Plan shall be a condition precedent to the commencement of Commissioning. The Training Plan shall:

(a) Include a combination of classroom and field/maintenance shop training;

(b) Be designed to completely train SAWS staff to competently operate and maintain the Project with the systems theory, sequence of operations, component and functional descriptions, standard operating procedures, hazard analysis of equipment, safety features, emergency procedures, assembly, disassembly, preventive, corrective and predictive maintenance, internal and external wiring, control loop, schematics and diagrams of all components;

(c) List all equipment and systems in the Project, including the following information for each equipment package or system:

   (1) A description of each equipment package or system with reference to technical Specifications or Drawings if applicable;

   (2) Identification of target audiences (i.e. operators, mechanical maintenance, electrical maintenance, instrumentation maintenance);

   (3) Duration of classroom training for each session and each audience (to be updated upon receipt of vendor O&M manuals); and

   (4) Duration of hands-on training for each session and each audience (to be updated upon receipt of vendor O&M manuals);

(d) Include the number, qualifications and certification levels of SAWS staff (as provided by SAWS);

(e) Establish the hours of training that will be provided prior to the Mechanical Completion Date; and

(f) Include the personnel training guidelines, policies and procedures established (1) by the TCEQ and the EPA; (2) in any Governmental Approval; and (3) in any other Applicable Law.

The Design-Builder shall provide for video recording (with professional quality video and audio) of the training. The Design-Builder shall provide SAWS with an unrestricted license to copy and reproduce training session videos for internal use in future training.
5.9. **OPERATIONS AND MAINTENANCE MANUAL**

5.9.1 **Development by the Design-Build.**

The Operations and Maintenance Manual shall be a secured online, electronic manual with hard copy reproduction capability. During the Design-Build Period, the Design-Build shall develop the Operations and Maintenance Manual in accordance with the Contract Standards. The Design-Build shall provide SAWS with preliminary, interim, pre-final and final versions of the Operations and Maintenance Manual for SAWS’ review, comment and approval.

A pre-final Operations and Maintenance Manual shall be submitted to and approved by SAWS as a condition precedent to the achievement of Mechanical Completion. A final Operations and Maintenance Manual shall be submitted to and approved by SAWS as a condition precedent to the achievement of Final Completion.

5.9.2 **Content of the Operations and Maintenance Manual.**

The Operations and Maintenance Manual shall (i) include the practices and procedures necessary for Project operation and control, auxiliary facility equipment and systems, system maintenance, repair and replacement, and grounds and buildings maintenance; and (ii) integrate all equipment and systems manuals and service manuals. The Operations and Maintenance Manual will be comprehensive, suitable as a resource for training operational staff, and will include the following information:

(a) Process design criteria;
(b) Project layout Drawings and process flow diagrams;
(c) Detailed operation and control procedures;
(d) Standard operating procedures;
(e) Emergency response procedures;
(f) maintenance instructions, including:

(1) Information necessary to properly assemble and install the equipment, including alignment, clearances, tolerances and interfacing equipment requirements; the trade and skill level required to install the equipment; any special rigging required to place the equipment; and any special test equipment required to place the equipment in service;

(2) Manufacturer’s schedule for routine preventive maintenance, calibration, lubrication, inspections, tests, and adjustments required to ensure proper and economical operation and to minimize corrective maintenance and repair;

(3) Manufacturer’s projection of preventive maintenance man-hours on a daily, weekly, monthly, and annual basis, including required trades and skill levels required for performance of maintenance and the total time required to perform the work;

(4) Manufacturer’s troubleshooting guide and recommendations on procedures and instructions for correcting problems and making repairs;
(5) Step-by-step procedures to isolate the cause of typical malfunctions, describing clearly why the checkout is performed and what conditions are to be sought;

(6) A description of maintenance and operating tools, replacement parts and materials, including specified quantity of spare parts;

(7) Information available from the manufacturers to use in training personnel to maintain the equipment and systems properly;

(8) Information on test equipment required to perform specified tests and/or special tools needed for the maintenance and repair of components;

(9) Instructions related to when equipment is in operation, including lubrication requirements;

(10) All warranty information, including effective warranty dates;

(11) Governmental Approvals indicating approval of all installations requiring permits; and

(12) The development of asset records and the means to assess equipment condition in coordination with the CMMS;

(g) A long-term schedule of major repairs and replacements, including a long-term budgeting plan to maintain the operability, durability and reliability of the Project through its projected operational life;

(h) The practices and procedures necessary to maintain the appearance of the buildings, grounds and landscaping of the Project; and

(i) Procurement procedures for all additional tools, equipment, maintenance supplies and component parts necessary for the operations and maintenance of the Project, including specifications and quantity of the items to be procured and procedures for planning and scheduling delivery of such items.

5.10. SERVICE MANUALS

The service manuals (also known as individual equipment operations and maintenance manuals) shall include the practices and procedures necessary for the operation and control, maintenance, and repair and replacement of each equipment system, package, or unit incorporated into the Project. The service manuals shall be suitable as a resource for operating and maintaining the components of the Project, and shall include the following information:

(a) Safety information for each equipment system, package or unit incorporated into the Project, including mechanical and electrical lockout procedures for all Project components; and

(b) Descriptions of units or systems and component parts, their functions, operating characteristics and limiting conditions, including:

(1) Equipment summary, which will include nameplate data, supplier, manufacturer and local representative;
(2) Start-up sequences, including inspections required before initiation of sequence;

(3) Performance monitoring requirements to confirm proper operation and guide component control adjustments;

(4) Adjustment of variable functions and settings;

(5) Interface among the components and systems of the Project;

(6) Troubleshooting guidelines to identify non-performing components and identify probable cause;

(7) Shut-down sequences and lock-out requirements to safely remove components from service without adverse impact on system performance;

(8) Preparation to isolate off-line equipment piping, power, and controls for safe execution of maintenance activities; and

(c) Description of instrumentation and control system, including alarm summary.

Pre-final service manuals shall be incorporated into the pre-final Operations and Maintenance Manual submitted to and approved by SAWS as a condition precedent to the achievement of Mechanical Completion. Final service manuals shall be incorporated into the final Operations and Maintenance Manual submitted to and approved by SAWS as a condition precedent to the achievement of Final Completion.

5.10.2 SCADA System Information and Electronic Requirements.

A separate section will be included in the Operations and Maintenance Manual for the SCADA System operations. This section will include hard and soft copies of all SCADA System programs incorporated in the Project. The Operations and Maintenance Manual will cover all process, electrical, instrumentation, and control equipment in the Project as secure digital electronic files that are designed for both web-based and local network access with capability to be linked and coordinated with other SAWS systems at in the SAWS Distribution System and the Related Projects. The Design-Builder shall:

(a) Provide links within the final Operations and Maintenance Manual to digital files of all final Phase II Design Documents, individual equipment service manuals, and the CMMS data base entries relevant to the equipment and functions described;

(b) provide special secure applications and links required to permit access to the final Operations and Maintenance Manual files from hand-held electronic devices and other portable or fixed electronic devices designated by SAWS; and

(c) coordinate digital Operations and Maintenance Manual development with SAWS’ information technology group to determine compatibility with currently available hardware and software in SAWS network.
5.11. ENVIRONMENTAL REVIEW AND PROTECTION

5.11.1 Wildlife and Protected Species Protection.

In accordance with the Environmental Mitigation Measures, if any exist, the Design-Builder shall develop and implement a plan that is consistent with required mitigation measures for wildlife and protected species that may be affected by Construction activities of the Design-Builder. Prior to implementing the plan, the Design-Builder shall obtain SAWS approval.

5.11.2 Design-Builder Construction Environmental Monitor.

If required by the Environmental Mitigation Measures, if any exist, the Design-Builder shall assign a Design-Builder Construction Environmental Monitor ("CEM") to ensure that its mitigations plan is properly and fully implemented. The CEM shall be the single, identified entity or person responsible for, at a minimum, the following duties:

(a) Planning of environmentally compliant construction methods.
(b) Oversight of Construction activities to determine compliance with mitigation measures.
(c) Ensuring that all training has been conducted, and signage, marking and barriers to protected areas have been installed.
(d) Ensuring compliance with the Stormwater Pollution Prevention Program (SWPPP).
(e) Coordination with SAWS on implementation of environmental mitigation measures.
(f) Coordination with Governmental Bodies that have administrative oversight of the environmental sites to be protected, if required.
(g) Compliance with environmental Governmental Approvals.
(h) Meeting or interacting with representatives of Governmental Bodies with environmental oversight authority, if required.

All environmental monitoring duties conducted by the CEM shall be recorded in the form of a standard report and photographic log (as required). The photographic log shall be kept in both electronic and hardcopy form. All reports shall be submitted to SAWS in summary form on a monthly basis or more frequently if required by SAWS. Copies of all daily monitoring records shall be maintained at the Terminus Site by the CEM.

5.11.3 Regulated Substances Management Plan.

The Design-Builder shall develop, maintain and implement a Regulated Substances management plan that includes as a minimum the requirements specified in this Section 5.11.3 ("Regulated Substances Management Plan"). A copy of the Regulated Substances Management Plan shall be submitted to SAWS for review and comment. The intent of the plan is to prevent accidental spills, site contamination, and injury or illness of all personnel on the site due to contact or exposure to Regulated Substances. SAWS shall notify the Design-Builder of any observed conditions that may be in violation of the plan. If the Design-Builder fails to address SAWS-reported concerns about observed conditions that may be in violation of the plan in a timely and appropriate manner, SAWS may notify all appropriate Governmental Bodies, and report the
observed conditions to them, and request that they inspect the sites involved that are under the Design-Builder’s control. All documents required by the Regulated Substances Management Plan shall be made available to SAWS immediately upon request.

5.11.4 Design-Builder Regulated Substances.

Any Regulated Substances generated by the Design-Builder shall be the responsibility of the Design-Builder. The Design-Builder shall obtain an EPA identification number for all Design-Builder Regulated Substances, listing the Design-Builder’s name and construction site address as the generator of the Design-Builder Regulated Substances. The Design-Builder shall be responsible for the identification, analysis, profiling, documentation, reporting, transport and disposal of Design-Builder Regulated Substances. Any fines that are levied against SAWS for violations of Applicable Law as determined by any Governmental Body relating to Design-Builder Regulated Substances shall be reimbursed immediately by the Design-Builder after payment by SAWS.

5.11.5 Emergency/Spill Response Plan.

The Design-Builder shall develop an Emergency/Spill Response Plan within the Regulated Substances Management Plan (“Emergency Response Plan”), for each Regulated Substance or class/group of Regulated Substances either known to be on the Project Sites or intended to be brought to the Project Sites by the Design-Builder. At a minimum, the Emergency Response Plan must include the following:

(a) A description of on-site equipment available to contain and respond to an emergency/spill of the Regulated Substance.

(b) Notification procedures, including notification to potentially impacted residents adjacent to the Project Sites.

(c) Response coordination procedures between the Design-Builder and SAWS.

(d) A Regulated Substance site map showing the location of stored Regulated Substances and location spill containment/response equipment.

(e) A description of the Regulated Substances handling and spill response training provided to the Design-Builder’s employees and Subcontractors.

5.11.6 Dust Control.

The Design-Builder shall be responsible for dust control during the performance of the Design-Build Work and shall comply with all applicable air pollution control regulations and the Environmental Mitigation Measures, if any exist. The Design-Builder shall furnish all necessary labor, materials and equipment for dust control.
APPENDIX 6

DESIGN-BUILD QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS
6.1. PURPOSE

The purpose of this Appendix is to describe the minimum requirements for the Design-Build Quality Management Plan ("QMP"), including quality assurance ("QA") and quality control ("QC") procedures that shall be implemented during the Design-Build Period.

(a) Quality assurance refers to the overall efforts to assuring project quality. Quality assurance shall include the planning and activities necessary to verify that the required QC activities have been satisfactorily conducted and that the quality requirements were met.

(b) Quality control shall include the monitoring, inspection, sampling and testing as applicable, and evaluation of the Design-Build Work through the project to verify that quality requirements as specified in the Contract Documents are met. Quality control also includes the identification of any defective work and documentation of completed corrective measures.

6.2. SAWS’ QUALITY OBJECTIVES

The QMP is a critical component of the design and Construction of the Project. It partly represents assurance to SAWS that the Design-Builder is executing the Design-Build Work in accordance with the Contract Documents. As a result, the QMP, including quality assurance and quality control ("QA/QC"), shall be consistent with and support the following quality objectives for the Project:

(a) Ensure that permitting, design, construction and testing are consistent with the Contract Standards;

(b) Ensure that Governmental Approval requirements are effectively incorporated into the Design-Build Work;

(c) Develop and implement procedures to ensure that problems are discovered early, resolved in a timely manner, and do not recur;

(d) Ensure that adequate QA/QC procedures and resources are provided by the Design-Builder to effectively assess and ensure high quality in all work products and services and compliance with the Acceptance Standards, warranty requirements, safety, security and environmental compliance requirements;

(e) Provide timely reporting and documentation of QA/QC inspections, technical reviews, testing, analysis and determinations of compliance with the Contract Standards;

(f) Provide follow up inspections, analysis and testing if conditions are found to be non-compliant with the Contract Standards and verify through special reports and direct communications with SAWS that all corrective actions have been effectively implemented and that the resultant product or service is of acceptable quality.
6.3. ROLES AND RESPONSIBILITIES

6.3.1 Design-Builder’s Role and Responsibilities for QA/QC.

The Project QA/QC functions as defined in this Appendix are the responsibility of the Design-Builder.

6.3.2 SAWS’ Role and Responsibilities for QA/QC.

SAWS ultimately retains its rights with respect to the Mechanical Completion and Acceptance of the Project. SAWS may perform design reviews, verification sampling and testing, independent assurance sampling and testing, review of the Design-Builder’s construction management scheduling, and other actions to verify payment of progress payments under the terms of this Design-Build Contract. However, by doing these actions, SAWS does not assume responsibility for any design or construction issue except as otherwise indicated in this Design-Build Contract.

6.4. DESIGN-BUILD QUALITY MANAGEMENT PLAN DEVELOPMENT AND IMPLEMENTATION

6.4.1 General Requirements.

The development and implementation of the QMP shall be the responsibility of the Design-Builder. The QMP shall integrate the permitting, design, construction, commissioning and testing phases of the Project during the Design-Build Period and shall include detailed QA and QC programs as attachments. Other QMP requirements are defined in Sections 6.5 and 6.6 of this Appendix.

6.4.2 Design-Build Quality Management Plan Requirements.

The QMP shall include a description of how the Design-Builder will provide the following:

(a) Adequate resources for effective plan implementation throughout all phases of the Design-Build Work;

(b) Information on QA/QC staff to be assigned to the Project and their qualifications for performing required QA/QC functions;

(c) Programs, procedures, methods, tests, analyses and communications procedures, reports, photographs and comments on Drawings and Specifications and other documents used by the Design-Builder to assess Design-Build Work quality and compliance with the Contract Standards;

(d) How the QA/QC program shall function independently of the Design-Builder’s production staff and be empowered to enforce plan objectives, define quality requirements, independently verify quality of Design-Build Work products and services, identify potential causes of unacceptable quality of work and provide safeguards to prevent unacceptable work quality, and require prompt corrective action for identified deficiencies;

(e) A communications plan for demonstrating that quality requirements have been established and communicated to all Subcontractors prior to their commencement of providing products or services on the Project. This shall include information on the roles, responsibilities and authorities of identified QA/QC staff;
The Design-Builder shall submit its Design-Build Quality Management Plan for design services to SAWS in draft form as part of Phase I Services Task 1 (Project Management) for review within 30 days following the Contract Date. SAWS will provide comments on the Design-Build Quality Management Plan, and the Design-Builder shall make required changes; and

The Design-Builder shall submit its Design-Build Quality Management Plan for Construction to SAWS in draft form as part of Phase I Services Task 4 (30% DCD), and in final form as part of Phase I Services Task 7 (GMP Submittal). If any Early Work Packages are initiated prior to the GMP Submittal, the QMP submittal shall be made by the Design-Builder prior to Construction of any Early Work Package. SAWS will provide comments on the draft and final Design-Build Quality Management Plans for Construction, and the Design-Builder shall make required changes.

6.4.3 Changes to the Design-Build Quality Management Plan.

Revisions and updates to the Design-Build Quality Management Plan may be proposed by the Design-Builder as the Design-Build Work progresses. Changes to the approved Design-Build Quality Management Plan require written approval of SAWS. Proposed revisions or updates shall be provided to SAWS at least 30 days prior to the start of the Design-Build Work to which the revision applies. SAWS will review and respond in a timely manner to Design-Build Quality Management Plan proposed changes. The Design-Builder shall not initiate any of the Design-Build Work that is impacted by such proposed revision or change until SAWS has reviewed and accepted the change.

6.5. DESIGN QUALITY CONTROL AND QUALITY ASSURANCE REQUIREMENTS

6.5.1 Design Quality Assurance Manager.

The Design-Builder shall designate a Design Quality Assurance Manager to determine whether the Baseline Design Documents and other Contract Standards are being met and that design QA/QC activities are following the approved QMP. The Design Quality Assurance Manager shall compile and maintain documentation of the review.

6.5.2 Design QA/QC Program.

The Design-Builder has primary responsibility for design quality to ensure design documents are professionally reviewed and checked to ensure a quality project. The QMP shall include the details of the Design-Builder's design QA/QC program and include a description of how the Design-Builder will provide the following:

(a) Design management functions and design review processes, which are the responsibility of the Design-Builder, will be described;

(b) Typical design QC tasks to be accomplished by the Design-Builder will be described and may include technical review of design deliverables, checking of calculations, checking of quantities, and the review of Specifications;

(c) Describe the process to approve and release design packages for Construction in alignment with the design QA/QC program;

(d) Demonstrate that SAWS retains oversight in the form of review and verification of the design's ability to meet the stated contract requirements. SAWS and its
designated consultants will participate in the design review process while not relieving the Design-Builder from its obligation to comply with the Contract Documents;

(e) Describe the application of the design QA/QC program through design review techniques to be used by the Design-Builder, such as over-the-shoulder design reviews to supplement formal reviews, formal milestone reviews, and submittal reviews during the Design-Build Period.

6.6. CONSTRUCTION QUALITY CONTROL REQUIREMENTS

6.6.1 Construction Quality Assurance Manager.

The Design-Builder shall designate a Construction Quality Assurance Manager to determine whether the Baseline Design Documents, the Design-Builder’s Drawings and Specifications, the Issued for Construction Drawings and Specifications, and other Contract Standards are being met and that Construction QA/QC activities are following the approved QMP.

6.6.2 Construction QA/QC Program.

The QMP shall include the details of the Design-Builder’s Construction QA/QC program, including the following:

(a) The Construction QA/QC program shall require inspection during Construction by inspectors who are not responsible, in whole or in part, for the scheduling or Construction of the Design-Build Work being inspected.

(b) Instructions for performing inspections must be clearly defined, including the work attributes to be inspected, acceptability criteria, frequency of inspections, and the requirements for documenting the inspection results.

(c) Inspection records must be kept current, have sufficient detail to enable the Engineer-of-Record to identify inspections which have been performed, and the results of these inspections. Inspections must be made throughout the period of construction, including the initial construction, in-process inspections, final inspections, and testing during Construction.

(d) Documentation requirements shall include contractor production reports, contractor quality control reports, field test reports, testing plan and log, inspection reports, rework items list and quality control meeting minutes.

(e) Procedures and controls shall be provided to ensure that inspections are being performed using the latest Issued for Construction Drawings and Specifications and approved shop drawings. Procedures shall ensure that an adequate number of inspection personnel are available as needed, and that all inspectors are qualified, trained, and proficient in performing inspections for the Design-Build Work to which they are assigned.

6.6.3 Non-Conforming Work.

The Construction QA/QC program shall establish and maintain a non-conformance system and procedures for uniform reporting, controlling, and disposition of nonconformance, including the following:
(a) The non-conformance system shall describe methods to be implemented, including a daily non-conformance report (NCR), to identify and track all unsatisfactory, deviating, and nonconforming work until the required repair, rework, or replacement is performed, and the work has been re-inspected and accepted. In addition, the non-conformance system shall detail the methods and measures to be used to develop corrective action procedures and prevent the recurrence of non-conforming work.

(b) The Construction QA/QC program shall detail the means and methods for identifying and correcting all Construction deficiencies such that Construction quality meets the Contract Standards and the Issued for Construction Drawings and Specifications.

(c) The Construction Quality Assurance Manager shall be informed of all unsatisfactory conditions within 24 hours of identification, and a copy of the condition report sent to the design engineer. The Design-Builder will correct any nonconforming conditions in accordance with Section 6.16 of this Design-Build Contract.

(d) The Design-Builder is encouraged to make corrections for non-conforming work as soon as practical rather than waiting until Mechanical Completion. SAWS may use the NCR as a basis for conducting its own final acceptance activities.

6.6.4 Materials and Equipment.

The Construction QA/QC program shall ensure the quality of all material and equipment. Procedures shall be used to verify that the procurement documents meet all Contract Standards, comply with the Baseline Design Documents and the Design-Builder’s Drawings and Specifications (including the Issued for Construction Drawings and Specifications), and shall include the following:

(a) Define how quality will be controlled during the manufacture and testing of all equipment which is being fabricated for the Project.

(b) Written documentation of inspection of all material and equipment to ensure that it meets all Contract Standards and complies with the Baseline Design Documents and the Design-Builder’s Drawings and Specifications (including the Issued for Construction Drawings and Specifications) such as material test reports, certifications, and equipment tests results must be delivered to SAWS and SAWS-designated representatives to demonstrate compliance with all Contract Standards, the Baseline Design Documents and the Design-Builder’s Drawings and Specifications (including the Issued for Construction Drawings and Specifications).

(c) Monitoring procedures to ensure that material and equipment is delivered to the Project Sites are undamaged, in the proper quantities and in accordance with the Specification requirements, and that all materials and equipment are stored and maintained on the Project Sites according to the Contract Standards, including the requirements of the designer and the manufacturer.

6.6.5 Construction Management and Testing.

The Design-Builder shall provide full-time construction management and full and comprehensive construction administration for the Design-Build Work. Construction inspectors, who shall be
provided with the latest Issued for Construction Drawings and Specifications, shall perform initial verification of procurement and Construction activities at the Project Sites, so that any conflicts will be identified at an early stage. The Construction QA/QC program shall clearly identify the circumstances under which the Design-Builder’s registered soils or geotechnical engineer and the Engineer-of-Record will be involved in Construction quality oversight. The Design-Builder shall perform all testing and inspections as required by the Contract Standards (including Section 6.15(D) of this Design-Build Contract), approved design documents, applicable codes, regulations, and standards (such as ACI and ASTM) which may be referenced in Appendix 4 Error! Reference source not found.. Section 1.2(Q) of this Design-Build Contract shall govern any conflicts or inconsistency in the stringency of test requirements.

6.6.6 Laboratories.

All Construction testing shall be performed by individuals who are qualified and experienced in providing these testing services. Equipment used to perform tests shall be calibrated according to requirements in the testing procedure. The Design-Builder shall hire a certified independent testing laboratory to perform all laboratory testing. The laboratory selected shall meet the qualification requirements specified in Section 16.15 of this Design-Build Contract or otherwise be subject to the approval of SAWS, which approval shall not be unreasonably withheld or delayed. Design-Builder requests for laboratory approval shall be made by the Design-Builder in a timely manner, in writing, to SAWS. Laboratory tests shall include the proposed concrete mix design, concrete aggregate tests, strength of concrete field test cylinders, gradation, and moisture density relationship of soils. The certified testing laboratories must also perform on-site tests that the Design-Builder is not experienced, qualified, or certified to perform or that require independent testing under the Contract Standards. On-site tests shall include tests for: concrete slump, concrete air entrainment, concrete temperature, casting of concrete test cylinder specimens, in-place testing of concrete strength, compaction density testing of soils, coating thickness measurements and structural bolting torque.

6.7. INSPECTION OF DESIGN-BUILD WORK

6.7.1 Inspection and Correction.

All Design-Build Work performed by the Design-Builder or its Subcontractors shall be inspected by the Design-Builder in accordance with Section 6.15 of this Design-Build Contract. All nonconforming Design-Build Work and any safety hazards in the work area shall be noted and promptly corrected in accordance with Section 6.16 of this Design-Build Contract. The Design-Builder is responsible for the performance of the Design-Build Work safely and in conformance with 5.7 of Appendix 5 and Section 6.14 of this Design-Build Contract.

6.7.2 SAWS Access.

SAWS, its employees, agents, representatives and contractors shall be permitted access to all parts of the Design-Build Work, including plants where materials or equipment are manufactured or fabricated, in order to perform testing and inspection in accordance with Section 6.15 of this Design-Build Contract. The presence of SAWS, its employees, agents, representatives and contractors shall not relieve the Design-Builder of the responsibility for the proper execution of the Design-Build Work in accordance with all requirements of the Contract Documents. No act or omission on the part of SAWS, its employees, agents, representative and contractors (other than SAWS Fault) shall be construed as relieving the Design-Builder of this responsibility.
6.7.3 Materials Inspection.

All materials and articles furnished by the Design-Builder shall be subject to documented inspection, by qualified personnel, and no materials or articles shall be used in the Design-Build Work until they have been inspected and accepted by the Construction QA/QC Manager or other designated representative. Any Design-Build Work covered in the absence of inspection shall be subject to uncovering as set forth in Section 6.15 of this Design-Build Contract.

6.8. TIME OF INSPECTION AND TESTS

Whenever the Design-Builder is ready to backfill, bury, cast in concrete or otherwise cover any Design-Build Work, SAWS shall be notified before such covering and completion, and SAWS shall notify the Design-Builder of a requested inspection of any such Design-Build Work as set forth in Section 6.15(G) of this Design-Build Contract. Failure of the Design-Builder to properly notify SAWS, as required by Section 6.15(G) of this Design-Build Contract, in advance of any such covering or completion shall be reasonable cause for SAWS to request the Design-Builder take apart or uncover for inspection or testing any previously covered or completed Design-Build Work in accordance with Section 6.15(G) of this Design-Build Contract. The costs of any uncovering, taking apart, remedial or corrective work required and all costs of such delays, including the impact on other portions of the Design-Build Work, shall be borne as set forth in Section 6.15(G) of this Design-Build Contract.

6.9. MATERIALS SAMPLING AND TESTING


All sampling and testing of materials shall be conducted in accordance with the methods prescribed in the current standards of the ASTM or otherwise required by the Contract Standards, as applicable to the class and nature of the article or materials considered. SAWS reserves the right to require the Design-Builder to use any generally accepted system of inspection that, in the opinion of SAWS, will ensure SAWS that the quality of the materials workmanship is in full accord with the Contract Documents. Results of such tests and analyses shall be considered along with the tests or analyses made by the Design-Builder to determine compliance with the applicable Specifications for the materials so tested or analyzed. Wherever any material, as a result of such independent testing or investigation by SAWS, fails to meet the requirements of the Contract Documents, all costs of such independent inspection and investigation and all costs of removal, correction, reconstruction, or repair of any such material shall be borne by the Design-Builder in accordance with Sections 6.15(G) and 6.16 of this Design-Build Contract.

6.9.2 Materials Rejection.

SAWS shall have the right at all times and places to reject any articles or materials to be furnished hereunder which, in any respect, fail to meet the requirements of the Contract Documents, regardless of whether the defects in such articles or materials are detected at the point of manufacture or after completion of the Design-Build Work at the Project Sites. If SAWS, through an oversight or otherwise, has accepted materials or work which are defective or in any way contrary to the Contract Documents, such materials, no matter in what stage or condition of manufacture, delivery, or erection, may be rejected. The Design-Builder, at its cost and expense and without any adjustment to the Scheduled Mechanical Completion Date and the Scheduled Acceptance Date, shall promptly remove and replace rejected articles or materials from the Project Sites after notification of rejection.
6.10. MATERIALS TESTING SERVICES

6.10.1 Design-Builder’s Laboratories.

The Design-Builder shall perform all tests requiring the services of a laboratory, to determine compliance with the Contract Documents, in accordance with Section 6.15(D) of this Design-Build Contract. The materials testing firm's laboratory shall be staffed with experienced technicians, properly equipped, and fully qualified to perform the tests in accordance with the specified standards. The Design-Builder shall pay all costs for these testing services.

6.10.2 Interruptions For Testing and Sampling.

The Design-Builder shall furnish all sample materials and cooperate in the testing activities, including sampling, and shall interrupt the Design-Build Work when necessary to allow testing, including sampling, to be performed. Except to the extent specifically provided in Section 16.15(F) of this Design-Build Contract, the Design-Builder shall have no claim for an increase in the Design-Build Price or extension of the Scheduled Mechanical Completion Date and Scheduled Acceptance Date due to such interruption. When testing activities, including sampling, are performed in the field by the testing firm’s laboratory personnel, the Design-Builder shall furnish personnel and facilities to assist in the activities.

6.10.3 Test Reports.

Written reports of tests and engineering data regarding materials and equipment proposed to be used in the Design-Build Work shall be submitted by the Design-Builder for SAWS' review. The testing firm’s laboratory shall perform all laboratory tests within a reasonable time, consistent with the specified standards, and shall furnish a written report of each test. Upon request by the Design-Builder, SAWS shall furnish one copy of each field and laboratory QA/QC test conducted by SAWS to the Design-Builder. The testing firm retained by the Design-Builder for material testing shall furnish a written report for each test. A copy of each test report shall be transmitted directly to SAWS and the Design-Builder electronically, within five days after each test is completed. The Design-Builder shall consecutively number each report for each type of test.

6.10.4 SAWS' Laboratories.

SAWS shall have the right to inspect work performed by an independent testing laboratory utilized by the Design-Builder, both at the Project Sites and at the laboratory. This may include inspection of the independent testing laboratory's internal quality assurance records (quality assurance manual, equipment calibrations, proficiency sample performance, etc.). Testing services provided by SAWS, if any, are for the sole benefit of SAWS; however, test results shall be available to the Design-Builder upon its request. Testing necessary to satisfy the Design-Builder's internal QA/QC procedures shall be the sole responsibility of the Design-Builder.

6.10.5 Materials to be Tested.

The Design-Builder shall provide all testing services in connection with the following materials as required under Good Engineering and Construction Practice, and deliver the test reports for review by SAWS:

(1) Concrete materials and mix designs.

(2) Masonry units, masonry grout, mortar materials, and design mixtures.
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(3) Asphaltic concrete materials and design mixtures.
(4) Embankment, fill, and backfill materials.
(5) QC testing of all precast concrete.
(6) Holiday testing of pipeline coatings.
(7) Air testing of field-welded joints for steel pipe and fabricated specials.
(8) Concrete strength tests.
(9) Test of masonry prisms.
(10) Field control test of masonry.
(11) Asphaltic concrete.
(12) Magnetic particle or dye penetrant testing of field welds for steel pipe and fabricated specials.
(13) Moisture-density and relative-density tests on embankment, fill, and backfill materials.
(14) In-place field density test on embankments, fills, and backfill.
(15) Other materials and equipment as specified herein.
(16) All other tests and engineering data required for SAWS’ review of materials and equipment proposed to be used in the Design-Build Work.

6.11. INSTALLATION

6.11.1 Inspection and Measurement.

The Design-Build shall inspect materials or equipment upon the arrival at the jobsite and immediately prior to installation, and remove damaged and defective items from the jobsite. SAWS shall be provided the opportunity to observe any such Design-Build inspections in accordance with Section 6.15 of this Design-Build Contract. The Design-Build shall verify measurements and dimensions of the work as an integral step of starting each installation.

6.11.2 Manufacturer’s Instructions.

Where installations include manufactured products, the Design-Build shall comply with manufacturer’s applicable instructions and recommendations for installation, to whatever extent these are more explicit or more stringent than the Contract Standards, so as not to violate manufacturers’ warranty conditions.

6.12. PERSONNEL QUALIFICATIONS

The QMP shall include a QA/QC organization chart with named individuals performing QA/QC including their experience and qualifications. The QMP shall describe staffing levels required for QA/QC and qualifications and experiences requirements for persons performing QA/QC functions, including the following:
Description of minimum qualifications and experiences that demonstrate quality management personnel have related experience and certifications. Typically, this indicates professional engineers and professional certified quality personnel who have a certain level of similar project experience, which may include:

(i) QA/QC Management/Supervisors should possess experience managing professional personnel in similar circumstances or on similar projects; demonstrate excellent communication skills; possess a working knowledge of QA/QC and quality management; possess certification as quality professionals by appropriate certifying bodies or have completed training courses in the quality discipline.

(ii) The Design Quality Assurance Manager must be a registered professional engineer in the State; may work directly for the Design-Builder or may be contracted from an independent firm or organization; must have at least five years’ experience in projects similar in scale or scope to the Project.

(iii) The Construction Quality Assurance Manager may work directly for the Design-Builder or may be contracted from an independent firm or organization; must have at least five years of recent experience (within the past ten years) overseeing the inspection and materials testing of projects similar in scale or scope to the Project.

(iv) QA and QC reviewers, inspectors, and testing technicians for design and Construction must be qualified for the duties they must perform; must possess the appropriate education or experience commensurate with the job responsibilities; and must possess the necessary certifications required for assignments.

(b) Persons performing QC and/or QA functions shall be at an organizational level that reports directly to upper level management of the Design-Builder to assure independence from the influences of the Project production staff.

(c) All key personnel performing QC and/or QA functions shall be designated as such and shall not be assigned to perform any conflicting duties.
APPENDIX 7

DESIGN-BUILD WORK REVIEW PROCEDURES
APPENDIX 7

DESIGN-BUILD WORK REVIEW PROCEDURES

7.1. OVERVIEW

7.1.1 Purpose.

The purpose of this Appendix is to set forth the procedures for SAWS’ review of each aspect of the Design-Build Work to verify that the Project has been designed and constructed in accordance with the Contract Documents.

7.2. DOCUMENTS TO BE SUBMITTED

At a minimum, the documents to be submitted during the Design-Build Period shall include the following:

(a) Monthly Phase II Services Schedule updates.
(b) Intermediate submittals for review sessions and workshops on various materials, facilities, systems, equipment, and disciplines.
(c) 90% Design Submittal.
(d) Drawings and Specifications.
(e) Issued for Construction Drawings and Specifications.
(f) Commissioning and Acceptance Test Plan.
(g) Acceptance Test report.
(h) Operations and Maintenance Manual.
(i) Applications and supporting documents required for Governmental Approvals.
(j) Record Drawings and Specifications.
(k) TWDB submittals, as described in Appendix 13.

Such documents shall be submitted in accordance with the Document Submittal Protocol.

7.2.1 Design-Construction Work Package Information.

The Design-Builder shall have flexibility with how it organizes and performs design-Construction work packages so that it can proceed with ordering any necessary equipment or commence with any necessary Construction activities such as civil-site work prior to the 100% design; provided, however, such Construction or ordering of equipment prior to the 100% design shall not negatively affect the remaining Design-Build Work, the Design-Build Price or the Phase II Services Schedule. The Design-Builder shall provide the following information in the appropriate design-construction work package in accordance with the Document Submittal Protocol:
(a) Specifications, Design Narratives and Lists:

(1) Project design criteria.
(2) Specifications list.
(3) Process systems piping line list.
(4) Process system valve list.
(5) Electrical loads list.
(6) Major equipment list (process, mechanical, electrical, instrumentation and control, support systems, other).
(7) Proprietary technology/equipment list.
(8) Specifications for major equipment.
(9) Narrative description of the following systems: controls, remote monitoring and operating capability, voice and data communications and security.
(10) Specifications (general requirements, civil, structural, architectural, equipment, specialties, mechanical, and electrical and instrumentation and controls sections).

(b) Drawings prepared and accepted for the 60% submittal shall continue to be progressed to 100% completion and shall be submitted, in both electronic and standard design formats:

(1) Cover sheet.
(2) Drawing index.
(4) Layout of the Project Sites.
(5) Major outside piping layout.
(6) Layout of operations building.
(7) Project Sites master planning layouts.
(8) Landscape inventory plan.
(9) Landscape and irrigation plans.
(10) Project Sites grading and utility plans, with sections as needed for Construction clarity or dimensioning.
(11) Surface drainage system and features plans and details.
(12) Fire protection and security system plans.
(13) Project Sites sections and details.

(14) Process and support facilities general arrangement plans, with sections as needed for Construction clarity or dimensioning.

(15) Piping system plans, sections and details.

(16) Major building structure foundation plans and sections.

(17) Major building and structure floor plans.

(18) Major building and structure exterior elevations and sections.

(19) Typical sections through all major wall, roof and floor sections of major buildings and structures.

(20) Architectural door, window, finish and hardware schedules and details.

(21) Architectural elevations.

(22) Non-process mechanical systems plans, details and schedules.

(23) Electrical site plan.

(24) Electrical one line Drawings.

(25) Duct bank plans and schedules.


(27) SCADA System network Drawings.

(28) Instrumentation and control system Drawings, including loop Drawings illustrating the functional elements in the path of the sensor to each control system input/output (ISA S5.4).

(29) Pipeline plan and profile sheets.

(30) Pipeline and tunnel details.

7.3. SAWS REVIEW DURING GOVERNMENTAL APPROVAL PROCESS

The Design-Builder’s responsibilities for obtaining and maintaining the Governmental Approvals required for Construction of the Project are described in Section 6.5 of this Design-Build Contract and Appendix 3. SAWS shall have the right to review and comment on Design-Builder Governmental Approval submittals as provided by Section 6.5 of this Design-Build Contract and this Appendix. Governmental Approval applications shall not include design Specifications or Drawings that SAWS has not previously reviewed. For all Governmental Approval applications, the Design-Builder shall provide draft copies of the applications and supporting documents for SAWS review and comment. SAWS’ review will not diminish the Design-Builder’s responsibility for timely submittals of complete applications for Governmental Approvals. SAWS may attend Design-Builder meetings with permitting agencies and help arrange for agency reviews and meetings.
7.4. **SAWS DOCUMENT REVIEW**

7.4.1 **SAWS Review Responsibilities.**

On or before the Construction Commencement Date, the Design-Builder shall submit to SAWS a document submittal protocol ("Document Submittal Protocol") that shall identify document submittal procedures for the key document submittal packages to be prepared by the Design-Builder and the expected submittal dates to SAWS which shall be based on and consistent with the Phase II Services Schedule. In accordance with the Document Submittal Protocol, SAWS shall review the Design-Builder’s Drawings and Specifications for compliance and consistency with the Baseline Design Documents, design-construction work package documents for compliance and consistency with the Issued for Construction Drawings and Specifications and both for overall compliance with the requirements of the Contract Documents. SAWS' input during finalization of the design documents and preparation and finalization of design-construction work packages shall be solicited by the Design-Builder on a timely basis so as to provide adequate periods for review by SAWS, revisions by the Design-Builder and final review by SAWS without negatively impacting the Phase II Services Schedule. SAWS shall make reasonable efforts to bring staff or representatives with review and decision-making authority to the work sessions as requested and scheduled by the Design-Builder. The Design-Builder shall provide SAWS with advance notice of the work sessions and agenda topics to facilitate SAWS’ scheduling of the appropriate participants for the work sessions. The Design-Builder shall provide SAWS with Drawings and Specifications before commencing any Construction activity. Construction activities shall not vary from the Issued for Construction Drawings and Specifications accepted by SAWS except where such variations are allowed, subject to SAWS’ and applicable Governmental Body’s review and approval. Adherence to the Issued for Construction Drawings and Specifications as well as to the Baseline Design Documents during work completion shall be a factor used by SAWS in its review and approval of the Design-Builder’s Payment Requests during Construction.

7.4.2 **Changes to Baseline Design Documents.**

Any change requested by the Design-Builder to the Baseline Design Documents (regardless of prior oral discussion) must be clearly identified by the Design-Builder in its cover letter that transmits the submittal and must be fully documented with compelling justification of the Design-Builder’s request for a change to the Baseline Design Documents and the benefits to SAWS for consenting to such a change. Any such change shall comply with the requirements set forth in Article 6 of this Design-Build Contract, as applicable. No change requested by the Design-Builder to the Baseline Design Documents shall be made except with SAWS’ approval pursuant to Sections 6.7 of this Design-Build Contract. The Design-Builder shall assume all risks associated with obtaining SAWS approval of any change requested by the Design-Builder to the Baseline Design Documents.

7.4.3 **Time for SAWS Review.**

The Design-Builder and SAWS shall periodically review the Document Submittal Protocol, which defines key submittals and the target submittal dates, and develop a submittal review schedule for each submittal based on the content and criticality of each submittal. SAWS shall complete its review of each submittal in a timely manner based on such target submittal dates in order to determine that the Design-Build Work conforms to the Baseline Design Documents, the Issued for Construction and other Contract Standards. Nothing in this Section 7.4 shall prevent SAWS from conducting a subsequent review raising a question as to whether the submittal was in compliance with the Contract Standards.
The review and comment rights of SAWS under this Appendix are intended for the informational purposes of SAWS and for SAWS to determine whether the Phase II Design Documents comply with the Baseline Design Documents and other Contract Standards. SAWS’ approval of any Design-Document shall not be required in order for the Design-Builder to proceed with the performance of the Design-Build Work.

7.4.4 Time for Design-Builder Response.

For each submittal, SAWS shall provide written comments in a tabular summation describing any concerns, problems, or assertions of non-compliance with the applicable Contract Standards. The tabular summation shall be on a form created mutually by the Design-Builder and SAWS, with provisions on the form for the Design-Builder's responses. The Design-Builder shall provide a written response to SAWS’ comments within 15 Business Days of receipt of SAWS’ comments, primarily through use of the tabular summary form, including documentation of responses and agreed-upon action items.

7.4.5 Design-Build Progress Meetings.

For the purpose of facilitating a timely review process, the Design-Builder shall schedule design-build progress meetings with SAWS on a routine basis and at least bi-weekly (unless both parties agree that more frequent meetings are required) throughout the design finalization and design-construction work package development period. Any outstanding review comments not satisfactorily resolved shall be transferred to an issues tracking form by the Design-Builder for subsequent follow-up. The primary purpose of these meetings shall be to discuss overall Design-Builder work progress, the conformance of the design and design-construction work packages to the Baseline Design Documents, and to address outstanding issues arising from the review and response process. The status and issues of related permitting and early Construction activities may also be included as agenda items for each design-build progress meeting. These meetings shall be held in SAWS’ offices, or another location agreed to by SAWS. Design-Builder representatives with responsibility for design and Construction shall participate in the meeting. SAWS will use reasonable efforts to have individuals with knowledge and authority for decision making attend the meeting.

7.4.6 Design Submittals During Construction.

It is anticipated that there could be some redesign or design clarifications needed during Construction. Additional design work by the Design-Builder shall be subject to SAWS’ review for compliance and consistency with applicable Baseline Design Documents and Contract Standards. Design changes to a particular Phase II Design Document performed following the issuance of the Phase II Design Document for Construction shall be issued under a Design Change Notice (DCN) process that accurately tracks and documents changes to the design. No later than 30 days prior to initiation of Construction, the Design-Builder shall submit to SAWS additions to the Document Submittal Protocol to include the DCN. SAWS shall be provided with copies of all DCNs in a timely manner to allow review, comment, and, where appropriate, approval in the same manner as set forth with respect to the initial design. Design clarifications shall be issued in a timely manner using a similar procedure. 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.

7.4.7 Design Change Authority.

The Design-Builder shall be responsible for providing design changes to the Phase II Design Documents necessary to complete the Project in accordance with the Contract Documents. All such changes shall be implemented in accordance with the DCN process described above, and
in accordance with this Appendix. No DCN shall operate to change the Baseline Design Documents unless approved by SAWS in writing. Any DCN which requests a change to the Baseline Design Documents shall be subject to SAWS’ rights under Section 7.4.2 of this Appendix.

7.5. **SAWS CONSTRUCTION INSPECTION**

7.5.1 **Construction Review Intent.**

SAWS and its designated representatives, including the Owner Representative, shall have the right, as provided in this Appendix, to review and inspect Construction activities and participate in Construction progress meetings as needed to verify compliance with the Contract Standards. In addition, SAWS shall have the right to monitor the progress of Construction work and verify all applications for payment covering all Construction work performed during the preceding calendar month in accordance with the procedures set forth in Article 9 and Appendix 8 of this Design-Build Contract. Notwithstanding SAWS’ review of Construction activities, the Design-Builder shall be fully responsible for means, methods, techniques, sequences, and procedures of Construction, as well as safety precautions and programs in the performance of the Design-Build Work. SAWS’ review and involvement in Construction activities is intended for the informational purposes of SAWS and to monitor compliance with the Contract Documents. Such activities shall also be a part of SAWS’ independent quality assurance process and shall not be viewed as an additional layer or integral part of the Design-Build Quality Management Plan.

7.5.2 **“Or Equals”**.

Whenever an item of material or equipment is specified in the Baseline Design Documents by using the name of a proprietary item or the name of a particular supplier, and is followed by the words “or equal”, material or equipment of other suppliers may be considered. SAWS shall determine, acting reasonably, the acceptability of proposed “or equal” items associated with the Design-Build Work. The Design-Builder shall allocate adequate time in the Document Submittal Protocol for SAWS to review and approve all “or equal” items for the Design-Build Work. Any delays resulting from submittal of “or equal” items later than as set forth in the Document Submittal Protocol shall be the responsibility of the Design-Builder. The Design-Builder’s design personnel shall be permitted to review proposed “or equal” suppliers for the balance of the Design-Build Work.

7.5.3 **Named Suppliers.**

Whenever an item of material or equipment is specified in the Baseline Design Documents by using the name of a proprietary item or the name of a particular supplier, and is not followed by the words “or equal”, the Design-Builder shall provide the named material or equipment.

7.5.4 **Functionally Equal.**

If, in SAWS’ reasonable discretion, an item of material or equipment proposed by the Design-Builder for the Design-Build Work is functionally equal to that named, it may be considered by SAWS as an “or equal” item. A proposed item of material or equipment shall be considered functionally equal to an item so named if:

(a) SAWS determines that:

(1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and
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Design-Build Work Review Procedures

7.5.5 Corrections and Changes.

The procedures to be followed for correction of non-conforming Design-Build Work and for instituting changes and additions to such work are set forth in Article 6 of this Design-Build Contract.

7.6. RECORD DRAWINGS

At the completion of Construction, the Design-Builder shall prepare and submit to SAWS two complete sets of record Drawings for the Project as built. The record Drawings shall be submitted in accordance with the Document Submittal Protocol. The record Drawings shall be prepared in accordance with the Contract Standards and shall include all electrical and control wiring schematics/diagrams. The Design-Builder shall obtain SAWS’ approval of the record Drawings as a condition of Final Completion. SAWS’ approval of the record Drawings shall not be unreasonably withheld.
APPENDIX 8

DESIGN-BUILD PRICE
APPENDIX 8

DESIGN-BUILD PRICE

8.1. PURPOSE

The purpose of this Appendix is to set forth the procedures and requirements for determining (1) the Design-Build Price, and (2) the Guaranteed Maximum Price.

8.2. DESIGN-BUILD PRICE

8.2.1 Payment.

SAWS shall pay the Design-Builder the Design-Build Price for its performance of the Design-Build Work, subject to the Guaranteed Maximum Price established in accordance with Section 8.7 of this Appendix.

8.2.2 Design-Build Price Defined.

The Design-Build Price shall be an amount equal to the sum of:

(a) The Design-Build Costs;
(b) The General Conditions Fee; and
(c) The Design-Builder Fee,

all subject to the following:

(a) The Design-Build Price shall not include Unallowable Costs, all of which shall be borne by the Design-Builder without payment or reimbursement by SAWS;
(b) The only compensation payable for General Conditions Costs is the General Conditions Fee; and
(c) The Design-Build Price shall not exceed the Guaranteed Maximum Price.

8.2.3 Related Definitions.

As used in this Design-Build Contract, the following terms shall have the meanings set forth below:

(a) “Design-Builder Contingency” has the meaning specified in Attachment 8C of this Appendix.
(b) “Design-Builder Fee” has the meaning specified in Section 8.6 of this Appendix.
(c) “Design-Build Costs” has the meaning specified in Section 8.3 of this Appendix.
(d) “Design-Build Price” has the meaning specified in Section 8.2.2 of this Appendix.
(e) “General Conditions Costs” has the meaning specified in Attachment 8A of this Appendix.
(f) “General Conditions Fee” has the meaning specified in Section 8.5 of this Appendix.

(g) “Guaranteed Maximum Price” has the meaning specified in Section 8.7 of this Appendix.

(h) “Unallowable Costs” has the meaning specified in Section 8.4 of this Appendix.

(i) “Uncontrollable Circumstance Costs” means, subject to Article 14, Section 17.8, and all other terms and conditions of this Design-Build Contract, any Design-Build Costs paid by the Design-Builder to the extent that such Design-Build Cost has been paid due to the occurrence of an Uncontrollable Circumstance.

8.2.4 Certification and Cost Substantiation.

Each Payment Request shall:

(a) Comply with and be submitted in accordance with the procedures and requirements of Article 9 of this Design-Build Contract.

(b) Be presented by element of the Design-Build Price;

(c) If Uncontrollable Circumstance Costs are being invoiced, present such Uncontrollable Circumstance Costs separately from other Design-Build Costs.

(d) If costs resulting from Subcontractor or Supplier delay or non-performance are being invoiced, present such costs separately from other Design-Build Costs.

(e) For Design-Build Costs payable on a reimbursable bases, provide Cost Substantiation for the Design-Build Cost for which reimbursement is sought, including copies of all documentation reasonably necessary to demonstrate that the reimbursable Design-Build Cost has been paid or incurred.

(f) For Design-Build Costs payable on a lump sum basis, provide copies of all documentation reasonably necessary to demonstrate the value of the Design-Build Work in place.

All such documentation shall be in a format and a level of detail reasonably acceptable to SAWS.

8.2.5 Relation to General Conditions Costs

Section 8.5 of this Appendix obligates SAWS to pay a fixed General Conditions Fee to the Design-Builder. The General Conditions Fee is intended to compensate the Design-Builder for General Conditions Costs, and is payable whether the Design-Builder’s actual General Conditions Costs are higher or lower than the amount of the General Conditions Fee. Accordingly, Design-Build Costs shall not include any costs constituting General Conditions Costs.

8.2.6 Discounts, Rebates and Refunds.

All cash discounts, trade discounts, rebates, refunds and returns from the sale of surplus materials and equipment shall be reported and accrue to the benefit of SAWS and serve to offset the Design-Build Costs.
8.3. **DESIGN-BUILD COSTS**

“Design-Build Costs” means the reasonable and necessary costs paid or incurred by the Design-Builder in the proper performance of the Design-Build Work (including Commissioning and Acceptance Testing and costs resulting from the occurrence of the risks assumed by the Design-Builder under this Design-Build Contract) that (1) are described in and meet the requirements of this Section 8.3 of this Appendix, and (2) are not Unallowable Costs.

As used in this Section 8.3, “reasonable and necessary costs paid or incurred by the Design-Builder in the proper performance of the Design-Build Work” includes (1) costs of Design-Build Work necessitated by ordinary mistakes or inadvertence; (2) costs incurred in repairing or correcting defective, damaged or non-conforming Design-Build Work; (3) additional costs incurred due to Subcontractor delay or non-performance; (4) costs incurred in performing corrective action needed to address a failure of the Acceptance Test to demonstrate compliance with the Acceptance Standards; and (5) Uncontrollable Circumstances Costs, in all cases except to the extent any such costs constitute Unallowable Costs.

8.3.1 **Third-Party Professional Services Fees.**

(a) Professional fees and expenses payable by the Design-Builder to design engineers for design engineering services under third party design Subcontracts.

(b) Fees and expenses payable by the Design-Builder for professional services under third-party professional services Subcontracts for other professional services, including accounting, planning, surveying, consulting and other professional services.

8.3.2 **Construction Subcontractor and Major Equipment Supplier Costs.**

(a) An amount equal to the amounts properly payable by the Design-Builder to Subcontractors for Design-Build Work performed under Construction Subcontracts and Subcontracts for major equipment entered into in accordance with the procedures and requirements set forth in Section 7.4 of this Design-Build Contract. No Subcontract shall provide for payment of Unallowable Costs.

8.3.3 **Design-Builder’s Own Labor Costs.**

Except to the extent that any of the following costs are supervisory and administrative personnel costs, and, as such, constitute General Conditions Costs payable as part of the General Conditions Fee:

(a) Wages or salaries of direct employees of the Design-Builder performing the Design-Build Work at the Project Sites or, with the written consent of SAWS, at locations off of the Project Sites. The costs for such on-site employees of the Design-Builder performing professional services shall be calculated on the basis of those rates set forth in Attachment 8B (Supervisory and Administrative Personnel Cost Schedule) to this Appendix or, if applicable, on the basis of prevailing market rates for professionals performing similar services.

(b) Costs reasonably paid or incurred by the Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions paid by the Design-Builder, excluding bonuses,
to the extent such costs are based on wages and salaries paid to employees of the
Design-Builder included in the Design-Build Costs under item (a) of this Section
8.3.3.

(c) The reasonable cost of travel, accommodations and meals for the Design-Builder’s
personnel incurred outside of SAWS metropolitan area, necessarily and directly
incurred in connection with the performance of the Design-Build Work, as
approved by SAWS and consistent with SAWS’ policies for payment of such costs.

8.3.4 Costs of Materials, Equipment and Supplies.

Except to the extent any of the following constitute General Conditions Costs or costs paid or
incurred under Subcontracts with Suppliers for Major Equipment:

(a) Costs, including transportation, inspection, testing, storage and handling, of
materials, equipment, systems, and supplies incorporated, to be incorporated or
reasonably used in completing the Design-Build Work.

(b) Costs of materials, equipment and supplies, described in item (c) of this Section
8.3.4, in excess of those actually installed to allow for reasonable waste and
spoilage. Unused excess materials, equipment and supplies, if any, shall become
SAWS’ property at the completion of the Design-Build Work or, at SAWS’ option,
shall be sold by the Design-Builder. Any amounts realized from such sales shall
be credited to SAWS as a deduction from the Design-Build Price.

(c) Costs, including transportation and storage, installation, maintenance,
dismantling and removal of materials, supplies, temporary facilities, machinery,
equipment and hand tools not customarily owned by the construction workers,
that are provided by the Design-Builder at the Project Sites and fully consumed
in the performance of the Design-Build Work; and costs (less salvage value) of
such items if not fully consumed, whether sold to others or retained by the Design-
Builder. The basis for the cost of items previously used by the Design-Builder
shall be fair market value.

(d) Rental charges and the costs of transportation, installation, minor repairs and
replacements, dismantling and removal of temporary facilities, machinery,
equipment and hand tools not customarily owned by the construction workers,
which are provided by the Design-Builder at the Project Sites, whether rented from
the Design-Builder or others, and incurred in the performance of the Design-Build
Work. Rates and quantities of equipment rented shall be subject to SAWS’ prior
written approval.

(e) Costs of materials and equipment suitably stored off the Project Sites at a
mutually acceptable location, if approved in advance in writing by SAWS.

(f) Any sales commissions related to the foregoing.

8.3.5 Other Costs.

Except to the extent any of the following constitute General Conditions Costs:

(a) Costs of conducting Commissioning and the Acceptance Test.

(b) Premiums for any Subcontractor Default Insurance.
(c) Net premiums for Project-specific Required Insurance, the Security Bond, the Payment Bond, the Performance Bond and the Warranty Bond, all to the extent directly attributable to this Design-Build Contract.

(d) Increases in Required Insurance premiums resulting from SAWS request to modification of lines of insurance coverage pursuant to Section 10.3.14 of Appendix 10.

(e) Costs of handing, removal and disposal of Hazardous Material and remediating Regulated Site Conditions (except as provided in Section 6.4(A) of this Design-Build Contract).

(f) Fuel and utility costs paid or incurred in the performance of the Design-Build Work.

(g) Sales, use or similar taxes, tariffs or duties imposed by a Governmental Body and incurred by the Design-Builder in the performance of the Design-Build Work for which the Design-Builder is not able to obtain an exemption under Applicable Law.

(h) Costs for obtaining and maintaining Governmental Approvals.

(i) Fees of laboratories for tests required by this Design-Build Contract.

(j) Royalties and license fees paid for the use of a particular design, process or product required by this Design-Build Contract.

8.3.6 SAWS Travel Policy Cost Limits.

Posted SAWS travel expense guidelines, as in effect from time to time, shall prevail over actual travel expenses incurred by the Design-Builder in any reimbursement of Design-Build Costs relating to travel.

8.3.7 Compensation for On-Going Design Costs During the Negotiation of the GMP Amendment.

Section 5.9(B) of this Design-Build Contract anticipates that, following the GMP Submittal, the parties will negotiate the GMP Amendment. The Phase II Services Schedule anticipates a negotiating period of approximately two weeks. The Design-Builder may, but is not obligated to, continue the development of the Project design during the negotiating period in order to preserve the continuity of the design effort by the design engineers. Any costs and expenses by the Design-Builder during the negotiating period in furtherance of the Project, including the cost and expense of the design team, shall be incurred at the sole risk of the Design-Builder and shall not subject to payment or reimbursement by SAWS unless SAWS specifically agrees to the payment of such costs and expenses in connection with the negotiation and execution of a GMP Amendment, in which case such costs and expenses shall constitute Design-Build Costs hereunder. Any such costs shall be payable in the same manner as Design-Build Costs are payable following the GMP Amendment Date or in any other manner agreed to by the parties in executing the GMP Amendment.
8.4. UNALLOWABLE COSTS

8.4.1 No Payment Obligation.

Notwithstanding any other provision of the Contract Documents, SAWS shall have no obligation to pay the Design-Build any Unallowable Costs.

8.4.2 Unallowable Costs Defined.

“Unallowable Costs” means:

(a) Premiums for Required Insurance that does not provide Project-specific coverage.

(b) In the event of damage to or destruction of any portion of the Project that is caused by Design-Build Fault, cost of repair or reconstruction not covered by the Required Insurance policies on account of deductibles or exceedances under the policy’s stated coverage limitations.

(c) Costs for wages, salaries and professional services fees, to the extent they exceed wage and salary rates or fees customarily paid for similar services by comparably qualified workers and professionals in SAWS.

(d) Any costs incurred in handling disputes or litigation with Subcontractors or any other third party.

(e) Salaries and other compensation for the Design-Build’s personnel stationed at the Design-Build’s principal office or branch offices other than the Project Sites, except as provided in Section 8.3.3 of this Appendix.

(f) Expenses of the Design-Build’s principal office or branch offices other than the Project Sites, except as provided in Section 8.3.3 of this Appendix.

(g) Overhead, office and general expenses at any location, except as provided for in Section 8.3.3 of this Appendix.

(h) The cost of the capital (including interest on capital) used in the performance of the Design-Build Work or otherwise.

(i) Rental costs of machinery and equipment, except as specifically provided in Section 8.3.4(d) of this Appendix.

(j) Costs incurred as a result of the negligence or willful misconduct of the Design-Build, any Affiliate, any Subcontractor or any other party performing any aspect of the Design-Build Work.

(k) Fines, penalties, sanctions or impositions assessed or imposed by any Governmental Body as a result of Design-Build Fault, including violations of or non-compliance with any Governmental Approval.

(l) Any cost relating to the Design-Build’s indemnification obligations hereunder.

(m) Travel and subsistence expenses, except as specifically provided in Section 8.3.3.

(n) Legal costs incurred for any reason.
(o) The fees of independent experts hired to assist in connection with dispute resolution.

(p) Amounts required to be paid the Design-Builder or any Subcontractor for federal or State income, franchise or other business Taxes.

(q) Any cost relating to Warranty Work.

(r) Any costs that would cause the Guaranteed Maximum Price to be exceeded.

8.5. GENERAL CONDITIONS FEE

The “General Conditions Fee” shall be specified in the GMP Amendment. The General Conditions Fee specified in Attachment 8A of this Appendix was proposed by the Design-Builder in response to the RFP and is based upon the scope of the Project as of the Contract Date. Such General Conditions Fee will serve as a baseline for the negotiation of the General Conditions Fee of the GMP Amendment in accordance with Section 5.9 of this Design-Build Contract and will be subject to modification solely based upon changes in the Project scope that occur following the Contract Date; provided that, the unit pricing reflected in Attachment 8A of this Appendix shall be fixed on the Contract Date and not be subject to adjustment in the GMP Amendment.

The General Conditions Fee is an amount attributable to General Conditions Costs, all of which shall be paid by the Design-Builder without reimbursement hereunder and irrespective of the sufficiency of the General Conditions Fee. The General Conditions Fee includes consideration for all costs and expenses paid or incurred by the Design-Builder, as well as all profit, risk, mark-up and general and indirect overhead, in connection with the General Conditions Costs. The General Conditions Fee shall be adjusted in the event the Scheduled Mechanical Completion Date and/or the Scheduled Acceptance Date are extended as provided in Article 14 of this Design-Build Contract.

8.6. DESIGN-BUILDER FEE

The “Design-Builder Fee” is an amount equal to 5.5% of the Design-Build Costs, subject to the exclusions set forth in this Section 8.6. The Design-Builder Fee is an amount attributable to profit, risk, mark-up and general or indirect overhead with respect to the Design-Build Work.

The Design-Builder Fee shall not be applied to: (1) the cost of any Project-specific Required Insurance, the Security Bond, the Payment Bond, the Performance Bond or the Warranty Bond; or (2) certain agreed upon lump sum amounts, as described in Section 7.4(H) of this Design-Build Contract.

8.7. GUARANTEED MAXIMUM PRICE

8.7.1 Guaranteed Maximum Price Generally.

SAWS shall pay the Design-Builder the Design-Build Price for the Design-Build Work, subject to the Guaranteed Maximum Price calculated in accordance with this Section 8.7. The “Guaranteed Maximum Price” shall be the sum of (1) the Base Guaranteed Maximum Price, and (2) the Base Guaranteed Maximum Price Adjustments. The Guaranteed Maximum Price represents the absolute limit of the total of all amounts payable to the Design-Builder by SAWS for the performance of the Design-Build Work. In the event additional amounts are required to be expended over and above the Guaranteed Maximum Price to perform the Design-Build Work and achieve Mechanical Completion, Acceptance and Final Completion, liability for and payment of such additional amounts shall be the sole responsibility of the Design-Builder. SAWS shall
not be liable for any such amounts, and the Design-Builder shall not pursue any claim for any such additional amounts against SAWS. Notwithstanding any reference in this Design-Build Contract to the terms “mark-up” or “profit”, the Design-Builder acknowledges that (1) SAWS is not guaranteeing the Design-Builder any profit, a particular level of profit, or the avoidance of any loss in the overall performance of the Design-Build Work, and (2) the obligation of the Design-Builder to complete the Design-Build Work may result in a loss or in a mark-up and profit that is less than the mark-up and profit amounts anticipated by the Design-Builder in proposing its Design-Builder Fee, in making its GMP Submittal, and in entering into this Design-Build Contract.

8.7.2 Base Guaranteed Maximum Price.

The “Base Guaranteed Maximum Price” shall be specified in the GMP Amendment. Except as provided in Section 8.7.3 of this Appendix, the Base Guaranteed Maximum Price shall not be increased for any reason.

8.7.3 Base Guaranteed Maximum Price Adjustments.

The adjustments to the Base Guaranteed Maximum Price provided for in this Section 8.7.3 constitute the “Base Guaranteed Maximum Price Adjustments”, and each adjustment shall be reflected in a Contract Administration Memorandum. The Base Guaranteed Maximum Price shall be adjusted (increased or decreased) only to reflect adjustments required on account of:

(a) Uncontrollable Circumstances generally, as provided in Article 14 of this Design-Build Contract);

(b) Baseline Design Requirements Changes made under Section 6.8 of this Design-Build Contract; or

(c) Work Change Directives made under Section 6.10 of this Design-Build Contract.

8.7.4 Value of Base Guaranteed Maximum Price Adjustments

The value of a Base Guaranteed Maximum Price Adjustment shall be determined as follows:

(a) Where the Design-Build Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved;

(b) To the extent unit prices are not applicable, by a mutually agreed lump sum; or

(c) To the extent unit prices are not applicable and the parties are unable to reach agreement on a lump-sum value, on the basis of the Design-Build Costs of the associated Design-Build Work, as determined in accordance with this Appendix, plus the Design-Builder Fee.

A Base Guaranteed Maximum Price Adjustment may provide for markup payable to Subcontractors where Design-Build Work is performed through Subcontracts. Any such Subcontractor markup shall not exceed (a) for the Subcontractor who actually performs or furnishes the additional Design-Build Work, 15% of the costs incurred by such Subcontractor in respect of labor, materials, equipment and supplies; and (b) for any higher tier Subcontractor, 5% of the amount paid to the next lower tier Subcontractor.
ATTACHMENT 8A

DESCRIPTION OF GENERAL CONDITIONS COSTS
ATTACHMENT 8A

DESCRIPTION OF GENERAL CONDITIONS COSTS

GENERAL CONDITIONS COSTS

In connection with the Design-Build Work, the Design-Builder is responsible for the General Conditions Costs, as well as the performance of the related obligations, identified in this Attachment 8A. The Design-Builder's compensation for the General Conditions Costs is limited to the General Conditions Fee. Design-Build Costs shall not include any General Conditions Costs. General Conditions Costs consist solely and exclusively of costs incurred for the items set forth in Table 1 and Table 2 of this Attachment 8A with respect to the Design-Build Work.

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### Table 1

**Exhibit “A”**

**General Conditions Costs**

<table>
<thead>
<tr>
<th>Description</th>
<th>Lump Sum Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mobilization (To include the following)</strong></td>
<td>$1,558,200.00</td>
</tr>
<tr>
<td>Field Offices &amp; Furnishings</td>
<td></td>
</tr>
<tr>
<td>Field Office Maintenance and Cleaning</td>
<td></td>
</tr>
<tr>
<td>Office Janitorial</td>
<td></td>
</tr>
<tr>
<td>Garbage disposal service including dumpster rental and trash removal/recycling</td>
<td></td>
</tr>
<tr>
<td>Storage Trailers</td>
<td></td>
</tr>
<tr>
<td>Small Tools &amp; Consumables</td>
<td></td>
</tr>
<tr>
<td>Monthly Cell Phone Expenses</td>
<td></td>
</tr>
<tr>
<td>Job Site Communications (telephones, radios, chargers, etc.)</td>
<td></td>
</tr>
<tr>
<td>Final Clean (general site, windows, glass, etc.)</td>
<td></td>
</tr>
<tr>
<td>Job Travel, including fuel and vehicle</td>
<td></td>
</tr>
<tr>
<td>Job Meeting Expenses</td>
<td></td>
</tr>
<tr>
<td>Job Office Supplies</td>
<td></td>
</tr>
<tr>
<td>Job Site Computers, Copiers, Fax, Servers, etc.</td>
<td></td>
</tr>
<tr>
<td>Postage &amp; Shipping Expenses</td>
<td></td>
</tr>
<tr>
<td>Project Sign</td>
<td></td>
</tr>
<tr>
<td>Drinking Water &amp; Supplies (site and offices)</td>
<td></td>
</tr>
<tr>
<td>Incidental Construction Equipment, Fuel &amp; Drayage</td>
<td></td>
</tr>
<tr>
<td>Materials Handling</td>
<td></td>
</tr>
<tr>
<td>Document Imaging</td>
<td></td>
</tr>
<tr>
<td>Parking Logistics</td>
<td></td>
</tr>
<tr>
<td>Printing/Reproduction Costs</td>
<td></td>
</tr>
<tr>
<td>As-built &amp; Record Document Preparation</td>
<td></td>
</tr>
<tr>
<td>Employee I.D. / Badges/Background Checks</td>
<td></td>
</tr>
<tr>
<td>Safety Expenses</td>
<td></td>
</tr>
<tr>
<td>PPE for Staff &amp; Visitors</td>
<td></td>
</tr>
<tr>
<td>First Aid</td>
<td></td>
</tr>
<tr>
<td>Fall Protection</td>
<td></td>
</tr>
<tr>
<td>Safety Program Administration &amp; Training</td>
<td></td>
</tr>
<tr>
<td>Safety Incentives</td>
<td></td>
</tr>
<tr>
<td>Drug Testing</td>
<td></td>
</tr>
<tr>
<td>Safety Signage</td>
<td></td>
</tr>
<tr>
<td><strong>Demobilization</strong></td>
<td>$ 250,000.00</td>
</tr>
<tr>
<td><strong>Site Conditions (To include the following)</strong></td>
<td>$ 1,418,300.00</td>
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<tr>
<td>Temporary Power consumption</td>
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<tr>
<td>Temporary Water and sewer consumption</td>
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</tr>
<tr>
<td>Temporary Water hookup, Distribution &amp; Meters</td>
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</tr>
<tr>
<td>Temporary Telephone &amp; Network System Installation</td>
<td></td>
</tr>
<tr>
<td>Temporary Telephone &amp; Internet Consumption Fees</td>
<td></td>
</tr>
<tr>
<td>Temporary Fire Protection</td>
<td></td>
</tr>
<tr>
<td>Temporary Heating &amp; Cooling</td>
<td></td>
</tr>
<tr>
<td>Temporary Fencing</td>
<td></td>
</tr>
<tr>
<td>Temporary Walkways</td>
<td></td>
</tr>
<tr>
<td>SWPPP Measures</td>
<td></td>
</tr>
<tr>
<td>Temporary Entries and Truck Washes</td>
<td></td>
</tr>
<tr>
<td>Street Cleaning (by GC)</td>
<td></td>
</tr>
<tr>
<td>Temporary Barricades &amp; Signage</td>
<td></td>
</tr>
<tr>
<td>Temporary Roads</td>
<td></td>
</tr>
<tr>
<td>Temporary Lighting</td>
<td></td>
</tr>
<tr>
<td>Temporary Partitions</td>
<td></td>
</tr>
<tr>
<td>Temporary Toilets/Sanitary Measures</td>
<td></td>
</tr>
<tr>
<td>Temporary Laydown (prep and restoration)</td>
<td></td>
</tr>
<tr>
<td>Security</td>
<td></td>
</tr>
<tr>
<td>Examinations &amp; Preparation</td>
<td></td>
</tr>
<tr>
<td>Pre- and Post-construction Photo Documentation</td>
<td></td>
</tr>
<tr>
<td>Progress Photos</td>
<td></td>
</tr>
<tr>
<td>Temporary Protection (in-place work/adjacent structures)</td>
<td></td>
</tr>
<tr>
<td>Temporary Weather Protection/Enclosures</td>
<td></td>
</tr>
<tr>
<td>Trash Chutes</td>
<td></td>
</tr>
<tr>
<td>Dumpsites (site and field offices) and trash removal</td>
<td></td>
</tr>
<tr>
<td><strong>Home Office Charges</strong></td>
<td>$ 245,000.00</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td>$ 3,241,500.00</td>
</tr>
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</table>
Table 2

<table>
<thead>
<tr>
<th>Table 2: Unit Price GC Costs</th>
<th>Quantity</th>
<th>Unit Price (Based on 172 hrs. per month)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Project Management</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Manager</td>
<td>26 mos.</td>
<td>$26,172</td>
<td>$680,472</td>
</tr>
<tr>
<td>Design-Build Manager</td>
<td>26 mos.</td>
<td>$37,508</td>
<td>$975,208</td>
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<tr>
<td>Project Controls Manager</td>
<td>26 mos.</td>
<td>$18,314</td>
<td>$476,164</td>
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<tr>
<td>Subcontract Manager</td>
<td>26 mos.</td>
<td>$22,016</td>
<td>$572,416</td>
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<tr>
<td>Procurement Manager</td>
<td>26 mos.</td>
<td>$11,609</td>
<td>$301,834</td>
</tr>
<tr>
<td>Safety Manager</td>
<td>26 mos.</td>
<td>$16,012</td>
<td>$416,312</td>
</tr>
<tr>
<td>CPM Scheduler</td>
<td>26 mos.</td>
<td>$13,210</td>
<td>$343,460</td>
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<tr>
<td>Quality Assurance / Quality Control</td>
<td>26 mos.</td>
<td>$12,974</td>
<td>$337,324</td>
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<tr>
<td>QA/QC Manager</td>
<td>26 mos.</td>
<td>$24,871</td>
<td>$646,646</td>
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<td>Field Office Engineer/Inspector</td>
<td>16 mos.</td>
<td>$11,609</td>
<td>$185,744</td>
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<tr>
<td>Field Office Support Staff</td>
<td>26 mos.</td>
<td>$41,000</td>
<td>$1,066,000</td>
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<tr>
<td>Managing Superintendent</td>
<td>16 mos.</td>
<td>$26,172</td>
<td>$418,752</td>
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<tr>
<td>Assistant Superintendent-Terminus</td>
<td>20 mos.</td>
<td>$25,719</td>
<td>$514,380</td>
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<tr>
<td>Site</td>
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<tr>
<td>Assistant Superintendent-Pipelines</td>
<td>16 mos.</td>
<td>$22,016</td>
<td>$352,256</td>
</tr>
<tr>
<td>Assistant Superintendent-Other</td>
<td>16 mos.</td>
<td>$22,016</td>
<td>$352,256</td>
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<tr>
<td>Facilities</td>
<td></td>
<td></td>
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<tr>
<td>Design-Builder Operations Manager</td>
<td>6 mos.</td>
<td>$26,019</td>
<td>$156,114</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td></td>
<td></td>
<td><strong>$7,765,338</strong></td>
</tr>
</tbody>
</table>
ATTACHMENT 8B

SUPERVISORY AND ADMINISTRATIVE PERSONNEL COST SCHEDULE
ATTACHMENT 8B

SUPERVISORY AND ADMINISTRATIVE PERSONNEL COST SCHEDULE

Wages or salaries of direct employees of the Design-Builder payable under Section 8.3.3(a) of this Appendix shall be specified in the GMP Amendment.
ATTACHMENT 8C

SCHEDULE OF VALUES AND DESIGN-BUILDER CONTINGENCY
ATTACHMENT 8C

SCHEDULE OF VALUES AND DESIGN-BUILDER CONTINGENCY

GENERAL

The purpose of this Attachment is (1) to define the requirements for the Design-Builder’s preparation of a Schedule of Values and the Design-Builder Contingency, which will be used as the basis for payments of the Design-Build Price pursuant to Article 9 of this Design-Build Contract, and (2) to describe the manner in which payment of the Design-Build Price will be made based on the Schedule of Values and the Design-Builder Contingency.

EARLY DESIGN-BUILD WORK PACKAGES

As provided in Section 5.6(F) of this Design-Build Contract, the parties intend that each Early Design-Build Work Package Amendment will contain complete pricing for the Design-Build Work covered by the Early Design-Build Work Package, and that a schedule of values and contingency will be established for such Early Design-Build Work Package separate and apart from the Schedule of Values and Design-Builder Contingency established on the GMP Amendment Date for the balance of the Design-Build Work.

TOTAL SCHEDULE OF VALUES AMOUNT

The sum of all amounts comprising the line items in the initial Schedule of Values shall be equal to the total amount of the reasonably estimated costs of achieving Mechanical Completion, Acceptance and Final Completion, as such total amount of reasonably estimated costs is negotiated by the parties pursuant to Section 5.9(C) of this Design-Build Contract. The total Schedule of Values amount, and the line items in the Schedule of Values, shall be adjusted appropriately by agreement of the parties to account for Base Guaranteed Maximum Price Adjustments.

DESIGN-BUILDER CONTINGENCY AMOUNT

The Design-Builder Contingency amount shall be a single stated dollar amount equal to the amount negotiated by the parties pursuant to Section 5.9(C)(2) of this Design-Build Contract.

SUM OF THE SCHEDULE OF VALUES AMOUNT AND THE DESIGN-BUILDER CONTINGENCY AMOUNT

The sum of the total Schedule of Values amount and the Design-Builder Contingency amount shall be equal to the Base Guaranteed Maximum Price.

PREPARATION OF THE SCHEDULE OF VALUES

As part of the GMP Submittal, the Design-Builder shall prepare a Schedule of Values identifying, on a line item basis, costs of major items of Design-Build Work and other costs in accordance with this Attachment, and which shall include a Design-Builder Contingency separately stated as a block amount.

The Schedule of Values shall be consistent with the work scope and cost breakdown structure presented in the GMP Submittal, as negotiated and agreed to by SAWS. The Schedule of Values shall assign prices to major elements of the Design-Build Work based on costs associated with scheduled activities for each such element.
The Schedule of Values shall:

(a) Be broken down by each structure at the Project Sites, in accordance with the approved WBS, and show each Specification division within each structure;

(b) Show the division of work between the Design-Build and each of the Subcontractors;

(c) Include an item for:

   (1) The General Conditions Fee;
   
   (2) The Design-Build Fee;
   
   (3) Commissioning and Acceptance Testing;
   
   (4) The Design-Build Contingency.

The Design-Builder shall provide supporting data, including certified payrolls, as requested by SAWS for any Schedule of Values item. The final Schedule of Values must be approved by SAWS.

**USE OF THE DESIGN-BUILDER CONTINGENCY**

The Design-Builder shall be compensated by receiving payments of the Design-Build Price based on the Schedule of Values line items. The Design-Build Contingency shall be used for payment of Design-Build Costs only as provided in this Section.

In the event the cost for completing Design-Build Work described in any particular Schedule of Values line item exceeds the Schedule of Values dollar amount listed for such line item, the Design-Build shall have the right to request and to receive compensation for such excess amounts from any remaining balance in the Design-Build Contingency. If and when the Design-Build Contingency has been fully used in compensating the Design-Build for such excess amounts, the Design-Build shall not be entitled to any compensation for costs of Design-Build Work exceeding the Schedule of Values line item relating to such cost (except as provided below in “Use of Line Item Savings”), notwithstanding the fact that the Design-Build has paid or incurred Design-Build Costs in excess of such line item in the Schedule of Values; provided, however, that upon Final Completion the Design-Build shall be entitled to request and to receive compensation for such excess Design-Build Costs to the extent that payment of such costs does not cause the Design-Build Costs to exceed the Guaranteed Maximum Price.

The Design-Build shall keep and provide SAWS with an ongoing record of the original amount of the Design-Build Contingency, all uses thereof under this Appendix, and the remaining balance of the Design-Build Contingency at any time. The Design-Build shall provide SAWS with notice of all anticipated charges against the Design-Build Contingency, and shall provide SAWS as part of the monthly status report all reasonably foreseeable potential uses of the Design-Build Contingency in the upcoming three month period. Any use of the Design-Build Contingency must be clearly identified in the associated Payment Request.

**USE OF LINE ITEM SAVINGS**

In administering payment of the Design-Build Price based on the Schedule of Values line items, the parties acknowledge that the Design-Build Costs associated with any particular line item may be less than the dollar amount provided for such line item in the Schedule of Values. The Design-Build may request at any time a determination by SAWS that the Design-Build Costs
associated with a particular Schedule of Values line item are or are reasonably projected to be less than the dollar amount provided for such line item in the Schedule of Values. SAWS shall have the right in its discretion to approve or disapprove any such request. In the event SAWS approves any such request, the dollar value associated with the line item cost underage shall be available to be requested by and paid to the Design-Builder in the event the Design-Build Costs associated with another particular line item exceed the Schedule of Values dollar amount listed for such line item. Such line item savings amounts shall be in addition to any Design-Builder Contingency amounts that may be available to pay such Schedule of Values line item excess costs.

**DAMAGE TO THE PROJECT AND INSURANCE RECOVERIES**

The costs of repairing any damage to the Project constitute Design-Build Costs, and (1) are payable to the Design-Builder as part of the Design-Build Costs, as provided in Section 8.3 of this Appendix, (2) shall result in an appropriate revision of the Schedule of Values, and (3) shall result in a Base Guaranteed Maximum Price Adjustment, as provided in Section 8.7.3 of this Appendix. All recoveries under policies of Required Insurance on account of any damage to the Project shall be applied to the payment of such repair costs, as provided in Section 6.17 and Article 13 of this Design-Build Contract.

**SUBCONTRACTOR AND SURETY RECOVERIES**

A substantial portion of the Construction of the Project is expected to be performed by Construction Subcontractors. The risks of delay and non-performance by Subcontractors are borne by the Design-Builder, and costs incurred by the Design-Builder that result from the occurrence of such risks constitute Design-Build Costs payable by SAWS from the Design-Builder Contingency hereunder, subject to the Guaranteed Maximum Price. All payments from the Design-Builder Contingency for costs incurred as a result of the occurrence of the risk of Subcontractor delay or non-performance shall be separately identified and recorded. In the event the Design-Builder, in the exercise of its mitigation duties under this Design-Build Contract, receives any judgment or settlement awards or otherwise makes any financial recoveries from Subcontractors or their guarantors or sureties on account of any such delays or non-performance, the amounts so received (net of reasonable enforcement costs), whether before or after Final Completion, shall be paid by the Design-Builder first to SAWS, up to the amount of any Design-Builder Contingency payments made due to the occurrence of such risks. Any remaining amounts then may be retained by the Design-Builder for its own account. The obligation of the Design-Builder to take such mitigation measures and to make such payments to SAWS shall survive termination of this Design-Build Contract.
ATTACHMENT 8D

INITIAL MONTHLY CASH FLOW SCHEDULE

The Initial Monthly Cash Flow Schedule will set forth in the GMP Amendment.
APPENDIX 9

COMMISSIONING, MECHANICAL COMPLETION AND ACCEPTANCE
APPENDIX 9

COMMISSIONING, MECHANICAL COMPLETION AND ACCEPTANCE

9.1. PURPOSE

The purpose of Commissioning, Mechanical Completion and Acceptance Testing is to demonstrate that the Project complies with the Acceptance Standards and all other Contract Standards. This Appendix sets forth certain supplementary requirements for Commissioning, Mechanical Completion and Acceptance Testing.

9.2. RELATIONSHIP TO BASELINE DESIGN DOCUMENTS

The Baseline Design Documents applicable to the requirements of this Appendix are set forth in Appendix 4.

9.3. MECHANICAL COMPLETION PROCEDURES

9.3.1 Mechanical Completion Procedures Generally

The intent of the Mechanical 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 the Contract Documents and the Contract Standards. The procedures described in this Appendix for determining when the Design-Builder has achieved Mechanical Completion (the “Mechanical Completion Procedures”) include pre-commissioning, verification of start-up readiness, Governmental Approval compliance, functionality of individual Project subsystems, and testing the back-up power capabilities of the Project. During the implementation of the Mechanical Completion Procedures, the Design-Builder 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 the Mechanical Completion Procedures shall be successfully demonstrated to have the capability to operate both individually, and as a part of the integrated Project.

9.3.2 Construction Testing

To confirm compliance with the Contract Documents, the Design-Builder shall submit certified reports. The certified reports shall be from the appropriate certifying entity demonstrating that construction complies with the Contract Documents 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 9.3.2, 9.3.3 and 9.3.4 of this Appendix, and others as required by selection of material, will be conducted and certified reports submitted by the Design-Builder to SAWS. The following list of tests and documentation activities are intended to establish an expectation as to the types of tests and documentation that will be expected to be provided during the Phase II Services Period. The actual listing of testing and documentation requirements will be developed during the Phase I Services.

9.3.3 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.

9.3.4 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 Design-Builder’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
- 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 – MASONRY:

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 8 – DOORS AND WINDOWS (not used)

(i) 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

(j) DIVISION 10 – SPECIALTIES:

Section 10520 - Fire-Protection Specialties:
- Performance Test Results
- Witnessed Test Results
- Flow Test Results
- Test Certificates

(k) DIVISION 11 – EQUIPMENT:

Section 11100 Horizontal Split Case Pumps:
- Pump Submittal Data Sheet
- Motor Submittal Data Sheet
- Witnessed/Unwitnessed Factory test results
  o 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
  o 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

(l) DIVISION 13 – SPECIAL CONSTRUCTION:

Section 13122 Chemical Tank Cover Structures:
• Manufacturer test results
• Certifications
• Test of Wind-Uplift Resistance of Roof Assembly Results
Appendix 9
San Antonio Water System
Commissioning, Mechanical Completion
Central Water Integration Pipeline

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

DIVISION 14 – CONVEYING SYSTEMS (not used)

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

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

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
9.3.5 **Observation of Mechanical Completion Procedures**

SAWS reserves the right to observe and inspect the Mechanical Completion Procedures. The Design-Build shall provide at least five days’ notice to SAWS prior to commencement of any Mechanical Completion Procedure. The Design-Build shall also ensure that each equipment manufacturer representative that is required to witness such Mechanical Completion Procedure is present.

9.3.6 **Subcontractors Required During Mechanical Completion Procedures**

Prior to the commencement of any Mechanical Completion Procedure, the Design-Build will identify all Subcontractors needed during such Mechanical Completion Procedure, and define their roles.

9.3.7 **Mechanical Completion Protocol**

As part of the Commissioning and Acceptance Test Plan required to be prepared and submitted by the Design-Build pursuant to Section 9.5.3 of this Appendix and Section 8.4(A) of this Design-Build Contract, the Design-Build shall also prepare and submit a protocol for the conduct of the Mechanical Completion Procedures pursuant to this Appendix (the “**Mechanical Completion Protocol**”). The Mechanical Completion Protocol shall identify the key Mechanical Completion Procedures to be performed and the expected date of such performance as well as expected submittal dates to SAWS related to the Mechanical Completion Procedures and the expected dates for SAWS responses, which shall be reasonable and be based on and consistent with the Phase II Services Schedule. The content of the Mechanical Completion Protocol shall be consistent with the terms and provisions of the Contract Documents. All Mechanical Completion Procedures shall be performed in compliance with the Contract Standards and all equipment manufacturer warranties and guidelines.

9.4. **MECHANICAL COMPLETION PROCEDURE REQUIREMENTS AND COMPONENTS**

9.4.1 **General Information**

To meet the requirements of Mechanical Completion, the Design-Build 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 and equipment warranty provisions.

9.4.2 **Process and Equipment Performance Requirements**

During the Mechanical Completion Procedures, the following, at a minimum, shall be demonstrated with respect to all of the tested Project systems and subsystems:

```plaintext
(a) All pumps operate through their specified design range, and are verified for proper rotation, speed, flow rate, pressure and design point;
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9.5.1 Commissioning Generally

Commissioning of the entire Project must occur prior to Mechanical Completion, subject to the terms and conditions of Article 8 of this Design-Build Contract. The Project, as coordinated by Design-Builder and SAWS, shall be operated and maintained during Commissioning in accordance with all applicable provisions of the approved Operations and Maintenance Manual and all other applicable Contract Standards under normal operating conditions, including routine equipment operation, and maintenance services.

9.5.2 Acceptance Testing Generally

This Section 9.5 describes the Acceptance Test to be conducted by SAWS in coordination with and under the supervision of the Design-Builder to demonstrate compliance with the Acceptance Standards. The Acceptance Test is to be conducted after Mechanical Completion and process optimization is completed by the Design-Builder. Successful passage of the Acceptance Test shall be the basis for achieving Acceptance.

All supplementary requirements and procedures the performance of Acceptance Testing specified in the Baseline Design Documents shall also be complied with and followed.
9.5.3 Commissioning and Acceptance Test Plan

The Design-Builder shall prepare and submit to SAWS for its review and approval a Commissioning and Acceptance Test Plan in accordance with Section 8.4(A) of this Design-Build Contract, the requirements set forth in this Appendix, and the requirements set forth in Appendix 4. The Commissioning and Acceptance Test Plan shall be a comprehensive plan for each system and subsystem of the Project organized into separate sections addressing overall Project start-up, Commissioning procedures and practices, all equipment and each unit operation, all auxiliary Project equipment and systems, Acceptance Testing activities, and the Design-Builder’s management, documentation and oversight of the foregoing. The content of the Commissioning and Acceptance Test Plan shall be consistent with the terms and provisions of the Contract Documents. The Design-Builder shall submit to SAWS for its approval the Commissioning and Acceptance Test Plan no later than 90 days prior to the anticipated commencement of Commissioning of the Project. Within 30 days after SAWS’ receipt of the Commissioning and Acceptance Test Plan, SAWS shall provide written notice to the Design-Builder either acknowledging that the Commissioning and Acceptance Test Plan is acceptable to SAWS or specifying the deficiencies therein. Within 15 days after the Design-Builder’s receipt of SAWS’ comments, the Design-Builder shall make such revisions as required in order to address SAWS’ comments to the Commissioning and Acceptance Test Plan.

At a minimum, the Commissioning and Acceptance Test Plan shall address the following:

(a) Organization of the test team, including identification of normal operations staff, qualifications, responsibilities, authority, and decision making protocols;

(b) A start-up, Commissioning and Acceptance Testing overview with a complete description of all such activities;

(c) A list of all Governmental Approvals required for Commissioning and for Acceptance Testing and the tracking mechanism the Design-Builder proposes to use to confirm that the Design-Builder has obtained all such Governmental Approvals prior to commencing the Commissioning and Acceptance Testing activities for which such Governmental Approvals are required;

(d) A description of the systems or components of the Project that will be started up as unit processes or sub-processes and the sequence in which they will be started-up;

(e) A description of the procedures the Design-Builder proposes for inspecting equipment prior to and during Commissioning and Acceptance Testing and for developing the Punch List;

(f) A critical path method (CPM) Commissioning and Acceptance Testing schedule that sequences all activities required to achieve Mechanical Completion and Acceptance. The schedule shall incorporate logic to properly sequence activities with precedents and constraints including 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 System functionality, and all other steps consistent with Good Engineering and Construction Practice and all equipment manufacturer’s guidelines and equipment warranty provisions. The schedule shall also indicate any activities on the critical path that require SAWS actions.
(g) A description of the Design-Builder’s process for assuring orderly transitions between its construction, start-up, Commissioning and Acceptance Testing activities;

(h) An organizational chart for the Design-Builder’s start-up, Commissioning and Acceptance Testing team and a description stating the responsibilities and the level of authority of each Design-Builder representative in the organizational chart;

(i) The QA/QC procedures for oversight by the Design-Builder’s staff to assure adherence to the requirements of the Commissioning and Acceptance Test Plan and the procedures for deficiency correction and tracking/documentation of such corrections;

(j) Process and procedures for verifying all Commissioning and Acceptance Test Plan prerequisites have been satisfied;

(k) Start-up Issue Log that describes the specific issue, the date of the observation, by whom the issue was observed, the evaluation and actions taken and by whom, the date the issue was resolved and any comments;

(l) Develop an Operational Change Log that describes when operational changes are made, by whom and why.

(m) A list of the documentation that the Design-Builder proposed to provide as verification that all equipment checks, dry testing, wet testing, and instrument calibration have been conducted;

(n) 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.

(o) 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 the SCADA System, ensuring the SCADA System coordinates all systems according to the Baseline Design Documents, testing SCADA System alarms, starting and testing chemical feed systems, loading cartridge filters;

(p) A list of all controls system set points and alarms required for operating the Project and for equipment protection;

(q) The documentation to be supplied to verify all controls logic and SCADA System and equipment protective device operating set points and alarms have been established, implemented and tested, and to substantiate the information and calculations used for the Commissioning and Acceptance Test Plan report;

(r) A description of the sequence of start-up and testing activities the Design-Builder intends to conduct including the testing of individual control loops and unit processes, equipment, generator systems, SCADA System demonstrations and CMMS demonstrations;
(s) The documentation to be supplied to verify all SCADA System instrumentation data has been confirmed with local instrumentation readings;

(t) A list of parameters to be monitored and measurements to be made;

(u) A schedule of monitoring, describing all data collection and related information and data collection frequencies at which parameters will be monitored on a continuous or other defined basis;

(v) A full description of any analytical methods, calculations and other techniques that have been or will be utilized to ensure that all Applicable Law and Performance Guarantees are met. In addition, descriptions of how data collected will be compared with Performance Guarantees shall be provided and shall be in a manner that complies with requirements of SAWS and Governmental Bodies, including applicable data handling requirements (if any). Provide examples of any tools such as flow charts, check sheets, calculations, or any other data presentation and evaluation techniques that will be utilized;

(w) Identification of equipment calibrations to be performed, descriptions of all calibration techniques to be used and timing of calibrations relative to Acceptance Testing (all instruments used in Acceptance Testing operations and to monitor and evaluate Acceptance Testing shall be calibrated in accordance with manufacturer’s requirements), QA/QC procedures, including those to be utilized for all equipment used for testing and measuring different parameters within the Project systems. The description shall address the calibration practices, including the frequency and accuracy requirements. The calibration procedures shall consider intermediate spot and cross checks, in addition to the formal calibration periods;

(x) Procedures for demonstrating compliance with all Acceptance Standards, including data and information collection requirements and calculation and analyses;

(y) The procedures and staffing planned that the Design-Builder intends to use for disinfecting the Project and obtaining all regulatory clearances necessary for producing Finished Water;

(z) The procedures, testing, and laboratory data that will be used for confirming all the Finished Water produced by the Terminus Facility complies with all applicable standards for Finished Water before such water is introduced into the SAWS Distribution System;

(aa) Plan for testing Finished Water output quantity;

(bb) The procedures for preventing any non-potable water from entering the SAWS Distribution System;

(cc) The procedures for disposal of non-potable water;

(dd) Estimates of Utility usages required for testing activities;

(ee) Response procedures for unsuccessful test results;

(ff) Internal and external communications protocols;
Operating and maintenance schedule during testing;

A description of the approach for management of Project generated wastewaters confirming that all wastewater created during start-up, Commissioning and Acceptance Testing activities can be disposed of in a manner consistent with the provisions of all Governmental Approvals;

A Flushing Plan, as further described in Section 9.5.4 of this Appendix.

The procedures for confirming the functionality and providing the clearances required by Governmental Bodies for the integration and use of the completed Finished Water Transmission Pipelines and associated equipment into the overall operations of the Project;

The procedures for confirming the functionality and providing the clearances required by Governmental Bodies for the integration and use of the completed Pump Station Improvements and associated equipment into the overall operations of the Project;

The procedures for confirming the functionality and providing the clearances required by Governmental Bodies for the integration and use of the completed SAWS Distribution System Upgrades and associated equipment into the overall operations of the Project;

Any other requirement specified in the Baseline Design Documents with respect to Commissioning and Acceptance Testing.

9.5.4 Flushing Plan

The Design-Build shall prepare a flushing plan, within the Commissioning and Acceptance Test 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 Design-Build shall prepare and submit to SAWS for its approval the Flushing Plan as part of the Commissioning and Acceptance Test Plan. The content of the Flushing Plan shall be consistent with the terms and provisions of the Contract Documents. All flushing activities shall be performed in compliance with the Contract Standards and all equipment manufacturer warranties and guidelines.

9.5.5 Pre-Commissioning Requirements

The Design-Build shall satisfy the following requirements prior to initiating Commissioning:

(a) The Design-Build shall have obtained SAWS’ approval of the Training Plan;

(b) The Design-Build shall have provided for the coordination of transition from construction to Commissioning in accordance with the Contract Standards, including holding meetings and discussions with SAWS to address all mechanical, electrical and instrumentation concerns and to perform a pre-start inspection of the Project;

○ This coordination shall take into account constraints imposed by the SAWS Distribution System and how the Design-Build shall avoid interfering with other operations of the SAWS Distribution System;
(c) The Design-Builder shall have provided an interim service manual for operating the Project during the period prior to Mechanical Completion;

(d) The Design-Builder shall have demonstrated to SAWS that up-to-date red lined construction as built drawings are available at the Terminus Site;

(e) The SCADA System testing (including demonstrations of automatic, semiautomatic and manual mode start-up, operation, and shutdown of the entire Project and each individual operating system) shall have been completed by the Design-Builder and witnessed by SAWS;

(f) The Design-Builder shall have certified that all instruments, systems, and equipment are functional and calibrated and that the SCADA System is fully functional, all equipment protective measures and devices are fully functional, and the accuracy of SCADA System information has been verified by direct comparison with the Project’s local instrumentation; and

(g) The Design-Builder shall have completed all other pre-requisites to Commissioning set forth in the Baseline Design Documents.

9.5.6 Performance of Commissioning

Upon the satisfaction of the pre-Commissioning requirements, the Design-Builder shall initiate Commissioning of the Project in accordance with the Contract Standards, the Operations and Maintenance Manual, the Commissioning and Acceptance Test Plan, to the extent necessary to verify that the Acceptance Standards are met, including:

(a) Confirmation of the electrical installation, mechanical installation, valve performance, instrumentation calibration and performance, electronic signal and control hardware installation. Initial performance during testing shall be logged electronically by the control systems and on data sheets maintained by the Design-Builder and available for review by SAWS;

(b) SCADA System readings shall be verified by readings taken from process-mounted instruments or, as applicable, laboratory analysis;

(c) Dry testing of the Project shall be performed in order to confirm electrical installation, mechanical installation, valve performance, pump performance, instrumentation calibration and performance, electronic signal and control hardware installation. Initial performance during dry testing shall be logged on data sheets maintained by the Design-Builder and available for review by SAWS;

(d) Wet testing of the Project shall be performed, which shall include ensuring proper air venting; flushing of all lines and pressure vessels; chlorinating all lines and tanks; running water through all systems; control loop check; adjustment and tuning; ensuring proper communications between Project facilities and the SCADA System; demonstrating that the SCADA System controls Project functions according to the Contract Standards; testing SCADA System alarms; starting and testing chemical feed systems; and loading cartridge filters. Performance during wet testing shall be logged on data sheets maintained by the Design-Builder and available for review by SAWS;

(e) All Finished Water quality analytical testing shall be conducted by State certified labs approved for use by SAWS;
Pretreatment system data shall include: chemical dosing information;

Confirmation of capability of the Terminus Facility to produce Finished Water at its design capacity; and

Any other Commissioning requirements specified in the Baseline Design Documents.

The following additional requirements shall apply during Commissioning:

(a) Qualified personnel shall operate, test, maintain, and repair the Project, including manufacture’s service representatives for component equipment and packages.

(b) The Design-Build shall train designated SAWS employees in accordance with the Contract Standards, including the approved Training Plan, in order to enable such SAWS employees to assume operation and maintenance responsibility for the Project.

(c) The Design-Build shall prepare the pre-final Operations and Maintenance Manual.

(d) If the Water Permit or an Interim Operations Approval has been issued by TCEQ and to the extent approved by SAWS, the Terminus Facility may deliver Finished Water to the SAWS Distribution System in compliance with Applicable Law, including all TCEQ and federal requirements.

(e) All scheduled maintenance for the Project shall be performed in accordance with the manufacturer’s written instructions and the Contract Standards.

(f) The Design-Build shall promptly perform all necessary repairs to the Project, immediately when possible, and no later than within five working days from occurrence of the event necessitating the repairs. A log of necessary repairs shall be continuously maintained and reviewed with SAWS staff on a weekly basis.

(g) Equipment calibration and ranges shall be maintained to appropriately and accurately measure expected parameter quantities.

(h) The Project shall be maintained in a safe and professional manner.

Additional Commissioning requirements may be set forth in the GMP Amendment.

9.5.7 Pre-Acceptance Test Requirements

In addition to the pre-Acceptance Test requirements set forth in Section 8.4(E) of this Design-Build Contract, the Design-Build shall satisfy the following requirements prior to initiating Acceptance Testing:

(a) The Design-Build shall have provided for the coordination of transition from Commissioning to Acceptance Testing in accordance with the Contract Standards, including holding meetings and discussions with SAWS and any of its consultants to address all mechanical, electrical and instrumentation concerns;

(b) The Design-Build shall have demonstrated to SAWS that up-to-date red lined construction as-built drawings are available at the Terminus Site;
The SCADA System functional testing (including demonstrations of automatic, semiautomatic and manual mode start-up, operation, and shutdown of the entire Project and each individual operating system) shall have been completed by the Design-Builder and witnessed by SAWS;

The Design-Builder shall have certified that all instruments are functional and calibrated and that the SCADA System is fully functional, all equipment protective measures and devices are fully functional, and the accuracy of SCADA System information has been verified by direct comparison with the Project’s local instrumentation;

The tuning and adjustments completed during Commissioning shall be checked and adjusted after actual process fluids are being used;

Process fluids are moving through the system at flow rates and concentrations that are typical of full-scale operation; and

Any other requirement specified in the Baseline Design Documents as a prerequisite to the commencement of Acceptance Testing.

### 9.5.8 Acceptance Testing Requirements

Following the achievement of Mechanical Completion, and the other pre-conditions to Acceptance Testing specified in this Appendix and Section 8.4(E) of this Design-Build Contract, the Acceptance Test shall be conducted over a 30 consecutive day period to verify that the Acceptance Standards, as specified in Section 9.6.1 of this Appendix, are satisfied.

Acceptance Testing requirements include:

- **(a)** All labor, materials, equipment, chemicals, fuels, sampling, laboratory testing, and services required to perform the Acceptance Tests shall be supplied by the Design-Builder and SAWS, as applicable. During Acceptance Testing, SAWS, in coordination with and under the supervision of the Design-Builder, shall operate all Project systems under normal operating conditions, including routine equipment operation, maintenance services, chemical usage and electricity usage.

- **(b)** All Acceptance Tests shall exhibit trouble-free and continuous operation unless otherwise indicated.

- **(c)** Acceptance Testing may utilize SCADA System data along with separate and independent field-collected or separately collected information. If there are discrepancies between data shown in the SCADA System and separately collected information, the Design-Builder shall reconcile those discrepancies.

- **(d)** The Project is being controlled automatically by the computer control system, which is receiving various instrumentation and data inputs. If manual action is required to conduct the test within the conditions specified, then the Acceptance Test shall begin again when fully automatic operation is available.

- **(e)** No temporary equipment shall be allowed to operate during Acceptance Testing. The Acceptance Test shall be repeated in its entirety at the Design-Builder’s expense if the Design-Builder is forced to use any temporary equipment to maintain operation.
(f) Acceptance Tests must be continuous without significant interruption ("Significant Interruption"). Significant Interruption includes the following:

(i) Failure of the Design Builder to maintain on-site personnel as specified during testing.

(ii) Failure of a system (process, control, etc.) that is not permanently corrected within 6 hours after such failure occurs.

(g) Permanently corrected means without a repeat failure during the remaining duration of the test and shall consist of all of the following:

(i) Work repaired and replaced to conform to specified requirements.

(ii) Parts and components replaced as recommended by original manufacturer without impacting warranty, and conforming to accepted submittals.

(iii) Piping and valves properly installed and connected.

(iv) Wiring properly terminated and enclosed in raceways or conduit.

(v) Accessories, including spare parts and lubricants, furnished as specified in the technical Specification sections.

(vi) The facility is back online and operating within normal operating parameters.

(vii) Failure of a process equipment unit (mechanical, electrical, instrumentation, etc.) that is not permanently corrected within 6 hours after such failure occurs.

(viii) Failure of an analytical, building service, HVAC, or hoisting equipment unit that is not permanently corrected within 6 hours after such failure occurs.

(ix) As determined by SAWS.

Additional Acceptance Test requirements may be set forth in the GMP Amendment.

**9.5.9 Finished Water Quality During Acceptance Testing**

During the Acceptance Test, Finished Water will be delivered into the SAWS Distribution System. Therefore, the Acceptance Test Plan shall assure that:

(a) should the performance of the Project be deemed to be unsatisfactory by the Design-Builder or SAWS at any time during Acceptance Testing due to concerns about the quality of the Finished Water, immediate action shall be taken to ensure that the Finished Water entering the SAWS Distribution System meets all State and federal drinking water standards at all times; or

(b) if such actions are considered unlikely to satisfy this requirement, the Project will be shutdown and the Acceptance Test terminated until such time as the requirement for potable water supply is satisfied, following which the Acceptance Test shall be restarted.
If the Acceptance Test is terminated, it shall be restarted at the beginning of the first day of the Acceptance Test period, and the entire Acceptance Test shall be performed again.

### 9.5.10 Acceptance Test Report

In accordance with Section 8.4(G) of this Design-Build Contract, the Design-Builders shall prepare and submit to SAWS a report which shall present all data, calculations, and other information obtained in the course of the Acceptance Test or needed to substantiate the Design-Builders’ conclusions reached in the Acceptance Test report.

### 9.6. PROJECT ACCEPTANCE STANDARDS AND PERFORMANCE GUARANTEES

#### 9.6.1 Acceptance Standards

The following shall constitute the “Acceptance Standards” which must be successfully demonstrated through the performance of the 30 consecutive day Acceptance Test and the data collected during the Acceptance Test in order for the Project to achieve Acceptance:

(a) The Project has been designed and constructed in accordance with the Contract Documents and performs in a manner that is consistent with the requirements of Applicable Law, the Performance Guarantees and all other applicable Contract Standards;

(b) The Project equipment functions reliably and in a trouble-free manner at the nominal ratings established by the equipment manufacturer;

(c) The Project has been operated and maintained pursuant to the requirements of the Operations and Maintenance Manual for the entire duration of the Acceptance Test;

(d) The Project operates properly with only the normal compliment of employees included in the staffing plan for the Project, with the exception of additional staffing related to collection and analysis of samples and other test data;

(e) The Terminus Facility is capable of meeting the Performance Guarantees using the proper amount of chemicals and equipment as set forth in the Operations and Maintenance Manual;

(f) The Terminus Facility, operating at a flow of 48.62 MGD over 30 continuous days, produces Finished Water that meets all Specified Finished Water Quality Parameters during the Acceptance Test;

(g) All the Contract Standards for Finished Water delivery are complied with during the Acceptance Test; and

(h) The Project operates in a manner consistent with all other Performance Guarantees during the Acceptance Test.

Additional Acceptance Standards may be set forth in the GMP Amendment.

#### 9.6.2 Specified Finished Water Quality Parameters

The Design-Builders guarantees that Finished Water will comply with all 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, and all federal drinking water regulations (e.g. primary and secondary maximum contaminant levels) promulgated by the EPA and enforceable in the State. The Design-Builder further guarantees that the Finished Water will comply with all additional Finished Water quality parameters set forth in Table 9-1 of this Appendix. The foregoing guarantees shall constitute the “Specified Finished Water Quality Parameters”.

### TABLE 9-1

**Additional Finished Water Quality Parameters**

<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>UNIT</th>
<th>ADDITIONAL FINISHED WATER QUALITY PARAMETER</th>
<th>TCEQ STANDARDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temperature</td>
<td>°F</td>
<td>83</td>
<td>NA</td>
</tr>
<tr>
<td>Turbidity</td>
<td>NTU</td>
<td>≤ 1</td>
<td>NA</td>
</tr>
<tr>
<td>Total Dissolved Solids (TDS)</td>
<td>mg/L</td>
<td>&lt; 500</td>
<td>1000 (1)</td>
</tr>
<tr>
<td>Calcium hardness</td>
<td>mg/L as CaCO₃</td>
<td>60</td>
<td>-</td>
</tr>
<tr>
<td>Alkalinity</td>
<td>mg/L as CaCO₃</td>
<td>&gt; 100</td>
<td>-</td>
</tr>
<tr>
<td>Sulfate</td>
<td>mg/L</td>
<td>10-75</td>
<td>&lt;300 (2)</td>
</tr>
<tr>
<td>Chloride</td>
<td>mg/L</td>
<td>&lt; 100</td>
<td>&lt;300 (2)</td>
</tr>
<tr>
<td>pH</td>
<td></td>
<td>7.4 – 7.8</td>
<td>&gt;7</td>
</tr>
<tr>
<td>Iron (Total)</td>
<td>mg/L</td>
<td>≤ 0.15</td>
<td>&lt;0.3</td>
</tr>
<tr>
<td>Manganese (Total)</td>
<td>mg/L</td>
<td>&lt;0.03</td>
<td>&lt;0.05</td>
</tr>
<tr>
<td>Langlier Saturation Index (LSI)</td>
<td></td>
<td>0.1-0.4</td>
<td>Depositing</td>
</tr>
<tr>
<td>Ryznar Stability Index (RSI)</td>
<td></td>
<td>&lt;8.0</td>
<td>Depositing</td>
</tr>
<tr>
<td>Free Chlorine Residual</td>
<td>mg/L</td>
<td>≥2.0 but ≤4.0</td>
<td>≥0.2 but ≤4.0</td>
</tr>
<tr>
<td>Total Trihalomethanes (TTHM)</td>
<td>mg/L</td>
<td>&lt;0.04</td>
<td>&lt;0.08</td>
</tr>
<tr>
<td>Haloacetic Acid (HAAS)</td>
<td>mg/L</td>
<td>&lt;0.03</td>
<td>&lt;0.06</td>
</tr>
</tbody>
</table>

**Notes to Table 9-1:**

1. The secondary MCL established by the USEPA for TDS is 500 mg/L.
2. The secondary MCL established by the USEPA for chloride and sulfate, individually, is 250 mg/L.
3. USEPA proposed MCL.

**9.6.3 Finished Water Delivery and Treatment Guarantee**

The Vista Ridge Regional Supply Project will provide WTPA Water to the Terminus Facility at the following capacities:

- 44.64 MGD in the months of November through February; and
- 48.62 MGD in all other months.

The Terminus Facility therefore will have the capacity to produce 48.62 MGD of Finished Water provided that the quantity of WTPA Water received at the Project is sufficient to meet such net production requirements and the WTPA Water complies with the Specified WTPA Water Quality Parameters set forth in Section 9.6.4 of this Appendix.

During the Acceptance Test, the Project shall be operated for a period of a minimum 30 continuous days, so that the Project produces Finished Water that complies with all Specified Finished Water Quality Parameters at a flow of 48.62 MGD (the “Finished Water Treatment and Delivery Guarantee”).

SAWS agrees to coordinate operation of the SAWS Distribution System for receiving Finished Water so that the Design-Builder the required Acceptance Testing can be performed on the agreed-upon dates. If SAWS is unable to accept 48.62 MGD of Finished Water from the Project on the dates proposed by the Design-Builder, the parties shall establish other test dates, which are within 21 days from the dates initially requested by the Design-Builder. If SAWS proposes dates beyond 21 days from dates initially requested, the Design-Builder and SAWS shall come to agreement on the new test dates and any additional costs that will be incurred by the Design-Builder due solely to the delay in test dates. Reimbursement by SAWS for SAWS caused test delays will be consistent with the payment provisions of this Design-Build Contract.

Net Finished Water production will be based on totalized readings from calibrated Finished Water flow meters. During the Acceptance Test daily production shall be 48.62 MGD for 30 continuous days.

9.6.4 Specified WTPA Water Quality Parameters

The design of the Terminus Facility and all Specified Finished Water Quality Parameters are based on the Project receiving WTPA Water with quality parameters between the minimum and maximum values listed in Table 9-2, and for all quality parameters not specified in Table 9-2, based upon the WTPA Water complying with all TCEQ potable drinking water requirements. The foregoing WTPA Water quality parameters shall constitute the “Specified WTPA Water Quality Parameters”.

<table>
<thead>
<tr>
<th>PARAMETER</th>
<th>UNIT</th>
<th>SPECIFIED WTPA WATER QUALITY PARAMETER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temperature</td>
<td>°F</td>
<td>≤ 83</td>
</tr>
<tr>
<td>Turbidity</td>
<td>NTU</td>
<td>≤ 2</td>
</tr>
<tr>
<td>pH</td>
<td>-</td>
<td>7.0 – 9.0</td>
</tr>
<tr>
<td>Iron (Total)</td>
<td>mg/L</td>
<td>≤ 0.3</td>
</tr>
<tr>
<td>Langlier Saturation Index (LSI)</td>
<td>-</td>
<td>&gt; 0.1 but ≤ 0.3</td>
</tr>
<tr>
<td>Free Chlorine Residual</td>
<td>mg/L</td>
<td>≥0.2 but ≤ 3.0</td>
</tr>
</tbody>
</table>
During the Acceptance Test samples of WTPA Water shall be collected prior to the addition of any chemicals on a schedule approved by the Design-Build and SAWS during the Acceptance Test period. Collected samples will be tested by a certified laboratory and/or field measurements with approved instruments for constituents as set forth in Table 9-2. The Acceptance Test shall be deemed valid if the Specified WTPA Water Quality Parameters are between the minimum and maximum values listed in Table 9-2.

### 9.6.5 Unexpected WTPA Water Quality Conditions

If the WTPA Water contains any constituent or condition not listed in Table 9-2 of this Appendix that does not comply with TCEQ potable drinking water requirements and negatively affects the Project’s ability to meet the Acceptance Standards, then the Design-Build shall evaluate such constituents or conditions and their effects and work with SAWS to develop remedies.

### 9.6.6 Environmental Requirements

The Design-Build shall at all times during performance of the Design-Build Work comply with the “Environmental Requirements” specified in Table 9-3 of this Appendix. SAWS may monitor any Environmental Requirement at multiple locations within the point of performance measurement at any time during the Design-Build Period to test the Design-Build’s compliance with this guarantee.

<table>
<thead>
<tr>
<th>No.</th>
<th>Parameter</th>
<th>Point of Performance Measurement</th>
<th>Performance Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Noise, $L_{eq}(1\text{ hr})$[2]</td>
<td>At and beyond the Project Sites Property Lines</td>
<td>Requirements of Applicable Law, subject to any enhanced standards that may be established in the GMP Amendment.</td>
</tr>
<tr>
<td>2</td>
<td>Noise complaints</td>
<td>At and beyond the Project Sites Property Lines</td>
<td>No third party noise complaints which are verified by SAWS and the Design-Build as a reasonable complaint. This requirement is independent of the other noise-related Environmental Requirements. (3)</td>
</tr>
<tr>
<td>3</td>
<td>Odors</td>
<td>At and beyond the Project Sites Property Lines</td>
<td>No detectable odors which are verified by SAWS.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Within the Project Sites</td>
<td>No objectionable odors.</td>
</tr>
<tr>
<td>4</td>
<td>Lighting</td>
<td>Within the Project Sites</td>
<td>Compliance with the Applicable Law.</td>
</tr>
<tr>
<td>5</td>
<td>Lighting</td>
<td>At and beyond the Project Sites Property Lines</td>
<td>No third party lighting complaints which are verified by SAWS and the Design-Build as a reasonable complaint. This requirement is independent of the other light-related Environmental Requirement. (3) In addition, lighting at the Terminus Facility Site shall comply with Camp Bullis Dark Sky requirements.</td>
</tr>
<tr>
<td>6</td>
<td>Other Nuisances</td>
<td>At and beyond the Project Sites Property Lines</td>
<td>No third party complaints which are verified by SAWS and the Design-Build as a reasonable complaint. This requirement is independent of the other Environmental Requirements. (3)</td>
</tr>
</tbody>
</table>

**Notes to Table 9-3:**
(1) To the extent that Applicable Law sets forth more stringent requirements than those specified in this Table 9-3, the more stringent Applicable Law shall govern in accordance with Section 1.2(Q) of this Design-Build Contract. To the extent that Applicable Law sets forth additional requirements than those provided in this Table 9-3, the Design-Builder shall comply with both the requirements set forth in this Table 9-3 and Applicable Law.

(2) Maximum permissible one-hour average sound pressure level.

(3) For all other complaints, the Design-Builder and SAWS shall prepare a plan for resolution of the complaint and the Design-Builder shall implement the plan in a timely manner. If the plan requires any capital modifications to the Project, the plan shall address cost responsibility.
APPENDIX 10

INSURANCE REQUIREMENTS
APPENDIX 10

INSURANCE REQUIREMENTS

10.1. INSURANCE REQUIREMENTS GENERALLY

10.1.1 Design-Builder Insurance.

Commencing on the Contract Date, the Design-Builder shall, at its own expense, purchase, maintain and keep in full force and effect such lines of insurance coverage as will protect the Design-Builder, SAWS, the City and their employees and agents from claims which may arise out of or result from the Contract Obligations, regardless of whether the Contract Obligations are performed by the Design-Builder, by any Subcontract or Supplier, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable including the minimum insurance coverages and limits set forth in this Appendix.

10.1.2 SAWS Review Rights with Respect to Design-Builder Insurance.

The Design-Builder represents and warrants it has carefully reviewed its insurance program with its legal and risk advisors and has determined its insurance policies comply with the insurance requirements in this Design-Build Contract, and further acknowledges a continuing obligation to ensure its insurance policies remain compliant herewith. Within 24 hours of a written request by SAWS, the Design-Builder shall submit for independent review by SAWS’ consultants, true and complete copies of the Design-Builder’s policies of insurance in electronic form. In addition, upon conducting such review, if SAWS’ consultants determine the Design-Builder’s insurance policies contain deficiencies that cause such policies to fail to comply with the requirements of this Design-Build Contract, the Design-Builder agrees to reimburse SAWS for all costs and fees of its consultants incurred in attempting to resolve such policy deficiencies by modification or special endorsement thereof. SAWS’ review of the Design-Builder’s policies of insurance shall in no way excuse the Design-Builder from any of the requirements set forth herein. In the event SAWS enters into contract with the Design-Builder before any such deficiencies are resolved, SAWS 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 the Design-Builder to recover directly from the Design-Builder any damages, including attorneys’ fees and other costs, SAWS incurs as a result of the Design-Builder’s failure to secure and maintain the insurance required hereunder. The Design-Builder 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.

10.2. REQUIRED INSURANCE

The Design-Builder shall obtain and keep in force throughout the Term the following insurance coverage (except to the extent not available in the insurance market on commercially reasonable terms):

10.2.1 Workers’ Compensation and Employers’ Liability Insurance.

Statutory Workers’ Compensation and Employers’ Liability Insurance with minimum limits of not less than indicated below. The Design-Builder shall require Subcontractors to provide Workers’ Compensation and Employers’ Liability Insurance with the same minimum limits. The policy must be in the name of the Design-Builder and contain an endorsement naming SAWS as the “Alternate Employer”.

A10-1
Required Limits of Coverage – Statutory limits, with Employer’s Liability Coverage as follows:

- Bodily Injury by Accident: $1,000,000.00
- Bodily Injury by Disease Each Employee: $1,000,000.00
- Bodily Injury by Disease Policy Limit: $1,000,000.00

10.2.2 Commercial General Liability.

Commercial General Liability (“CGL”) Insurance with minimum limits of coverage not less than those indicated below, written on an ISO CG 00 01 12 04 coverage form, or a form identical thereto, and shall include additional insured endorsements providing coverage in favor of the SAWS Indemnitees 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. Such policy shall contain no endorsements or policy forms reducing, limiting or excluding in any way the scope of coverage afforded under such form, including without limitation any endorsements/forms excluding or limiting coverage for the following:

(a) Liability assumed by the Design-Builder 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;

(b) 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;

(c) Cross-liability between insureds;

(d) Injury to independent contractors and employees of independent contractors;

(e) Any exclusion relating to damage to work performed by Subcontractors on behalf of the Design-Builder such as the ISO CG 22 94 or ISO CG 22 95, or their equivalent;

(f) Any type of classification or business description limitation endorsement;

(g) Any type of endorsement excluding coverage for construction defects in the completed operations phase;

(h) Any type of endorsement modifying the employer’s liability exclusion;

(i) Any type of habitational or residential exclusion;

(j) Any type of punitive, exemplary or multiplied damages exclusion; and

(k) Any type of subsidence exclusion if the Design-Builder is engaged in any type of earth movement work, including, but not limited to, soil compaction, fill, or installation of storm or sewer drains.

The CGL policy shall at a minimum include the following coverages:
(a) Bodily injury and Property damage on an “Occurrence” basis
(b) Premises & Operations Liability
(c) Products/Completed Operations Liability (to be maintained three years after Mechanical Completion)
(d) Personal and Advertising Injury Liability
(e) 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.

Minimum CGL limits of coverage required:

Each Occurrence: $1,000,000.00
General Aggregate: $2,000,000.00
Products & Completed Operations Aggregate (to be maintained 3 years after Mechanical Completion) $2,000,000.00
Personal and Advertising Injury $1,000,000.00
Contractual Liability $1,000,000.00

10.2.3 Business Automobile Liability.

Business Automobile Insurance for all owned, non-owned, and hired vehicles with the limits of coverage shown below.

Combined Single Limit Bodily Injury & Property Damage $1,000,000.00

10.2.4 Excess Liability.

Excess Liability Insurance over Employers’ Liability, CGL, Business Automobile Liability Policies, with the limits shown below, following form over and affording coverage no less broad than the coverage in the underlying policies, with the limit of coverage shown below.

Excess Liability Insurance $10,000,000.00

If the limits of any underlying policy are greater than the minimum limits of primary coverage required hereunder, then each underlying policy shall be written so as not to preclude coverage under the Excess Liability Insurance policy for failure to exhaust the full limit of coverage of the underlying policy.

10.2.5 Contractor’s Pollution Liability

Contractor’s Pollution Liability Insurance, having the limits of coverage shown below, 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 any Design-Builder Person’s operations, actions or inactions, or completed operations associated with any Contract Obligations performed by the Design-Builder Person. Coverage must be maintained for a minimum of twenty-four (24) months after the date that a certificate of Final Completion is issued, or if this Design-Build Contract is terminated for any reason, for a minimum of twenty-four (24) months following the Termination Date. If coverage is written on a Claims Made & Reported Policy form, the policy retroactive date shall be no later than the Contract Date. Such insurance shall name the SAWS Indemnitees as Additional Insureds.

The Contractor’s Pollution Liability policy shall provide coverage for both sudden and gradual occurrences arising from the Contract Obligations performed under this Design-Build 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 the Contractor’s Pollution Liability policy shall be endorsed to provide transportation coverage beyond the boundaries of the job site, if the Design-Builder’s activities involve hauling excavated spoil.

The Contractor’s Pollution Liability policy shall also include the following coverages:

(a) Coverage for bodily injury to include physical injury, sickness, disease, death, mental anguish and emotional distress sustained by any person;

(b) Coverage for 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); and

(c) If non-owned disposal sites are used for disposal of wastes, these sites shall be specifically covered under the Contractor’s Pollution Liability policy.

“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 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.

Contractor’s Pollution Liability Insurance

$2,000,000.00 Occurrence

$2,000,000.00 Aggregate

10.2.6 Professional Liability Insurance.

Professional Liability Insurance (including Contractor’s Professional Liability insurance for any construction services firm that is a member of the Design-Builder that does not maintain such Professional Liability Insurance) shall be provided by the Design-Builder to cover professional liability and liability of construction services firm members of the Design-Builder arising in connection with the coordination, management or oversight of design professionals and any non-professional Design-Builder Person, for all such liability arising from or in connection with a negligent act, error or omission of the Design-Builder, a Subcontractor, a design professional or architectural/engineering firm, or any other Design-Builder Person, for all Contract Obligations required under this Design-Build Contract, including, but not limited to, design and
design/build 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 design/build contractors; (ii) habitational or residential operations; (iii) mold and/or microbial matter and/or fungus and/or biological substance; (iv) punitive, exemplary or multiplied damages; or (v) contractual liability caused by, related to, or arising from a negligent act, error or omission of the Design-Builder Person (or any limitation or exclusion that restricts coverage to only liability that would exist in the absence of contract).

<table>
<thead>
<tr>
<th>Professional Liability Insurance</th>
<th>$10,000,000 Occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$10,000,000 Aggregate</td>
</tr>
</tbody>
</table>

**10.2.7 Builder’s Risk Insurance**

Before commencement of onsite Construction work or placement of orders for long-lead items pursuant to any Early Work Packages, the Design-Builder shall obtain, and thereafter at all times during the performance of the Design-Build Work maintain, an “All Risk” Builders’ Risk Insurance policy written in completed value form naming the Design-Builder as an insured, and naming the SAWS Indemnitees as named insureds and covering the Contract Obligations (but not the Design-Builder’s or its employees tools and construction equipment) against loss or damage as described herein. The “All Risk” Builder’s Risk Insurance policy shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage, including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earth movement, flood, windstorm, falsework, testing and startup, temporary buildings, risks of damage to materials and equipment that constitute part of the Design-Build Work (whether on site or in transit) and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder’s services and expenses required as a result of such insured loss.

The “All Risk” Builders Risk Insurance Policy shall be in an amount not less than the full replacement cost of the Design-Build Work at completion and shall name SAWS as the loss payee to the policy providing for losses to be payable to SAWS. The Design-Builder will protect the Design-Build Work against loss or damage from and after the time SAWS gives the Design-Builder an authorization to proceed with the Design-Build Work, and continuing until the Design-Build Work is finally accepted and the Design-Builder has demobilized its forces and equipment from the Project Sites. The Design-Builder shall be liable for and assume the risk of any damage or loss to the Design-Build Work or the work of others on the Project that is not covered by such insurance, including any deductible charges associated with such damage or loss, if it: (1) occurs prior to the Design-Builder transfer of the risk of loss upon Final Completion, as provided in this Design-Build Contract; (2) is caused by defects in the Design-Build Work; or (3) is caused by the fault or negligence of the Design-Builder, or any other Design-Builder Person, including, but not limited to, all Subcontractors and Suppliers of any tier. The Design-Builder waives, shall cause all tiers of its Subcontractors to waive, and shall cause its insurers to waive by way of a policy endorsement, all rights of subrogation that the Design-Builder or its insurers may have against the SAWS Indemnitees and any other party that the Design-Builder is required to indemnify under this Design-Build Contract. Nothing herein shall be construed to limit in any way the Design-Builder’s obligations to remedy and correct defects under this Design-Build Contract. Builders’ Risk Insurance shall contain no provision limiting coverage of a named insured only “as its interests may appear.”

| Builders Risk Insurance | No Less than the Total Project Value |
10.3. GENERAL INSURANCE POLICY REQUIREMENTS

10.3.1 Primary and Non-Contributing.

Each of the Design-Builders’ liability insurance policies (excluding only the Design-Builders’ workers’ compensation/employers’ liability and professional liability 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 the SAWS Indemnitees. Insurance may be provided under a single limit policy, or two or more policies with combined limits for the required amount of coverage. The Design-Builders’ Commercial General Liability primary policies shall include a per-project aggregate endorsement. If any insurance the Design-Builders furnishes shall be, or become at risk of being, reduced diminished or exhausted by claims thereon, the Design-Builders agrees to supplement, increase and/or replace such insurance with other insurance to ensure that the Design-Builders has available at all times the coverage required hereunder.

10.3.2 Waiver of Subrogation.

The Design-Builders’ workers’ compensation, employers’ liability, commercial automobile liability, CGL, excess liability, professional liability and builder’s risk insurance policies shall be endorsed to waive all rights of subrogation in favor of the SAWS Indemnitees. With respect to all such policies, the Design-Builders waives any and all rights of recovery or subrogation against the SAWS Indemnitees.

10.3.3 Additional Insured Requirements.

The SAWS Indemnitees shall be included as additional insureds without limitation on all policies required herein (except workers’ compensation, employers’ liability and professional liability policies), under the form of an additional insured endorsement providing the maximum protection to SAWS allowed by Applicable Law, except as otherwise expressly stated herein. The Design-Builders represents and warrants that:

(a) The Design-Builders’ policies of liability insurance, including the Design-Builders’ commercial general liability, commercial automobile liability, and excess liability insurance policies have been endorsed to cover the SAWS Indemnitees as additional insureds to the maximum extent permitted by Applicable Law, or as otherwise set forth herein, with respect to liability arising out of Contract Obligations performed by or for the Design-Builders, including ongoing and completed operations in connection with this Design-Build Contract (and such coverage provides for the protection of each insured against claims of liability by another insured, under a severability of interests clause).

(b) Such policies of insurance have also been endorsed to cover as an additional insured any third party to the extent required by this Design-Build Contract.

(c) Such endorsements provide as to each additional insured, at a minimum, coverage to the limits of each such policy for at least each claim to the same extent that the Design-Builders is obligated to indemnify and defend the additional insured as an indemnified party under this Design-Build Contract.

(d) Access to originals or certified copies of required insurance policies have been provided to SAWS for review.

(e) Attached hereto are true and correct copies of the following:
10.3.4 Notice of Cancellation.

All policies shall be endorsed to require thirty (30) days’ notice of cancellation to SAWS (except for cancellation resulting from non-payment of premiums) and ten (10) days’ notice of cancellation to SAWS in the event of non-payment of premiums by the Design-Builder. The Design-Builder shall not cause or permit its insurance to be canceled, reduced, restricted, limited, or invalidated.

10.3.5 Qualification of Insurers and Evidence of Coverage

All the Design-Builder’s insurance shall be issued by insurance carriers licensed to do business in the State at the time the policy is issued 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) Certificates of insurance shall be prepared on an Acord 25 (2010/05) form;
(b) Certificates shall designate SAWS as certificate holder, together with SAWS’ mailing address;
(c) The named insured’s name must match the Design-Builder’s name as shown in this Design-Build Contract;
(d) Certificates shall list each insurance company producing each form of coverage, together with the applicable policy number and policy date;
(e) 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) Certificates for all applicable policies shall attach copies of all applicable additional insured endorsements;
(g) Certificates shall disclose the amount of any deductible or self-insured retention in excess of $25,000;
(h) Certificates of applicable policies shall disclose any designated construction project(s) general aggregate limit (SAWS reserves the right to require notice of replenishment and placement of supplemental coverage if any aggregate limit is exhausted during the applicable policy period);
(i) Certificates shall attach all primary and non-contributory endorsements required herein;
(j) Certificates shall attach waivers of subrogation applicable to all coverages required herein;
(k) Certificates shall attach copies of all notice of cancellation terms from all policies required herein;
(l) Name(s) of the Project(s) as described in this Design-Build Contract shall be listed in the certificate;

(m) For Pollution Liability and Professional Liability policies, include in writing on the certificate the coverage form under which the respective line of coverage is written – either:

(i) Claims-made form; if the coverage form declared on the certificate is the claims-made form, the “retroactive-date” for this line of coverage must also be included on the certificate as well; or

(ii) Occurrence basis – no additional wording required.

(n) The SAWS’ Project/Contract number(s) along with its descriptor caption must be included in the Description of Operations section located in the bottom half of the certificate forms.

(o) Certificate Holder - SAWS 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  
c/o Ebix BPO  
PO Box 100085-ZD  
Ref. # (Will be provided by SAWS)  
Duluth, GA 30096

*The SAWS Contract Representative will include in the above address, the complete Reference Number in the written confirmation of the Design-Builder’s selection pending final Board of Trustees approval. DO NOT BEGIN THE DISTRIBUTION OF ANY CERTIFICATE(S) BEFORE RECEIVING AND INSERTING THE COMPLETE REFERENCE NUMBER INTO THE CERTIFICATE HOLDER ADDRESS SHOWN ABOVE.

(p) Distribution of Completed Certificates - Completed Certificates shall be distributed by the Design-Builder as follows:

1) Original shall be sent:

   a. By Mail:

      San Antonio Water System  
      C/O Ebix BPO  
      PO Box 100085-ZD  
      Ref. # (Will be provided by SAWS)  
      Duluth, GA 30096

   b. By Fax: 1-770-325-6502

   c. By E-Mail: saws@ebix.com

   d. To Upload: https://www.ebixcerts.com (preferred method)

2) Copies shall be sent to the following address:
10.3.6 “Claims-Made” Coverage.

With respect to any coverage maintained on a “claims-made” policy form, the Design-Builder shall maintain such coverage for three (3) years following Termination Date of this Design-Build Contract or the achievement of Final Completion under this Design-Build Contract, whichever is later; provided that, if a “claims-made” policy is maintained, the retroactive date must precede the Contract Date under this Design-Build Contract.

10.3.7 Required Insurance as Condition to Performance of Contract Obligations.

The Design-Builder shall not commence Contract Obligations under this Design-Build Contract until the Design-Builder has obtained all Required Insurance and until such insurance has been accepted by SAWS’ approval. SAWS’ approval of the Design-Builder’s insurance shall not relieve or decrease the liability of the Design-Builder hereunder. SAWS shall have no duty to pay or perform under this Design-Build Contract until all certificates of insurance and required insurance policies have been confirmed by SAWS’ advisors to comply with the requirements set forth herein. The Design-Builder’s failure to fulfill these insurance requirements shall not be a basis for any adjustment to the Design-Builder’s compensation or schedule. SAWS reserves the right to terminate this Design-Build Contract for convenience without any expense or liability in the event the Design-Builder fails to secure all insurance required herein within ten (10) days of the Design-Builder’s execution of the Design-Build Contract.

The Design-Builder and its Subcontractors shall not commence the shipment of equipment or materials or commence the Contract Obligations at the Project Sites until all of the insurance coverages required of the Design-Builder and any other Design-Builder Person, including Builders’ Risk insurance coverage, are in force and the necessary certificates and statements pursuant to this Appendix have been received and approved by SAWS.

10.3.8 Failure to Obtain or Renew Required Insurance.

If the Design-Builder fails to obtain or renew the insurance required herein and to provide SAWS with acceptable evidence thereof, SAWS shall have the right, but not the obligation, to: (1) procure such insurance and reduce the Design-Build Price by the cost thereof; and/or (2) deem as a material breach of this Design-Build Contract the Design-Builder’s failure to do so. Within five (5) calendar days of any cancellation or non-renewal of any required line of insurance coverage, the Design-Builder shall provide SAWS a replacement certificate of insurance with all applicable endorsements included therewith. SAWS shall have the right, in its sole discretion, to suspend the Design-Builder's performance or terminate this Design-Build Contract should there be a lapse in coverage at any time during the Term. In addition to any other remedies available to SAWS, SAWS shall have the right, upon the Design-Builder’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, to withhold any payment(s) which become due to the Design-Builder hereunder until the Design-Builder demonstrates compliance with the requirements of this Design-Build Contract.

10.3.9 No Effect on Indemnification Requirements.

Nothing herein shall reduce or alter any obligation of the Design-Builder to indemnify, defend or hold harmless the SAWS Indemnitees identified in this Design-Build Contract. The Design-Builder’s obligations for loss or damage arising out of the Design-Builder’s Contract Obligations or operations are not limited to the types or amounts of insurance set forth herein.
10.3.10 Recovery of Attorneys’ Fees.

To the extent Applicable Law allows recovery of attorneys’ fees in any action or proceeding commenced to enforce the rights of any SAWS Indemnitee as an additional insured under this Design-Build Contract, the Design-Builder agrees to pay SAWS as the prevailing party in any such action, in addition to any other relief granted, the actual reasonable attorney fees SAWS 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 Design-Build Contract and shall be enforceable as a separate agreement.

10.3.11 Design-Builder Responsibility for Other Design-Builder Persons.

SAWS shall not be under any duty to advise the Design-Builder in the event that the Design-Builder’s insurance is not in compliance with this Design-Build Contract. The Design-Builder shall require each other Design-Builder Person to carry the types and limits of insurance coverage the Design-Builder determines to be necessary and appropriate to protect SAWS and the Design-Builder from the risk of loss, taking into consideration the scope of services and work performed by each other Design-Builder Person. Excepting only Workers’ Compensation and Professional Liability insurance policies, the Design-Builder shall cause each other Design-Builder Person to include SAWS as an additional insured under each policy of insurance maintained by such Design-Builder Person. The Design-Builder will require evidence of this insurance and additional insured status to be provided by each other Design-Builder Person prior to their commencement of any work or entering onto any Project Sites in connection with the Project, and copies of this evidence shall be provided to SAWS by the Design-Builder.

10.3.12 Deductibles and Self-Insured Retentions.

The Design-Builder is responsible for all deductibles and any self-insured retentions under all lines of insurance coverage required by this Design-Build Contract.

10.3.13 Design-Builder’s Determination of Adequacy of Coverage.

The stated policy limits of each line of insurance coverage required herein are minimum only and it shall be the Design-Builder’s responsibility to determine what policy limits in excess of such minimum limits are adequate, and the length of time each line of insurance coverage shall be maintained beyond any lengths of time set forth herein; insurance policy limits are not a limit of the Design-Builder’s liability.

10.3.14 Changes to Insurance Requirements.

SAWS reserves the right to review the above insurance requirements during the Term, and any extension or renewal hereof, and to request modification of lines of insurance coverage and their respective liability limits when deemed necessary and prudent by SAWS based upon changes in Applicable Law or circumstances surrounding this Design-Build Contract, subject to the right of the Design-Builder to seek reimbursement of reasonable and necessary increased premium costs.
APPENDIX 11

KEY PERSONNEL AND APPROVED SUBCONTRACTORS
APPENDIX 11

KEY PERSONNEL AND APPROVED SUBCONTRACTORS

11.1. PURPOSE

The purpose of this Appendix is to identify (1) the key management and supervisory personnel proposed to be used by the Design-Builder in performing the Contract Obligations and (2) those Subcontractors that SAWS has approved for use by the Design-Builder in performing the Contract Obligations.

11.2. KEY PERSONNEL

11.2.1 Key Personnel Generally.

As referenced in Section 7.1 of this Design-Build Contract, certain key management and supervisory personnel were proposed by the Design-Builder and shall be used by the Design-Builder in connection with the performance of the Contract Obligations (the “Key Personnel”). The Key Personnel are identified in the Design-Builder’s organization chart(s) as set forth in Attachment 11A to this Appendix. Any change in the Key Personnel shall be subject to review and approval of SAWS in accordance with Section 7.1 of this Design-Build Contract. Resumes for the Key Personnel are included in Attachment 11B to this Appendix and establish the general level of qualifications for the role identified.

11.2.2 Key Personnel.

At a minimum, the Key Personnel shall include the following:

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Supervisor*</td>
<td>Chris Krumwiede</td>
</tr>
<tr>
<td>Design-Builder Contract Representative*</td>
<td>Eric Thoendel</td>
</tr>
<tr>
<td>Design-Build Manager*</td>
<td>Rade Popovich</td>
</tr>
<tr>
<td>Safety Manager*</td>
<td>Brett Stewart</td>
</tr>
<tr>
<td>Design-Build Operations Manager*</td>
<td>Gary Sober</td>
</tr>
<tr>
<td>Project Design Manager</td>
<td>Mark Janay, PE</td>
</tr>
<tr>
<td>Lead Designer – Pipelines</td>
<td>Mark Bush, PE</td>
</tr>
<tr>
<td>Lead Designer – Pump Stations and Tanks</td>
<td>Jaime Kypuros, PE</td>
</tr>
<tr>
<td>Lead Designer – WTP at Terminus Site</td>
<td>Jarret Kinslow, PE</td>
</tr>
<tr>
<td>Design Principal</td>
<td>Jill Hudkins, PE</td>
</tr>
<tr>
<td>Design Team QA/QC Manager</td>
<td>Steve Tedesco, PE, BCEE</td>
</tr>
<tr>
<td>Lead Estimator</td>
<td>Ryan Roehner</td>
</tr>
<tr>
<td>Design Coordinator/Construction Manager</td>
<td>Bren Cline</td>
</tr>
<tr>
<td>Treatment Superintendent</td>
<td>Mark Mantila</td>
</tr>
<tr>
<td>Pipeline Superintendent</td>
<td>Doc Gadd</td>
</tr>
<tr>
<td>Pump Station Superintendent</td>
<td>Shane McDougall</td>
</tr>
<tr>
<td>CPM Scheduler/Project Controls</td>
<td>Anton Hocevar</td>
</tr>
</tbody>
</table>

* Responsibilities are specified in this Design-Build Contract.
### 11.3. APPROVED SUBCONTRACTORS

As of the Contract Date, there are no Approved Subcontractors. Potential Subcontractors shall be proposed by the Design-Build and approved by SAWS for any Early Work Packages and for the balance of the Design-Build Work in accordance with Sections 5.6 and 7.4 of this Design-Build Contract and the Subcontracting Plan. Approved Subcontractors proposed by the Design-Build and approved by SAWS after the GMP Amendment Date shall be reflected in a Contract Administration Memorandum.

The names and roles of all Approved Subcontractors as of the GMP Amendment Date shall be reflected in the table below as part of the GMP Amendment.

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Tetra Tech, Inc.</td>
<td>Lead Professional Services Firm</td>
</tr>
<tr>
<td>2. Structural Engineering Associates</td>
<td>Structural Engineering</td>
</tr>
<tr>
<td>3. Maverick Land Surveying Co.</td>
<td>Surveying</td>
</tr>
<tr>
<td>4. Arias &amp; Associates</td>
<td>Geotechnical</td>
</tr>
<tr>
<td>5. Lopez Salas Architects</td>
<td>Architecture/Landscape Architecture</td>
</tr>
<tr>
<td>6. CFZ Group</td>
<td>Landscape Architecture</td>
</tr>
<tr>
<td>7. Bain Medina Bain</td>
<td>Survey, Civil Engineering</td>
</tr>
<tr>
<td>8. Enotech</td>
<td>Mechanical, Electrical and Plumbing</td>
</tr>
<tr>
<td>9. Sanchez-Salazar &amp; Associates</td>
<td>Traffic Control</td>
</tr>
</tbody>
</table>
ATTACHMENT 11A

KEY PERSONNEL ORGANIZATION CHART
of the named positions on this organization chart were engaged during Phase I. There will be no learning curve during Phase II, which accelerates construction.

PHASE II
CORPORATE SUPPORT
Through Lead Member Kiewit, the project team will have access to the following unique and specialized corporate technical resource groups on an as-needed basis.

Kiewit Infrastructure Engineers (KIE)
Dedicated in-house engineering group to provide support. Their core services include temporary structure design including cofferdams, falsework, formwork, support of excavation, and crane critical lift design.

Kiewit Supply Network (KSN)
Centralized service group that services Kiewit projects by consistently estimating and purchasing high-quality materials and services ensuring they are delivered on schedule and in compliance with specifications. KSN takes advantage of Kiewit’s global presence to leverage economics of scale to strengthen our competitive advantage while decreasing costs and expediting execution.

Virtual Design and Construction (VDC)
Engaging our VDC (BIM) Group in early stages of design reduces risk, increases efficiency, and allows projects to benefit from model data throughout the life cycle of a project.

Kiewit Environmental Management
Kiewit entities, our partners including Tetra Tech, and all respective employees and subcontractors are required to operate and conduct themselves at all times in full compliance with all environmental laws, policies and procedures. The Corporate Management Team will provide oversight and support to our Project Environmental Coordinator (PEC) tasked with training and ensuring compliance by all members of our Team.

New team member since RFQ submittal
APPENDIX 12

PROJECT SITES SECURITY REQUIREMENTS
APPENDIX 12

PROJECT SITES SECURITY REQUIREMENTS

12.1. GENERAL

The Design-Build shall provide 24-hour security for the Terminus Facility Site, the Bitters Pump Station Improvements Site, the Maltsberger Pump Station Improvements Site, the Basin Pump Station Improvements Site, and the Stone Oak Pump Station Improvements Site. Security measures shall be at least equal to those usually provided by SAWS to protect SAWS’ existing facilities during normal operation, but shall also include such additional security fencing, barricades, lighting and other measures as required to protect the sites.

12.2. PRIME CONTRACTOR DATA FORM (PCDF) AND BACKGROUND SCREENING LETTER

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

12.3. PHOTO IDENTIFICATION BADGE

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

A SAWS employee must physically escort the Design-Builder at all times. SAWS may, in its sole discretion, waive the escort requirements if the PCDF and a “clean” Background Screening Letter, signed by an authorized representative of the Design-Builder are approved by SAWS Security.

Subcontractors must always be under escort of the Design-Builder while performing work on any SAWS property. Subcontractors must display either a company photo badge, with name, or a valid driver’s license at all times while working on any SAWS property. The Design-Builder is solely responsible for the actions of its employees, agents and Subcontractors.

12.5. **COMPLIANCE WITH SECURITY REQUIREMENTS**

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

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

- Issue a Work Stoppage Order until the security violation(s) are remedied.
- Ask any unidentified or improperly identified person or equipment to leave the Project Sites immediately and not return until items are remedied.
APPENDIX 13

TWDB, PREVAILING WAGE AND LABOR REQUIREMENTS
APPENDIX 13

TWDB, PREVAILING WAGE AND LABOR REQUIREMENTS

13.1. TWDB SUPPLEMENTAL CONDITIONS

References to the “Owner” and the “Contractor” in this Appendix shall be deemed to mean and refer to SAWS and the Design-Builder, respectively. To the extent any provision of this Section 13.1 is addressed differently or more specifically in another Appendix, the higher standard will govern.

1. Supersession

The Owner and the Contractor agree that the TWDB Supplemental Conditions apply to the work eligible for Texas Water Development Board assistance to be performed under this contract and these clauses supersede any conflicting provisions of this contract.

2. Privity of Contract

Funding for this project is expected to be provided in part by a loan or grant from the Texas Water Development Board. Neither the state of Texas, nor any of its departments, agencies or employees is, or will be, a party to this contract or any lower tier contract. This contract is subject to applicable provisions in 31 TAC Chapter 363 in effect on the date of the assistance award for this project.

3. Definitions

(a) The term “Owner” means the local entity contracting for the construction services.

(b) The term "TWDB" means the Executive Administrator of the Texas Water Development Board, or other person who may be at the time acting in the capacity or authorized to perform the functions of such Executive Administrator, or the authorized representative thereof.

(c) The term “Engineer” means the Owner’s authorized consulting engineer for the project.

4. Laws to be Observed

In the execution of the contract, the Contractor must comply with all applicable local, state and federal laws, including but not limited to laws concerned with labor, safety, minimum wages, and the environment. The Contractor shall be familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances and regulations which in any manner affect the conduct of the work, and shall indemnify and save harmless the Owner, Texas Water Development Board, and their representatives against any claim arising from violation of any such law, ordinance or regulation by the Contractor, their Subcontractor or their employees.

5. Review by Owner and TWDB

(a) The Owner, authorized representatives and agents of the Owner, and the TWDB shall, at all times have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this contract, provided, however
that all instructions and approval with respect to the work will be given to the Contractor only by the Owner through authorized representatives or agents.

(b) Any such inspection or review by the TWDB shall not subject the state of Texas, or its representatives, to any action for damages.

6. Performance and Payment Bonds

Each Contractor awarded a construction contract must furnish performance and payment bonds:

(a) the performance bond shall include without limitation guarantees that work done under the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices;

(b) the performance and payment bonds shall be in a penal sum of not less than 100 percent of the contract price and remain in effect for one year beyond the date of approval by the Engineer of the political subdivision; and

(c) the Contractor shall utilize a surety company that is authorized to do business in Texas in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code.

7. Payments Schedule and Cost Breakdown

(a) The Contractor shall submit for approval immediately after execution of this Design-Build Contract, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work, the anticipated monthly payments to become due to the Contractor, and the accumulated percent of progress each month.

(b) The following paragraph applies only to contracts awarded on a lump sum contract price:

COST BREAKDOWN: The Contractor shall submit to the Owner a detailed breakdown of the estimated cost of all work to be accomplished under the contract, so arranged and itemized as to meet the approval of the Owner or funding agencies. This breakdown shall be submitted promptly after execution of the agreement and before any payment is made to the Contractor for the work performed under the contract. After approval by the Owner the unit prices established in the breakdown shall be used in estimating the amount of partial payments to be made to the Contractor.

8. Workers’ Compensation Insurance Coverage (as applicable, consistent with Texas Labor Code §406.096)

(a) The Contractor shall certify in writing that the Contractor provides workers' compensation insurance coverage for each employee of the Contractor employed on the public project.

(b) Each Subcontractor on the public project shall provide such a certificate relating to coverage of the Subcontractor’s employees to the general Contractor, who shall provide the Subcontractor’s certificate to the governmental entity.
(c) A Contractor who has a contract that requires workers’ compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer’s primary business does not constitute engaging in building or construction.

(e) In this section:

(1) "Building or construction" includes:
   i. erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
   ii. remodeling, extending, repairing, or demolishing a structure; or
   iii. otherwise improving real property or an appurtenance to real property through similar activities.

(2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

9. U.S. Iron and Steel and Manufactured Goods (Does not apply to State Participation or SWIFT Projects)

In the execution of the contract, the Contractor shall be familiar with and at all times shall observe and comply with all applicable federal, state, and local laws, ordinances and regulations concerned with the use of iron and steel and manufactured goods made in the United States which in any manner affect the conduct of the work, and shall indemnify and save harmless the Texas Water Development Board against any claim arising from violation of any such law, ordinance or regulation by the Contractor or by their Subcontractor or their employees.

Consistent with Texas Water Code Section 17.183, iron and steel products and manufactured goods used in the project shall be produced in the United States, unless:

(a) such products or goods are not:
   (1) available in sufficient quantities;
   (2) readily available; or
   (3) of a satisfactory quality; or

(b) the use of such products or goods will increase the total cost of the project by more than 20 percent.

10. Prevailing Wage Rates

This contract is subject to Government Code Chapter 2258 concerning payment of Prevailing Wage Rates. The Owner will determine what the general prevailing rates are in accordance with the statute. The applicable provisions include, but are not limited to the following:
§2258.021. Right to be Paid Prevailing Wage Rates

(a) A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid:

(1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and

(2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

(b) Subsection (a) does not apply to maintenance work.

(c) A worker is employed on a public work for the purposes of this section if the worker is employed by a Contractor or Subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

§2258.023. Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

(a) The Contractor who is awarded a contract by a public body or a Subcontractor of the Contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.

(b) A Contractor or Subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, $60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.

(c) A Contractor or Subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.

(d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.

(e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

§2258.024. Records

(a) A Contractor and Subcontractor shall keep a record showing:

(1) the name and occupation of each worker employed by the Contractor or Subcontractor in the construction of the public work; and

(2) the actual per diem wages paid to each worker.

(b) The record shall be open at all reasonable hours to inspection by the officers and agents of the public body.
§2258.025. Payment Greater Than Prevailing Rate Not Prohibited

This chapter does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wages.

11. Employment of Local Labor (only applicable to projects funded by EDAP)

The Contractor shall, to the maximum feasible extent, employ local labor for construction of the project. The Contractor and every Subcontractor undertaking to do work on the project which is, or reasonably may be done as on-site work, shall employ qualified persons who regularly reside within the political subdivision boundary of the Owner and the economically distressed area where the project is located (Texas Water Code, Section 17.183).

12. Payments

(a) Progress Payments:

(1) The Contractor shall prepare their requisition for progress payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for review. Except as provided in paragraph (3) of this subsection, the amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting: (1) five percent (5%) minimum of the total amount, as a retainage and (2) the amount of all previous payments. The total value of work completed to date shall be based on the actual or estimated quantities of work completed and on the unit prices contained in the agreement (or cost breakdown approved pursuant to section 7b relating to lump sum bids) and adjusted by approved change orders. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection by the Engineer.

(2) The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this contract complete and satisfactory to the Owner in all details.

(3) This clause applies to contracts when the Owner is a District or Authority. The retainage shall be ten percent of the amount otherwise due until at least fifty percent of the work has been completed. After the project is fifty percent completed, and if the District or Authority’s Board finds that satisfactory progress is being made, then the District may authorize any of the remaining progress payments to be made in full. The District is not obligated to pay interest earned on the first 50% of work completed (Texas Water Code Sec. 49.276(d)).

(4) The five percent (5%) retainage of the progress payments due to the Contractor may not be reduced until the building of the project is substantially complete and a reduction in the retainage has been authorized by the TWDB.

(b) Withholding Payments. The Owner may withhold from any payment otherwise due the Contractor so much as may be necessary to protect the Owner and if so elects may also withhold any amounts due from the Contractor to any Subcontractors or
material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the Owner and will not require the Owner to determine or adjust any claims or disputes between the Contractor and their Subcontractors or Material dealers, or to withhold any monies for their protection unless the Owner elects to do so. The failure or refusal of the Owner to withhold any monies from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this contract.

(c) Payments Subject to Submission of Certificates. Each payment to the Contractor by the Owner shall be made subject to submission by the Contractor of all written certifications required of the Contractor, their Subcontractors and other general and special conditions elsewhere in this contract.

(d) Final Payment.

(1) Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract the Contractor shall execute and deliver to the Owner a release of all claims against the Owner arising under, or by virtue of, this contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in this contract, by state law or otherwise expressly agreed to by the parties to this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Owner's claims against the Contractor or their sureties under this contract or applicable performance and payment bonds.

(2) After final inspection and acceptance by the Owner of all work under the Contract, the Contractor shall prepare their requisition for final payment which shall be based upon the carefully measured or computed quantity of each item of work at the applicable unit prices stipulated in this Design-Build Contract or cost breakdown (if lump sum), as adjusted by approved change orders. The total amount of the final payment due to the Contractor under this contract shall be the amount computed as described above less all previous payments.

(3) The retainage and its interest earnings, if any, shall not be paid to the Contractor until the TWDB has authorized a reduction in, or release of, retainage on the contract work.

(4) Withholding of any amount due to the Owner, under general and/or special conditions regarding "Liquidated Damages" shall be deducted from the final payment due the Contractor.

13. Archaeological Discoveries and Cultural Resources

No activity which may affect properties listed or properties eligible for listing in the National Register of Historic Places or eligible for designation as a State Archeological Landmark is authorized until the Owner has complied with the provisions of the National Historic Preservation Act and the Antiquities Code of Texas. The Owner has previously coordinated with the appropriate agencies and impacts to known cultural or archeological deposits have been avoided or mitigated. However, the Contractor may encounter unanticipated cultural or archeological deposits during construction.

If archeological sites or historic structures which may qualify for designation as a State Archeological Landmark according to the criteria in 13 TAC Chapter 26, or that may be eligible for listing on the National Register of Historic Places in accordance with 36 CFR
Part 800, are discovered after construction operations are begun, the Contractor shall immediately cease operations in that particular area and notify the Owner, the TWDB, and the Texas Historical Commission, 1511 N. Colorado St., P. O. Box 12276, Capitol Station, Austin, Texas 78711-2276. The Contractor shall take reasonable steps to protect and preserve the discoveries until they have been inspected by the Owner's representative and the TWDB. The Owner will promptly coordinate with the State Historic Preservation Officer and any other appropriate agencies to obtain any necessary approvals or permits to enable the work to continue. The Contractor shall not resume work in the area of the discovery until authorized to do so by the Owner.

14. Endangered Species

No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), and/or the State of Texas Parks and Wildlife Code on Endangered Species, or to destroy or adversely modify the habitat of such species.

If a threatened or endangered species is encountered during construction, the Contractor shall immediately cease work in the area of the encounter and notify the Owner, who will immediately implement actions in accordance with the ESA and applicable State statutes. These actions shall include reporting the encounter to the TWDB, the U.S. Fish and Wildlife Service, and the Texas Parks and Wildlife Department, obtaining any necessary approvals or permits to enable the work to continue, or implement other mitigation actions. The Contractor shall not resume construction in the area of the encounter until authorized to do so by the Owner.

15. Hazardous Materials

Materials utilized in the project shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

If the Contractor encounters existing material on sites owned or controlled by the Owner or in material sources that are suspected by visual observation or smell to contain hazardous materials, the Contractor shall immediately notify the Engineer and the Owner. The Owner will be responsible for the testing and removal or disposal of hazardous materials on sites owned or controlled by the Owner. The Owner may suspend the work, wholly or in part during the testing, removal or disposal of hazardous materials on sites owned or controlled by the Owner.

16. Changes

*Provisions identified with an asterisk below are consistent with Local Government Code 271.060. Counties and Municipalities may modify the identified provisions, when applicable, to conform to Local Government Code 262.031 (Counties) or 252.048 (Municipalities).

(a) The Owner may at any time, without notice to any surety, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including but not limited to changes:

(1) In the specifications (including drawings and designs);

(2) In the time, method or manner of performance of the work;
(3) To decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished;

(b) *The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

(c) *A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract, with an original contract price of less than $1 million, increases the contract amount to $1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.

(d) *A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less.

(e) Changes that involve an increase in price will be supported by documentation of the cost components. For projects funded through the EDAP program, or with grant proceeds, TWDB staff may request this information to be provided in a format equivalent to the Cost and Pricing Information form (No. WRD-277).

(f) Any change orders involving a change in the project requiring a relocation of project components, sizing, or process may require additional environmental approval. A map and description of the proposed changes should be sent to the TWDB Environmental Reviewer for coordination and approval as soon as possible to avoid any delay.

17. Operation and Maintenance Manuals and Training

(a) The Contractor shall obtain installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the contract. The Contractor shall submit three copies of each complete manual to the Engineer within 90 days after approval of shop drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the project site or storage location.

(b) The Owner shall require the Engineer to promptly review each manual submitted, noting necessary corrections and revisions. If the Engineer rejects the manual, the Contractor shall correct and resubmit the manual until it is acceptable to the Engineer as being in conformance with the design concept of the project and for compliance with information given in the contract documents. Owner may assess Contractor a charge for reviews of same items in excess of three (3) times. Such procedure shall not be considered cause for delay.

(c) Acceptance of manuals by Engineer does not relieve Contractor of any requirements of terms of Contract.

(d) The Contractor shall provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.
(e) Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor to install, test, and start-up the equipment.

(f) Each manual is to be bound in a folder and labeled to identify the contents and project to which it applies. The manual shall contain the following applicable items:

1. A listing of the manufacturer's identification, including order number, model, serial number, and location of parts and service centers.
2. A list of recommended stock of parts, including part number and quantity.
3. Complete replacement parts list.
4. Performance data and rating tables.
5. Specific instructions for installation, operation, adjustment, and maintenance.
6. Exploded view drawings for major equipment items.
7. Lubrication requirements.
8. Complete equipment wiring diagrams and control schematics with terminal identification.

18. As-built Dimensions and Drawings

(a) Contractor shall make appropriate daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities.

(b) Upon completion of each facility, the Contractor shall furnish the Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed. As a minimum, the final drawings shall include the following:

1. Horizontal and vertical locations of work.
2. Changes in equipment and dimensions due to substitutions.
3. "Nameplate" data on all installed equipment.
4. Deletions, additions, and changes to scope of work.
5. Any other changes made.

19. Close-Out Procedures

To close-out the contract and release final retainage, the following steps must be completed:

(a) TWDB Staff must conduct a construction contract final inspection (CCFI).

(b) The following submittals must be received, reviewed, and accepted by TWDB:
(1) The final change order, adjustment of quantities, or a statement that all change orders have previously been submitted and there will be no more change orders;

(2) The final pay request from the Contractor;

(3) An affidavit by the Contractor that all bills have been paid;

(4) Certification by the consulting Engineer that the work has been completed and was constructed in accordance with the approved plans and specifications and sound engineering principles and construction practices;

(5) Acceptance of the project by the Owner in the form of a written resolution or other formal action;

(6) Notification of the beginning date of the warranty period for the contract; and

(7) Confirmation that the Owner has received as-built drawings from the Contractor.

(c) TWDB will issue a Certificate of Approval allowing the release of retainage.

13.2. PREVAILING WAGE AND LABOR REQUIREMENTS

The Design-Builder shall comply with the SAWS Wage and Labor Provisions, described below, in performance of the Contract Obligations.


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1. **GENERAL STATEMENT**

This is a San Antonio Water System Contract and Government Code Chapter 2258, Prevailing Wage Rate requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefit contribution) for work of similar character be paid to contractor and subcontractor employees. All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Clean Water State Revolving Fund or Drinking Water State Revolving Fund shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (U.S.C.)

These wage rates are derived from the current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas pursuant to the original intent and authority of Ordinance No. 60110 and amended by Ordinances 71312 and 2008-11-20-1045 passed by the City Council of the City of San Antonio. Copies of both the current Ordinance and the wage rates are contained in the Special Conditions, and are included instruments of this contract and full compliance with same shall be required.

Any deviation from Wage and Labor Standard Provisions compliance may be cause for SAWS’ withholding either periodic interim or final payment to the contractor until such deviations are properly corrected.

2. **SAWS, CONTRACTING DEPT., CONTRACT ADMINISTRATION, RESPONSIBILITIES**

The Contract Administration Section, Contracting Dept., San Antonio Water System, is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor contractor/subcontractor practices to assure the President/CEO that:

a. Appropriate weekly compliance statements and payroll records are submitted to SAWS by the contractor/subcontractor and that such are reviewed for compliance with the Wage and Labor Standard Provisions.

b. Apprentices/trainees working on the project are properly identified by the contractor/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.

c. Applicable Wage Determination Decisions, including any applicable modifications and related statements are posted at the work-site by the contractor and that proper job classifications and commensurate minimum hourly base fringe wage rates are paid.

d. Employees are periodically interviewed (at random) on each project as required.

e. That no person employed by contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.

f. That any and all periodic administrative directives to the Contract Administration Section from the President/CEO are being implemented.
3. **CLAIMS & DISPUTES PERTAINING TO WAGE RATES**

Claims and disputes not promptly and routinely settled by the contractor/subcontractor and employee pertaining to wage rates, or to job classifications of labor employed upon the work covered by this contract, shall be reported by the employee in writing, within sixty (60) calendar days of employee's receipt of any allegedly incorrect classification, wage or benefit report, to the Contract Administration Section, San Antonio Water System for further investigation. Claims and disputes not reported by the employee to the San Antonio Water System, Contract Administration Section in writing within the sixty (60) calendar day period shall be deemed waived by the employee for the purposes of the San Antonio Water System administering and enforcing the San Antonio Water System's contract rights against the contractor on behalf of the employee. Waiver by the employee of this San Antonio Water System intervention shall not constitute waiver by the San Antonio Water System to independently pursue contractual rights it has against the contractor/subcontractor for breach of contract and other sanctions available to enforce the Wage and Labor Standard Provisions.

4. **BREACH OF WAGE & LABOR STANDARD PROVISIONS**

The San Antonio Water System reserves the right to terminate this contract for cause if the contractor/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unresolved proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the contractor/subcontractor from future San Antonio Water System contracts for lack of responsibility, as determined by the San Antonio Water System. Recurrent violations, whether remedied or not, will be considered by the President/CEO when assessing the responsibility history of a potential contractor/subcontractor prior to competitive award of future SAWS projects. The general remedies stated in this paragraph 4. above, are not exhaustive and not cumulative and SAWS reserves legal and contractual rights to other specific remedies outlined herein below and in other parts of this contract and as are allowed by applicable San Antonio Water System Resolutions, state and federal statutes.

5. **EMPLOYMENT OF LABORERS/Mechanics NOT LISTED IN WAGE DETERMINATION DECISION**

In the event that a contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the Wage Determination Decision contained in the original contract documents, contractor/subcontractor will make prompt inquiry (before bidding, if possible) to Contract Administration identifying that class of laborers/mechanics not listed in the Wage Determination Decision who are intended to be employed, or who are being employed, under the contract. Using his best judgment and information resources available to him at the time, and any similar prior decisions, the President/CEO, San Antonio Water System, shall classify said laborers/mechanics by issuing a special local Wage Determination Decision to the contractor/subcontractor which shall be enforced by the Contract Administration Section.

6. **MINIMUM WAGE**

All laborers/mechanics employed to construct the work governed by this contract shall be paid not less than weekly, the full amount of wages due (minimum hourly base pay and minimum hourly fringe benefit contribution for all hours worked, including overtime) for the immediately preceding pay period computed at wage and fringe rates not less than those contained in the Wage Determination Decision included in this contract. Only
payroll deductions as are mandated by state or federal law and those legal deductions previously approved in writing by the employee, or as are otherwise permitted by state or federal law, may be withheld by the contractor/subcontractor.

Should the contractor/subcontractor subscribe to fringe benefit programs for employees, such programs shall be fully approved by SAWS in adopting a previous U.S. Department of Labor decision on such fringe benefit programs or by applying DOL criteria in rendering a local decision on the adequacy of the fringe benefit programs. The approved programs shall be in place at the time of SAWS contract execution and provisions thereof disclosed to the Contract Administration Section, San Antonio Water System, for legal review prior to project commencement.

Regular contractor/subcontractor contributions made to, or costs incurred for, approved fringe benefit plans, funds or other benefit programs that cover periods of time greater than the one week payroll period (e.g. monthly or quarterly, etc.) shall be prorated by the contractor/subcontractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

7. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS

No contractor/subcontractor contracting for any part of the non-federally funded contract work (except for work-site related security guard services) which may require or involve the employment of laborers/mechanics shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he/she is employed on such work to work in excess of 40 hours in such work period unless said laborer/mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven (7) calendar day work period. Fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

8. PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

The contractor/subcontractor is allowed to pay a minimum hourly cash equivalent of minimum hourly fringe benefits listed in the Wage Determination Decision in lieu of the contribution of benefits to a permissible fringe benefit plan for all hours worked including overtime as described in paragraph 6 above. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the Wage Determination Decision.

9. WORK CONDUCTED ON HOLIDAYS-NON-FEDERALLY FUNDED PROJECTS

If a laborer/mechanic is employed in the normal course and scope of his/her work on the job-site on New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Martin Luther King Day or the calendar days observed as such in any given year, work performed shall be paid for at no less than one and one half (1 1/2) times the regular minimum hourly base pay regardless of the total number of hours the laborer/mechanic has accumulated during the pay period.

10. UNDERPAYMENT OF WAGES OR SALARIES

a. When a "full investigation" (as called for in and as construed under Texas Government Code Section 2258) establishes underpayment of wages by contractor/subcontractor to laborers/mechanics employed upon the work covered by this contract, the San Antonio Water System, in addition to such other rights as may be afforded it under state and/or federal law and/or this contract, shall withold from the contractor, out of any payments (interim progress and/or
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final) due the contractor, so much thereof as the San Antonio Water System may consider necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages required by this contract plus possible penalty to be retained by the San Antonio Water System, may be disbursed at an appropriate time after "full investigation" by the San Antonio Water System, for and on behalf of the contractor/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due or on their behalf to fringe benefit plans, funds, or programs for any type of minimum fringe benefits prescribed in the applicable Wage Determination Decision.

b. Texas Government Code 2258, states that the contractor shall forfeit as a penalty to the San Antonio Water System the sum of sixty dollars ($60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this contract, whether by the contractor himself or by any subcontractor working under him. Pursuant to and supplemental to this statutory authority, the San Antonio Water System and the contractor/subcontractor contractually acknowledge and agree that said sixty dollar ($60.00) statutory penalty shall be construed by and between the San Antonio Water System and the contractor/subcontractor as liquidated damages and will apply to any violations of paragraphs 6, 7, or 9 herein, resulting from contractor/subcontractor underpayment violations.

c. If unpaid or underpaid workers cannot be located by the Contractor or SAWS after diligent efforts to accomplish same, unpaid or underpaid wages shall be reported as “unclaimed property” in accordance with Texas State law.

The San Antonio Water System requires that the prime contractor send to the Contract Administration Office a copy of the supporting documentation for the unclaimed property submitted to the state.

11. DISPLAYING WAGE DETERMINATION DECISIONS/AND NOTICE TO LABORERS/MECHANICS STATEMENT

The applicable Wage Determination Decision as described in the "General Statement" (and as specifically included in each project contract), outlining the various worker classifications and mandatory minimum wages and minimum hourly fringe benefit deductions, if any, of laborers/mechanics employed and to be employed upon the work covered by this contract, shall be displayed by the contractor/subcontractor at the site of work in a conspicuous and prominent public place readily and routinely accessible to workmen for the duration of the project. In addition, the contractor/subcontractor agrees with the contents of the following statement, and shall display same, in English and Spanish, near the display of the Wage Determination Decision:

NOTICE TO LABORERS/MECHANICS

Both the San Antonio Water System and the contractor/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this job-site and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly rate of pay for any hours worked over 40 in any seven (7) calendar day work period, and for any work conducted on New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and Martin Luther King Day or the calendar days observed as such in any given year.
Apprentice and trainee hourly wage rates and ratios apply only to apprentices and trainees recognized under approved Federal or State apprenticeship training programs registered with the Bureau of Apprenticeship and Training, U.S. Dept. of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing, within sixty (60) calendar days of your receipt of any allegedly incorrect wage or benefit check or report, to the San Antonio Water System, Contract Administration, 2800 U.S. Hwy 281 North, San Antonio, TX 78212. It is mandatory that you promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the San Antonio Water System, Contract Administration Section within sixty (60) calendar day period so that you do not waive your potential right of recovery under the provisions of the San Antonio Water System contract that governs this project.

Both the San Antonio Water System and the contractor/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits shall be discharged by the employer or in any other manner be discriminated against by the employer for filing such complaint or inquiry.

12. PAYROLLS & BASIC PAYROLL RECORDS

a. The contractor and each subcontractor shall prepare payroll reports in accordance with the "Wage and Labor Standard Provisions" furnished by the Contract Administration Section, San Antonio Water System. Such payroll submittal shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The contractor shall submit payroll records each week, and no later than seven (7) working days following completion of the workweek being processed, to the Contract Administration Section, San Antonio Water System. These payroll records shall include certified copies of all payrolls of the contractor and of his subcontractors, it being understood that the contractor shall be responsible for the submission and general mathematical accuracy of payrolls from all his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to SAWS’ Contract Administration Section and shall contain a "Weekly Statement of Compliance", as called for by the contract documents. Such payrolls will be forwarded to San Antonio Water System, Contract Administration, 2800 U.S. Hwy 281 North, San Antonio, TX 78212.

b. Copies of payroll submittal and basic supporting payroll records of the contractor/subcontractors accounting for all laborers/mechanics employed under the work covered by this contract shall be maintained during the course of the work and preserved for a period of three (3) years after completion of the project. The contractors/subcontractors shall maintain records which demonstrate: any contractor commitment to provide fringe benefits to employees as may be mandated by the applicable Wage Determination Decision, that the plan or program is adjudged financially responsible by the appropriate approving authority, (i.e. U.S. Department of Labor, U. S. Department of Treasury, etc.), and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.
c. The contractor/subcontractor shall make the above records available for inspection, copying, or transcribing by authorized representatives of the San Antonio Water System at reasonable times and locations for purposes of monitoring compliance with this contract.

13. LABOR DISPUTES

The contractor/subcontractor shall immediately notify the Manager of Contract Administration or his designated representative of any actual or impending contractor/subcontractor labor dispute which may affect, or is affecting, the schedule of the contractor’s or any other contractor’s/subcontractor’s work. In addition, the contractor/subcontractor shall consider all appropriate measures to eliminate or minimize the effect of such labor disputes on the schedule, including but not limited to such measures as: promptly seeking injunctive relief if appropriate; seeking appropriate legal or equitable actions or remedies; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; and any other measures that may be appropriately utilized to mitigate or eliminate the job-site and scheduling effects of the labor dispute.

14. COMPLAINTS, PROCEEDING, OR TESTIMONY BY EMPLOYEES

No laborers/mechanics to whom the wage, salary, or other labor standard provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor/subcontractors because such employee has filed any formal inquiry or complaint or instituted, or caused to be instituted, any legal or equitable proceeding or has testified, or is about to testify, in any such proceeding under or relating to the wage and labor standards applicable under this contract.

15. EMPLOYEE INTERVIEWS TO ASSURE WAGE AND LABOR STANDARD COMPLIANCE

Contractor/subcontractors shall allow expeditious job-site entry of San Antonio Water System, Contract Administration representatives displaying and presenting proper identification credentials to the job-site superintendent or his representative. While on the job-site, the Contract Administration representatives shall observe all job-site rules and regulations concerning safety, internal security and fire prevention. Contractor/subcontractors shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration by the Contract Administration representatives to facilitate compliance determinations regarding adherence by the contractor/subcontractor to these Wage and Labor Standard Provisions.

16. "ANTI-KICKBACK" PROVISION

No person employed in the construction or repair of any San Antonio Water System public work shall be induced, by any means, to give up to any contractor/subcontractor or public official or employee any part of the hourly and/or fringe benefit compensation to which he is otherwise entitled.

17. "FALSE OR DECEPTIVE INFORMATION" PROVISION

Any person employed by the contractor/subcontractor in the construction or repair of any San Antonio Water System public work, who is proven to have knowingly and willfully falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or
used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be permanently removed from the job-site by contractor/subcontractor. The San Antonio Water System reserves the right to terminate this contract for cause as a result of serious and uncured violations of this provision.

18. **EMPLOYMENT OF APPRENTICES/TRAINEES**

a. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship & Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor/subcontractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below or is not registered or otherwise employed as stated above, shall be paid the wage rate for the classification of work he actually performs. The contractor/subcontractor is required to furnish to the Contract Administration Section of the San Antonio Water System, a copy of the certification, along with the payroll record upon which the employee is first listed. The wage rate paid apprentices shall be not less than the specified rate in the registered program for the apprentice’s level of progress expressed as the appropriate percentage of the journeyman’s rate contained in the applicable Wage Determination Decision.

b. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeyman shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the wage rate determined by the classification of work he actually performs. The contractor/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates prescribed in the program, along with the payroll record upon which the employee is first listed, to the Contract Administration Section of the San Antonio Water System. In the event the Employment and Training Administration withdraws approval of a training program, the contractor/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

c. Paragraphs 18.a. and 18.b. above shall not operate to exclude training programs approved by the Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor and as adopted by the Associated General Contractors (AGC) of Texas, Highway, Heavy, Utilities and Industrial Branch. Guidelines for these training programs shall be the same as those established for federally
funded projects. This sub-paragraph 18.c. shall not apply to those portions of a project deemed to be building construction.

d. **THE RATIO OF APPRENTICE TO JOURNEYMAN** for this project shall be the same as the Ratio permitted under the plan approved by the Employment and Training Administration, Bureau of Apprenticeship and Training, U. S. Department of Labor, by Craft. A copy of the allowable Ratios is included with the applicable Wage Determination Decision in the specifications for this project.

When a “full investigation” (as called for in, and as construed under, Government Code Chapter 2258, Prevailing Wage Rate, and as further generally described in an administrative directive to the City’s Wage & Hour Office from the City’s Director of Public Works entitled “Conducting Wage and Labor Standards Investigations on partially federally funded Construction Projects”, as may be amended) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for contractor/subcontractor employees working on this contract, the San Antonio Water System, in addition to such other rights as may be afforded it under state and/or other sections of this contract (especially paragraph 10 underpayment of wages), shall withhold from the contractor, out of any payments (interim progress and/or final) due the contractor, the liquidated damages sum of seventy-five dollars ($75.00) for each calendar day, or portion thereof, for each certified Apprentice of Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/Trainee to Journeyman ratio stipulated for any work done under this contract, whether by the contractor himself or by any subcontractor working under him.

19. **JOB-SITE CONDITIONS**

Contractors/subcontractors will not allow any person employed for the project to work in surroundings or under construction conditions which are unsanitary, unhealthy, hazardous, or dangerous as governed by industry standards and appropriate local, state and federal statutes, ordinances, and regulatory guidelines.

20. **EMPLOYMENT OF CERTAIN PERSONS PROHIBITED**

a. The contractor/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of required skill, strength, maturity and judgment associated with the activity to be engaged in, but not less than the age of fourteen (14) years, as governed by the Texas Child Labor Law, Chapter 51 of the Texas Labor Code “Child Labor” and Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wage Hour Manual at Paragraph 96:1; “Child Labor Requirements in Nonagricultural Occupations” WH Publication 1330, July 1978, as may be amended), could pre-empt the Texas Statute and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.

b. Prohibited persons not to be employed are also those persons who, at the time of employment for this contract, are serving sentence in a penal or correctional institution except that prior approval by the President/CEO of SAWS is required to employ any person participating in a supervised work release or furlough programs that is sanctioned by appropriate state or federal correctional agencies.
c. The contractor/subcontractor shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this contract.

21. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

The contractor shall cause these Wage and Labor Standard Provisions, or reasonably similar contextual adaptations hereof, and any other appropriate state and federal labor provisions, including the Mandatory Davis-Bacon Contract Conditions, to be inserted in all subcontracts relative to the work to bind subcontractors to the same Wage and Labor Standards as contained in these terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors or sub-subcontractors and to give the contractor similar, if not greater, general contractual authority over the subcontractor or subcontractors as the San Antonio Water System may exercise over the contractor.

The Mandatory Davis-Bacon Contract Conditions can be found immediately following the end of this document.

22. CONTRACTOR'S RESPONSIBILITY

The prime contractor shall be responsible for ensuring that its subcontractors comply with the Wage and Labor Standards Provisions.

13.3. PREVAILING WAGE RATE

Chapter 2258 of the Texas Government Code applies to this Design-Build Contract. The applicable wage determinations are provided below and contain the specific applicable wage rates.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
General Decision Number: TX170280 06/02/2017 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 (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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ASB500087-014 01/01/2017

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BOIL0074-003 01/01/2017

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ELEC0060-003 06/01/2016

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* ELEC0060-004 06/01/2017
### Appendix 13

#### Central Water Integration Pipeline

**TWDB, Prevailing Wage and Labor Requirements**

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<td>$38.14</td>
<td>31.585+a+b</td>
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**FOOTNOTES:**

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.

B. Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day; and Veterans Day.

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**HVAC MECHANIC (HVAC Electrical Temperature Control Installation Only) | $30.25 | 11.35**

**HVAC MECHANIC (HVAC Unit Installation Only) | $30.25 | 11.35**

**PIPERITTER (Including HVAC Pipe Installation) | $30.25 | 11.35**

**PLUMBER (Excludes HVAC Pipe Installation) | $30.25 | 11.35**

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<td>SUTX2014-006 07/21/2014</td>
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| bricklayer                        | $ 22.15  | 0.00   |
| carpenter (Acoustical Ceiling)    | $ 17.83  | 0.00   |
| carpenter (Formwork Only)         | $ 13.63  | 0.00   |
| carpenter, excludes               |          |        |
| Acoustical Ceiling Installation,  |          |        |
| Drywall Hanging, Formwork, and    |          |        |
| Metal Stud Installation           | $ 16.86  | 4.17   |
| caulkers                          | $ 15.00  | 0.00   |
| cement mason/concrete finisher    | $ 22.27  | 5.30   |
| drywall finisher/taper            | $ 13.81  | 0.00   |
| drywall hanger and metal stud     | $ 15.18  | 0.00   |
| installer                         |          |        |
| electrician (Low Voltage Wiring   | $ 20.39  | 3.04   |
| only)                             |          |        |
| ironworker, reinforcing           | $ 12.27  | 0.00   |
| laborer: common or general        | $ 10.75  | 0.00   |
| laborer: mason tender - brick     | $ 11.88  | 0.00   |
| laborer: mason tender - cement    | $ 12.00  | 0.00   |
| laborer: pipelayer                | $ 11.00  | 0.00   |
| laborer: roof tearoff             | $ 11.28  | 0.00   |
| laborer: landscape and             |          |        |
Irrigation......................$  8.00  0.00

OPERATOR:
Backhoe/Excavator/Trackhoe.......$ 15.98  0.00

OPERATOR:  Bobcat/Skid Steer/Skid Loader............$ 14.00  0.00
OPERATOR:  Bulldozer................$ 14.00  0.00
OPERATOR:  Drill......................$ 14.50  0.00
OPERATOR:  Forklift.................$ 12.50  0.00
OPERATOR:  Grader/Blade.............$ 23.00  5.07
OPERATOR:  Loader...................$ 12.79  0.00
OPERATOR:  Mechanic..................$ 18.75  5.12
OPERATOR:  Paver (Asphalt, Aggregate, and Concrete)........$ 16.03  0.00
OPERATOR:  Roller....................$ 12.00  0.00

PAINTER (Brush, Roller and Spray), Excludes Drywall Finishing/Taping....................$ 13.07  0.00

ROOFER.............................$ 12.00  0.00
TILE FINISHER......................$ 11.32  0.00
TILE SETTER.......................$ 14.94  0.00
TRUCK DRIVER:  Dump Truck...........$ 12.39  1.18
TRUCK DRIVER:  Flatbed Truck.......$ 19.65  8.57
TRUCK DRIVER:  Semi-Trailer Truck..........................$ 12.50  0.00
TRUCK DRIVER:  Water Truck........$ 12.00  4.11

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 "UAVD" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLM0199-005 07/01/2014. PLM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 019B indicates the local union number or district council number where applicable, i.e., Plumbers Local 019B. 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 1.3 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 material, 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
General Decision Number: TX170016 01/06/2017  TX16
Superseded General Decision Number: TX20160016
State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampassas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McLennan and Williamson Counties) and HIGHWAY Construction Projects

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.

Modification Number Publication Date
0 01/06/2017

* SUTX2011-006 08/03/2011

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CEMENT MASON/CONCRETE
FINISHER (Paving and Structures)..................$ 12.56

ELECTRICIAN............................................$ 26.35

FORM BUILDER/FORM SETTER
Paving & Curb........................................$ 12.94
Structures............................................$ 12.87

LABORER
Asphalt Raker.............................................$ 12.12
Flagger..................................................$ 9.45
Laborer, Common......................................$ 10.50
Laborer, Utility........................................$ 12.27
Pipelayer...............................................$ 12.79
Work Zone Barricade Servicer.......................$ 11.85

PAINTER (Structures).................................$ 18.34

POWER EQUIPMENT OPERATOR:
Agricultural Tractor.................................$ 12.69
Asphalt Distributor...................................$ 15.85
Asphalt Paving Machine..............................$ 14.36
Boom Truck............................................$ 18.36
Broom or Sweeper.....................................$ 11.04
Concrete Pavement Machine.........................$ 15.48
Finishing Machine....................................$ 15.48
Crane, Hydraulic 80 tons or less..................$ 18.36
Crane, Lattice Boom 80 tons or less...................$ 15.87
Crane, Lattice Boom over 80 tons..................$ 19.38
Crawler Tractor.......................................$ 15.67
Directional Drilling Locator.........................$ 11.67
Directional Drilling..................................$ 11.67

WR-1
Operator.................. $ 17.24
Excavator 50,000 lbs or
Less...................... $ 12.88
Excavator over 50,000 lbs........ $ 17.71
Foundation Drill, Truck
Mounted.................. $ 16.93
Front End Loader, 3 CY or
Less...................... $ 13.04
Front End Loader, Over 3 CY........ $ 13.21
Loader/Backhoe............... $ 14.12
Mechanic.................. $ 17.10
Milling Machine............... $ 14.18
Motor Grader, Fine Grade......... $ 18.51
Motor Grader, Rough............ $ 14.61
Pavement Marking Machine........ $ 19.17
Reclaimer/Pulverizer........... $ 12.88
Roller, Asphalt................ $ 12.78
Roller, Other.................. $ 10.50
Scraper..................... $ 12.27
Spreader Box.................. $ 14.04
Trenching Machine, Heavy........ $ 18.48
Servicer.................... $ 14.51
Steel Worker
Reinforcing.................. $ 14.00
Structural................... $ 19.29
TRAFFIC SIGNAL INSTALLER
Traffic Signal/Light Pole
Worker....................... $ 16.00
TRUCK DRIVER
Lowboy-Float.................. $ 15.66
Off Road Hauler.............. $ 11.88
Single Axle.................. $ 11.79
Single or Tandem Axle Dump
Truck........................ $ 11.68
Tandem Axle Tractor w/Semi
Trailer....................... $ 12.81
WELDER...................... $ 15.97

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 90 hours
they work, up to 56 hours of paid sick leave each year.
Employment 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

WR-2

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 the 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

Classifications 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-CH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. CH 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 material, 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

General Decision Number: TX170081 01/06/2017  TX81
Superseded General Decision Number: TX20160081
State: Texas
Construction Type: Heavy Tunnel

TUNNEL CONSTRUCTION PROJECTS (BORED, 48" IN DIAMETER OR MORE)
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 work performed 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.

<table>
<thead>
<tr>
<th>Modification Number</th>
<th>Publication Date</th>
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<tr>
<td>SUTX1992-010</td>
<td>01/06/1992</td>
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<table>
<thead>
<tr>
<th>Classification</th>
<th>Rates</th>
<th>Fringes</th>
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<tr>
<td>CARPENTER (Including Form Setting - Wood Forms ONLY)</td>
<td>$10.67</td>
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<td>ELECTRICIAN</td>
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<td>.92</td>
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<td>IRONWORKER, REINFORCING (Shaft Collar &amp; Surface ONLY)</td>
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<td>4.09</td>
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<td>Laborers:</td>
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<td></td>
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<tr>
<td>Miner</td>
<td>$11.77</td>
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<tr>
<td>Surface</td>
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<tr>
<td>Tunnel</td>
<td>$9.24</td>
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<tr>
<td>MECHANIC (Maintenance and repair on trucks and power equipment)</td>
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<td>.92</td>
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<tr>
<td>Oiler (Services trucks and power equipment)</td>
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<td>Power equipment operators:</td>
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<td>Backhoe Operator (Less than 1 1/2 CY)</td>
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<tr>
<td>Bulldozer</td>
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<td>Crane (1 1/2 CY or more)</td>
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<td>Front End Loader (2 1/2 CY or more)</td>
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<tr>
<td>Front End Loader (less than 2 1/2 CY)</td>
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<tr>
<td>Locomotive Operator</td>
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<td>Road Head Operator</td>
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<tr>
<td>Tunnel/Boring Machine Operator</td>
<td>$13.61</td>
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Truck drivers:

Semi............................ $  7.25    1.05
Single Axle, Light.............. $  7.55

WELDER............................. $ 11.58

LABORER CLASSIFICATIONS

SURFACE - Air Tool Operator (Surface Only), Batch Plant Laborer, Change Houseman, Dumpman (Outside, Tool Man).

TUNNEL - Air Tool Operator (Tunnel Only), Bull Gang (Muckers/Trackmen), Cable Tenter, Concrete Crew (Rodders/Spreader), Concrete Finisher in Tunnel, Concrete Screed Man, Conveyor Operator, Headerman, High Pressure Nozzle Man, Hoist Operator, Jumbo Man, Loading/Unloading Agitator Car, Nipper, Nozzleman-Slice Line, Pot Tender, Primer Man, Reboundman, Shaft/Raise Work (Below Ground), Shotcrete Man, Shooter Operator, Stew Pole Raisers/Setters, (metal forms only) Swamper (Brakeman/ Switchman), Timberman, Troweling/Grout Machine Operator, Tugger, Vibratorman, Jack Hammer, Pneumatic Tools (Except Driller), Vibratorman, Pavement Breakers.

MINER - Drill Doctor, Bit Sharpener, Bit Grinder, Rebar (Tunnel Only), Jack Leg Miner, Shaft Drill Operator

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 preventative care; to assist a family member (or person who is like a family to the employee) who is ill, injured, or has other health-related needs, including preventative 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 (29 CFR 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, for example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the wage determination.

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: SUA2012-007 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-ON-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. ON 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 these 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:

WR-3
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 material, 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
APPENDIX 14

SMWVB REQUIREMENTS
APPENDIX 14

SMWVB REQUIREMENTS

14.1. GOOD FAITH EFFORT PLAN

The Design-Builder must comply with all applicable requirements of the attachment to this Appendix titled “Attachment 14A – Good Faith Effort Plan”.

ATTACHMENT 14A
GOOD FAITH EFFORT PLAN
Attachment “E” - Good Faith Effort Plan (GFEP) for the Design-Build’s (DB) Subcontracts*

NAME OF PROJECT: Vista Ridge Integration Project: Design-Build Contract – RFP

*Only firms certified by the South Central Texas Regional Certification Agency (SCTRCA) or the Texas Comptroller’s Office (HUB) that are located in the San Antonio Metropolitan Statistical Area, i.e., “local”, will be counted for SMWB credit. Please see the Good Faith Effort Plan Definition for “Local”. Veteran-owned Business Enterprises (VBEs) are not eligible for SMWB points.

SECTION A - DESIGN-BUILD FIRM INFORMATION:

Name of Firm: Kiewit Infrastructure South Co.

Address: 13119 Old Denton Road

City: Fort Worth State: TX Zip Code: 76177

Contact Person: Eric Thoendel Telephone No.: 303-325-0320

Email Address: eric.thoendel@kiewit.com Fax No.: 817-337-5289

Is your firm Certified? Yes _____ No X _____ Certification Agency that has granted SMWB certificate(s): N/A

Type of Certification: SBE WBE MBE

SMWB Points will be earned as follows:

1. Small, Minority, and Woman-owned Business (SMWB) Participation Percentage of the DB’s own team of Design SERVICES subcontractors (Up to 5 Points):

List all subconsultants, whether SMWB or not, in the chart below. (All subconsultants listed in the Organizational Chart must also be listed below.) Please include the subconsultants’ legal business name, address of office that will perform the project work, point of contact, and what percentage of the design component of the project that they will perform. Don’t include proposed goals for work packages that have yet to be solicited. The listing of design team subconsultants in the Good Faith Effort Plan is solely for the DB’s team of design subconsultants. Indicate whether design subconsultants have SMWB certifications (AABE, MBE, SBE, WBE), and which entity they were certified by: South Central Regional Certification Agency, or the Texas Historically Underutilized Business “HUB” program.

- 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

Page 29 of 41
### Table from Attachment E – Good Faith Effort Plan for the DB Subcontracts

<table>
<thead>
<tr>
<th>Legal Name of Subconsultant (including &quot;doing business as&quot;, if applicable), and point of contact</th>
<th>Address of Office Location to Perform Project Work or Provide Supplies</th>
<th>Scope of Work/Supplies to be Performed/Provided by Firm</th>
<th>Estimated Percentage of Participation on this Project</th>
<th>Certification Type &amp; Certification Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maverick Land Surveying Jake Oder 210-342-9455</td>
<td>1856 Lockhill Selma Rd., #105, San Antonio, TX 78213</td>
<td>Surveying, Sub-surface Utility Engineering</td>
<td>5%</td>
<td>SCTRCA: SBE, VBE</td>
</tr>
<tr>
<td>Structural Engineering Associates David T. Covarrubias 210-735-9202</td>
<td>3838 NW Loop 410, San Antonio, TX 78229</td>
<td>Structural</td>
<td>8%</td>
<td>SCTRCA: HABE, MBE</td>
</tr>
<tr>
<td>Arias &amp; Associates Jerry Shepherd 210-499-6810</td>
<td>142 Chula Vista Drive, San Antonio, TX 78232</td>
<td>Geotechnical</td>
<td>2.5%</td>
<td>SCTRCA: MBE, SBE, DBE</td>
</tr>
<tr>
<td>CFZ Group, LLC Cullen Coltrane 210-366-1911</td>
<td>7410 John Smith Dr., Ste. 208, San Antonio, TX 78229</td>
<td>Landscape Architecture</td>
<td>3%</td>
<td>SCTRCA: ESBE, HABE, MBE, SBE, WBE</td>
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<tr>
<td>Lopez Salas Architects Sandy Lenz 210-734-4448</td>
<td>237 W. Travis, Ste. 201, San Antonio, TX 78205</td>
<td>Architecture</td>
<td>3%</td>
<td>SCTRCA: ESBE, HABE, MBE, SBE, WBE</td>
</tr>
<tr>
<td>Bain Medina Bain Carl Bain 210-494-7223</td>
<td>7073 San Pedro Ave., San Antonio, TX 78216</td>
<td>Survey, Civil Engineering</td>
<td>5%</td>
<td>SCTRCA: WBE, SBE</td>
</tr>
<tr>
<td>Encotech Juan Arango 210-545-3558 (or) 512-758-7575</td>
<td>700 N St. Mary’s St., Ste. 1400, San Antonio, TX 78205</td>
<td>Mechanical, Electrical, Plumbing</td>
<td>2%</td>
<td>SCTRCA: MBE, SBE</td>
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<tr>
<td>Sanchez-Salazar &amp; Associates, LLC Juan Carlos Sanchez 210-314-5458</td>
<td>12770 Cimarron Path, Ste. 120, San Antonio, TX 78249</td>
<td>Traffic Control</td>
<td>1.5%</td>
<td>SCTRCA: DBE</td>
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<td>30%</td>
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</tbody>
</table>

A14A-2

2799393.11 041637 CTR
2. Small, Minority, and Woman-owned Business (SMWB) Subcontractor/Supplier Percentage of Participation Commitment for the Construction Component of the Project (Up to 10 Points):

The DB is eligible to earn up to 10 SMWB points (total) for making a commitment to SMWB subcontractor/supplier participation for the construction component of the project. SMWB subcontractor/supplier participation will be scored according to the scale below:

- SMWB Participation Percentage between 1% to 10.99%: 2 Points
- SMWB Participation Percentage between 11% to 19.99%: 4 Points
- SMWB Participation Percentage between 20% to 24.99%: 6 Points
- SMWB Participation Percentage between 25% to 29.99%: 8 Points
- SMWB Participation Percentage at 30% or greater: 10 Points

**X** The DB is committed to a minimum of 30% SMWB subcontractor/supplier utilization on the construction component of the contract.

_____ The DB, if exceeding the SMWB goal of 30%, is committed to _____% of SMWB utilization on the construction component of the contract.

_____ The DB, if unable to meet the SMWB goal of 30%, is committed to _____% of SMWB utilization on the construction component of the contract. (If contractor is unable to meet the goal, please fill out Section B and submit documentation demonstrating good faith efforts).

3. Name and phone number of person appointed to coordinate and administer the SMWB requirements on this project.

Name: ___Kristin Cox___
Title: ___Senior Human Resources Administrator___
Phone Number: ___817-337-7031___

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).

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.

1. List all SMWB listings or directories, contractor associations, and/or any other associations utilized to solicit SMWB subcontractors/suppliers.

2. 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:

Page 31 of 41
3. 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 thereto and become a binding part of the contract.

Name and Title of Authorized Official:

Name: Shane T. Petersen

Title: Senior Vice President

Signature: ___________________________ Date: JUL 07 2017

NOTE:

This Good Faith Effort Plan is reviewed by SAWS Contracting Department. For questions and/or clarifications, please contact Marisol V. Robles, SMWB Program Manager, at marisol.robles@saws.org, or 210-233-2950.

DEFINITIONS:

Construction Services (as distinguished from Design Services): All Services the Design-Build Firm is required to perform hereunder to physically execute the Work, as required by the Construction Documents.

Design Services: All Services of the Design Professional of Record (DPOR) and the professional Design Services of all other Design-Build Firm Personnel for the design the Project, including 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, 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.

Local: A business located in the San Antonio Metropolitan Statistical Area (SAMSA), which includes the counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, Uvalde and Wilson. A business’s presence in the SAMSA that consists solely of a P.O. Box, a mail drop, or a telephone message center does not count as being local.
Prime Consultant/Contractor: Any person, firm partnership, corporation, association or joint venture which has been awarded a San Antonio Water System contract.

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

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

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

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

a. African American – Persons having origins in any of the black racial groups of Africa.

b. Hispanic American – Persons of Mexican, Puerto Rican, Cuban, Spanish or Central or South American origin.

c. Asian-Pacific American – Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

d. Asian-Indian American – Persons whose origins are from India, Pakistan, Bangladesh or Sri Lanka.

e. American Indian/Native American – Persons having no less than 1/16th percentage origin in any of the American Indian Tribes, as recognized by the U.S. Department of the Interior’s Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

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

African American Business Enterprise (AABE): A business structure that is certified by the Texas State Comptroller’s Office or the South Central Texas Regional Certification Agency as being 51% owned, operated and controlled by an African American minority group member(s) who are legally residing in or are citizens of the United States.
**Joint Venture:** A limited association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, efforts, skills and knowledge.

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

The Contractor and all subcontractors will be provided a unique log-in credential and password to access the SAWS subcontractor payment reporting system. The link may also be accessed through the following internet address: [https://saws.smweb.com/](https://saws.smweb.com/)
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 CENTRAL WATER INTEGRATION PIPELINE PROJECT A PUBLIC NECESSITY

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached Resolution requests the San Antonio City Council to declare the San Antonio Water System’s (SAWS) Central Water Integration Pipeline Project (the “Project”) a public necessity to obtain for public use the permanent and temporary easements that are required for the Project’s construction and operation, and authorizes the General Counsel and/or designated attorneys to file eminent domain proceedings, if necessary.

• SAWS entered into a Water Transmission and Purchase Agreement on November 4, 2014 (as subsequently amended) with Abengoa Vista Ridge LLC (now Vista Ridge LLC) to provide and deliver water supplies to SAWS through the Vista Ridge Regional Supply Project. The Project will deliver water from the Vista Ridge Regional Supply Project to integration points within the SAWS distribution system.

• This Project includes the construction of a pump station at the Vista Ridge Terminus Site located in north central Bexar County, and upgrades to the Basin, Bitters, and Maltsberger Pump Stations. This Project also consists of approximately 3,500 feet of 30-inch and 36-inch water main from the Vista Ridge Terminus Site to Knight’s Cross Drive, approximately 12,000 feet of 54-inch water main from the Vista Ridge Terminus Site connecting with the existing 48-inch water main at Voigt Drive and approximately 2,100 feet of 48-inch water main from Aspen Wells to the Bitters Pump Station. The estimated construction cost for this Project is $107,500,000.00.

• This Project will require the acquisition of real property being approximately 20 permanent and temporary easements. The alignment traverses through a mixture of undeveloped properties and properties improved with schools, office buildings, hotels, apartments and various retail developments. This Project does not affect any buildings or structures located on the various subject properties. SAWS staff intends to use every effort to reduce the impact this Project will have on the various landowners within the alignment.
• 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 and may require temporary injunctive relief to enter onto properties to perform surveying and other preliminary investigations to determine the suitability of such property for the Project.

• The general Project locations and routes requiring permanent and temporary easements are set out in Attachment IA and Attachment IB to the Resolution and the general route descriptions are set out in Attachment II to the Resolution, attached hereto and incorporated herein for all purposes.

• This Project also requires the installation of approximately nine pressure reducing valves (PRV’s) to be constructed at various locations. These locations have not been specifically identified at this point in time, but are generally in the locations shown on Attachment I to this memorandum. Therefore, this resolution provides that SAWS’ President/Chief Executive Officer may designate additional properties as necessary for the Project and include such properties in the requested Ordinance or seek additional ordinances as necessary.

• 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 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 CY 2016 Capital Improvement Program. The project work is included in the Water Delivery Core Business, Central Water Integration Pipeline Project budget line.

Bruce A. Haby
Manager, Corporate Real Estate

Nancy Belinsky
Vice President and General Counsel

Robert R. Puente
President/Chief Executive Officer

Attachment:
I Approximate locations of Project PRV’s
RESOLUTION NO.


WHEREAS, the Project consists of new transmission water main, the construction of a pump station located in the north central portion of Bexar County, upgrades to existing pump stations and construction of pressure reducing valves; and

WHEREAS, the System has determined that acquisition of the Easements is necessary for the Project, the general Project locations and routes being more particularly set out in Attachments IA and IB to this Resolution, and the Project route descriptions are 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 (which term, as used hereafter, shall include additional parcels as may be determined by the System’s President/Chief Executive Officer to be necessary for the Project) 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) authorize the President/Chief Executive Officer, and the System’s General Counsel and/or designated attorneys to take all lawful actions, including, without limitation, the filing of legal proceedings seeking injunctive relief, being incidental to the power of eminent domain, to survey, specify, test drill or dig, clarify, define, inspect, and determine the suitability of real property in furtherance of the Project, (iii) direct the System staff to negotiate the acquisition of the Easements, (iv) 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, (v) 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, (d) authorize the System’s General Counsel and/or designated attorneys to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary, (vi) authorize, at the determination of the System’s President/Chief Executive Officer, requests for additional City Council ordinances authorizing the use of condemnation for additional parcels as determined to be necessary for the Project or to add such parcels to the ordinance being requested herein, and (vii) 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 water system as part of the Project.

3. That if the System is unable to obtain a voluntary right of entry from potentially affected property owners, the President/Chief Executive Officer and the System’s General Counsel and designated attorneys are hereby authorized to take all lawful actions, including, without limitation, the filing of legal proceedings seeking injunctive relief, being incidental to the power of eminent domain, to survey, specify, test drill or dig, clarify, define, inspect, and determine the suitability of real property in furtherance of the Project.
4. 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.

5. 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 attorneys, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn such Easements.

6. 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 use, benefit and control of the System, and (iv) authorize the System’s General Counsel and/or designated attorneys to file eminent domain proceedings and prosecute such proceedings through final judgment and any appeals, if deemed necessary.

7. At the determination of the System’s President/Chief Executive Officer, System staff may seek additional City Council ordinances authorizing the use of condemnation for such additional parcels as determined to be necessary for the Project, to add such parcels to the ordinance being requested herein.

8. That funding for the acquisition of the Easements is found in the CY 2016 Capital Improvement Program, Water Delivery Core business, Central Water Integration Pipeline Project budget line.

9. 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.

10. 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.
11. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 13th day of September, 2017.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

__________________________
Ernesto Arrellano, Jr., Secretary

Attachments:
I  Depiction of general Project locations and route.
II  Project route descriptions
Route Descriptions

Route A:
From a point south of Las Lomas Elementary School, known as the Vista Ridge Terminus site, heading in a northwesterly direction connecting to a point in the cul-de-sac of Silver Knoll.

Route B:
Starting from a point south of Las Lomas Elementary School, known as the Vista Ridge Terminus Site, heading west on Hardy Oak Boulevard then south to the intersection of Sonterra Boulevard and Sigma Road, heading south on Sigma Road adjacent to Reagan High School, continuing on Sigma Road then turning in a westerly direction through commercial properties adjacent to Loop 1604 to the northwest corner of Loop 1604 and Stone Oak Parkway, then south under Loop 1604 to the southwest corner of Loop 1604 and Voigt Drive.

Route C:
Starting from a point at 105 W. Bitters Road heading in a northwesterly direction to the southwest quadrant of Bitters Road and West Avenue, terminating at 13535 West Avenue.

PROJECT LOCATED IN: NCB 19221, 17606, 17428, 15669, 16332, 16331, 16329 and 12059
TO: San Antonio Water System Board of Trustees

FROM: Sam Mills, P.E., Director, Development, and Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction

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

SUBJECT: UTILITY SERVICE AGREEMENT FOR WATER AND/OR WASTEWATER SERVICES TO TRACTS REQUIRING THE SAN ANTONIO WATER SYSTEM FINANCIAL PARTICIPATION IN THE DEVELOPMENT OF INFRASTRUCTURE THROUGH OVERSIZING OR IMPACT FEE CREDITS AND/OR ARE LOCATED OUTSIDE THE SAN ANTONIO WATER SYSTEM WATER AND/OR WASTEWATER CERTIFICATE OF CONVENIENCE AND NECESSITY

Board Action Date: September 13, 2017

SUMMARY AND RECOMMENDATION:

The attached resolution approves Utility Service Agreements (USA) to provide water and/or wastewater services to the specified tracts of land requiring the San Antonio Water System’s (the “System”) financial participation in the development of infrastructure through oversizing or impact fee credits, and/or are located outside the System’s water and/or wastewater Certificate of Convenience and Necessity (CCN).

- This board item consists of four tracts, which total 576.88 acres; 1,818 water Equivalent Dwelling Units (EDUs); and 1,414 wastewater water EDUs.

- Board approval is required since the tracts require the System’s financial participation in the development of infrastructure through oversizing or impact fee credits and/or is located outside the System’s water and/or wastewater CCN.

- The Stone Oak Offices Tract is located inside the City of San Antonio limits, outside the System’s water CCN and inside the wastewater CCN. The USA provides seven EDUs of water and two EDUs of wastewater services.

- The Blue Skies Tract is located inside the City of San Antonio Extra Territorial Jurisdiction, inside the System’s water CCN and inside the wastewater CCN. The USA provides 638 EDUs for water and 634 EDUs for wastewater services.

- The Northpoint Offices Tract is located inside the City of San Antonio limits, inside the System’s water CCN and outside the wastewater CCN. The USA provides 93 EDUs of water and 20 EDUs of wastewater services.
The Briggs Ranch North Tract is located inside the City of San Antonio Extra Territorial Jurisdiction, inside the System’s water CCN and inside the wastewater CCN. The USA provides 1,080 of water and 758 EDUs of wastewater services.

The Developer is required to install all necessary on-site facilities in accordance with the Board’s regulations and at the Developer’s total cost.

The Developer is responsible for the construction and engineering costs associated with all required water and/or wastewater mains to serve the tract (on-site and off-site).

Staff recommends that the Board approve this resolution.

<table>
<thead>
<tr>
<th>No.</th>
<th>Tract Name</th>
<th>Developer</th>
<th>Acres</th>
<th>W EDUs</th>
<th>WW EDUs</th>
<th>CoSA/CoSA ETJ</th>
<th>EARZ/CZ</th>
<th>Board Reason</th>
<th>W CCN</th>
<th>WW CCN</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Stone Oak Offices Tract</td>
<td>Blustreek Partners, LLC</td>
<td>1.714</td>
<td>7</td>
<td>2</td>
<td>COSA INSIDE</td>
<td>CCN</td>
<td>OUTSIDE</td>
<td>INSIDE</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Blue Skies Tract</td>
<td>Blue Skies of Texas</td>
<td>136.97</td>
<td>638</td>
<td>634</td>
<td>COSA ETJ OUTSIDE</td>
<td>OVR</td>
<td>INSIDE</td>
<td>INSIDE</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Northpoint Offices Tract</td>
<td>IGXS NorthPoint, LLC</td>
<td>27.796</td>
<td>93</td>
<td>20</td>
<td>COSA OUTSIDE OVR/CCN INSIDE</td>
<td>OUTSIDE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Briggs Ranch North Tract</td>
<td>Briggs Ranch LTD</td>
<td>410.4</td>
<td>1,080</td>
<td>758</td>
<td>COSA ETJ OUTSIDE</td>
<td>OVR</td>
<td>INSIDE</td>
<td>INSIDE</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>576.88</strong></td>
<td><strong>1,818</strong></td>
<td><strong>1,414</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Acronyms:**
- EARZ = Edwards Aquifer Recharge Zone
- OVR = Oversizing
- CCN = Certificate of Convenience and Necessity
- CZ = Edwards Aquifer Contributing Zone
- WW = Wastewater
- IFC = Impact Fee Credits
- CoSA = City of San Antonio limits
- ETJ = Extraterritorial Jurisdiction
EXTENT AND CONDITIONS OF UTILITY SERVICE AGREEMENT:

Upon approval by the System of this USA, the Developer Customers have 36 months to complete the required utility master plan and to start construction. If a Developer Customer fails to complete these requirements within the 36-month period, the USA will expire and a request for a new agreement must be submitted to the System. During the effective term of this USA, capacity in the System’s water and wastewater systems will be set aside. The Developer Customers are not guaranteed capacity until all required off-site infrastructure is built by the Developer, accepted by the System, and all impact fees are paid.

FINANCIAL IMPACT:

In compliance with the System’s Board of Trustees water extension policy, Developer Customer applicants are responsible for financing all required local benefit facilities and for payment of all applicable impact fees. The Developers will contribute all impact fees in effect at the time of plat recordation or the latest date allowable by law for each subdivision unit. The fees to be collected by the System will be recorded in the Service Recovery Account and are estimated as follows, based on current charges and full build out of the tracts:

<table>
<thead>
<tr>
<th>No.</th>
<th>Tract Name</th>
<th>Water Impact Fees</th>
<th>Wastewater Impact Fees</th>
<th>Total Impact Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Stone Oak Offices Tract</td>
<td>$33,439</td>
<td>$6,612</td>
<td>$40,051</td>
</tr>
<tr>
<td>2</td>
<td>Blue Skies Tract</td>
<td>$2,932,886</td>
<td>$1,490,534</td>
<td>$4,423,420</td>
</tr>
<tr>
<td>3</td>
<td>Northpoint Offices Tract</td>
<td>$444,261</td>
<td>$66,120</td>
<td>$510,381</td>
</tr>
<tr>
<td>4</td>
<td>Briggs Ranch North Tract</td>
<td>$5,159,160</td>
<td>$1,782,058</td>
<td>$6,941,218</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$8,569,746</td>
<td>$3,345,324</td>
<td>$11,915,070</td>
</tr>
</tbody>
</table>

The System is responsible for providing access to existing general benefit facilities and/or financing the construction of additional general benefit facilities.

OVERSIZING AND/OR IMPACT FEE CREDITS:

The following USAs have recommendations for the System’s financial participation in the development of infrastructure through oversizing or impact fee credits and/or facilities based on the System’s Master Plan.
Utility Service Agreement to the Specified Tract Requiring Oversizing and/or Outside the System’s Water and/or Wastewater CCN

<table>
<thead>
<tr>
<th>No.</th>
<th>Tract Name</th>
<th>Oversize SAWS</th>
<th>Oversize Developer</th>
<th>Oversize Total</th>
<th>Oversize Developer (%)</th>
<th>Oversize System (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Blue Skies Tract 24-Inch Water</td>
<td>$3,907,800</td>
<td>$1,302,600*</td>
<td>$5,210,400</td>
<td>25.0%</td>
<td>75.0%</td>
</tr>
<tr>
<td>2</td>
<td>Blue Skies Tract 16-Inch Water</td>
<td>$676,000</td>
<td>$405,600</td>
<td>$1,081,600</td>
<td>37.5%</td>
<td>62.5%</td>
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<tr>
<td>2</td>
<td>Blue Skies Tract 7MGD Pump Station</td>
<td>$5,914,000</td>
<td>$1,458,500*</td>
<td>$7,372,500</td>
<td>19.78%</td>
<td>80.22%</td>
</tr>
<tr>
<td>3</td>
<td>Northpoint Offices Tract 16-Inch Water</td>
<td>$182,000</td>
<td>$234,000</td>
<td>$416,000</td>
<td>56.25%</td>
<td>43.75%</td>
</tr>
<tr>
<td>4</td>
<td>Briggs Ranch Tract 24-Inch Water</td>
<td>$1,698,667</td>
<td>$1,358,933*</td>
<td>$3,057,600</td>
<td>44.44%</td>
<td>55.56%</td>
</tr>
</tbody>
</table>

Total $12,378,467 $4,759,633 $17,138,100

*Note: The Developer is eligible for impact fee credits for their share of the cost of the oversized infrastructure
Utility Service Agreement to the Specified Tract Requiring Oversizing
And/or Outside the System’s Water and/or Wastewater CCN

The Developer is required to install all other necessary on-site facilities in accordance with the Board’s regulations and at the Developer’s total cost.

Sam Mills, P.E.
Director
Development

Andrea L.H. Beymer, P.E.
Vice President
Engineering and Construction

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachment:
1. Table 1, Tract Information
<table>
<thead>
<tr>
<th>No.</th>
<th>Tract Name</th>
<th>Developer</th>
<th>Principal</th>
<th>CoSA / CoSA ETJ / Outside</th>
<th>EARZ / CZ</th>
<th>PZ</th>
<th>Acres</th>
<th>Water EDU</th>
<th>WW EDU</th>
<th>Watershed</th>
<th>Board Reason</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Stone Oak Offices Tract</td>
<td>Blustreek Partners, LLC</td>
<td>Louis Debonopaula</td>
<td>COSA INSIDE 11A</td>
<td>1.714</td>
<td>7</td>
<td>2</td>
<td>Mud Creek</td>
<td>CCN</td>
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<tr>
<td>2</td>
<td>Blue Skies Tract</td>
<td>Blue Skies of Texas</td>
<td>Lloyd Utterback</td>
<td>COSA ETJ OUTSIDE 950W</td>
<td>136.97</td>
<td>638</td>
<td>634</td>
<td>Polecat Creek-Medina River</td>
<td>OVR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Northpoint Offices Tract</td>
<td>IGXS NorthPoint, LLC</td>
<td>Ron Mills</td>
<td>COSA OUTSIDE 9</td>
<td>27.796</td>
<td>93</td>
<td>20</td>
<td>Dietz Creek-Cibolo Creek and Clear Fork-Cibolo Creek</td>
<td>OVR/CCN</td>
<td></td>
<td></td>
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<tr>
<td>4</td>
<td>Briggs Ranch North Tract</td>
<td>Briggs Ranch LTD</td>
<td>Lloyd A. Denton, Jr.</td>
<td>COSA ETJ OUTSIDE 1080</td>
<td>410.4</td>
<td>1,080</td>
<td>758</td>
<td>Polecat Creek-Medina River Watershed</td>
<td>OVR</td>
<td></td>
<td></td>
</tr>
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<td><strong>Total</strong></td>
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**Acronyms:**
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- WW = Wastewater
- PZ = Pressure Zone
- CoSA = City of San Antonio limits
- ETJ = Extraterritorial Jurisdiction
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A UTILITY SERVICE AGREEMENT TO PROVIDE WATER AND/OR WASTEWATER SERVICES TO THE SPECIFIED TRACTS OF LAND REQUIRING THE SAN ANTONIO WATER SYSTEM’S FINANCIAL PARTICIPATION IN THE DEVELOPMENT OF INFRASTRUCTURE THROUGH OVERSIZING OR IMPACT FEE CREDITS AND/OR ARE LOCATED OUTSIDE THE SAN ANTONIO WATER SYSTEM’S WATER AND/OR WASTEWATER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN), SUBJECT TO THE EXPIRATION OF SUCH AGREEMENTS IF NOT EXERCISED IN THIRTY-SIX MONTHS; 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 Developer Customers, specified in the table below, have requested the San Antonio Water System (the “System”) to provide water and/or wastewater service(s), and have satisfied the requirements of the Board’s Regulations for Developer Customers Applicant; and

<table>
<thead>
<tr>
<th>No.</th>
<th>Tract Name</th>
<th>Developer</th>
<th>Acres</th>
<th>W PDS</th>
<th>WW PDS</th>
<th>CoSA / CoSA ETJ / Outside</th>
<th>EARZ/CZ</th>
<th>Board Reason</th>
<th>W CCN</th>
<th>WW CCN</th>
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<td>Blustreek Partners, LLC</td>
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<td>CCN</td>
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<td>634</td>
<td>COSA ETJ</td>
<td>OVR</td>
<td>INSIDE</td>
<td>INSIDE</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Northpoint Offices Tract</td>
<td>IGXS NorthPoint, LLC</td>
<td>27.56</td>
<td>93</td>
<td>20</td>
<td>COSA OUTSIDE</td>
<td>OVR/CCN</td>
<td>INSIDE</td>
<td>OUTSIDE</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Briggs Ranch North Tract</td>
<td>Briggs Ranch LTD</td>
<td>410.4</td>
<td>1,080</td>
<td>758</td>
<td>COSA ETJ</td>
<td>OVR</td>
<td>INSIDE</td>
<td>INSIDE</td>
<td></td>
</tr>
</tbody>
</table>

**Totals**: 576.88 acres, 1,818 W PDS, 1,414 WW PDS

WHEREAS, the Developer Customer’s provisions to acquire water and/or wastewater services within the System’s jurisdiction is generally illustrated in the attached Project Site Maps; and

WHEREAS, the Developer Customer is obligated to pay the prescribed fees and to comply with other applicable requirements as set forth in the Regulations for Water and/or Wastewater Service; and
WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve the Utility Service Agreement and to provide water and/or wastewater services to tracts of land requiring the System’s financial participation in the development of infrastructure through oversizing or impact fee credits and/or are located outside the System’s water and/or wastewater Certificate of Convenience and Necessity, and (ii) to provide that the Utility Service Agreement will be honored for a period of thirty-six months, and that if not exercised during this period, the Utility Service Agreements will expire; now, therefore:

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

1. That the System hereby approves the Utility Service Agreement and agrees to provide water and/or wastewater services to tracts of land requiring the System’s financial participation in the development of infrastructure through oversizing or impact fee credits and/or are located outside the System’s water and/or wastewater Certificate of Convenience and Necessity as generally illustrated in the attached Project Site Maps hereto, on a Developer Customer basis as provided for in the Board's Regulations, applicable amendments to the Regulations, and any other applicable federal, state or local regulations.

2. That the Utility Service Agreement shall be honored for a period of thirty-six months, and if not exercised during this thirty-six-month period, the Utility Service Agreement will expire.

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 shall take effect immediately from and after its passage.
PASSED AND APPROVED this 13th day of September, 2017.

_______________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Ernesto Arrellano, Jr., Secretary

Attachments
1. Project Site Maps
Attachment III:
USA-16873
"Stone Oak Offices" Tract
Proposed Sewer Infrastructure Map
1.714 Acres

Legend
- Existing Sewer Main
- USA Tract
- Parcels Update

Project Location

Stone Oak Offices
7 Water EDUs
2 Sewer EDUs
1.714 Acres
USA-16873

Job No. 03-1673
Attachment III:
USA-16793
"Blue Skies" Tract
Proposed Water Infrastructure Map
151.57 Acres

Blue Skies Tract
638 Water EDUs
634 Sewer EDUs
151.57 Acres
USA-16793

Phase I:
Construct approx. 1 mile of 12-inch (oversized to 16-inch) main from proposed 24-inch main

Approx. 8,000 LF of 12-inch main (Oversized to a 24-inch main)

Approx. 1,900 feet of 12-inch main (Oversized to a 24-inch main)

Phase I:
Approx. 630-feet of 12-inch main (oversized to 16-inch)

Proposed Oversized Facility:
Tank (GST): 250k gal to 1.0 MG
High Service Pumps: 3.0 MGD to 7 MGD
Well Pumps: .5 MGD to 4.0 MGD
Northpoint Offices
93 Water EDUs
20 Sewer EDUs
27.796 Acres
USA-15772

Approximately 2,000 feet of proposed 12-inch Border Main (Oversized to a 15-inch)
Northpoint Offices
93 Water EDUs
20 Sewer EDUs
27.796 Acres
USA-15772

Existing 10-inch

Existing 8-inch
Segment A:
Oversize approx. 1.85 miles of 16-inch approach main to a 24-inch