AGENDA

MEETING OF THE
SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES
November 13, 2018, 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 September 11, 2018.


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 210-233-3537 or 711 (Texas Relay Service for the Deaf).
CONSENT AGENDA ITEMS
Items 6 – 23

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 Halifax Security, Inc. dba North American Video to provide: security cameras, video recorders and accessories for maintenance, repair, replacement and improvement of existing equipment, Bid No. 18-16085, for a total of $234,192.00.

2. Approving a one-time purchase from DN Tanks, Inc. to provide: digester concrete tank dome rehabilitation at the Dos Rios Water Recycling Center, Bid No. 18-18115, for a total of $998,940.00.

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 CIP Planner Corp. to provide: annual contract for CIPAce software maintenance and support, Bid No. 18-18116, for a total of $119,198.10.

2. Acceptance of the single source bid of United Rentals (North America), Inc. to provide: annual contract for purchase of vertical shores parts and service, Bid No. 18-2065, for a total of $109,187.50.

3. Acceptance of the bid of American Water Chemicals, Inc. to provide: annual contract for desal antiscalant/clean-in-place chemicals, Bid No. 18-18006, for a total of $320,490.00.

4. Acceptance of the bid of R.E.C. Industries, Inc. to provide: annual contract for mechanical maintenance and repair services for specialized equipment, and/or expertise for installation or repair of process equipment that is either subsurface or located in confined space, Bid No. 18-18034, for a total of $581,089.13.

5. Acceptance of the sole source bid of Utilis, Inc. to provide: satellite imagery leak system analysis, Bid No. 18-18137, for a total of $472,500.00.
CAPITAL IMPROVEMENT CONTRACTS
PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY

Water and Sewer Line Improvements

7. A Resolution awarding a construction contract to Whittaker Lane Contracting, LLC in an amount not to exceed $472,434.00 in connection with the Ground and Elevated Storage Tank Demolition Project. (ANDREA BEYMER – TRACEY LEHMANN)

8. A Resolution approving Change Order No. 2 in the decreased amount of $372,019.12 to the construction contract with S.J. Louis Construction of Texas, Ltd. in connection with the E-19: Seguin Road to Nacogdoches Road – Segment 2 Project. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

9. A Resolution ratifying the actions of the Vice President of Engineering and Construction for approving Change Order No. 1 in an amount not to exceed $566,200.00 to the construction contract with SAK Construction, LLC in connection with the Multiple Sewershed Package 2A Project. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

Production, Transmission and Treatment Improvements

10. A Resolution approving Change Order No. 1 in an amount not to exceed $211,733.99 to the construction contract with Associated Construction Partners, Ltd. in connection with the Dos Rios Water Recycling Center Sludge Thickening Facility Expansion Project. (ANDREA BEYMER – MICHAEL MYERS)

11. A Resolution approving Change Order No. 4 in an amount not to exceed $383,108.00 to the construction contract with Archer Western Construction, LLC in connection with the Dos Rios Water Recycling Center Headworks Enhancement Project. (ANDREA BEYMER – JULIE VALADEZ)

12. A Resolution awarding a professional services contract to Freese & Nichols, Inc. in an amount not to exceed $2,149,157.00 in connection with the Turtle Creek No. 3 Primary Pump Station Project. (ANDREA BEYMER – MICHAEL MYERS)

13. A Resolution awarding a professional services contract to K Friese & Associates, Inc. in an amount not to exceed $819,842.00 in connection with the Turtle Creek No. 3 Pump Station Transmission Main Project. (ANDREA BEYMER – MICHAEL MYERS)

14. A Resolution approving additional funds in an amount not to exceed $140,000.00 to the existing professional services contract with Tetra Tech, Inc. in connection with the Water Productions Facilities Painting and Rehabilitation Design Services Contract I. (ANDREA BEYMER – TRACEY LEHMANN)
REPLACEMENT AND ADJUSTMENT PROJECTS
Governmental Relocations and Replacements

15. A Resolution approving reimbursement to the City of San Antonio in an amount not to exceed $550,000.00 for environmental services in connection with the 2017 – 2022 Bond Program. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

EASEMENT AND REAL PROPERTY

16. A Resolution accepting an offer in the amount of $50,000.00 for the sale of 23011 Shady Forest, Elmendorf, Bexar County, Texas; approving a purchase agreement with Angela Poritz and Verona Curry; affirming a six percent commission to be paid to Cano and Company at closing; authorizing payment of closing costs (excluding real estate commissions) up to $1,200.00 at closing. (NANCY BELINSKY – BRUCE HABY)

17. A Resolution approving the acquisition of a permanent water line easement being approximately 0.104 acres and temporary construction easements being approximately 0.228 acres from Mortgage Loan & Agency Company, joined by Short Living Trust, and located at the southwest corner of Loop 1604 and Voigt Drive, in Bexar County, Texas for the Central Water Integration Pipeline Project in an amount not to exceed $206,847.03. (NANCY BELINSKY – BRUCE HABY)

18. A Resolution approving the acquisition of a permanent water line easement being approximately 1.084 acres and temporary construction easements being approximately 1.045 acres in the aggregate from Metro Creekside Texas, LLC, and located at the southeast corner of West Avenue and Bitters Road, in Bexar County, Texas for the Central Water Integration Pipeline Project in an amount not to exceed $900,000.00. (NANCY BELINSKY – BRUCE HABY)

MISCELLANEOUS ITEMS

19. A Resolution approving an agreement with Bluebonnet Electric Cooperative in an amount not to exceed $456,346.00 for design and construction of electrical facilities for the Vista Ridge Regional Supply Project Well Field Facilities 4, 5 and 6. (DONOVAN BURTON – MARTY JONES)

20. A Resolution approving a Transfer of Use Agreement for Lease of Groundwater Rights with City Public Service Energy for 2,000 acre-feet of Edwards Aquifer groundwater rights for a five-year term, beginning January 1, 2019 through December 31, 2023 at a cost of $260,000.00 per year for a total obligation not to exceed $1,300,000.00. (DONOVAN BURTON – DARREN THOMPSON)

21. A Resolution approving expansion of the Watersaver Coupon Program under the San Antonio Water System’s Conservation Department; approving agreements with local and non-local qualifying businesses that provide desired conservation technologies, services, and materials; authorizing reimbursement of participating businesses for accepting Watersaver Coupons from preapproved customers under such agreements. (GAVINO RAMOS – KAREN GUZ)
22. A Resolution recommending and requesting San Antonio City Council approve an application for financial assistance to the Texas Water Development Board for participation in the Clean Water State Revolving Fund Program in an amount not to exceed $25,285,000.00; and adoption of a reimbursement resolution. (DOUG EVANSON)

23. A Resolution approving settlement of the lawsuit of Mary Alice Pastrano and Southern County Mutual Insurance Company against the San Antonio Water System; approving the System’s financial obligation in an amount not to exceed $80,000.00 for purposes of the settlement. (NANCY BELINSKY)

24. PUBLIC HEARING: 2019 ANNUAL BUDGET
   A. Public Hearing Briefing (DOUG EVANSON)

25. Public Comment.

ITEMS FOR INDIVIDUAL CONSIDERATION

26. A Resolution approving the annual budget for the San Antonio Water System for the Fiscal Year ending December 31, 2019; authorizing expenditures in an amount not to exceed $12,778,964.00 for the owner controlled construction changes for the fiscal year ending December 31, 2019; and approving adjustments for certain special services fees for 2019 as provided by the City Code. (DOUG EVANSON)

27. A Resolution consenting to the selection of EPCOR Services, Inc. by Vista Ridge, LLC as the Operating Service Provider for the Vista Ridge Project, and approving the terms of the Operating Service Agreement between the Vista Ridge, LLC, Central Texas Regional Water Supply Corporation, and EPCOR Services, Inc. (DONOVAN BURTON)

28. The Regular Session of the November 13, 2018, Regular Board Meeting is hereby recessed to hold an Executive Session and discuss the matters listed pursuant to Sections §551.071 and §551.074 of the Texas Open Meetings Act.

29. EXECUTIVE SESSION.
   A. Deliberation regarding the employment, evaluation and duties of the President/Chief Executive Officer and consultation with attorneys regarding any related legal matters pursuant to Texas Government Code §551.074 and §551.071.
   B. Consultation with attorneys regarding legal matters related to compliance with the Consent Decree between the San Antonio Water System and the United
States of America and the State of Texas, pursuant to §551.071, Texas Government Code.

C. Consultation with attorneys regarding legal matters related to (i) Renda/Southland, JV., et. al. vs San Antonio Water System, et. al., Cause No. 2018 CI 18329 in the District Court for the 150th Judicial District of Bexar County, Texas; and (ii) In Re: The City of San Antonio, Texas, acting by and through the San Antonio Water System Board of Trustees, and the City of San Antonio, Texas Water System Junior Lien Revenue and Refunding Bonds, Series 2018A (No Reserve Fund), Cause No. 2018 CI 19101 in the District Court for the 407th Judicial District of Bexar County, Texas, related to the Central Water Integration Pipeline Segment 5-1 Project pursuant to §551.071, Texas Government Code.

D. Consultation with attorneys regarding legal matters related to the Design Build Services Agreement with Teal Construction Company for the Phase II Service Center Project pursuant to §551.071, Texas Government Code.

E. Consultation with attorneys regarding advice on legal matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act, pursuant to §551.071, Texas Government Code.

30. The Regular Session of the Regular Board Meeting of November 13, 2018, is hereby reconvened.

31. A Resolution approving additional funds in an amount not to exceed $1,499,360.00 to the existing design build contract with Teal Construction Company in connection with Phase 2 of the Service Center Project. (ANDREA BEYMER – JULIE VALADEZ)

CAPITAL IMPROVEMENT CONTRACTS

PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY

Developer Customer Contracts

32. 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 – TRACEY LEHMANN)

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BOARD MEETING 6 11-13-18
33. A Resolution awarding a construction contract to Payton Construction, Inc. in an amount not to exceed $9,176,000.00 in connection with the Green Mountain Pump Station Facility Project; approving a contract between the System, Payton Construction, Inc., and KB Home Lone Star, Inc. for the project work; authorizing the expenditure of funds in the amount of $8,625,440.00 for the System’s proportionate share of the project work payable to Payton Construction, Inc. and the expenditure of funds in the amount of $862,544.00 for the System’s proportionate share of the engineering design fees payable to KB Home Lone Star, Inc.

(ANDREA BEYMER – TRACEY LEHMANN)

Water and Sewer Line Improvements

34. A Resolution awarding a construction contract to Qro Mex Construction Company, Inc. in an amount not to exceed $14,024,873.83 in connection with the C5 Culebra – Castroville to Laredo & C28 Zarzamora Creek – San Gabriel to NW 23rd Phase 3 Project.

(ANDREA BEYMER – GAIL HAMRICK-PIGG)

35. A Resolution awarding a construction contract to Facilities Rehabilitation, Inc. in an amount not to exceed $3,724,212.00 in connection with the Central Sewershed Package 4 Open Cut Project.

(ANDREA BEYMER – GAIL HAMRICK-PIGG)

36. A Resolution awarding a construction contract to SAK Construction, LLC in an amount not to exceed $4,478,947.00 in connection with the West Sewershed Package 1 Project.

(ANDREA BEYMER – GAIL HAMRICK-PIGG)

Production, Transmission and Treatment Improvements

37. A Resolution awarding a construction contract to MGC Contractors, Inc. in an amount not to exceed $6,530,789.00 in connection with the Dos Rios Water Recycling Center Chlorine System Improvements Project.

(ANDREA BEYMER – MICHAEL MYERS)

MISCELLANEOUS PROJECTS

38. A Resolution awarding a construction services contract to Tesco Controls, Inc. in an amount not to exceed $4,321,167.00 in connection with construction and deployment of the Production Control System Upgrade; approving additional funds in an amount not to exceed $666,565.00 to EMA, Inc. dba EMA Services, Inc. for construction phase services.

(DOUG EVANSON – SREE PULAPAKA)

MISCELLANEOUS ITEMS

39. A Resolution awarding a services contract to Weisinger Incorporated in the amount of $1,384,883.00 in connection with well plugging services for the South Bexar County Monitor Well No. 2 (Catfish Farm Well-State Well No. AY 68-43-617).

(DONOVAN BURTON - SCOTT HALTY)
40. **BRIEFING SESSION.**

   A. Briefing and deliberation regarding the Vista Ridge Project
   
   B. Briefing and deliberation regarding the Quarterly Financial Report

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

42. **Adjournment.** THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES MEETING OF NOVEMBER 13, 2018, IS HEREBY ADJOURNED.
Board Members Present:
Berto Guerra, Jr., Chairman
Pat Jasso, Vice Chair
Pat Merritt, Assistant Secretary
David P. McGee, Trustee
Eduardo Parra, Trustee

Board Members Absent:
Amy Hardberger, Secretary
Ron Nirenberg, Mayor

1. MEETING CALLED TO ORDER.

The meeting of the San Antonio Water System Board of Trustees was held on September 11, 2018, and called to order at 9:15 a.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.

Chairman Guerra acknowledged the sudden loss of two SAWS team members, Jack Bagley and Patrick Herrera. Officer Bagley greeted everyone with a smile while still understanding the importance of his job to protect SAWS staff. Mr. Herrera was a journey level electrician with 30 years of service and came to SAWS in 2012 from BexarMet. Chairman Guerra asked for a moment of silence.
3. Minutes.

A. Approval of the Minutes of the San Antonio Water System Board of Trustees Regular Board Meeting of July 10, 2018.

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


Robert Puente discussed two awards from the National Association of Clean Water Agencies, the gold award for perfect compliance with Leon Creek and Medio Creek Water Recycling Centers and the silver award for the Dos Rios Water Recycling Center. The National Association of Clean Water Agencies recognized perfect or near perfect compliance with SAWS water recycling TCEQ permits. These permit limits were stringent and in many cases exceeded the requirements for drinking water. In 2017, the Leon Creek and Medio Creek facilities had a perfect compliance record and Dos Rios had a single event. Without the pretreatment program administered by the Resource Protection Compliance Department, the maintenance of the wastewater collection system by Distribution and Collections, the sample analysis provided by the Laboratory, and the operation and maintenance of the plants by Production and Treatment, SAWS would not be as successful. It took different parts of SAWS working as a team and the dedication of the employees for SAWS to have one of the best water recycling operations in the United States. He recognized Steve Clouse for leading the team and congratulated him for the awards.

Chairman Guerra thanked Mr. Clouse for continuing to do an outstanding job for SAWS and for the city.

Chairman Guerra stated the meeting was recessed for Executive Session to discuss Item 36. At this point in the meeting, an Executive Session was held. The time was 9:22 a.m.

41. The Regular Session of the September 11, 2018, Regular Board Meeting is hereby recessed to hold an Executive Session and discuss Agenda Item 36 pursuant to Section §551.071 of the Texas Open Meetings Act.

43. The Regular Session of the Regular Board Meeting of September 11, 2018, is hereby reconvened.

The meeting reconvened at 10:00 a.m. Chairman Guerra stated that no decisions were made in Executive Session.

5. Public Comment.

Chairman Guerra asked Rudy Renda if he wished to speak. Mr. Renda stated he was going to pass.

Alan Wilson stated he was with the Law Firm Sandberg & Carroll and was there on behalf
of his client, Southland Oscar Renda Construction, in regards to the Central Water Integration Pipeline Segment 5-1 Project. He discussed his client’s bid protest for the project and intention to file a lawsuit related to the bid protest. He asked for a short two-week deferment on the award of the contract, that the Council make a decision to withhold the award, and that the Council meet with them to discuss the best value bid process.

CONSENT AGENDA ITEMS

Items 6 – 33

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 Alsay Inc. to provide: installation of well pumps and motors at H2Oaks Brackish Groundwater Desalination Plant, Bid No. 18-18106, for a total of $1,815,300.00.

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 bid of Harn R/O Systems, Inc. to provide: annual contract for cartridge filters for reverse osmosis membranes, Bid No. 18-16064, for a total of $134,250.00.

2. Acceptance of the sole source bid of Kinloch Equipment & Supply, Inc. to provide: annual contract for IBAK sewer inspection equipment parts and repair services, Bid No. 18-18071, for a total of $187,600.00.

3. Acceptance of the bid of Zenner Performance Meters, Inc dba Zenner USA to provide: annual contract for water meter strainers, Bid No. 18-0034, Items 1, 2, 3 and 5, for a total of $113,150.10.

4. Acceptance of the sole source bid of Carahsoft to provide: annual contract for Salesforce Lightning Service Cloud Unlimited Edition licenses, (DIR-TSO-3149), Bid No. 18-18104, for a total of $102,060.00.

5. Acceptance of the best value bid of Dell Marketing, L.P. to provide: annual contract for Enterprise Encryption and Key Management Solution, (DIR-TSO-3763), Bid No. 18-18011, for a total of $117,974.00.

6. Acceptance of the bid of Commonwealth Computer Co. to provide: annual contract for Dell desktops, laptops, monitors and accessories, Bid No. 18-6023A, for a total of $623,112.05.
7. Acceptance of the single source bid of San Antonio Lighthouse for the Blind to provide: annual contract for office supplies, Bid No. 18-0106, for a total of $105,000.00.

CAPITAL IMPROVEMENT CONTRACTS

PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY

Water and Sewer Line Improvements

7. A Resolution awarding a construction contract to Facilities Rehabilitation, Inc. in an amount not to exceed $817,070.00 in connection with the Vantage View – E. Broadview to Hillcrest (Alley) Project. (ANDREA BEYMER – MICHAEL MYERS)

8. A Resolution approving Change Order No. 9 in the decreased amount of $184,150.00 and Change Order No. 10 in the amount of $841,209.94 to the construction contract with Oscar Renda Contracting, Inc. in connection with the C5 Culebra - Castroville to Laredo & C28 Zarzamora Creek - San Gabriel to NW 23rd Street, Phase 1B Project. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

9. A Resolution awarding a professional services contract to Arias & Associates, Inc. in an amount not to exceed $200,000.00 in connection with the 2018 Geotechnical Engineering and Construction Materials Testing Services. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

10. A Resolution awarding a professional services contract to Professional Service Industries, Inc. in an amount not to exceed $200,000.00 in connection with the 2018 Geotechnical Engineering and Construction Materials Testing Services. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

11. A Resolution awarding a professional services contract to Raba Kistner, Inc. in an amount not to exceed $200,000.00 in connection with the 2018 Geotechnical Engineering and Construction Materials Testing Services. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

12. A Resolution awarding a professional services contract to Terracon Consultants, Inc. in an amount not to exceed $200,000.00 in connection with the 2018 Geotechnical Engineering and Construction Materials Testing Services. (ANDREA BEYMER – GAIL HAMRICK-PIGG)

REPLACEMENT AND ADJUSTMENT PROJECTS

Governmental Relocations and Replacements

13. A Resolution approving an Interlocal Agreement with Bexar County; authorizing expenditures in an amount not to exceed $1,578,114.22 for the adjustment of water facilities by Bexar County in connection with the Marshall Road: US 281 to Bulverde Road Project. (ANDREA BEYMER – GAIL HAMRICK-PIGG)
14. A Resolution approving an Advance Funding Agreement with the Texas Department of Transportation; authorizing expenditures in an amount not to exceed $322,007.71 for the adjustment of water facilities by the Texas Department of Transportation in connection with the FM 1976: Woodlake Parkway to Loop 1604 Project.  
(ANDREA BEYMER – GAIL HAMRICK-PIGG)

15. A Resolution approving an Advance Funding Agreement with the Texas Department of Transportation; authorizing expenditures in an amount not to exceed $12,347.67 for the removal of asbestos cement pipe by the Texas Department of Transportation in connection with the FM 1976: Woodlake Parkway to Loop 1604 Project.  
(ANDREA BEYMER – GAIL HAMRICK-PIGG)

16. A Resolution approving an Interlocal Agreement with the Alamo Regional Mobility Authority; authorizing expenditures in an amount not to exceed $1,413,184.29 for the adjustment of water and sewer facilities by the Alamo Regional Mobility Authority in connection with the Evans Road Phase I: Bulverde to TPC Parkway Project.  
(ANDREA BEYMER – GAIL HAMRICK-PIGG)

**EASEMENT AND REAL PROPERTY**

17. A Resolution authorizing the President/Chief Executive Officer or his duly appointed designee to negotiate and execute a Right of Entry Agreement with Drury Southwest, Inc. and RTSA Operations, LP in an amount not to exceed $100,000.00 in connection with Design Request 1091 - 800 N. Loop 1604 Sewer Main Project.  
(NANCY BELINSKY – BRUCE HABY)

18. A Resolution awarding contracts to Ford Engineering, Inc. and Bain Medina Bain, Inc. in an amount not to exceed $300,000.00 to provide real estate survey services in connection with the acquisition and disposition of real property and for various capital improvement projects over a three-year period with the option of two, one-year renewals. (NANCY BELINSKY – BRUCE HABY)

**MISCELLANEOUS ITEMS**

19. A Resolution awarding a construction contract to Facilities Rehabilitation, Inc. in an amount not to exceed $1,194,140.00 in connection with the 2018 Annual Water Distribution Leak Repairs Contract – Package 5.  
(MICHAEL BRINKMANN – SHAWN CRAWFORD)

20. A Resolution awarding a construction contract to Facilities Rehabilitation, Inc. in an amount not to exceed $1,169,140.00 in connection with the 2018 Annual Water Distribution Leak Repairs Contract – Package 6.  
(MICHAEL BRINKMANN – SHAWN CRAWFORD)

21. A Resolution approving Change Order No. 1 in an amount not to exceed $257,600.00 to the construction contract with Facilities Rehabilitation, Inc. in connection with 2018 Annual Water Distribution Leak Repairs Contract - Package 3.  
(MICHAEL BRINKMANN – SHAWN CRAWFORD)
22.  A Resolution approving Change Order No. 1 in an amount not to exceed $267,870.00 to the construction contract with Bartek Construction, Co. in connection with 2018 Annual Water Distribution Leak Repairs Contract - Package 4. (MICHAEL BRINKMANN – SHAWN CRAWFORD)

23.  A Resolution ratifying the actions of the Vice President of Distribution and Collection Operations in approving Change Order No. 1 in an amount not to exceed $261,600.00 to the construction contract with Facilities Rehabilitation, Inc. in connection with 2018 Annual Water Distribution Leak Repairs Contract - Package 1. (MICHAEL BRINKMANN – SHAWN CRAWFORD)

24.  A Resolution ratifying the actions of the Vice President of Distribution and Collection Operations in approving Change Order No. 1 in an amount not to exceed $260,378.00 to the construction contract with Bartek Construction, Co. in connection with 2018 Annual Water Distribution Leak Repairs Contract - Package 2. (MICHAEL BRINKMANN – SHAWN CRAWFORD)

25.  A Resolution awarding a professional services contract to ADS, LLC dba ADS Environmental Services in an amount not to exceed $392,458.00 for the period beginning October 1, 2018 through October 1, 2021 with two additional one-year extensions in connection with wastewater flow metering services. (ANDREA BEYMER – TRACEY LEHMANN)

26.  A Resolution approving an ordinance amending Chapter 34, Article V, Divisions 3 and 5 and Article VI, Division 5 of the City Code to comply with amendments to 40 C.F.R. Part 403 and TPDES Permit Number WQ0004284000; and amending Article VI, Division 8 of the City Code; authorizing the President/Chief Executive Officer or his duly appointed designee to recommend the ordinance amendments to the City Council and requesting that City Council pass an ordinance amending Chapter 34, Article V, Divisions 3 and 5; and Chapter 34, Article VI, Division 5; and Article VI, Division 8 of the City Code. (DONOVAN BURTON – SCOTT HALTY)

27.  A Resolution accepting bids for the lease of Edwards Aquifer Authority groundwater rights and approving Lease Agreements with the holders of Edward Aquifer Authority groundwater rights for a total of 2,153.018 acre-feet per annum of Edwards Aquifer Authority groundwater rights at a cost of $276,992.34 per year for five years beginning in 2019 for a total obligation of the Lease Agreements in an amount not to exceed $1,384,961.70. (DONOVAN BURTON – DARREN THOMPSON)

28.  A Resolution approving amendments to the Bylaws of the Community Conservation Committee and the Citizens Advisory Panel. (GAVINO RAMOS – DONOVAN BURTON)

29.  A Resolution authorizing the purchase of insurance policies with Standard Insurance Company for the period of January 1, 2019 through December 31, 2019 in an amount not to exceed $1,114,932.00 in connection with basic life, accidental death and
dismemberment, voluntary life insurance, and long term disability for the System's Employee Benefits Program. (SHARON DE LA GARZA)

30. A Resolution approving additional funds in an amount not to exceed $250,000.00 to various temporary employment agencies in connection with temporary employment services for Information Systems related positions. (DOUG EVANSON – SREE PULAPAKA)

31. A Resolution approving additional funds in an amount not to exceed $250,000.00 to various temporary employment agencies in connection with temporary employment services for Information Systems related positions. (DOUG EVANSON – SREE PULAPAKA)

32. A Resolution approving additional funds in an amount not to exceed $250,000.00 to various temporary employment agencies in connection with temporary employment services for Information Systems related positions. (DOUG EVANSON – SREE PULAPAKA)

33. A Resolution awarding a contract to JPMorgan Chase Bank, N.A. in connection with providing depository banking services to the San Antonio Water System and entering into a Custody Agreement with the Bank of New York Mellon Trust Company, N.A. to serve as custodian for investments of the San Antonio Water System, both for a two-year term with three optional one-year extensions. (DOUG EVANSON)

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

Mr. McGee asked that Item 31 be pulled for discussion. Mr. McGee made a motion to approve the Consent Agenda Items 6–33, except for Item 31. Ms. Jasso seconded the motion.

Consent Agenda Items 6–33, except for Item 31, were unanimously approved. Verbal voting.

Chairman Guerra stated Item 31 would be taken up for consideration next.

Mr. McGee commented on a recent movement by some of the large banks to drift out of the banking lane and into more of a legislative, social engineering lane. He referenced articles in the paper where Citibank, in particular, had taken some fairly draconian steps which limited the access of capital to some of their customers based on their opinion of an interpretation of the Second Amendment. He asked if J.P. Morgan had made any publicly mandated, or taken any publicly mandated positions to affect their opinion of the Second Amendment to their customers. Mr. Evanson responded that to the best of his knowledge, the answer to that question would be no. In his research, the only two individual banks that had made public statements were Bank of America and Citibank.

Mr. McGee asked if staff had talked to J.P. Morgan. Mr. Evanson stated he had some
discuss their recommendation with J.P. Morgan and to the best of his knowledge, they had not made any public proclamation.

Mr. McGee recommended that the RFP process for banking services and financial institutions include some questions and ask those financial institutions to declare if they had taken any public statements or proposed any mandates related to legislative or social engineering issues. Chairman Guerra stated so noted.

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

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

ITEMS FOR INDIVIDUAL CONSIDERATION

CAPITAL IMPROVEMENT CONTRACTS

PROJECTS INVOLVING IMPROVEMENTS, EXTENSIONS AND ADDITIONAL CAPACITY

Developer Customer Contracts

34. 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 – TRACEY LEHMANN)

<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>CCN OVR</th>
<th>EARZ / CZ</th>
<th>JBSA</th>
<th>Board Reason</th>
<th>W CCN</th>
<th>WW CCN</th>
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<tbody>
<tr>
<td>1</td>
<td>Dietz Elkhorn 30 Acre Tract</td>
<td>Del D. Baker, Jr. Family Partnership, LTD</td>
<td>30</td>
<td>289</td>
<td>289</td>
<td>COSA ETJ INSIDE</td>
<td>Y</td>
<td>OVR</td>
<td>INSIDE</td>
<td>INSIDE</td>
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</tr>
<tr>
<td>2</td>
<td>Langdon Tract</td>
<td>Continental Homes of Texas L.P.</td>
<td>186</td>
<td>850</td>
<td>800</td>
<td>COSA ETJ INSIDE</td>
<td>N</td>
<td>OVR</td>
<td>INSIDE</td>
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</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>216</strong></td>
<td><strong>1,39</strong></td>
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<td></td>
<td></td>
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</tbody>
</table>

Tracey Lehmann presented Item 34, the Utility Service Agreements (USA) for the Dietz Elkhorn 30 Acre Tract and the Langdon Tract.

The Dietz Elkhorn 30 Acre Tract was a mixed use development along IH-10 on the northwest side, across the street from Balcones Creek. The developer was requesting 289 water and wastewater equivalent dwelling units (EDU) for the development. The tract was located over the Edwards Aquifer recharge and contributing zones and within the five-mile radius of military bases, with Camp Bullis being the closest facility. He reviewed project maps and proposed infrastructure options for the tract. Staff recommended oversizing requirements for the USA. There was an existing 24-inch water main along the west side of IH-10 and extends along Balcones Creek Road. The developer would be required to extend a water main.
main across IH-10 along the full frontage of the property. Staff recommended oversizing the crossing of IH-10 from a 12-inch to 24-inch water main as well as the portion of the water main going north along the frontage to a 16-inch water main. There was an existing sewer lift station across IH-10 that would require some modifications and some gravity sewer main just south of Fair Oaks Parkway that would require improvements. The tract was upstream of the Falcon Center Lift Station, which was currently at capacity. SAWS was working on the W31 Sewer Main Extension Project to deliver that lift station. Once that project was completed as well as the additional improvements on the development’s sewer main, the developer would be allowed to connect services.

The Langdon Tract was a residential development off of East Evans Road, located north of Loop 1604 and east of Highway 281. The developer was requesting 850 water EDUs and 800 wastewater EDUs. The tract was not within the five-mile radius of military bases, but was over the Edwards Aquifer recharge zone. There were oversizing requirements for both water and wastewater improvements. He reviewed project maps and proposed infrastructure options for the tract. Staff recommended oversizing the water main for future growth as well as creating a loop within the area. A portion of the sewer EDUs would be able to tie into the Fossil Ridge Lift Station, which was along Evans Road and included in the Evans Road Lift Station fee area. In December 2014, SAWS and the development community looked at ways to include responsible development over the recharge zone. The intent of the lift station escrow fee was that as the individual developments came in these areas, small upgrades would be made to the lift stations with the ultimate goal to eliminate those lift stations. The escrow fee would cover a regional lift station in case the gravity solutions were not able to be completed. The Langdon Tract fell in the center of the lift stations so the developer would get a portion of the EDUs now to tie into the lift station. The developer would partner with SAWS to build the gravity solution for the remaining EDUs that would allow the elimination of three lift stations over the Edwards Aquifer.

Staff recommended approval of the USAs for the Dietz Elkhorn 30 Acre Tract and the Langdon Tract.

Ms. Jasso made a motion to approve Item 34. Mr. McGee seconded the motion.

Ms. Jasso inquired about the timeline. Mr. Lehmann replied it would probably be two years before construction started.

Ms. Jasso inquired about the number of lift stations, once these three lift stations were eliminated. Mr. Lehmann replied there were about 154 now, and this development would eliminate three lift stations.

After no further discussion, Item 34 was unanimously approved. Electronic voting.

**Water and Sewer Line Improvements**

35. A Resolution awarding a construction contract to SAK Construction, LLC in an amount not to exceed $2,621,988.10 in connection with the Central Sewershed Package 5 Project. (ANDREA BEYMER – GAIL HAMRICK-PIGG)
Gail Hamrick-Pigg presented Item 35, the Central Sewershed Package 5 Project. The project was part of the EPA Consent Decree and would address pipes based on structural condition. The project would rehabilitate approximately 1.3 miles of sewer main ranging in sizes from 8-inch to 24-inch by both cured-in-place and pipe bursting methods. The project was located along the Broadway Corridor, between Josephine to the Witte Museum. The project would require coordination with City of San Antonio Parks and with the Witte Museum.

She discussed the bid results. SAK Construction, LLC was the low bidder at $2,621,988.10, and the bid represented a 37.7 percent increase from the engineer's estimated construction cost. Because the percentage was over 25 percent, a bid analysis was performed and included an independent cost estimate from HDR. The independent cost estimate was $3.26 million, which was 19 percent difference from the low bid. Staff met with the contractor, checked referenced on past projects, and looked at the contractor’s capacity to do the work. Based on the detailed analysis, staff found that SAK Construction, LLC did meet the requirements as the low responsible bidder. She reviewed the contractor’s performance on SAWS projects, and stated that all of the projects were completed on time, on budget. She discussed the contractor’s capacity to perform the work along with the three active projects, which were currently on budget and ahead of schedule. Staff had no concerns about the contractor’s capacity to perform the work.

Staff recommended the award of the construction contract to SAK Construction, LLC in the amount of $2,621,988.10 for the Central Sewershed Package 5 Project.

Ms. Jasso made a motion to approve Item 35. Mr. Parra seconded the motion.

Mr. Parra asked if staff had coordinated with Brackenridge Park Conservancy. Ms. Hamrick-Pigg replied staff coordinated with the City mainly on the park entrances and agreed to do additional traffic control and signage. Also, the bypass piping would be buried at all the lighted intersections.

After no further discussion, Item 35 was unanimously approved. Electronic voting.

Production, Transmission and Treatment Improvements

36. A Resolution awarding a construction contract to Guy F. Atkinson Construction, LLC in an amount not to exceed $48,050,070.00 in connection with the Central Water Integration Pipeline Segment 5-1 Project.

(ANDREA BEYMER – ALISSA LOCKETT)

Alissa Lockett presented Item 36, the award of a construction contract for the Central Water Integration Pipeline Segment 5-1 Project. She stated the presentation would cover Items 36, 37 and 38. She gave an overview of the eight projects that made up the Central Water Integration Pipeline (CWIP) Project that would bring the Vista Ridge water into SAWS service area and integrate amongst the central corridor into the distribution system. There were currently two projects under construction, the Terminus Ground Storage Tank started construction in April, and the Maltsberger Ground Storage Tank Rehabilitation went to the Board in August. The Pipeline Segment 5-1 Project would be the most complicated tunnel contract that SAWS had ever undertaken. The Pipeline Segment 5-2 Project would integrate
water into the Stone Oak area from the terminus facility. The Bitters Pump Station and Pipeline Segment 5-3 Improvements would integrate water into the northern part of the central corridor through an existing pipeline that crossed both Bitters Road and West Avenue. She reviewed a map of the project locations and how each project fit into the overall CWIP program. Pipeline Segment 5-1 would connect the terminus site to an existing pipeline that went through Hollywood Park and Hill Country Village that was previously operated by BexarMet. Pipeline Segment 5-2 also would connect the existing BexarMet infrastructure that served Stone Oak. The Bitters and Segment 5-3 Project would improve the Bitters Pump Station facility and connect the existing 48-inch pipeline to the Bitters facility.

For the two larger projects, the Request for Competitive Sealed Proposal procurement method was used. In September 2011, this methodology was used on projects that were complicated, that were very large, and that had schedule constraints. The procurement method allowed staff to make selections for a best value contractor based on more than just price. The Pipeline Segment 5-1 was the most complicated tunnel project that SAWS had ever done, and the Bitters Pump Station Improvements and Segment 5-3 Project was a complicated facilities project that would cross Bitters and West Avenue, with very densely urban roads, densely populated urban areas. Staff chose this procurement method and sought Mr. Puente's approval to use this procurement method for these two projects.

She reviewed the criteria assigned to the projects to be evaluated by a technical committee and a selection committee. Team qualifications and similar prior experience at 30 points, project approach, schedule and resource availability at 30 points, and delivery schedule to meet the deadline to start receiving Vista Ridge water in January 2020. These facilities needed to be up and operational for substantial completion milestones by December 31, 2019, and the schedule from the respondents was a critical piece in determining who gave SAWS the best value. Resource availability was another key element on Pipeline Segment 5-1, which was two tunnel boring machines to meet a very aggressive project schedule. The project schedule had intermediate milestones to guarantee the project was moving along and did not wait until the end to decide if something was going wrong. Meeting those intermediate milestones with the right resources was key. Price was 30 percent, and the importance of small minority, woman-owned and veteran-owned businesses was 10 percent.

She discussed the details for Pipeline Segment 5-1 that included routes in four different regions, divided up to convey the water from the terminus treatment facility to the existing 48-inch pipeline in Hollywood Park area. The first reach was the tunnel reach and required entering a tunnel boring machine at the terminus site and going about 4,700 feet. The tunnel’s diameter would be 8 feet, and a 54-inch pipe would be inserted to convey the water. The second reach would be open cut to try to save some schedule time and to save some costs. The open cut reach would be about 1,500 feet, and would go through Sigma Road in the Stone Oak area. Reach 3 was another tunnel reach of about 3,570 feet with a diameter of 8 feet. The thought was both Reach 1 and Reach 3 needed to be constructed concurrently with two different tunnel boring machines to meet the aggressive schedule. Reach 4 was either jack and bore or hand mine, which was traditionally done underneath Loop 1604 meeting the Texas Department of Transportation requirements. The four reaches made the project very complicated, which was why it was important to look at the schedule, resource availability, and the past prior experience for the various respondents. In total, there was about 10,500 feet of 54-inch welded steel pipe on the project.
Due to the importance of schedule, liquidated damages were put into the contract. SAWS interconnection improvements were required by contract to be completed by January 16, 2020, and SAWS would start paying for the water on April 15, 2020. Both SAWS and the project company would need that time between January and April to work out all the bugs with the water production facility and all the pipelines connecting the facility to the pump stations. Liquidated damages between January and April of 2020 were $10,000 per day. Starting on April 15, 2020, the liquidated damages would be $40,000 per day, up to a maximum of $4 million. Part of the reason there was a cap and the cap was not exactly the amount that SAWS would be paying for water to the project company was because staff understood that SAWS had to share some of the risk on the project due to the aggressive schedule. One of the things added to the contract, which was not typical of SAWS projects, was a $40,000 per day incentive. If the contractor was able to meet substantial completion prior to December 31, 2019, the contractor could earn a bonus of $40,000 per day up to a maximum of $2.4 million.

Gerardo Gomez presented Item 37, the Central Water Integration Pipeline Segment 5-2 Project. The project consisted of approximately 3,450 feet of 36-inch welded steel pipe. He reviewed a map of the project location and the pipeline that went from the terminus pump station through an easement into Silver Knoll and Summer Knoll. The pipeline would tie into an existing 30-inch water main along Knight's Cross. The purpose of the new 36-inch water main was to integrate the Vista Ridge water into the Stone Oak area. One of the challenges encountered was that Summer Knoll was a high traffic area. Staff had several meetings with the homeowner's association and residents. There were concerns from the residents regarding the street being used for dropping off kids at Reagan High School and Las Lomas Elementary. Staff worked with the residents and the schedule to decide a later start time for construction to allow the residents to drop off their kids and extend the hours into the afternoon as the evenings were not as much of a concern. Staff would continue to work with the residents and the homeowner's associations to minimize the impact.

Linda Bevis presented Item 38, the Bitters Pump Station Improvements Project and Pipeline Segment 5-3. The facility was located at the intersection of Bitters and West Avenue. The improvements included a new five-million gallon storage tank. Bitters Pump Station was one of a handful of stations that was originally laid out to accommodate an additional tank for future expansion. Among those were Anderson, Wurzbach, and Naco Pump Stations that allowed the opportunity to expand the facilities. The construction would consist of a new 30-million gallon per day pump station, which would replace three existing pumps. The new pumps would allow the water from Vista Ridge to be delivered to the two tanks and then pushed out to the distribution system. Additionally, two flow control valves would allow staff to control Vista Ridge water coming into the facility as well as reverse flow in the rare event Vista Ridge water stopped. The project also included associated piping and electrical improvements. The project would allow a drain and overflow facility to be built at the Bitters Pump Station, which would accommodate the anticipated flows of each tank should an overflow event occur as well as to help with drainage on the site. She reviewed the alignment of Pipeline Segment 5-3. In 2016, the 48-inch pipeline located in the corridor was assessed to determine the condition of the pipeline. It was determined that less than one percent of the pipeline was mildly corroded. Pipeline Segment 5-3 would connect to the 48-inch pipe, cross Bitters Road through the Hobby Lobby parking lot, and then cross West Avenue to
connect to the Bitters Pump Station. The alignment would accommodate the high traffic of the retail facilities and a three box culvert running underground through the parking lot. Pipeline Segment 5-3 was approximately 1,900 feet of 48-inch welded steel pipe, and a 48-inch overflow drain pipe would connect from the Bitters Pump Station to the culvert with a parallel alignment of Segment 5-3.

Ms. Lockett summarized the bid results for each of the projects. For Pipeline Segment 5-1, there were five respondents that submitted a proposal, and the best value proposal was selected as Guy F. Atkinson Construction, LLC. The selection was based on the criteria were 60 percent of the points were based on similar prior experience, the team, project approach, schedule, and resources. Price was not the governing factor in selecting the best value proposal. The cost above the engineer's estimate of approximately $10 million was taken seriously by staff. An independent cost estimate was done to look at the bidding environment. Individual cost quotes were pulled for all of the different materials and labor. The independent cost estimate and conservative assessment, which would be expected from an out-of-state bidder like Atkinson, was within 1.8 percent of Atkinson's price. Staff felt that the Atkinson bid was a fair bid even though the selection wasn't just based on price. The bid of Guy F. Atkinson Construction, LLC was $48,050,070 and 21 percent above the engineer's estimate, and their SMWVB participation was currently 4.44 percent. Staff would work closely with the contractor to try to improve the SMWVB participation. The project had a substantial completion milestone date of December 31, 2019, and there were intermediate milestones as well because of the criticality of the schedule. For Pipeline Segment 5-2, the project would award to the lowest responsible bidder. One bid was received, which was from S.J. Louis Construction of Texas, Ltd. in the amount of $3,829,046.60. One of the reasons for one bidder was the complicated sequencing on the project that required specialized construction with a 36-inch welded steel pipe in a congested residential area and a strict timeline as well. However, the one bid was within 0.61 percent of the engineer's estimate. The contractor's SMWVB participation was currently 3.92 percent, and staff would also work closely with the contractor to try to improve the participation. For the Bitters Pump Station Improvements and Pipeline Segment 5-3, a request for competitive sealed proposal method was used. Again, price was not the governing factor in determining the best value proposal. There were three bidders, Flatiron Constructors, Inc., Archer Western Construction, LLC, and MGC Contractors, Inc. SAWSS had done work with both Archer Western and MGC on numerous projects over the years. The best value proposal was determined to be MGC Contractors, Inc. with a price of $17,765,969.00. The price was a 13 percent increase from the engineer's estimate, and the contractor's SMWVB participation was 23.25 percent. There was an intermediate completion milestone on the project of December 31, 2019, to be able to accept the Vista Ridge water by January 16, 2020.

She reviewed the overall construction cost on all the projects that had come for Board approval since April. The summary showed the recommended award of $78,313,985.60 that was approximately $10 million more than the engineer's cost estimate. There were a lot of projects bidding right now, and there was a very competitive bidding environment. The steel tariffs were also a huge concern because most of the projects included steel pipe. With specialized construction like Segment 5-1, there were going to be out-of-state bidders.

Staff recommended the award of a construction contract to Guy F. Atkinson Construction,
LLC as the best value proposal submitted to the System, and approval of funds in the amount of $48,050,070.00 for the construction contract in connection with the Central Water Integration Pipeline Segment 5-1 Project.

Ms. Jasso made a motion to approve Item 36. Mr. McGee seconded the motion.

After no further discussion, Item 36 was unanimously approved. Electronic voting.

37. **A Resolution awarding a construction contract to S.J. Louis Construction of Texas, Ltd. in an amount not to exceed $3,829,046.60 in connection with the Central Water Integration Pipeline Segment 5-2 Project.**

(ANDREA BEYMER – ALISSA LOCKETT)

Ms. Lockett stated staff recommended the award of the construction contract to S.J. Louis Construction of Texas, Ltd. as the lowest responsible bidder, and approval of funds in the amount $3,829,046.60 for the construction contract in connection with the Central Water Integration Pipeline Segment 5-2 Project.

Mr. Parra made a motion to approve Item 37. Ms. Merritt seconded the motion.

After no further discussion, Item 37 was unanimously approved. Electronic voting.

38. **A Resolution awarding a construction contract to MGC Contractors, Inc. in an amount not to exceed $17,765,969.00 in connection with the Central Water Integration Pipeline - Bitters Pump Station and Segment 5-3 Project.**

(ANDREA BEYMER – ALISSA LOCKETT)

Ms. Lockett stated staff recommended the award of a construction contract to MGC Contractors, Inc. as the best value proposal submitted to the System, and approval of funds in the amount of $17,765,969.00 for the construction contract in connection with the Central Water Integration Pipeline - Bitters Pump Station and Segment 5-3 Project.

Ms. Merritt made a motion to approve Item 38. Ms. Jasso seconded the motion.

After no further discussion, Item 38 was unanimously approved. Electronic voting.

39. **BRIEFING SESSION.**

A. **Briefing and deliberation regarding Quarterly Financial and Investment Reports**

Cecilia Velasquez presented SAWS Financial Report for the second quarter of 2018. Overall, the financial results for the first six months of the year were favorable. Revenues recovered from being $6.2 million unfavorable in the first quarter to $3.9 million favorable on June 30. The improvement of revenues was primarily due to unseasonably dry and hot weather in April and May. The favorability in revenues combined with favorable variances and O&M expenses, non-operating revenues and interest expense contributed to the overall favorability to budget. As a result, the increase in net position or equity before capital contributions of $47.3 million was $26.5 million favorable to budget for the period. Interest
and debt related expenses were favorable to budget by $11.8 million, due primarily to the timing of planned debt issuances. The budget always assumed debt would be issued on the first of January each year. Impact fees and plant contributions were very strong for the first six months, exceeding both budget and prior year. Customer growth of 1.6 percent was in line with budget expectations.

SAWS financial position continued to show improvements year over year. The increase in net position of $264 million over the last 12 months, and particularly the $90.4 million increase in unrestricted net position were certainly indications of improvement. Unrestricted investments increased $94.5 million during the last 12 months. Increases and unrestricted investments were generally utilized to cash fund future capital projects in order to minimize debt issuances and keep rates low. Capital assets increased $176.3 million compared to this time last year, while outstanding debt had only increased $3.5 million.

The financial metrics continued to show improvement. In June, the total debt coverage ratio of 1.95 times coverage had improved from the end of 2017. As a reminder, the target for the metric was 1.7 times coverage. This metric along with days cash on hand were probably the two most important metrics supporting SAWS AA+ bond rating. Days cash on hand had increased from the end of 2017. As more unrestricted cash resources were used to fund capital projects, the metric would start to move closer to the goal of 300 plus days.

Mr. McGee asked if staff had received any guidance recently from the rating agencies. Ms. Velasquez replied no and stated staff expected to receive a rating update at the end of the month. Phyllis Garcia added that with the item the Board approved for a new credit facility for the commercial paper program, SAWS would receive a rating review from the rating agencies. Those reports were due probably in a couple of weeks, but the last report in April affirmed the rating from the debt issuance recently done.

Ms. Garcia presented the Quarterly Investment Report, as required by the Texas Public Funds Investment Act. There was $940 million in investments, essentially unchanged since the last quarter due to payment of interest and principle on debt obligations offset by operating revenues. Earnings for the quarter were $3.9 million, and overall portfolio yield was 1.78 percent. The majority of the portfolio was invested in U.S. Agency Securities in the form of discount notes and coupon notes, with the remaining invested in U.S. Treasury Securities, investment pools, and money market funds. The portfolio was invested in a diverse number of issuers totaling nine in all, including U.S. Treasury, Agency Securities from the Federal Home Loan Bank, Federal Farm Credit Bank, and the Federal National Mortgage Association, along with money market funds and investment pools.

The benchmark for the portfolio was a six-month and one-year Treasury. As of the end of June, the portfolio was unfavorable to the benchmarks. Treasury rates were based on a rate on a particular day, while the SAWS portfolio yield was based on the total portfolio holdings that did not change as rapidly as the benchmark. SAWS portfolio reacted well to changes in interest rates, which was favorable in a declining interest rate environment but unfavorable in a rising interest rate environment. A rising interest rate environment had been occurring since the Fed started raising interest rates in 2016. The six-month portfolio for the quarter increased 17 basis points. The one-year treasury raised 21 basis points. SAWS portfolio increased 28 basis points through the quarter.
She reviewed the yield curve and how the rates increased from three months to five years with the entire yield curve shifting up. Current expectations were that the Fed would raise interest rates later in the month and possibly again in December, and that there could be three to four additional rate increases in 2019. As required by SAWS Investment Policy, the bank deposits were all collateralized as of June 30. SAWS continued to utilize the earnings credits to offset bank fees, with the earning credits being 2.12 percent at the end of the quarter. Overall, SAWS portfolio was in compliance with the Investment Policy. All transactions were made in accordance to the investment strategies. Investment objectives were met in the order of priority of legality, safety, liquidity, diversification, and finally yield.

B. Briefing and deliberation regarding the Vista Ridge Project

Donovan Burton provided an update of the Vista Ridge Project and discussed the operating service provider (OSP) for the project. The next big step in the Vista Ridge decision point was the consent of the selection of the OSP. The OSP would be the person actually turning the dials, turning on the pumps, working day in, day out with SAWS crews on the delivery of the Vista Ridge water.

He discussed how the operations of a P3 project worked. Some P3s put the cost of operation in the cost of the project with escalators going forward. In the public negotiations process, SAWS decided to keep that from being a profit center and instead created an O&M budget panel that would work through the costs of the project every year. The primary duties the operator would be responsible for included a reliable source of water consistent with the WTPA and protocol, operate the project efficiently and ensure appropriate water quality, predictive preventative maintenance of the project, and major equipment repair and replacement. The operator would make sure that SAWS system was protected and work closely with SAWS integration team.

Staffing requirements drove a lot of the costs in the project. In the WTPA, the operator had to adequately staff the project to meet the WTPA standards, and staff had to possess all the appropriate certifications and licenses. The project would need to be staffed at least eight hours per day and monitored 24 hours per day. SAWS primary contact would be the chief operator, who would need to have all the required licenses.

The O&M budget panel would review and establish an annual budget. The panel would also look at a longer, five-year capital budget, review monthly compensable and non-compensable costs, review and approve monthly water payments, review and approve unplanned major equipment repair, and review monthly project performance and efficiency. Again, efficiency was a critical part to make sure that the project got to the end of 30 years. He reviewed the members of the O&M budget panel and how the panel would be established. The panel needed to be established 180 days prior to commercial operation, which would be October 2019. There would be five panelists. Panelists 1 and 2 would be appointed one by SAWS and one by the project company. Then those two appointed panelists would select Panelists 3 and 4. Panelists 3 and 4 would select a chair of the full panel. The panelists would serve annual terms, but continued to serve as long as SAWS and the project company agreed. Qualifications required the panelist had to be senior industry experts and had to be qualified in budgeting. The panelists could not be past or present employees of SAWS or
Garney Holding Co. or affiliates.

The next steps for the selection of the OSP would be led by the project company. The project company had gone through some initial interests and qualifications, and were going through their selection process. Once the project company finished their process, they would bring the selection to SAWS for consent. SAWS had an absolute consent of not only the OSP but also the contractor associated with it. The process would happen over the next couple of months, and staff would then bring the item to the Board for consent.

C. Briefing and deliberation regarding Automated Metering Infrastructure (AMI)

Mary Bailey provided a briefing on automated metering infrastructure (AMI). AMI refers to the systems that measure, collect, and analyze from advanced devices such as electric meters, gas, and water meters through various communication media. One of the key pieces of functionality that AMI offered was near real-time, two-way communication by pulling key operation information from the meter at any time. Some of the components of AMI included a meter interface unit, a field area network, data collectors, backhaul network, and a head-in software system. While smart meter implementation had been robust in the electric industry throughout the U.S., smart meter implementation had been slower to take hold with water utilities. There were more than 50,000 water utilities as compared to about 3,000 electric utilities in the U.S. Each utility had to make the investment decision on smart meters. In 2015, a water utility survey revealed that about three-quarters of all U.S. water providers were planning on spending up to an average of $1 million on smart meters during the following 12 months, and most of these water utilities were very small. Obviously, SAWS would invest considerably more than $1 million through the program. A third of the respondents were working on AMI, meter data management, or data analytics, and only seven percent of respondents said they had no plans to implement a smart water system.

She discuss the many benefits of AMI that would be substantial to both customers and the utility. AMI could lead to quicker identification of leaks, both on the customer and the utility side of the meter. High water usage alerts to the customer would enable the customer to quickly identify problems, minimizing high bill concerns. Pressure sensors transmit data through the AMI network that could be used to alert operators of changes in pressure before a main break was even noticeable. More frequent measurements of data both hourly and daily could provide the customer with a more direct correlation between their behaviors and their monthly water bill. Water usage reports could better highlight those activities that result in high water usage. Obviously, automating the metering process would significantly minimize the need for manual meter reads. Currently, it would take more than 60 meter readers to read the 500,000 plus meters that SAWS had across the system each and every month. AMI would not only limit this labor-intensive activity, but also significantly reduce the vehicles that were used and the related carbon emission. In addition to the conservation benefits derived from quick leak detention, SAWS would be able to target conservation messaging for usage modification and help enforce drought restriction. AMI would have a significant impact on SAWS billing process. For example, when a customer moved out of a property, a truck would no longer have to roll to get a manual reading. Instead, the most recent daily electronic reading would be used to prepare the final bill. Customers would be able to select a billing date, much like they would do for a car loan or other types of service. Staff would also be able to aggregate bills for commercial customers that had multiple
Billing periods would be consistent and not dependent on the manual meter reading process. Another benefit would allow SAWS to better detect water theft at addresses where there was no active service or account.

While there were obvious benefits of water AMI systems, the transition to smart meter technology had been slower than with electric and gas meters, primarily due to the high cost of installing smart meters. In 2015, a survey conducted by West Monroe Partners indicated that only 20 percent of water utilities in the industry had adopted automated water meters, and cited cost as a barrier to implementing smart meter technology. While a significant portion of the cost was in the replacement or the retrofit of the meter, the added technology and infrastructure to implement and support smart meters and the huge volume of data generated was also a significant component of the smart meter program. She discussed the cost of related smart meter infrastructure at various water utilities. The cost of the non-meter related infrastructure averaged approximately $155 per meter, and the all in cost including the meter cost averaged $288 per meter.

SAWS has been examining smart water meter systems, including automated meter reading (AMR) and AMI since 2004. In 2004, Schlumberger (Neptune) developed a pilot study of approximately 4,000 meters, and there were mixed results. SAWS decided not to move forward due to cost and technology issues. In 2007, staff developed an internal business case that recommended AMR, and hired a consultant to validate and confirm the findings. In August 2008, Enspiria Solutions was hired. However, the study was never completed due to turnover in SAWS personnel. Enspiria was eventually taken over by Black & Veatch. In 2015 and 2017, more studies were performed by Black & Veatch and West Monroe. The Black & Veatch study exclusively used the CPS Energy Silver Spring Networks’ Smart Grid system as the underlying technology platform. Many operational efficiencies and customer service enhancements were noted. Black & Veatch recommended that SAWS proceed with detailed design and planning around the implementation of an AMI solution that would deliver operational efficiencies and enhance customer service. Further action was put on hold. CPS Energy was in the midst of a multi-year smart meter rollout. In June 2017, CPS Energy provided a proposal to SAWS to share their AMI network with the water solution. In 2017, SAWS engaged West Monroe to perform another feasibility assessment. The comprehensive study took several months and included the input of many of SAWS employees. West Monroe was tasked to determine multiple solutions that would meet SAWS objective, including analyzing CPS Energy’s proposal.

West Monroe identified a number of key decision points that SAWS would need to make prior to finalizing an AMI strategy. Two of these decisions relate to the meters, which constitute the largest part of the AMI capital investment. First, the type of meter to be installed would need to be decided, mechanical or static. SAWS, along with most other water utilities, currently used mechanical meters. However, static meters represent the latest water meter technology. The next decision related to whether the newer meters would be retrofitted or whether every meter would be replaced during a project rollout. Mechanical meters used either positive displacement or velocity based methods to measure volume of water consumed, which did a good job registering very low flow rates but the accuracy would tend to degrade over time. Static meters used static measurement fabric such as magnetic or ultrasonic sensors to measure the velocity of water flow, and could compute volumetric water consumption. Static meters were more accurate than mechanical meters, particularly at low...
flow rates and would not degrade over time. Instead, battery life appeared to be the key driver of meter replacement with regards to static meters. While static meters had been used for a while in commercial and industrial application, there were no large-scale deployments in large residential applications. During 2018, SAWS conducted a pilot of static meters from six different manufacturers. The meters were installed in line with new mechanical meters. Most of the static meters registered slightly more water usage than the mechanical meters. In order to evaluate whether the meter should be retrofitted or replaced, staff looked at the number of meters that had been replaced during the last seven years. More than 50 percent of SAWS 513,000 meters had been installed during that time. Based on the average degradation of meter accuracy, SAWS typically planned to replace meters that were 15 years old or greater. She discussed the cost to retrofit mechanical meters, the cost to replace all meters with new mechanical meters, and the cost to replace all meters with new static meters. At $135 per meter, retrofitting each meter was the smallest capital investment. However, this approach also resulted in the least amount of benefits. Since SAWS would see no improvement in registration from the existing meters, additional capital investments would be required to replace meters. Replacing all meters with mechanical meters would be more expensive than retrofitting, but only about 15 percent less than replacing with static meters. While replacing meters with mechanical meters would provide some improved integration, the meters still would degrade over time. Replacing all the meters with static meters definitely required the largest initial capital investment, but would provide the greatest benefits. The West Monroe analysis had conservatively projected a two-and-a-half percent increase in registration that should be able to be sustained throughout the life of the meters.

Another key question that must be resolved was the type of network solution. SAWS could develop and operate a private network, or SAWS could piggyback off an existing network such as the one developed by CPS Energy. The best option would be to utilize a cellular network. Finally, the fourth option was leasing a private network built by a third party. West Monroe analyzed all these options, and the best return on investment came from SAWS building and operating a private network. She reviewed the cost of both initial capital and ongoing O&M of a SAWS AMI program. Assuming that 100 percent of the meters were replaced with static meters and that SAWS developed and operated a private network, and that additional systems and applications were developed to maximize operational efficiencies and customer interfaces, the cost was estimated at $261.9 million. The benefits derived from an AMI system were estimated at $252.8 million over the 20-year life of the meters. The benefits almost offset the projected cost. The largest portion of the benefits were achieved from the improved registration of the static meters by more than 60 percent. While a full-scaled deployment of static meters had been limited, some of the utilities that implemented static meters had seen as much as a six percent improvement in meter accuracy. West Monroe concluded that SAWS should move forward with implementing AMI, and should undertake a demonstration project that would focus on two critical decision points. One was to determine the type of meters to utilize, and then determine what network to utilize. While the West Monroe analysis showed a stronger NPV from building a private network, their analysis of the shared network option was based on CPS Energy’s cost proposal from June 2017.

After the conclusion of the West Monroe study earlier this year, CPS Energy provided an updated proposal. CPS Energy’s smart grid network consisted of communication devices installed on utility poles, street lights and substations, and an advanced distribution
management system, which allowed for remote management of the grid and the network. The smart meters were installed at customers’ homes or businesses addresses allowing for automated two-way wireless communication. The analysis determined that 98 percent of SAWS meters would be within 300 feet or less of the CPS Energy smart meter. On June 28, CPS Energy provided more detailed information for a potential collaboration with two key components. One component involved network as a service. For a monthly charge per unit, SAWS would utilize the capacity on the CPS Energy communications network rather than constructing a stand-alone system. SAWS water meter would initially communicate to the closest CPS Energy electric meter, which should actually extend the life of the battery. The second component involved data as a service, which would be provided by Itron Silver Springs. Again, a monthly per unit charge would provide both a backhaul network and headend system needed to collect and store data, which was then periodically transmitted to SAWS meter data management system.

The next steps would be to evaluate the CPS Energy/Itron proposal, the pricing and the different procurement approaches. Staff anticipated that a pilot study would be developed in 2019 to test network functionality, geographic variability, meter compatibility, installation and functionality, and system integration. The study would likely take a minimum of six months, after which staff should be in a position to develop a long-term AMI strategy.

Mr. McGee inquired about other water utilities in Texas that had done an AMI conversion. Ms. Bailey replied that Houston and New Braunfels had done AMI, and Austin was working on it. The utilities did not use static meters in those implementations; however, some smaller markets had implemented static meters.

Ms. Merritt inquired about how the meter reader jobs would be affected by the implementation. Ms. Bailey responded that those resources would need to be redirected in other roles. SAWS had been outsourcing a portion of the meter reading activities to a third party contractor under the assumption that eventually there would be a move to an AMI program. The plan would be that no SAWS employee would be out of a job as a result of the program, but the employee may be retrained and redirected to other areas.

Mr. Parra inquired about how long the battery would last. Ms. Bailey referred to the West Monroe study that had requested information from various meter manufacturers. The manufacturers had all guaranteed battery life for 20 years. It would depend on how often data was retrieved. Staff would expect that the information would be recorded on maybe 15 minute intervals, but only transmitted once a day to help extend the battery life.

Ms. Jasso asked if CPS Energy used static meters as well. Ms. Bailey stated she was not sure on electric meters. A static meter was ultrasonic and listened to the water flow.

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

Mr. Puente confirmed Mr. McGee’s request regarding requested information for future banking proposals.

At this point in the meeting, an Executive Session was held. The time was 11:22 a.m.
41. The Regular Session of the September 11, 2018, Regular Board Meeting is hereby recessed to hold an Executive Session and discuss the matters listed pursuant to Section §551.071 of the Texas Open Meetings Act.

42. **EXECUTIVE SESSION.**


B. Consultation with attorneys regarding legal matters related to the Design Build Services Agreement with Teal Construction Company for the Phase II Service Center Project pursuant to §551.071, Texas Government Code.

C. Consultation with attorneys regarding advice on legal matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act, pursuant to §551.071, Texas Government Code.

43. The Regular Session of the Regular Board Meeting of September 11, 2018, is hereby reconvened.

The meeting reconvened at 12:39 p.m. Chairman stated that no decisions were made in Executive Session.

44. **Adjournment.** THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES MEETING OF SEPTEMBER 11, 2018, IS HEREBY ADJOURNED.

The San Antonio Water System Board of Trustees Meeting of September 11, 2018, adjourned at 12:39 p.m.

__________________________________
Berto Guerra, Jr., Chairman

**ATTEST:**

__________________________________
Patricia Merritt, Assistant 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:

<table>
<thead>
<tr>
<th>Description</th>
<th>This Board Meeting</th>
<th>Year-to-Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Contracts (SMWB)</td>
<td>Estimated Amount (SMWB)</td>
</tr>
<tr>
<td>A. Award of New One Time Purchases of Materials, Equipment or Services</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>B. Award of New and Renewal of Annual Goods &amp; Services Requirements Contracts and Maintenance Agreements</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>SMWB Purchasing Contracts (percentage)</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
</tbody>
</table>

Yvonne C. Torres, Director  
Purchasing Division

Reviewed:  
Marisol V. Robles  
SMWB Program Manager

Approved:  
Robert R. Puente  
President/Chief Executive Officer
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 November, 2018

Berto Guerra, Jr., Chairman

ATTEST:

Patricia E. Merritt, Assistant Secretary
Award of New One Time Purchases of Materials, Equipment or Services

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

<table>
<thead>
<tr>
<th>VENDOR</th>
<th>DESCRIPTION</th>
<th>ITEM NO(s.)</th>
<th>ESTIMATED TOTAL PURCHASES</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Halifax Security, Inc. dba North American Video</td>
<td>One Time Purchase of Security Cameras, Video Recorders and Accessories for Maintenance, Repair, Replacement and Improvement of Existing Equipment Bid No. 18-16085</td>
<td>All</td>
<td>$ 234,192.00</td>
<td>This is a one time purchase of various security cameras and accessories for maintenance, repair, replacement and improvement of existing equipment. The equipment purchased will be used to repair, replace, upgrade or expand devices throughout the System.</td>
</tr>
<tr>
<td>2. DN Tanks, Inc.</td>
<td>Request for Proposal for Digester Concrete Tank Dome Rehabilitation at the Dos Rios Water Recycling Center Bid No. 18-18115</td>
<td>All</td>
<td>$ 998,940.00</td>
<td>This is a one time purchase for Digester Concrete Tank Rehabilitation at the Dos Rios Water Recycling Center. This tank is used at the Water Recycling Center to process additional wastewater sludge daily.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$ 1,233,132.00</td>
<td></td>
</tr>
</tbody>
</table>

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

Board Date: November 13, 2018
**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. CIP Planner Corp.</td>
<td>CIPAce Software Maintenance and Support (Sole Source) Bid No. 18-18116</td>
<td>All</td>
<td>$119,198.10</td>
<td>This is a new Sole Source contract for Maintenance and Support of existing software. System currently utilizes the CIPAce software to manage the full lifecycle for the design and construction of Capital Projects. The lifecycle goes through planning, contract solicitation and scoring, implementation, contract management and closeout. This contract will be effective February 8, 2019 through February 7, 2020. If determined that an extension is favorable to System, price and service considered, the award includes the availability of four (4) additional one-year options to extend as provided for and approved in future years budget.</td>
</tr>
<tr>
<td>2. United Rentals (North America), Inc.</td>
<td>Annual Contract for Purchase of Vertical Shores Parts and Service Bid No. 18-2065</td>
<td>All</td>
<td>$109,187.50</td>
<td>This is a new Single Source contract. This contract will be utilized by System to provide vertical shores excavation safety protection for designated system employees. This contract will be effective Date of Award (November 6, 2018) through September 30, 2019. 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 years budget.</td>
</tr>
</tbody>
</table>

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

Board Date: November 13, 2018
**Award of New and Renewal Annual Goods & Services Requirement Contracts and Maintenance Agreements**

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<table>
<thead>
<tr>
<th>VENDOR</th>
<th>DESCRIPTION</th>
<th>NO(s)</th>
<th>PURCHASES</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. American Water Chemicals, Inc.</td>
<td>Request for Proposals for Desal Antiscalant/Clean-In-Place Chemicals Bid No. 18-18006</td>
<td>All</td>
<td>$320,490.00</td>
<td>Vertical shores are used to provide excavation safety protection for designated System employees. Speed Shore shoring equipment has been purchased for over 10 years and the specifications of new equipment must be interchangeable with System existing Speed Shore shoring equipment. Bids were sent to 7 companies, was posted on SAWS website and Onvia and United Rentals was the only response received. Recommend Award. This is a new contract. This contract will be utilized by System employees for supply and delivery of antiscalant and clean in place (CIP) chemicals for System brackish groundwater desalination plant. This contract will be effective Date of Award (November 6, 2018) through August 31, 2020. 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 years budget.</td>
</tr>
<tr>
<td>4. R.E.C. Industries, Inc.</td>
<td>Annual Contract for Mechanical Maintenance and Repair Services Accessories Bid No. 18-18034</td>
<td>All</td>
<td>$581,089.13</td>
<td>This is a new contract. This contract will be utilized by System to provide Mechanical Maintenance and Repair Services to assist staff were additional experience and demand is required. This contract will be effective Date of Award (November 6, 2018) through September 30, 2019. If determined that an extension is favorable to System, price and service considered, the award includes the availability of four (4) additional one-year options to extend as provided for and approved in future years budget.</td>
</tr>
</tbody>
</table>

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Board Date: November 13, 2018
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.

B. VENDOR

5. Utilis, Inc.

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>NO(s)</th>
<th>PURCHASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satellite Imagery Leak System Analysis for SAWS</td>
<td>All</td>
<td>$472,500.00</td>
</tr>
<tr>
<td>(Sole Source)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bid No. 18-18137</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

REMARKS

This is a Sole-Source award to Utilis, Inc. to provide leakage reports using a propriety satellite imaging program to identify leaks in System's water system. SAWS will be responsible for providing baseline system data, work order history and an acoustic leak detection team to inspect point of interests identified by Utilis. Award is for period of November 13, 2018 through December 31, 2019 and includes $157,500 for 2018 and $315,000 for 2019. If determined that an extension is favorable to System, price and service, considered, the award includes the availability of one (1) additional one year option to extend as provided for and approved in future years budget.

$1,602,464.73

Board Date: November 13, 2018
<table>
<thead>
<tr>
<th>Item</th>
<th>Make/Model</th>
<th>Quantity</th>
<th>Description</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DS-2CD2721G0-I - 4MP IP Camera</td>
<td>24</td>
<td>24-4MP Outdoor IP Cameras</td>
<td>San Antonio, TX</td>
</tr>
<tr>
<td>2</td>
<td>DS-2CD2721G0-I - 4MP IP Camera</td>
<td>24</td>
<td>24-4MP Outdoor IP Cameras</td>
<td>San Antonio, TX</td>
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<tr>
<td>3</td>
<td>DS-2CD2721G0-I - 4MP IP Camera</td>
<td>24</td>
<td>24-4MP Outdoor IP Cameras</td>
<td>San Antonio, TX</td>
</tr>
</tbody>
</table>

*LOW RIDER*
REQUEST FOR PROPOSAL
FOR
DIGESTER CONCRETE TANK DOME REHABILITATION AT DOS RIOS WRC
SAWS PROPOSAL # 18-18115

SUMMARY AND RECOMMENDATION:

The attached resolution awards a contract to DN Tanks, Inc. Incorporated, a Non-Local/ Non-SMWB firm, in the amount of $998,940.00 in connection with the digester tank dome rehabilitation at the SAWS’s Dos Rios Water Recycling Center for Digester #6.

- On Thursday, January 4, 2018, the dome on Digester #6 at the Dos Rios Water Recycling Center was separated from the side wall. The suspected cause was an obstruction of the overflow pipe resulting in a buildup of sludge in the Digester. The resulting pressure caused the dome to be lifted off of the wall.

- The Dos Rios Water Recycling Center has 9 digesters with a capacity of 2.14 million gallons per digester. The digesters are 110-feet in diameter and have 32-feet side walls. Texas Commission of Environmental Quality regulations require that the sludge remain in the digesters for a minimum of 15 days, however it is common practice to have a sludge detention time of greater than 20 days to allow for any variation in daily sludge loading. Currently, the digester detention time is approximately 22 days with Digester #6 out of service.

- Rehabilitation of Digester #6 will restore the plant digester capacity which will improve gas production and volatile solids reduction with the increased detention time. It will allow greater redundancy for maintenance and cleaning of the other digesters.

- Because the large digester dome cannot be restored with in-house maintenance staff due its size, and the specialized nature of this type of digester rehabilitation, this contract outsources the work to provide a turn-key repair to return Digester #6 to service.

- The Request for Proposals (RFP) process was used to select the vendor for this contract.

- DN Tanks, Inc., INC was selected for this contract.

Staff recommends that the Board approve this resolution.

SUPPLEMENTARY COMMENTS:

Staff recommends that the contract be awarded to DN TANKS, INC. Non-Local/ Non-SMWB firm, as the bidder who will provide the services at the best value for the System based on the selection criteria set forth below. Price and other factors have been considered. In determining the “best value”, the Evaluation Criteria listed below have been considered and weighted as shown.

A) Evaluation Committee: All properly submitted proposals were reviewed by an Evaluation Committee.

B) Weighted Evaluation Criteria: The following weighted criteria were considered to determine which proposal offers the “best value” to the System.
<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Pricing Schedule</td>
<td>35</td>
</tr>
<tr>
<td>b. Project Approach</td>
<td>25</td>
</tr>
<tr>
<td>c. Similar Prior Experience and References</td>
<td>15</td>
</tr>
<tr>
<td>d. Resources</td>
<td>15</td>
</tr>
<tr>
<td>e. Small, Minority and Woman Business Program Compliance</td>
<td>10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

System received proposals from the following companies:

<table>
<thead>
<tr>
<th>NO</th>
<th>BIDDER</th>
<th>BID AMOUNT</th>
<th>BEST VALUE SCORE</th>
<th>LOCAL/ SMWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>* DN TANKS, INC.</td>
<td><strong>$ 998,940.00</strong></td>
<td>347 points</td>
<td>Non-Local/ Non-SMWB</td>
</tr>
<tr>
<td>2</td>
<td>PRELOAD, LLC</td>
<td><strong>$ 3,267,900.00</strong></td>
<td>204.25 points</td>
<td>Non-Local/ Non-SMWB</td>
</tr>
</tbody>
</table>
*Best Value Proposal*

Additionally, the overall SMWB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>SMWB ANALYSIS – BOARD AWARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
</tr>
<tr>
<td>MBE - African American</td>
</tr>
<tr>
<td>MBE - Asian</td>
</tr>
<tr>
<td>MBE - Hispanic</td>
</tr>
<tr>
<td>MBE - Other</td>
</tr>
<tr>
<td>WBE - Minority</td>
</tr>
<tr>
<td>WBE - Non-Minority</td>
</tr>
<tr>
<td>SMWB Total</td>
</tr>
</tbody>
</table>

**PERIOD OF AWARD:**

Contract period shall begin on Date of Award and shall end after 120 calendar days.

In determining the best value, staff considered relevant criteria specifically listed in the request for proposal. Staff has determined that **DN TANKS, INC.** will provide services at the best value to System.
Keenology Corporation dba CIPPlanner Corporation’s software maintenance and support is a sole source of the CIPAce software.

System currently utilizes the CIPAce software to manage the full lifecycle for the design and construction of Capital Projects. The lifecycle goes through planning, contract solicitation and scoring, implementation, contract management, and closeout.

CIPAce software was selected through a competitive solicitation process in 2014. The software has been configured and customized to meet System’s contracting process. The software is proprietary and is developed and sold solely by Keenology Corporation dba CIPPlanner Corporation.

The unique fit of CIPAce software with System’s needs, along with System’s existing investment with the software, makes this the only source for the necessary maintenance and support.

- System seeks approval to renew maintenance for CIPAce software.
- Current Maintenance price for February 8, 2019 - February 7, 2020 is $119,198.10.
- Award is for one year with four one-year options to extend.
- Option years include an estimated escalation of 5% per year.

<table>
<thead>
<tr>
<th>Years of Coverage</th>
<th>Description</th>
<th>Estimated Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yr 1: 02/08/19 – 02/07/20</td>
<td>Maintenance and Support</td>
<td>$119,198.10</td>
</tr>
<tr>
<td>Ext. Yr 2: 02/08/20 – 02/07/21</td>
<td>Maintenance and Support</td>
<td>$125,158.01</td>
</tr>
<tr>
<td>Ext. Yr 3: 02/08/21 – 02/07/22</td>
<td>Maintenance and Support</td>
<td>$131,415.91</td>
</tr>
<tr>
<td>Ext. Yr 4: 02/08/22 – 02/07/23</td>
<td>Maintenance and Support</td>
<td>$137,986.71</td>
</tr>
<tr>
<td>Ext. Yr 5: 02/08/23 – 02/07/24</td>
<td>Maintenance and Support</td>
<td>$144,886.05</td>
</tr>
</tbody>
</table>

*Option year prices include a 5% escalation. The escalation is estimated, and actual cost of future year’s maintenance will be paid.
ITEM
BID NO. 18-2065
ANNUAL CONTRACT FOR VERTICAL SHORES PARTS AND SERVICE
SINGLE SOURCE

Bid No. 18-2065 solicited bids for the purchase of Speed Shore or approved equal* brand vertical shores to include parts and service. Vertical shores are used to provide excavation safety protection for designated System employees. Previous purchases for shoring equipment have been made by System over the last ten years and, the specifications must be interchangeable with System existing shoring equipment. The shoring equipment purchased to date has been manufactured by Speed Shore.

United Rentals (North America) Inc. is the single responsible bidder for the purchase of Speed Shore or approved equal* brand vertical shores to include parts and service.

All vertical shores parts and service vendors were invited to bid. One (1) of the responses was a no bid with cited reason as "other reason", which was we are not a supplier.

The vertical shores parts and service submitted by United Rentals (North America) Inc. meet all the requirements of the specifications in the bid. The criticality of the vertical shores parts and service offered by United Rentals 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>V-1.5-55 Standard Single Shoring (34&quot; – 55&quot;) Lawson No. 28526</td>
<td>10</td>
<td>$362.03</td>
<td>$3,620.30</td>
</tr>
<tr>
<td>V-1.5-88 Standard Single Shoring (52&quot; – 88&quot;) Lawson No. 32348</td>
<td>10</td>
<td>$434.43</td>
<td>$4,344.30</td>
</tr>
<tr>
<td>V-1.5-88/24 Standard Single Shoring (76&quot; – 112&quot;) Lawson No. 25154</td>
<td>10</td>
<td>$575.95</td>
<td>$5,759.50</td>
</tr>
<tr>
<td>PSV-05-88 Standard 5' Shore (52&quot; – 88&quot;) Lawson No. 25155</td>
<td>20</td>
<td>$921.52</td>
<td>$18,430.40</td>
</tr>
<tr>
<td>PSV-05-55 Standard 5' Shore (34&quot; – 55&quot;) Lawson No. 25156</td>
<td>10</td>
<td>$783.29</td>
<td>$7,832.90</td>
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<tr>
<td>F.F-48 4' x 8' Finn Form Lawson No. 25157</td>
<td>80</td>
<td>$134.43</td>
<td>$10,754.40</td>
</tr>
<tr>
<td>F.F-28 2' x 8' Finn Form Lawson No. 25158</td>
<td>10</td>
<td>$67.22</td>
<td>$672.20</td>
</tr>
<tr>
<td>R.T-48 48&quot; Release Tool Lawson No. 25199</td>
<td>30</td>
<td>$58.16</td>
<td>$1,744.80</td>
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<tr>
<td>R.H-48 48&quot; Removal Hook Lawson No. 25160</td>
<td>30</td>
<td>$46.70</td>
<td>$1,401.00</td>
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<tr>
<td>Hydraulic Bucket Pumps (Plastic) Lawson No. 25161</td>
<td>20</td>
<td>$41.58</td>
<td>$831.60</td>
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<tr>
<td>Description</td>
<td>Quantity</td>
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</tr>
<tr>
<td>----------------------------------------------------------------------------</td>
<td>----------</td>
<td>--------</td>
<td>----------</td>
</tr>
<tr>
<td>Lubricant Shoring Fluid</td>
<td>120</td>
<td>$5.78</td>
<td>$693.60</td>
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<tr>
<td>Shoring standard cylinder pad yellow with O-Ring SPSH/P-2-CP Lawson No. 40754</td>
<td>50</td>
<td>$70.13</td>
<td>$3,506.50</td>
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<tr>
<td>Shoring O-Ring SPSH/P-2-CP-202A Lawson No. 40755</td>
<td>50</td>
<td>$1.64</td>
<td>$82.00</td>
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<tr>
<td>Shoring standard socket pad SPSH/P-2-SP Lawson No. 40756</td>
<td>50</td>
<td>$32.67</td>
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<tr>
<td>Shoring piston head SPSH/P-2-CLY-105 Lawson No. 40757</td>
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<td>$20.53</td>
<td>$615.50</td>
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<tr>
<td>Shoring bolt and retainer ring SPSH/P-2-CLY-111-1 Lawson No. 40758</td>
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<td>Shoring piston head seal SPSH/P-2-CLY-203J Lawson No. 40759</td>
<td>60</td>
<td>$8.89</td>
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<tr>
<td>Shoring connecting pin w/ring includes retaining ring SPSH/ P-2-CLY-304-1 Lawson No. 40760</td>
<td>200</td>
<td>$2.33</td>
<td>$466.00</td>
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<tr>
<td>Shoring cap screw 5/8 X 1 Inch GRADE 5 SPSH/P-2-CLY-401-A Lawson No. 40761</td>
<td>50</td>
<td>$1.2</td>
<td>$60.00</td>
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<tr>
<td>Shoring flat washer 5/8 INCH SPSH/P-2-CLY-402 Lawson No. 40762</td>
<td>50</td>
<td>$0.47</td>
<td>$23.50</td>
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<tr>
<td>Shoring lock washer 5/8 INCH SPSH/P-2-CLY-403 Lawson No. 40763</td>
<td>50</td>
<td>$0.47</td>
<td>$23.50</td>
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<tr>
<td>Shoring hex nipple SPSH/P-HF-207 Lawson No. 40764</td>
<td>100</td>
<td>$4.11</td>
<td>$411.00</td>
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<tr>
<td>Shoring male coupler SPSH/P-HF-209 Lawson No. 40765</td>
<td>100</td>
<td>$12.32</td>
<td>$1,232.00</td>
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<tr>
<td>Shoring O-Ring HV2000 Pump SPSH/P-HVP-2030 Lawson No. 40766</td>
<td>20</td>
<td>$9.24</td>
<td>$184.80</td>
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<tr>
<td>Shoring check valve pump head</td>
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<td>$46.53</td>
<td>$4,653.00</td>
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<tr>
<td>SPSHIP-HVP-2110 Lawson</td>
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<td>-------------------------</td>
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<td>$547.00 No. 40767</td>
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<table>
<thead>
<tr>
<th>Shoring pump head seal neoprene</th>
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</thead>
<tbody>
<tr>
<td>SPSHIP/HVP-2170 Lawson No. 40768</td>
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<table>
<thead>
<tr>
<th>Shoring O-Ring pump head</th>
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<tbody>
<tr>
<td>SPSHIP/HVP-2180 Lawson No. 40769</td>
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</table>

<table>
<thead>
<tr>
<th>Shoring check valve SPSHIP/HVP-2230 Lawson No. 40770</th>
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<tbody>
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<td>20</td>
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</table>

<table>
<thead>
<tr>
<th>Shoring pressure gauge SPSHIP/HVP-2310 Lawson No. 40771</th>
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</thead>
<tbody>
<tr>
<td>100</td>
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</table>

<table>
<thead>
<tr>
<th>Shoring brass kit # 2411, 2421, 2431,2441, 2450 SPSHIP/HVP-2460 Lawson No. 40772</th>
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</thead>
<tbody>
<tr>
<td>50</td>
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</table>

<table>
<thead>
<tr>
<th>Shoring high pressure hose 12 inch and includes fittings SPSHIP/H-144 Lawson No. 40773</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
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</table>

<table>
<thead>
<tr>
<th>Shoring release tool 96 inch SPSHIP/RT-96 Lawson No. 40776</th>
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<tbody>
<tr>
<td>20</td>
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</table>

<table>
<thead>
<tr>
<th>Shoring removal hook-96 inch SPSHIP/RH-96 Lawson No. 40777</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>3/8 standard handle assembly with cotter pins and washers P-VR-303A-1 Lawson No. 40939</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Shoring sticker for HVP-2000 SPEED SHORE P-HVP-2190 Lawson No. 43858</th>
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</thead>
<tbody>
<tr>
<td>40</td>
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<table>
<thead>
<tr>
<th>Labor Lawson No. 25162</th>
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<tr>
<td>20</td>
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<table>
<thead>
<tr>
<th>Cost Plus applies to all $7,000.00**</th>
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<tbody>
<tr>
<td>MISCELLANOUS PARTS Lawson No. 33413</td>
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<tr>
<td>22%</td>
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<table>
<thead>
<tr>
<th>TOTAL</th>
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<tbody>
<tr>
<td>$109,187.50</td>
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</tbody>
</table>

- The award amount is $109,187.50
# SAN ANTONIO WATER SYSTEM

**P. O. BOX 2449**

**SAN ANTONIO, TEXAS 78298-2449**

## TABULATION OF BIDS

**PROPOSAL:** Annual Contract for Purchase of Vertical Shores Parts and Service  
**FOR:** (October 1, 2018 through September 30, 2019)  
**TIME & DATE:** 3:00 p.m., September 12, 2018  
**ITEM NO.** DESCRIPTION AND APPROXIMATE QUANTITY  

<table>
<thead>
<tr>
<th>GROUP</th>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GROUP 1</strong></td>
<td>Shoring</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>10 ea.</td>
<td>V-1.5-55 Standard Single Shoring (34&quot; - 55&quot;), Lawson No. 28526</td>
<td>UNIT</td>
<td>362.03</td>
<td>3,620.30</td>
</tr>
<tr>
<td>2.</td>
<td>10 ea.</td>
<td>V-1.5-88 Standard Single Shoring (52&quot; - 88&quot;), Lawson No. 32348</td>
<td>UNIT</td>
<td>434.43</td>
<td>4,344.30</td>
</tr>
<tr>
<td>3.</td>
<td>10 ea.</td>
<td>V-1.5-88/24 Standard Single Shoring (76&quot; - 112&quot;), Lawson No. 25154</td>
<td>UNIT</td>
<td>575.95</td>
<td>5,759.50</td>
</tr>
<tr>
<td>4.</td>
<td>20 ea.</td>
<td>PSV-05-88 Standard 5' Shore (52&quot; - 88&quot;), Lawson No. 25155</td>
<td>UNIT</td>
<td>921.52</td>
<td>18,430.40</td>
</tr>
<tr>
<td>5.</td>
<td>10 ea.</td>
<td>PSV-05-55 Standard 5' Shore (34&quot; - 55&quot;), Lawson No. 25156</td>
<td>UNIT</td>
<td>783.29</td>
<td>7,832.90</td>
</tr>
<tr>
<td>6.</td>
<td>80 ea.</td>
<td>F.F-48 4' x 8' Finn Form, Lawson No. 25157</td>
<td>UNIT</td>
<td>134.43</td>
<td>10,754.40</td>
</tr>
<tr>
<td>7.</td>
<td>10 ea.</td>
<td>F.F-28 2' x 8' Finn Form, Lawson No. 25158</td>
<td>UNIT</td>
<td>67.22</td>
<td>672.20</td>
</tr>
<tr>
<td>8.</td>
<td>30 ea.</td>
<td>R.T-48 48&quot; Release Tool, Lawson No. 25199</td>
<td>UNIT</td>
<td>58.16</td>
<td>1,744.80</td>
</tr>
<tr>
<td>9.</td>
<td>30 ea.</td>
<td>R.H-48 48&quot; Removal Hook, Lawson No. 25160</td>
<td>UNIT</td>
<td>46.70</td>
<td>1,401.00</td>
</tr>
<tr>
<td>10.</td>
<td>20 ea.</td>
<td>Hydraulic Bucket Pumps (Plastic), Lawson No. 25161</td>
<td>UNIT</td>
<td>841.58</td>
<td>16,831.60</td>
</tr>
<tr>
<td>11.</td>
<td>120 bottles</td>
<td>Lubricant Shoring Fluid, Lawson No. 13688</td>
<td>UNIT</td>
<td>5.78</td>
<td>693.60</td>
</tr>
<tr>
<td><strong>Sub Total for Group 1</strong></td>
<td></td>
<td></td>
<td>TOTAL</td>
<td>72,085.00</td>
<td></td>
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</tbody>
</table>

| GROUP 2 | Fittings |  |
|-------|---------|-------------|------|-------|-------|
| 1. | 50 ea. | Shoring standard cylinder pad yellow with O-Ring SPSH/P-2-CP, Lawson No. 40754 | UNIT | 70.13 | 3,506.50 |
| 2. | 50 ea. | Shoring O-Ring SPSH/P-2-CP-202A, Lawson No. 40755 | UNIT | 1.64 | 82.00 |
| 3. | 50 ea. | Shoring standard socket pad SPSH/P-2-SP, Lawson No. 40756 | UNIT | 32.67 | 1,633.50 |
| 4. | 30 ea. | Shoring piston head SPSH/P-2-CLY-105, Lawson No. 40757 | UNIT | 20.53 | 615.90 |
| 5. | 20 ea. | Shoring bolt and retainer ring SPSH/P-2-CLY-111-1, Lawson No. 40758 | UNIT | 1.92 | 38.40 |
| 6. | 60 ea. | Shoring piston head seal SPSH/P-2-CLY-203J, Lawson No. 40759 | UNIT | 8.89 | 533.40 |
| 7. | 200 ea. | Shoring connecting pin w/ring includes retainer ring SPSH/P-2-CLY-304-1, Lawson No. 40760 | UNIT | 2.33 | 466.00 |
| 8. | 50 ea. | Shoring cap screw 5/8 X 1 inch GRADE 5 SPSH/P-2-CLY-401-A, Lawson No. 40761 | UNIT | 1.20 | 60.00 |
| 9. | 50 ea. | Shoring flat washer 5/8 INCH SPSH/P-2-CLY-402, Lawson No. 40762 | UNIT | 0.47 | 23.50 |

**NO BID**
<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>Shoring lock washer 5/8 INCH SPSH/P-2-CLY-403, Lawson No. 40763</td>
<td>50 ea.</td>
<td>0.47</td>
<td>23.50</td>
</tr>
<tr>
<td>11.</td>
<td>Shoring hex nipple SPSH/P-HF-207, Lawson No. 40764</td>
<td>100 case</td>
<td>4.11</td>
<td>411.00</td>
</tr>
<tr>
<td>12.</td>
<td>Shoring male coupler SPSH/P-HF-209, Lawson No. 40765</td>
<td>100 ea.</td>
<td>12.32</td>
<td>1,232.00</td>
</tr>
<tr>
<td>14.</td>
<td>Shoring check valve pump head SPSH/P-HVP-2110, Lawson No. 40767</td>
<td>100 ea.</td>
<td>46.53</td>
<td>4,653.00</td>
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<tr>
<td>15.</td>
<td>Shoring pump head seal neoprene SPSH/P-HVP-2170, Lawson No. 40768</td>
<td>100 ea.</td>
<td>5.47</td>
<td>547.00</td>
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<tr>
<td>16.</td>
<td>Shoring O-Ring pump head SPSH/P-HVP-2180, Lawson No. 40769</td>
<td>50 ea.</td>
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<td>77.00</td>
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<td>17.</td>
<td>Shoring check valves SPSH/P-HVP-2230, Lawson No. 40770</td>
<td>20 ea.</td>
<td>85.36</td>
<td>1,707.20</td>
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<tr>
<td>18.</td>
<td>Shoring pressure gauge SPSH/P-HVP-2330, Lawson No. 40771</td>
<td>100 ea.</td>
<td>39.51</td>
<td>3,951.00</td>
</tr>
<tr>
<td>19.</td>
<td>Shoring brass kit #2411, 2421, 2431, 2441, 2450 SPSH/P-HVP-2460</td>
<td>50 ea.</td>
<td>0.72</td>
<td>36.00</td>
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<tr>
<td>20.</td>
<td>Shoring high pressure hose 12 inch and includes fittings SPSH/P-H-144</td>
<td>Lawson No. 40772</td>
<td>91.17</td>
<td>4,558.50</td>
</tr>
<tr>
<td>21.</td>
<td>Shoring release tool 96 inch SPSH/RT-96, Lawson No. 40776</td>
<td>20 ea.</td>
<td>69.96</td>
<td>1,399.20</td>
</tr>
<tr>
<td>22.</td>
<td>Shoring removal hook 96 inch SPSH/RH-96, Lawson No. 40777</td>
<td>20 ea.</td>
<td>58.50</td>
<td>1,170.00</td>
</tr>
<tr>
<td>23.</td>
<td>Shoring sticker for HVP-2000 SPEED SHORE P-HVP-2190,</td>
<td>50 ea.</td>
<td>9.75</td>
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<td>24.</td>
<td>Lawson No. 40939</td>
<td>3/8 standard handle assembly with cotter pins and washers P-VR-303A-1</td>
<td>40 ea.</td>
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<tr>
<td></td>
<td>Lawson No. 43858</td>
<td>400 feet Shoring sticker for HVP-2000 SPEED SHORE P-HVP-2190,</td>
<td>40 ea.</td>
<td>1.64</td>
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<tr>
<td></td>
<td>Lawson No. 43858</td>
<td>Shoring sticker for HVP-2000 SPEED SHORE P-HVP-2190,</td>
<td>40 ea.</td>
<td>1.64</td>
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<tr>
<td></td>
<td>Lawson No. 43858</td>
<td>Lawson No. 43858</td>
<td>40 ea.</td>
<td>1.64</td>
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<tr>
<td></td>
<td>Lawson No. 43858</td>
<td>Lawson No. 43858</td>
<td>40 ea.</td>
<td>1.64</td>
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Sub Total for Group 2

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<tr>
<th>ITEM</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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Sub Total for Group 3

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<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>UNIT</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
</table>

Sub Total for Group 3
**SAN ANTONIO WATER SYSTEM**  
P. O. BOX 2449  
SAN ANTONIO, TEXAS 78298-2449  
**TABULATION OF BIDS**

**PROPOSAL:**  
Annual Contract for Purchase of  
**Vertical Shores Parts and Service**  
**DATE:**  3:00 p.m., September 12, 2018

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>Unit(s)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**GROUP 4**  
**Miscellaneous Parts**  
$7,000.00  
Cost Plus applies to all **Miscellaneous Parts, Lawson No. 33413**

<table>
<thead>
<tr>
<th>Sub Total for Group 4</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$8,540.00</td>
</tr>
</tbody>
</table>

**GRAND TOTAL (GROUPS 1-4)**  
TOTAL $109,187.50

**EXTENSION 1**  
$109,187.50

**EXTENSION 2**  
$109,187.50

**EXTENSION 3**  
$109,187.50

**Terms**  
Net 30 days

**Delivery Days**  
3 days

*LOW BIDDER*

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

- Efficiency Shoring & Supply
- Heam
- Prodigy
- Trench Shore Rentals
- United Rentals

SAWS Website
REQUEST FOR PROPOSALS
FOR DESAL ANTISCALANT/CLEAN-IN-PLACE CHEMICALS
SAWS Bid # 18-18006

SUPPLEMENTARY COMMENTS:
Staff recommends that the contract be awarded to American Water Chemicals Inc. Non-Local/Non-SMWB, as the bidder who will provide the services at the best value for the System based on the selection criteria set forth below. Price and other factors have been considered. In determining the “best value”, the Evaluation Criteria listed below have been considered and weighted as shown.

A) Evaluation Committee: All properly submitted proposals were reviewed by an Evaluation Committee.

B) Weighted Evaluation Criteria: The following weighted criteria were considered to determine which proposal offers the “best value” to the System.

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Supplier’s experience and qualifications</td>
<td>10</td>
</tr>
<tr>
<td>b. Past Experience with Similar Project</td>
<td>15</td>
</tr>
<tr>
<td>c. Project Approach</td>
<td>30</td>
</tr>
<tr>
<td>d. Compensation Proposal</td>
<td>35</td>
</tr>
<tr>
<td>e. Small, Minority, Woman and Veteran Owned Business (SMWB) Participation</td>
<td>10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

System received proposals from the following companies:

<table>
<thead>
<tr>
<th>NO</th>
<th>BIDDER</th>
<th>BID AMOUNT</th>
<th>RFP SCORE</th>
<th>LOCAL/SMWB</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>* American Water Chemicals Inc</td>
<td>$320,490.00&lt;br&gt;Ext 1: $160,245.00&lt;br&gt;Ext 2: $160,245.00&lt;br&gt;Ext 3: $160,245.00&lt;br&gt;Total: $801,225.00</td>
<td>410.00 points</td>
<td>Non-Local/Non-SMWB</td>
</tr>
<tr>
<td>2</td>
<td>Avista Technologies</td>
<td>$682,572.00&lt;br&gt;Ext 1: $341,286.00&lt;br&gt;Ext 2: $341,286.00&lt;br&gt;Ext 3: $341,286.00&lt;br&gt;Total: $1,706,430.00</td>
<td>316.15 points</td>
<td>Non-Local/Non-SMWB</td>
</tr>
<tr>
<td>3</td>
<td>King Lee Technologies</td>
<td>$371,100.00&lt;br&gt;Ext 1: $185,550.00&lt;br&gt;Ext 2: $185,550.00&lt;br&gt;Ext 3: $185,550.00&lt;br&gt;Total: $927,750.00</td>
<td>300.15 points</td>
<td>Local/Non-SMWB</td>
</tr>
</tbody>
</table>
Additionally, the overall SMWB analysis is shown in the following table:

| Request for Proposal SAWS Bid No. 18-18006 Desal Antiscalant/Clean-In-Place Chemicals |
| VENDOR NAME: AMERICAN WATER CHEMICALS, INC. |
| SMWB ANALYSIS – BOARD AWARD |
| SBE | 0.00% |
| MBE - African American | 0.00% |
| MBE - Asian* | 0.00% |
| MBE - Hispanic | 0.00% |
| MBE - Other | 0.00% |
| WBE - Minority | 0.00% |
| WBE - Non-Minority | 0.00% |
| SMWB Total | 0.00% |

**PERIOD OF AWARD:**

Contract period shall begin on November 6, 2018 and shall end on August 31, 2020. The contract shall include three (3) additional one-year options to extend subject to future years budgets.

In determining the best value, staff considered relevant criteria specifically listed in the request for bid/ proposal. Staff has determined that American Water Chemicals Inc. will provide services at the best value to System.
# SAN ANTONIO WATER SYSTEM

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

TABULATION OF BIDS

**PROPOSAL FOR TIME & DATE**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>PRICE TOTAL</th>
<th>PRICE TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>Hourly rates submitted include all Contractor's markups for burden, overhead &amp; profit</td>
<td>82.78 24,834.00</td>
<td>105.00 31,500.00</td>
</tr>
<tr>
<td>A-2</td>
<td>500 hrs. Superintendent</td>
<td>78.82 39,410.00</td>
<td>85.00 42,500.00</td>
</tr>
<tr>
<td>A-3</td>
<td>50 hrs. Safety Officer</td>
<td>82.78 4,139.00</td>
<td>85.00 4,250.00</td>
</tr>
<tr>
<td>A-4</td>
<td>100 hrs. Crane Operator</td>
<td>78.82 788.20</td>
<td>98.00 980.00</td>
</tr>
<tr>
<td>A-5</td>
<td>200 hrs. Equipment Operator</td>
<td>75.08 15,016.00</td>
<td>75.00 15,000.00</td>
</tr>
<tr>
<td>A-6</td>
<td>200 hrs. Skilled Pipe Fitter</td>
<td>75.08 15,016.00</td>
<td>105.00 21,000.00</td>
</tr>
<tr>
<td>A-7</td>
<td>100 hrs. Semi-Skilled Pipe Fitter</td>
<td>63.83 6,383.00</td>
<td>75.00 7,500.00</td>
</tr>
<tr>
<td>A-8</td>
<td>400 hrs. Pipe Fitter Laborer</td>
<td>63.83 25,532.00</td>
<td>75.00 30,000.00</td>
</tr>
<tr>
<td>A-9</td>
<td>200 hrs. Skilled Pipe Fitter</td>
<td>75.08 15,016.00</td>
<td>75.00 15,000.00</td>
</tr>
<tr>
<td>A-10</td>
<td>100 hrs. Semi-Skilled Pipe Layer</td>
<td>63.83 6,383.00</td>
<td>75.00 7,500.00</td>
</tr>
<tr>
<td>A-11</td>
<td>400 hrs. Pipe Layer Laborer</td>
<td>63.83 25,532.00</td>
<td>75.00 30,000.00</td>
</tr>
<tr>
<td>A-12</td>
<td>200 hrs. Carpenter</td>
<td>75.08 15,016.00</td>
<td>85.00 17,000.00</td>
</tr>
<tr>
<td>A-13</td>
<td>400 hrs. Carpenter Laborer</td>
<td>63.83 25,532.00</td>
<td>75.00 30,000.00</td>
</tr>
<tr>
<td>A-14</td>
<td>100 hrs. Electrician, Low Voltage</td>
<td>78.82 7,882.00</td>
<td>85.00 8,500.00</td>
</tr>
</tbody>
</table>
## SAN ANTONIO WATER SYSTEM

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

<table>
<thead>
<tr>
<th>PROPOSAL</th>
<th>Annual Contract for Mechanical Maintenance and Repair Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOR:</td>
<td>Accessories (October 1, 2018 through September 30, 2019)</td>
</tr>
<tr>
<td>DATE</td>
<td>3:00 p.m., August 21, 2018</td>
</tr>
<tr>
<td>ITEM NO</td>
<td>DESCRIPTION AND APPROXIMATE QUANTITY</td>
</tr>
<tr>
<td>A-15</td>
<td>100 hrs. Electrician, Apprentice, Low Voltage</td>
</tr>
<tr>
<td>A-16</td>
<td>100 hrs. Electrician, Medium Voltage</td>
</tr>
<tr>
<td>A-17</td>
<td>100 hrs. Electrician, Apprentice, Medium Voltage</td>
</tr>
<tr>
<td>A-18</td>
<td>100 hrs. Certified Welder - all categories</td>
</tr>
<tr>
<td>A-19</td>
<td>300 hrs. Concrete Form Worker/placer/finisher</td>
</tr>
<tr>
<td>A-20</td>
<td>200 hrs. Process Equipment/Industrial Machine Installer</td>
</tr>
<tr>
<td>A-21</td>
<td>200 hrs. Mechanical Laborer</td>
</tr>
<tr>
<td>A-22</td>
<td>400 hrs. General Laborer</td>
</tr>
</tbody>
</table>

**SUB TOTAL GROUP A**  
TOTAL: 331,617.20  
386,230.00

| B-1 | 8 hrs/day (5 days) Core Drill, Electric, 2" to 8" | 145.48 | 625.00 |
| B-2 | 8 hrs/day (5 days) Core Drill, Electric, 8" to 18" | 179.63 | 775.00 |
| B-3 | 8 hrs/day (5 days) Excavator, Diesel Hydraulic, Crawler Mounted, 1/2 C.Y. | 746.35 | 1,702.00 |
| B-4 | 8 hrs/day (5 days) Excavator, Diesel Hydraulic, Crawler Mounted, 1 C.Y. | 1,151.15 | 1,932.00 |
| B-5 | 8 hrs/day (5 days) Hydraulic Hammer, 750 ft lb | 449.08 | 1,817.00 |
| B-6 | 8 hrs/day (5 days) Hydraulic Hammer, 1200 ft lb | 891.83 | 2,047.00 |
| B-7 | 8 hrs/day (5 days) Boom Truck, 22 Ton | 1,568.60 | 1,283.40 |
## SAN ANTONIO WATER SYSTEM

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

### TABULATION OF BIDS

**PROPOSAL**
Annual Contract for Mechanical Maintenance and Repair Services

**FOR**
Accessories

**TIME & DATE**
(October 1, 2018 through September 30, 2019)

**TIME**
3:00 p.m., August 21, 2018

### ITEM NO | DESCRIPTION AND APPROXIMATE QUANTITY | PRICE
---|---|---
B-8 | 8 hrs/day (5 days) Crane, 40 Ton | PRICE TOTAL 1,771.00
B-9 | 8 hrs/day (5 days) Small Rock Saw | PRICE TOTAL 904.48
B-10 | 8 hrs/day (5 days) Front End Loader, 4WD, 1 to 1-1/4 C.Y. | PRICE TOTAL 1,739.38
B-11 | 8 hrs/day (5 days) Front End Loader, 4WD, 1 to 2 C.Y. | PRICE TOTAL 2,024.00
B-12 | 8 hrs/day (5 days) Backhoe Loader, 4WD, 3/4 C.Y. | PRICE TOTAL 499.68
B-13 | 8 hrs/day (5 days) Backhoe Loader, 4WD, 1-1/2 C.Y. | PRICE TOTAL 815.93
B-14 | 8 hrs/day (5 days) Sky Trak Ext Forklift | PRICE TOTAL 777.98
B-15 | 8 hrs/day (5 days) Trench Compactor | PRICE TOTAL 320.05
B-16 | 8 hrs/day (5 days) Compressor, 185 cfm | PRICE TOTAL 246.68
B-17 | 8 hrs/day (5 days) Wacker/Small Compressor/Plug/Generator | PRICE TOTAL 82.23
B-18 | 8 hrs/day (5 days) Trencher, chain boom type, operator riding, 40 HP | PRICE TOTAL 474.38
B-19 | 8 hrs/day (5 days) Trencher, chain boom type, operator riding, 100 HP | PRICE TOTAL 752.68
B-20 | 8 hrs/day (5 days) Truck, Dump, 8 C.Y. | PRICE TOTAL 445.28
**TABULATION OF BIDS**

**PROPOSAL**
Annual Contract for Mechanical Maintenance and Repair Services

**FOR**
Accessories

**DATE**
(October 1, 2018 through September 30, 2019)

3:00 p.m., August 21, 2018

**ITEM NO.**
DESCRIPTION AND APPROXIMATE QUANTITY

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-21</td>
<td>Truck, Dump, 12 C.Y. (8 hrs/day (5 days))</td>
<td>645.15</td>
<td>575.00</td>
</tr>
<tr>
<td>B-22</td>
<td>Pickup Truck (8 hrs/day (5 days))</td>
<td>113.85</td>
<td>611.50</td>
</tr>
<tr>
<td>B-23</td>
<td>Crew Truck (8 hrs/day (5 days))</td>
<td>158.13</td>
<td>628.75</td>
</tr>
<tr>
<td>B-24</td>
<td>Water Truck (8 hrs/day (5 days))</td>
<td>1,068.93</td>
<td>1,002.40</td>
</tr>
</tbody>
</table>

**SUB TOTAL GROUP B**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>17,971.93</td>
<td>25,300.43</td>
</tr>
</tbody>
</table>

**Section C. % markup for any Section C item include all Contractor's burden overhead & profit (Example in Section Q)**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-1</td>
<td>Parts and Materials Per Year</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>TOTAL 50,000.00</td>
<td>50,000.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL 10,000.00</td>
<td>7,500.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL 60,000.00</td>
<td>57,500.00</td>
<td></td>
</tr>
<tr>
<td>C-2</td>
<td>Specialty Rental Equipment Per Year</td>
<td>20%</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>TOTAL 20,000.00</td>
<td>20,000.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL 4,000.00</td>
<td>3,000.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL 24,000.00</td>
<td>23,000.00</td>
<td></td>
</tr>
<tr>
<td>C-3</td>
<td>Sub-Contractors Per Year</td>
<td>18%</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>TOTAL 125,000.00</td>
<td>125,000.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL 22,500.00</td>
<td>18,750.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TOTAL 147,500.00</td>
<td>143,750.00</td>
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</table>

**SUB TOTAL GROUP C**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>231,500.00</td>
<td>224,250.00</td>
</tr>
</tbody>
</table>

**FIRST YEAR BASE PERIOD TOTAL CONTRACT AMOUNT (GROUPS A, B, C)**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>581,089.13</td>
<td>635,780.43</td>
</tr>
</tbody>
</table>

**EXTENSION 1**

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>DESCRIPTION</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>581,089.13</td>
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</table>

**EXTENSION 2**

<table>
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<tr>
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<tbody>
<tr>
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<td>589,089.13</td>
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**EXTENSION 3**

<table>
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<th>PRICE</th>
<th>TOTAL</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td>589,089.13</td>
<td></td>
</tr>
</tbody>
</table>
## SAN ANTONIO WATER SYSTEM

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

**TABULATION OF BIDS**

**PROPOSAL**  
Annual Contract for Mechanical Maintenance and Repair Services  
**FOR**  
Accessories  
**TIME & DATE**  
(October 1, 2018 through September 30, 2019)  
3:00 p.m., August 21, 2018

<table>
<thead>
<tr>
<th>ITEM NO</th>
<th>DESCRIPTION AND APPROXIMATE QUANTITY</th>
<th>R.E.C. Industries, Inc.</th>
<th>The Brandt Companies, LLC</th>
<th>LMC Corporation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2103 Minuteman Dr.</td>
<td>603 Corridor Parkway, Suite 100</td>
<td>1012 Algipoint, Suite 101</td>
</tr>
<tr>
<td>Terms</td>
<td></td>
<td>San Antonio, TX 78217</td>
<td>Schertz, TX 78104</td>
<td>San Antonio, TX 78217</td>
</tr>
<tr>
<td>Delivery Days</td>
<td></td>
<td>Net 30 days</td>
<td>Net 30 days</td>
<td>Net 30 days</td>
</tr>
</tbody>
</table>

*LOW BIDDER*

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

- All Pro General Construction
- Azteca Designs
- IN New Braunfels
- LMC Corporation
- MGC Contractors
- REC Industries
- Spaw Glass
- The Brandt Co.
- Valleon Services
- Walsh Group

Demandstar

SAWS Website
BID NO. 18-18137
SATELLITE IMAGERY LEAK SYSTEM ANALYSIS FOR SAWS
SOLE SOURCE

This is a Sole-Source award to Utilis Inc. Per the proposal presented by Utilis Inc, "Utilis developed a unique and patented technology for leak detection in urban potable water networks, using airborne mounted sensors. The analysis is based on a primary algorithm that detects underground leaks through the analysis of micro spectral satellite imagery."

Utilis will provide leakage reports using a propriety satellite imaging program to identify leaks in SAWS' water system. SAWS will be responsible for providing baseline system data, work order history and an acoustic leak detection team to inspect point of interests identified by Utilis.

The proprietary satellite imaging program used by Utilis is a sole-source product and no other company makes a similar competing product.

SAWS seeks approval to award a contract to Utilis Inc in the amount of $472,500 which includes $157,500 for 2018 and $315,000 for 2019 with one available one-year extension in the amount of $315,000 for the option year. Pricing is as follows:

<table>
<thead>
<tr>
<th>2018</th>
<th>Description</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of deliveries</td>
<td>Full system survey (4,000)</td>
<td>$157,500</td>
<td>$157,500</td>
</tr>
<tr>
<td>Estimated delivery timeline</td>
<td>November 2018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miles of pipe analyzed</td>
<td>~4,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Utilis 4 days field survey and team certification</td>
<td>included</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total 2018</strong></td>
<td></td>
<td></td>
<td>$157,500</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2019</th>
<th>Description</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of data analysis deliveries per year</td>
<td>3 (Feb., May, August)</td>
<td>$52,500</td>
<td>$157,500</td>
</tr>
<tr>
<td>Estimated delivery timeline</td>
<td>Rolling, every 3 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miles of pipe analyzed per delivery/ quarter</td>
<td>~1,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scan for remaining 3,000 miles</td>
<td>December</td>
<td>$157,500</td>
<td>$157,500</td>
</tr>
<tr>
<td><strong>Total 2019</strong></td>
<td></td>
<td></td>
<td>$315,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2020</th>
<th>Description</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of data analysis deliveries per year</td>
<td>3 (Feb., May, August)</td>
<td>$52,500</td>
<td>$157,500</td>
</tr>
<tr>
<td>Estimated delivery timeline</td>
<td>Rolling, every 3 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miles of pipe analyzed per delivery/ quarter</td>
<td>~1,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scan for remaining 3,000 miles</td>
<td>December</td>
<td>$157,500</td>
<td>$157,500</td>
</tr>
<tr>
<td><strong>Total 2020</strong></td>
<td></td>
<td></td>
<td>$315,000</td>
</tr>
</tbody>
</table>
SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract to Whittaker Lane Contracting, LLC, a local, non-SMWVB contractor, in the amount of $472,434.00, in connection with the Ground and Elevated Storage Tank Demolition Project.

- The San Antonio Water System (the “System”) received approval for the BexarMet (District Special Project, DSP) merger in 2012. In addition to new employees and customers, this merger provided the System with all of the DSP infrastructure.

- Integration of the DSP infrastructure into the System’s distribution system created redundant infrastructure. Due to efficiencies identified since the merger, certain facilities are no longer necessary and must be demolished as part of the decommissioning process.

- This project includes 22 DSP sites and two System sites which have been identified for decommissioning and demolition.

- Whittaker Lane Contracting, LLC has submitted the lowest responsible bid of $472,434.00 for construction of the project.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The construction contract will be paid from System funds budgeted in the 2018 budget (Company: 1000, Accounting Units: 5027500, Account: 511220).

The construction contract will be paid from funds accrued from the BexarMet/SAWS DSP merger in accordance with GASB 69 Government Combinations and Disposals of Government Operations (Company: 1000, Accounting Unit: 1000005, Account: 219300).

The construction contract amount is $472,434.00 for the Project work under job number 18-0124.
SUPPLEMENTARY COMMENTS:

Kimley-Horn prepared the plans and specifications for this project. The engineer’s estimated construction cost was $970,000.00.

A bid opening was held on October 11, 2018, at 10:00 AM. The following proposals were submitted:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Bid Amount</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whittaker Lane Contracting, LLC*</td>
<td>$472,434.00</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td>Billingsley House Moving, Inc.</td>
<td>$486,113.25</td>
<td>Non-Local/Non-SMWVB</td>
</tr>
<tr>
<td>Engineer’s Estimate</td>
<td>$970,000.00</td>
<td></td>
</tr>
<tr>
<td>Hunter Demolition &amp; Wrecking Corp.</td>
<td>$1,394,969.25</td>
<td>Local/WBE-Caucasian</td>
</tr>
</tbody>
</table>

* Lowest Responsible Bidder

The bid amount represents a 51.3 percent decrease from the estimated construction cost.

Additionally, the overall SMWVB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>Ground and Elevated Storage Tank Demolition Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whittaker Lane Contracting, LLC</td>
</tr>
<tr>
<td>SMWVB Analysis – Board Award</td>
</tr>
<tr>
<td>SBE</td>
</tr>
<tr>
<td>MBE – African American</td>
</tr>
<tr>
<td>MBE – Asian</td>
</tr>
<tr>
<td>MBE – Hispanic</td>
</tr>
<tr>
<td>MBE – Other</td>
</tr>
<tr>
<td>WBE – Minority</td>
</tr>
<tr>
<td>WBE – Non–Minority</td>
</tr>
<tr>
<td>SMWVB Total</td>
</tr>
</tbody>
</table>

Tracey B. Lehmann, P.E.  
Director  
Development  

Andrea L.H. Beymer, P.E.  
Vice President  
Engineering and Construction
Award of Construction Contract
Ground and Elevated Storage Tank Demolition Project

APPROVED:

[Signature]

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A CONSTRUCTION CONTRACT TO WHITTAKER LANE CONTRACTING, LLC IN AN AMOUNT NOT TO EXCEED $472,434.00 IN CONNECTION WITH THE GROUND AND ELEVATED STORAGE TANK DEMOLITION PROJECT; APPROVING THE EXPENDITURE OF FUNDS AND MAKING AVAILABLE AN AMOUNT NOT TO EXCEED $472,434.00 FROM SYSTEM FUNDS FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONSTRUCTION CONTRACT WITH WHITTAKER LANE CONTRACTING, LLC, AND TO PAY WHITTAKER LANE CONTRACTING, LLC AN AMOUNT NOT TO EXCEED $472,434.00 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) has solicited bids for the project work; and

WHEREAS, Whittaker Lane Contracting, LLC, a local, non-SWMVB firm, is declared the lowest responsible bidder and has submitted the low responsible bid of $472,434.00 for the project work; and

WHEREAS, System funds in an amount not to exceed $472,434.00 are required for the project work; and

WHEREAS, the total amount of $472,434.00 is available from System funds for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a construction contract to Whittaker Lane Contracting, LLC in an amount not to exceed $472,434.00 in connection with the Ground and Elevated Storage Tank Demolition Project, (ii) to approve the expenditure of funds and make available an amount not to exceed $472,434.00 from System funds for the project work, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a construction contract with Whittaker Lane Contracting, LLC, and to pay Whittaker Lane Contracting, LLC an amount not to exceed $472,434.00 for the project work; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:
1. That a construction contract in an amount not to exceed $472,434.00 is hereby awarded to Whittaker Lane Contracting, LLC, who is determined to be the lowest responsible bidder, in connection with the Ground and Elevated Storage Tank Demolition Project.

2. That the expenditure of funds in an amount not to exceed $472,434.00 for the project work is hereby approved and made available from System funds.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a construction contract with Whittaker Lane Contracting, LLC, and to pay Whittaker Lane Contracting, LLC an amount not to exceed $472,434.00 for the project 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 13 day of November, 2018.

_______________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Patricia E. Merritt, Assistant 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 CHANGE ORDER NO. 2 IN CONNECTION WITH THE E-19: SEGUIN ROAD TO NACOGDOCHES ROAD – SEGMENT 2 PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution approves Change Order No. 2 in the decreased amount of $372,019.12 to be credited to the construction contract with S.J. Louis Construction of Texas, Ltd. in connection with the E-19: Seguin Road to Nacogdoches Road – Segment 2 Project (the “Project”).

- The change order to the contract that is the subject of the attached resolution will, if approved, authorize work that is required by the Consent Decree between the San Antonio Water System (the “System”), the United States of America, and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- On July 10, 2018, the System’s Board of Trustees, by Resolution No. 18-164, authorized a construction contract with S.J. Louis Construction of Texas, Ltd., in the total amount of $30,705,920.68 in connection with the Project.

- The Project will replace and upsize approximately three miles of existing 42-inch and 48-inch gravity sewer main with 60-inch and 78-inch and eliminate two siphons along Salado Creek. The Project will extend north along Holbrook Road from a point just north of Rittiman Road to Ira Lee Road and then the alignment parallels Salado Creek all the way to the upstream termination point just north of the Marymont neighborhood. The alignment is shown on Attachment II.

- Change Order No. 2, in the decreased amount of $372,019.12, provides a credit to the System for the costs associated with placing select fill in lieu of flowable fill for the pipe bedding and initial backfill.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

This project is included in the Wastewater Core Business budget line item. The total amount
Approval of Change Order No. 2
E19: Seguin Road to Nacogdoches Road, Segment 2 Project

requested for Change Order No. 2 is a decreased amount of $372,019.12. The job number is 18-4502.

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. 18-164)</td>
<td>$30,705,920.68</td>
</tr>
<tr>
<td>Change Order No. 1</td>
<td>0.00</td>
</tr>
<tr>
<td>Proposed Change Order No. 2</td>
<td>(372,019.12)</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>$30,333,901.56</td>
</tr>
</tbody>
</table>

The new contract amount for the System’s work as a result of all change orders is $30,333,901.56, which represents a 1.21 percent decrease to the original contract amount.

The original completion date for this contract is July 30, 2020. As a result of this change order and previous change orders, the contract duration has been reduced for a new completion date of July 14, 2020.

Gail Hamrck-Pigg, P.E.
Director
Pipelines

APPROVED:

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

Robert R. Puente
President/Chief Executive Officer

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

E-19 SEGMENT 2: SEGUIN ROAD TO NACOGDOCHES ROAD

LEGEND
★ PROJECT SITE
EDWARDS AQUIFER RECHARGE ZONE
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING CHANGE ORDER NO. 2 IN THE DECREASED AMOUNT OF $372,019.12 TO BE CREDITED TO THE CONSTRUCTION CONTRACT WITH S.J. LOUIS CONSTRUCTION OF TEXAS, LTD. IN CONNECTION WITH THE E19: SEGUIN ROAD TO NACOGDOCHES ROAD, SEGMENT 2 PROJECT; AMENDING RESOLUTION NO. 18-164 BY APPROVING A DECREASED AMOUNT NOT TO EXCEED $372,019.12 TO THE PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE CHANGE ORDER NO. 2 IN THE DECREASED AMOUNT OF $372,019.12 TO BE CREDITED TO THE CONSTRUCTION CONTRACT WITH S.J. LOUIS CONSTRUCTION OF TEXAS, LTD. FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on July 10, 2018, the San Antonio Water System’s (the “System”) Board of Trustees, by Resolution No. 18-164, authorized a construction contract with S.J. Louis Construction of Texas, Ltd., in the amount of $30,059,206.83 in connection with the E-19: Seguin Road to Nacogdoches Road – Segment 2 Project (the “Project”); and

WHEREAS, during construction of the Project, the Contractor proposed to use select fill in lieu of flowable fill for the pipe bedding and initial backfill; and

WHEREAS, negotiations between the System and S.J. Louis Construction of Texas, Ltd. resulted in a credit of $372,019.12 for Change Order No. 2 to replace flowable fill with select fill for the pipe bedding and initial backfill; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve Change Order No. 2 in the decreased amount of $372,019.12 to be credited to the construction contract with S.J. Louis Construction of Texas, Ltd. in connection with the E-19: Seguin Road to Nacogdoches Road – Segment 2 Project, (ii) to amend Resolution No. 18-164 by approving a decreased amount of $372,019.12 to the Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute Change Order No. 2 in the decreased amount of $372,019.12 to be credited to the construction contract with S.J. Louis Construction of Texas, Ltd. for the project work; now, therefore:

BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:
1. That Change Order No. 2 in the decreased amount of $372,019.12 to the construction contract with S.J. Louis Construction of Texas, Ltd. in connection with the E-19: Seguin Road to Nacogdoches Road – Segment 2 Project is hereby approved.

2. That Resolution No. 18-164 is hereby amended by approving a decreased amount of $372,019.12 to the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute Change Order No. 2 in the decreased amount of $372,019.12 to be credited to the construction contract with S.J. Louis Construction of Texas, Ltd. for the project 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. This resolution becomes effective immediately upon its passage.

6. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 13th day of November, 2018.

______________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Patricia E. Merritt, Assistant 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 CHANGE ORDER NO. 1 IN CONNECTION WITH THE MULTIPLE SEWERSHED PACKAGE 2A PROJECT

SUMMARY AND RECOMMENDATION:

The attached resolution ratifies the actions of the Vice President of Engineering and Construction in approving Change Order No. 1 in the amount of $566,200.00 payable to SAK Construction, LLC, a local, non-SMWVB firm, in connection with the Multiple Sewershed Package 2A Project.

- The change order to the contract that is the subject of the attached resolution will, if approved, authorize work that is required by the Consent Decree between the San Antonio Water System (the “System”), the United States of America, and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- On October 9, 2018, the System’s Board of Trustees, by Resolution No. 18-240, authorized a construction contract with SAK Construction, LLC in an amount not to exceed $21,918,562.00 in connection with the Multiple Sewershed Package 2A Project.

- During historic September rain events, an overflow and collapse was reported at Wurzbach Parkway at Indian Hollow. The existing 24-inch gravity sewer line on the north edge of the right of way was collapsed. Upon further investigation, the entire segment of approximately 483 feet was found to be filled with rocks that required specialized heavy duty line cleaning equipment to remove.

- The work being requested under this change order includes mobilization, emergency bypass of wastewater flows to allow for heavy duty line cleaning to remove rock and debris accumulated on the line, traffic control in compliance with Texas Department of Transportation requirements, emergency point repair of collapsed 24-inch RCP line, rehabilitation of the 24-inch via Cured-In-Place Pipe (CIPP) lining of 483 feet, and site cleanup and restoration.

- SAK Construction, LLC is willing and able to perform the proposed work. The change order was negotiated to meet time constraints in the amount of $566,200.00.
Ratification of Change Order No. 1
Multiple Sewershed Package 2A

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will finance this additional expenditure included in the CY 2018 Capital Improvement Program. This project is included in the Wastewater Core Business budget line item. The amount is $566,200.00 for Change Order No. 1 and funds will be transferred from the 2018 Owner Controlled Construction Changes line item. The job number is 17-4533.

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. 18-240)</td>
<td>$21,918,562.00</td>
</tr>
<tr>
<td>Proposed Change Order No. 1</td>
<td>566,200.00</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>$22,484,762.00</td>
</tr>
</tbody>
</table>

The new contract amount for the System’s work as a result of Change Order No. 1 is $22,484,762.00, which represents a 2.58 percent increase to the original contract amount.

The original completion date for this contract is April 14, 2020. As a result of this change order, the contract has been extended for a new completion date of May 4, 2020.

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 CHANGE ORDER NO. 1 IN AN AMOUNT NOT TO EXCEED $566,200.00 IN CONNECTION WITH THE MULTIPLE SEWERSHED PACKAGE 2A PROJECT; AMENDING RESOLUTION NO. 18-240, BY APPROVING AN ADDITIONAL AMOUNT NOT TO EXCEED $566,200.00 FROM THE PROJECT FUND FOR THE ADDITIONAL PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE CHANGE ORDER NO. 1, AND TO PAY SAK CONSTRUCTION LLC AN ADDITIONAL AMOUNT NOT TO EXCEED $566,200.00 FOR ADDITIONAL PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on October 9, 2018, the San Antonio Water System’s (the “System”) Board of Trustees, by Resolution No. 18-240, authorized a construction contract with SAK Construction, LLC, in the amount of $21,918,562.00 in connection with the Multiple Sewershed Package 2A Project; and

WHEREAS, during historic September rain events, an overflow and collapse was reported at Wurzbach Parkway at Indian Hollow; and

WHEREAS, the System negotiated a change order for the project work associated with the Wurzbach Parkway Emergency Repair of 24-inch Sewer Line Project (the “project work”) with SAK Construction, LLC, under the Multiple Sewershed Package 2A Project; and

WHEREAS, Change Order No. 1 in the amount of $566,200.00 provides for the additional project work; and

WHEREAS, additional System funds in an amount not to exceed $566,200.00, are required for the additional project work; and

WHEREAS, the required amount of $566,200.00 is available from the Project Fund; and

WHEREAS, the contractor was authorized to proceed with Change Order No. 1 in response to an emergency collapse of the existing 24-inch sewer line on the north edge of the
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 Change Order No. 1 in an amount not to exceed $566,200.00 in connection with the Multiple Sewershed Package 2A Project, (ii) to amend Resolution No. 18-240 by approving the expenditure of an additional amount not to exceed $566,200.00 from the Project Fund, and (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute Change Order No. 1, and to pay SAK Construction, LLC an amount not to exceed $566,200.00 for additional 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 Change Order No. 1 in an amount not to exceed $566,200.00 to the construction contract with SAK Construction, LLC in connection with the Multiple Sewershed Package 2A Project are hereby ratified.

2. That Resolution No. 18-240 is hereby amended by approving an additional amount not to exceed $566,200.00 from the Project Fund for additional project work.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute Change Order No. 1, and to pay SAK Construction, LLC an additional amount not to exceed $566,200.00 for additional project 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 Code 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 November, 2018.

____________________________________
Berto Guerra, Jr., Chairman

ATTEST:

____________________________________
Patricia E. Merritt, Assistant 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: APPROVAL OF CHANGE ORDER NO. 1 IN CONNECTION WITH THE DOS RIOS WRC SLUDGE THICKENING FACILITY EXPANSION PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution approves Change Order No. 1 in the amount of $211,733.99 payable to Associated Construction Partners, Ltd., a local, WBE-Caucasian firm, in connection with the Dos Rios Water Recycling Center (WRC) Sludge Thickening Facility Expansion Project (the “Project”).

- On May 1, 2018, the San Antonio Water System’s (the “System”) Board of Trustees, through Resolution No. 18-121, authorized a construction contract with Associated Construction Partners, Ltd. in the amount of $6,610,000.00 in connection with the project work.

- The Project includes the installation of two centrifuges and ancillary components at Dos Rios WRC, which will provide sufficient solids loading capabilities to Dos Rios WRC sludge thickening facility.

- The Dos Rios WRC sludge thickening facility treats bio solids by processing it through a set of strain press screens, followed by thickening and digestion processes prior to final disposal.

- With the installation of the centrifuges, it is necessary to install variable frequency drives to provide efficient operation of the strain press pumps.

- The strain press pumps are currently being manually operated based on the level of flow in the sludge blending tank, which require constant monitoring to prevent disruptions in the feed of activated sludge.

- The installation of the variable frequency drives will allow the strain press pumps to be operated in a consistent manner, which will improve the overall solids handling process.

- Change Order No. 1 in an amount not to exceed $211,733.99 provides costs associated with the installation of variable frequency drives for the strain press screens at Dos Rios
Approval of Change Order No. 1
Dos Rios WRC Sludge Thickening Facility Expansion Project

WRC.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will finance this additional expenditure included in the CY 2018 Capital Improvement Program. This project is included in the Wastewater Core Business budget line item. Funds for Change Order No.1 will be transferred from the 2018 Owner Controlled Construction Changes line item. The job number is 17-6507.

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</td>
<td>$6,610,000.00</td>
</tr>
<tr>
<td>Proposed Change Order No. 1</td>
<td>211,733.99</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>$6,821,733.99</td>
</tr>
</tbody>
</table>

The new contract amount for the System’s work as a result of this change order is $6,821,733.99, which represents an increase of 3.2 percent from the original contract amount.

The original completion date for this contract was June 19, 2019. As a result of Change Order No. 1, the completion date has not been affected.

Michael L. Myers, P.E.                              Andrea L.H. Beymer, P.E.
Director                                             Vice President
Plants and Major Projects                            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 CHANGE ORDER NO. 1 IN AN AMOUNT NOT TO EXCEED $211,733.99 FOR THE ADDITIONAL PROJECT WORK IN CONNECTION WITH THE DOS RIOS WRC SLUDGE THICKENING FACILITY EXPANSION PROJECT; AMENDING RESOLUTION NO. 18-121 BY APPROVING AN ADDITIONAL AMOUNT NOT TO EXCEED $211,733.99 FROM THE PROJECT FUND FOR THE ADDITIONAL PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE CHANGE ORDER NO. 1, AND TO PAY ASSOCIATED CONSTRUCTION PARTNERS, LTD. AN ADDITIONAL AMOUNT NOT TO EXCEED $211,733.99 FOR ADDITIONAL PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on May 1, 2018, the San Antonio Water System’s (the “System”) Board of Trustees, through Resolution No. 18-121, authorized a construction contract with Associated Construction Partners, Ltd., in the amount of $6,610,000.00 in connection with the Dos Rios Water Recycling Center (WRC) Sludge Thickening Facility Expansion Project (the “Project”); and

WHEREAS, Change Order No. 1 is required for the installation of two centrifuges and ancillary components at Dos Rios WRC, which will provide sufficient solids loading capabilities to Dos Rios WRC sludge thickening facility; and

WHEREAS, negotiations between the System and Associated Construction Partners, Ltd. resulted in a cost of $211,733.99 for Change Order No. 1 for the additional project work; and

WHEREAS, additional System funds in an amount not to exceed $211,733.99 are required in connection with the project work; and

WHEREAS, the amount of $211,733.99 is available in the Project Fund; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve Change Order No. 1 in an amount not to exceed $211,733.99 in connection with the Dos Rios Water Recycling Center Sludge Thickening Facility Expansion Project, (ii) to amend Resolution No. 18-121 by approving an additional amount not to exceed $211,733.99 from the Project Fund for additional project work, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute Change Order No. 1, and to pay Associated Construction Partners, Ltd. an additional amount not to exceed $211,733.99 for additional project work; finding the resolution to have been considered pursuant to the laws governing open meetings; providing a severability clause; and establishing an effective date.
Officer or his duly appointed designee to execute Change Order No. 1, and to pay Associated Construction Partners, Ltd an amount not to exceed $211,733.99 for additional project work; now, therefore:

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

1. That Change Order No. 1 in an amount not to exceed $211,733.99 to the construction contract with Associated Construction Partners, Ltd. in connection with the Dos Rios Water Recycling Center Sludge Thickening Facility Expansion Project is hereby approved.

2. That Resolution No. 18-121 is hereby amended by approving an additional amount not to exceed $211,733.99 from the Project Fund for additional project work.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute Change Order No. 1, and to pay Associated Construction Partners, Ltd. an additional amount not to exceed $211,733.99 for additional project 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 November, 2018.

___________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Patricia E. Merritt, Assistant 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: APPROVAL OF CHANGE ORDER NO. 4 IN CONNECTION WITH THE DOS RIOS WRC HEADWORKS ENHANCEMENTS PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution approves Change Order No. 4 in an amount not to exceed $383,108.00 payable to Archer Western Construction, LLC, a non-local, non-SMWVB firm, in connection with the Dos Rios WRC Headworks Enhancements Project (the “Project”).

- On March 6, 2018, the San Antonio Water System’s (the “System”) Board of Trustees, through Resolution No. 18-074, authorized a construction contract with Archer Western Construction, LLC, in the amount of $2,723,000.00 in connection with the project work.

- To honor the retirement of the System’s Chief Operating Officer, Steven M. Clouse, the Dos Rios WRC will be renamed to the Steven M. Clouse Water Recycling Center. This honor is a tribute to his endless contribution to the organization, which includes numerous awards recognizing the Dos Rios WRC under his leadership.

- The existing monument will be demolished. A new monument with signage and a small water feature will be installed. In addition, drought-resistant landscaping will be planted. A marker listing all awards received by the plant will be installed at the entrance as well as at the outfall of the plant. Associated architectural, site, civil and electrical work will also be included.

- Change Order No. 4 in the negotiated amount not to exceed $383,108.00 will provide the necessary modifications required for the renaming of the plant.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will finance this additional expenditure included in the CY 2018 Capital Improvement Program. This project is included in the Wastewater Core Business budget, Owner Controlled Construction Changes line item. The amount is $383,108.00 for additional project work. The job number is 16-6505.
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. 18-074)</td>
<td>$2,723,000.00</td>
</tr>
<tr>
<td>Change Order Nos. 1 through 3</td>
<td>82,293.02</td>
</tr>
<tr>
<td>Proposed Change Order No. 4</td>
<td>383,108.00</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
<td>$3,188,401.02</td>
</tr>
</tbody>
</table>

The new contract amount for the System’s work as a result of all change orders is $3,188,401.02, which represents an increase of 17.09 percent to the original contract amount.

The original completion date for this contract is May 17, 2019. As a result of this change order, the contract completion date has not been impacted.

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
2. Project Site Map
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING CHANGE ORDER NO. 4 IN AN AMOUNT NOT TO EXCEED $383,108.00 FOR THE ADDITIONAL PROJECT WORK IN CONNECTION WITH THE DOS RIOS WRC HEADWORKS ENHANCEMENTS PROJECT; AMENDING RESOLUTION NO. 18-074 BY APPROVING AN ADDITIONAL AMOUNT NOT TO EXCEED $383,108.00 BE MADE AVAILABLE FROM THE PROJECT FUND FOR THE ADDITIONAL PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE CHANGE ORDER NO. 4, AND TO PAY ARCHER WESTERN CONSTRUCTION, LLC AN ADDITIONAL AMOUNT NOT TO EXCEED $383,108.00 FOR ADDITIONAL PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, on March 6, 2018, the San Antonio Water System’s (the “System”) Board of Trustees, through Resolution No. 18-074, authorized a construction contract with Archer Western Construction, LLC, in the amount of $2,723,000.00 in connection with the Dos Rios WRC Headworks Enhancement Project; and

WHEREAS, Change Order No. 4 is requested to honor the retirement of the System’s Chief Operating Officer, Steven M. Clouse, in which the Dos Rios WRC will be renamed to the Steven M. Clouse Water Recycling Center; and

WHEREAS, Change Order No. 4 in the negotiated amount not to exceed $383,108.00 will provide the necessary modifications required for the renaming of the plant; and

WHEREAS, additional System funds in an amount not to exceed $383,108.00 are required for the additional project work; and

WHEREAS, the total amount of $383,108.00 is available from the Project Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve Change Order No. 4 in an amount not to exceed $383,108.00 payable to Archer Western Construction, LLC in connection with the Dos Rios WRC Headworks Enhancements Project, (ii) to amend Resolution No. 18-074 by approving an additional amount not to exceed $383,108.00 from the Project Fund for the additional project work, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute Change Order No. 4, and to pay Archer
Western Construction, LLC an additional amount not to exceed $383,108.00 for additional project work; now, therefore:

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

1. That Change Order No. 4 in an amount not to exceed $383,108.00 to the construction contract with Archer Western Construction, LLC in connection with the Dos Rios WRC Headworks Enhancements Project is hereby approved.

2. That Resolution No. 18-074 is hereby amended by approving an additional amount not to exceed $383,108.00 from the Project Fund for additional project work.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute Change Order No. 4, and to pay Archer Western Construction, LLC an additional amount not to exceed $383,108.00 for additional project 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 November, 2018.

___________________________________
Berto Guerra, Jr., Chairman

ATTEST:

___________________________________
Patricia E. Merritt, Assistant 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 PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE TURTLE CREEK NO. 3 PRIMARY PUMP STATION PROJECT
Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution awards a professional services contract to Freese & Nichols, Inc., a local, non-SMWVB firm, and authorizes funds in the amount of $2,149,157.00 in connection with the Turtle Creek No. 3 Primary Pump Station Project (the “project”).

- The existing Turtle Creek No. 3 Pump Station and the surrounding facilities of Turtle Creek No. 2 Pump Station and Dreamhill Pump Station serving the medical center area are in need of replacing or rehabilitation.

- The existing Turtle Creek No. 3 secondary pump station is located at the intersection of Bluffcreek Drive and Bluffdale Drive near the Medical Center in northwest San Antonio.

- This existing station is 43 years old and includes one small well, a disinfection system, and electrical equipment that that pumps directly into the distribution system.

- The current Master Plan calls for a new primary pump station that will replace these facilities at Turtle Creek No. 3.

- The new station will include two new larger wells with pumps and motors, high service pumps, a ground storage tank, electrical equipment in a new building, a new disinfection system in a new building, yard piping, and civil site improvements.

- Currently the two wells are being drilled to determine their maximum discharge that will in turn determine the final equipment sizing for the various components. These final improvements will provide an additional source of water and redundancy to this highly critical area.

- The engineering design services will include civil, mechanical, structural, electrical, subsurface utility engineering, instrumentation and controls, environmental, archaeological, permitting, and associated civil site improvements.

- A transmission main to convey water from this station to the Medical Elevated Storage
Tank located along Fredericksburg Road will be done under a separate phase that will run concurrently with this contract.

- A Request for Qualifications was issued on May 25, 2018, for professional services for this project, and eight interest statements were received for the project. Freese and Nichols, Inc. was selected through the Architect and Engineer Selection Process.

- Freese and Nichols, Inc. will provide engineering services for the project for a not to exceed amount of $2,149,157.00.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure included in the CY 2018 Capital Improvement Program. The project work is included in the Water Delivery Core Business, Turtle Creek No. 3 Primary Pump Station budget line Item. The amount is $2,149,157.00 under job number 11-6003.

**SUPPLEMENTARY COMMENTS:**

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

<table>
<thead>
<tr>
<th>Name of Firm</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arcadis US, Inc.</td>
<td>Local/Non–SWMVB</td>
</tr>
<tr>
<td>Brown and Gay Engineers, Inc.</td>
<td>Local/Non–SWMVB</td>
</tr>
<tr>
<td><strong>Freese and Nichols, Inc.</strong>*</td>
<td><strong>Local/Non–SMWVB</strong></td>
</tr>
<tr>
<td>Garver, LLC</td>
<td>Local/Non–SWMVB</td>
</tr>
<tr>
<td>Jacobs Engineering Group, Inc.</td>
<td>Local/Non–SWMVB</td>
</tr>
<tr>
<td>Kimley-Horn and Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Pape-Dawson Consulting Engineers, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Tetra Tech, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
</tbody>
</table>

*Selected Firm

Freese and Nichols, Inc. proposes to use the following sub-consultants for services on this contract:
Award of Professional Services Contract  
Turtle Creek No. 3 Primary Pump Station Project

<table>
<thead>
<tr>
<th>Name of Firm</th>
<th>Percent of Fee</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maestas &amp; Associates, LLC</td>
<td>10.00%</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Gupta &amp; Associates, Inc.</td>
<td>23.00%</td>
<td>Local/MBE–Asian</td>
</tr>
<tr>
<td>Rock Engineering &amp; Testing Laboratory</td>
<td>2.00%</td>
<td>Local/WBE–Asian</td>
</tr>
<tr>
<td>Chapman Engineering, Inc.</td>
<td>2.00%</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Adams Environmental, Inc.</td>
<td>1.50%</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>KFW Surveying, LLC</td>
<td>1.50%</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>WSP USA, Inc.</td>
<td>5.00%</td>
<td>Local/Non–SMWVB</td>
</tr>
</tbody>
</table>

Additionally, the overall SMWVB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>Turtle Creek No. 3 Primary Pump Station Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freese and Nichols, Inc.</td>
</tr>
<tr>
<td>SMWVB Analysis – Board Award</td>
</tr>
<tr>
<td>SBE</td>
</tr>
<tr>
<td>MBE – African American</td>
</tr>
<tr>
<td>MBE – Asian</td>
</tr>
<tr>
<td>MBE – Hispanic</td>
</tr>
<tr>
<td>MEB – 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>

Approved:

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

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

Attachments:
1. Project Area Map
2. Project Site Map
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A PROFESSIONAL SERVICES CONTRACT TO FRESEE AND NICHOLS, INC. IN AN AMOUNT NOT TO EXCEED $2,149,157.00 IN CONNECTION WITH THE TURTLE CREEK NO. 3 PRIMARY PUMP STATION PROJECT; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $2,149,157.00 FROM THE 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 FRESEE AND NICHOLS, INC., AND TO PAY FRESEE AND NICHOLS, INC. AN AMOUNT NOT TO EXCEED $2,149,157.00 FOR 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 services for design of the Turtle Creek No. 3 Primary Pump Station Project (the “project”); and

WHEREAS, the System has solicited proposals for the required project engineering work in connection with the project; and

WHEREAS, the System’s Architect and Engineer Selection Committee has selected Freese and Nichols, Inc. to provide the required project engineering work in connection with the project; and

WHEREAS, Freese and Nichols, Inc., a local, non-SMWVB firm, is deemed to be the most highly qualified provider of these engineering services on the basis of demonstrated competence and qualifications and for a fair and reasonable price; and

WHEREAS, Freese and Nichols, Inc. has submitted a proposal in an amount not to exceed $2,149,157.00 to provide the required project engineering work for the project; and

WHEREAS, System funds in an amount not to exceed $2,149,157.00 are required for the project engineering work; and

WHEREAS, the required amount not to exceed $2,149,157.00 is available from the Project Fund; and
WHEREAS, the San Antonio Water System’s Board of Trustees desires (i) to award a professional services contract to Freese and Nichols, Inc. in an amount not to exceed $2,149,157.00 in connection with the Turtle Creek No. 3 Primary Pump Station Project, (ii) to approve the expenditure of funds in an amount not to exceed $2,149,157.00 from the Project Fund for the project engineering work, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a professional services contract with Freese and Nichols, Inc., and to pay Freese and Nichols, Inc. an amount not to exceed $2,149,157.00 for the project engineering work; 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 $2,149,157.00 is hereby awarded to Freese and Nichols, Inc. in connection with the Turtle Creek No. 3 Primary Pump Station Project.

2. That the expenditure of funds in an amount not to exceed $2,149,157.00 from the Project Fund for the project engineering work is hereby approved.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a professional services contract with Freese and Nichols, Inc., and to pay Freese and Nichols, Inc. an amount not to exceed $2,149,157.00 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 November, 2018.

_______________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Patricia E. Merritt, Assistant 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 PROFESSIONAL SERVICES CONTRACT IN CONNECTION WITH THE TURTLE CREEK NO. 3 PUMP STATION TRANSMISSION MAIN PROJECT

Board Action Date: November 13, 2018

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 $819,842.00 in connection with the Turtle Creek No. 3 Pump Station Transmission Main Project (the “project”).

- The existing Turtle Creek No. 3 secondary pump station is located at the intersection of Bluffcreek Drive and Bluffdale Drive near the Medical Center in northwest San Antonio. This secondary station does not have any high service pumps or ground storage tank, but pumps directly into the distribution system from a well after chlorination.

- The station will be converted to a primary pump station that will include wells, a tank and pumps that will require a transmission main to convey this water from this station to the Medical Elevated Storage Tank located along Fredericksburg Road. These improvements will provide an additional source of water and redundancy to this highly critical area.

- The scope of work will provide for the installation of approximately 5,100 feet of new 48-inch pipe through developed residential and commercial areas and include boring and casing of pipe, valves, fittings, traffic controls and easements.

- The engineering design services will include surveying, subsurface investigations, soil borings, geotechnical engineering services, preparation of design plans and specifications, permits, and construction services.

- A Request for Qualifications was issued on May 25, 2018, for professional services for this project, and eight interest statements were received for the project. K Friese & Associates, Inc. was selected through the Architect and Engineer Selection Process.

- K Friese & Associates, Inc. will provide engineering services for a not to exceed amount of $819,842.00.
Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure included in the 2018 Capital Improvement Program. The project work is included in the Water Delivery Core Business, Turtle Creek No. 3 Pump Station Transmission Main budget line. The total amount is $819,842.00 under job number 15-7001.

**SUPPLEMENTARY COMMENTS:**

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

<table>
<thead>
<tr>
<th>Name of Firm</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freese and Nichols, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td><strong>K Friese &amp; Associates, Inc.</strong></td>
<td>Local/WBE–Caucasian firm</td>
</tr>
<tr>
<td>Kimley-Horn and Associates, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Maestas &amp; Associates, Inc.</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>Pape-Dawson Engineers, Inc.</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Unintech Consulting Engineers, Inc.</td>
<td>Local/WBE–Asian</td>
</tr>
<tr>
<td>Quora Ipsum, LLC</td>
<td>Local/WBE–Hispanic</td>
</tr>
<tr>
<td>International Consulting Engineers</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td><em>Selected Firm</em>*</td>
<td></td>
</tr>
</tbody>
</table>

K Friese & Associates, Inc. proposed 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>
</tr>
</thead>
<tbody>
<tr>
<td>Brown &amp; Gay Engineers, Inc.</td>
<td>15.00%</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Arcadis U.S., Inc.</td>
<td>7.00%</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Construct-Ability, LLC</td>
<td>4.00%</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Civil Design Services, Inc. dba CDS Muery</td>
<td>7.00%</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Arias &amp; Associates, Inc.</td>
<td>2.00%</td>
<td>Local/MBE–Hispanic</td>
</tr>
<tr>
<td>The Rios Group, Inc.</td>
<td>3.50%</td>
<td>Local/WBE–Hispanic</td>
</tr>
<tr>
<td>Chapman Engineering, Inc.</td>
<td>1.50%</td>
<td>Local/SBE</td>
</tr>
</tbody>
</table>
Additionally, the overall SMWVB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>SMWVB Analysis – Board Award</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
<td>1.50%</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>2.00%</td>
</tr>
<tr>
<td>MEB – Other</td>
<td>0.00%</td>
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<tr>
<td>WBE – Minority</td>
<td>3.50%</td>
</tr>
<tr>
<td>WBE – Non-Minority</td>
<td>60.00%</td>
</tr>
<tr>
<td><strong>SMWVB Total</strong></td>
<td><strong>67.00%</strong></td>
</tr>
</tbody>
</table>

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  
2. Project Site Map
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 $819,842.00 IN CONNECTION WITH TURTLE CREEK NO. 3 PUMP STATION TRANSMISSION MAIN PROJECT; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $819,842.00 FROM THE 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 $819,842.00 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 services for design of the Turtle Creek No. 3 Pump Station Transmission Main Project (the “project”); and

WHEREAS, the System has solicited proposals for the required project engineering work in connection with the project; and

WHEREAS, the System’s Architect and Engineer Selection Committee has selected K Friese & Associates, Inc. to provide the required project engineering work in connection with the project; and

WHEREAS, K Friese & Associates, Inc. is deemed to be the most highly qualified provider of these engineering services on the basis of demonstrated competence and qualifications and at a fair and reasonable price; and

WHEREAS, K Friese & Associates, Inc. has submitted a proposal in an amount not to exceed $819,842.00 to provide the required project engineering work for the project; and

WHEREAS, System funds in an amount not to exceed $819,842.00 are required for the project engineering work; and

WHEREAS, the required amount not to exceed $819,842.00 is available from the
Project Fund; 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 $819,842.00 in connection with Turtle Creek No. 3 Pump Station Transmission Main Project, (ii) to approve the expenditure of funds from the Project Fund in an amount not to exceed $819,842.00 for the project engineering work, and (iii) to authorize 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 $819,842.00 for the project engineering work; 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 $819,842.00 is hereby awarded to K Friese & Associates, Inc. in connection with Turtle Creek No. 3 Pump Station Transmission Main Project.

2. That the expenditure of funds in an amount not to exceed $819,842.00 from the Project Fund for the project engineering work is hereby approved.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a professional services contract with K Friese & Associates, Inc., and to pay K Friese & Associates, Inc. an amount not to exceed $819,842.00 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 13\textsuperscript{th} day of November, 2018.

Berto Guerra, Jr., Chairman

ATTEST:

Patricia E. Merritt, Assistant Secretary
AGENDA ITEM NO. 14

TO: San Antonio Water System Board of Trustees

FROM: Tracey B. Lehman, 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: APPROVAL OF ADDITIONAL SERVICES AND FUNDS FOR PROFESSIONAL SERVICES IN CONNECTION WITH THE WATER PRODUCTION FACILITIES PAINTING AND REHABILITATION DESIGN SERVICES CONTRACT I

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution amends Resolution No. 16-203 by authorizing additional funds to an existing professional services contract with Tetra Tech, Inc., a local, non-SMWV firm, in an amount not to exceed $140,000.00 in connection with the Water Production Facilities Painting and Rehabilitation Design Services Contract I (the “Project”).

- The San Antonio Water System (the “System”) routinely hires engineering consultants to design most Operations and Maintenance (O&M) projects for water tank assessments and rehabilitations through the Request for Qualifications process; however, assistance is required to meet O&M projects that are ongoing and require additional funding in order to complete in a timely and cost effective manner.

- By Resolution No. 16-203, approved on August 2, 2016, the System’s Board of Trustees approved a professional services contract in the amount of $950,000.00 with Tetra Tech, Inc. in connection with the Project.

- The Plants and Major Projects division within the System is in the process of preparing design documents for the improvements at La Rosa Pump Station under the Capital Improvements Program (CIP), which will require the ground storage tank to be taken offline. This action is disruptive to production and should be minimized.

- The plan to do the rehabilitation of the tank concurrently with the pump station improvements is desired. A delay in the tank rehabilitation work would mean taking the tank offline twice within a short period of time as well as additional costs to the System as the projects would not be able to be bid together.

- The remaining balance on the Water Production Facilities Painting and Rehabilitation Design Service Contract I is not enough to complete the design for La Rosa Ground Storage Tank Rehabilitation Project.
Approval of Additional Services and Funds
Water Production Facilities Painting and Rehabilitation Design Service Contract 1

• Additional engineering design services in the amount of $140,000.00 are required to complete the work associated with the La Rosa Ground Storage Tank Rehabilitation Project.

• Additional funding in the amount of $140,000.00 is available from the Project Fund, and can be added to the current contract with Tetra Tech, Inc. for the Project.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The System Fund will finance this expenditure included in the CY 2018 Operations and Maintenance budget, Accounting Unit 5027500 Tank Maintenance Section in account 511312 Contractual Professional Services. The work is included in the Water Delivery Core Business, Water Production Facilities Painting and Rehabilitation Design Service Contract I budget line item. The amount is $140,000.00 for the additional water production engineering work. The job number is 18-0122.

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. 16-203)</td>
</tr>
<tr>
<td>Proposed Additional Funds</td>
</tr>
<tr>
<td>Revised Contract Amount</td>
</tr>
</tbody>
</table>

As a result of the additional funds, the new contract amount is $1,090,000.00. This represents an increase of 14.74 percent to the System’s original contract amount.

Tracey B. Lehman, P.E.  Andrea L.H. Beymer, P.E.
Director  Vice President
Development  Engineering and Construction

APPROVED:

Robert R. Puente  Andrea L.H. Beymer, P.E.
President/Chief Executive Officer  Vice President

Kasey M. Price  Andrea L.H. Beymer, P.E.
for Tracey B. Lehman  Vice President
Director  Engineering and Construction
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING ADDITIONAL SERVICES AND EXPENDITURES TO THE EXISTING PROFESSIONAL SERVICES CONTRACT WITH TETRA TECH, INC. IN AN AMOUNT NOT TO EXCEED $140,000.00 FROM THE SYSTEM FUND IN CONNECTION WITH THE WATER PRODUCTION FACILITIES PAINTING AND REHABILITATION DESIGN SERVICES CONTRACT I; APPROVING THAT AN AMOUNT NOT TO EXCEED $140,000.00 BE MADE AVAILABLE AND EXPENDED FROM THE SYSTEM FUND FOR THE ADDITIONAL ENGINEERING SERVICES; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE AN AMENDMENT TO THE EXISTING PROFESSIONAL SERVICES CONTRACT WITH TETRA TECH, INC., AND TO PAY TETRA TECH, INC. AN ADDITIONAL AMOUNT NOT TO EXCEED $140,000.00 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, the San Antonio Water System’s (the “System”) Board of Trustees by Resolution No. 16-203, adopted August 2, 2016, approved a professional services contract with Tetra Tech, Inc. in an amount not to exceed $950,000.00 in connection with the Water Production Facilities Painting and Rehabilitation Design Service Contract I; and

WHEREAS, additional funding to the existing professional services contract with Tetra Tech, Inc. in an amount not to exceed $140,000.00 is required to provide additional professional engineering services for the rehabilitation of the La Rosa Ground Storage Tank Rehabilitation Project; and

WHEREAS, the required amount of $140,000.00 is available from the System Fund for the additional engineering services; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve additional services and expenditures to the existing professional services contract with Tetra Tech, Inc. in an amount not to exceed $140,000.00 in connection with the Water Production Facilities Painting and Rehabilitation Design Service Contract I, (ii) to make available an amount not to exceed $140,000.00 from the System Fund for the additional engineering services, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute an
amendment to the existing professional services contract with Tetra Tech, Inc., and to pay Tetra Tech, Inc. an additional amount not to exceed $140,000.00 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 Resolution No. 16-203 is hereby amended to provide additional engineering services and expenditures to the existing professional services contract with Tetra Tech, Inc. in an amount not to exceed $140,000.00 in connection with the Water Production Facilities Painting and Rehabilitation Design Service Contract I.

2. That an amount not to exceed $140,000.00 is hereby made available and is to be expended from the System Fund for the additional engineering services related to the project work.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute an amendment to the existing professional services contract with Tetra Tech, Inc., and to pay Tetra Tech, Inc. an amount not to exceed $140,000.00 for additional engineering services related to the project 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 November, 2018.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Patricia E. Merritt, Assistant 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: AUTHORIZATION TO REIMBURSE THE CITY OF SAN ANTONIO FOR ENVIRONMENTAL SERVICES IN CONNECTION WITH THE 2017 – 2022 BOND PROGRAM

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes funds in the amount of $550,000.00 to reimburse the City of San Antonio (the “City”) for environmental services in connection with San Antonio Water System (the “System”) work under the City’s 2017 – 2022 Bond Program.

- On May 6, 2017, San Antonio voters approved the passage of an $850 million Bond Program. Six propositions were passed, which included 180 capital improvement projects.

- The Environmental Management Division of the City’s Transportation and Capital Improvements (TCI) Department will perform and manage all environmental work related to System improvements under Bond Program projects.

- The Environmental Management Division will utilize their staff and various consultants to assess environmental impacts that could potentially affect the design and construction of System improvements. Environmental impacts include, but are not limited to risk assessments, asbestos pipe removal assessments, cultural resources assessments, water quality (Section 404 permitting), endangered species surveys, karst surveys, NEPA assessments, environmental oversight during construction.

- All costs associated with Phase I Environmental Site Assessments (ESA) will be covered by the City. Costs for additional Phase II ESA and other environmental, permitting, or cultural resource services found to be required and associated mitigation plans will be shared by the City and the System or if the System is doing work in an area in which there are no City underground improvements then System will pay cost of Phase II ESA.

- System staff will review and approve proposals for consultant performed services and estimated costs for City performed services. Consultant services are expected to be based on lump sum or not-to-exceed fees for a specified scope of environmental work. Reimbursement of City capital administrative costs will be based on 20 percent of the approved Consultant fee for the projects except for projects that involve asbestos pipe removal services which will have a City capital administration fee based on the amount of
pipe to be removed.

- The City will request reimbursement from System for Consultant and City performed services including City capital administrative costs. Reimbursement shall be managed and documented through a formal work authorization form charged against the proposed fund.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure included in the CY 2018 Capital Improvement Program. The water work is included in the Water Delivery Core Business, Governmental – Water Category, and Governmental Water Replacements budget line item. The amount is $275,000.00 for water related engineering work.

The wastewater work is included in the Wastewater Core Business, Governmental Wastewater Category, and Governmental Wastewater Replacements budget line item. The amount is $275,000.00 for sewer related engineering work.

**SUPPLEMENTARY COMMENTS:**

The City utilizes a consultant selection process that meets the minimum State requirements for the procurement of professional services. The consultants used by the City for environmental services and their specialties are:

- ATC Group Services LLC – Risk Assessments
- Baer Engineering & Environmental Consulting, Inc. – Risk Assessments
- Raba Kistner, Inc. – Risk Assessments
- SWCA Incorporated – Risk Assessments
- Terracon Consultants – Risk Assessments
- Atkins – NEPA / Natural Resources / 404 Permitting
- Poznecki –Camarillo Incorporated – NEPA / Natural Resources / 404 Permitting
- Zephyr Environmental Corporation – NEPA / Natural Resources / 404 Permitting
- Pape-Dawson Engineers, Incorporated – NEPA / Natural Resources / 404 Permitting
- Adams Environmental – NEPA / Natural Resources / 404 Permitting
- Burns McDonnell – Cultural Resources
- Pape-Dawson Engineers – Cultural Resources
- Prewitt & Associates, Inc. – Cultural Resources
- UTSA – Cultural Resources
- Aleo Environmental – Asbestos Services
- Cardno ATC – Asbestos Services
- Progressive Environmental Services, Inc. – Environmental Remediation
- Rawhide Construction Services – Environmental Remediation
Authorization to Reimburse the City of San Antonio - Environmental Services
2017 - 2022 Bond Program

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 APPROVING REIMBURSEMENT TO THE CITY OF SAN ANTONIO IN AN AMOUNT NOT TO EXCEED $550,000.00 FOR ENVIRONMENTAL SERVICES IN CONNECTION WITH THE 2017 – 2022 BOND PROGRAM; APPROVING AN AMOUNT NOT TO EXCEED $550,000.00 BE MADE AVAILABLE AND EXPENDED FROM THE PROJECT FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO PAY THE CITY OF SAN ANTONIO AN AMOUNT NOT TO EXCEED $550,000.00 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, San Antonio voters approved the passage of a $850 million bond program on May 6, 2017; and

WHEREAS, the 2017 – 2022 Bond Program includes 180 capital improvement projects of the City of San Antonio (the “City”); and

WHEREAS, San Antonio Water System (the “System”) water and sewer facilities may be impacted by the construction of these projects or require replacement due to deterioration; and

WHEREAS, the System requires environmental services (the “project work”) related to the replacement or adjustment of water and sewer facilities in connection with such projects; and

WHEREAS, the Environmental Management Division of the City’s Transportation and Capital Improvements Department (TCI) will be performing or managing environmental services related to System improvements; and

WHEREAS, System funds in the amount of $550,000.00 are required to reimburse the City for the project work; and

WHEREAS, the amount of $550,000.00 is available from the System’s Project Funds for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve reimbursement to the City in an amount not to exceed $550,000.00 for the project work
in connection with the 2017 – 2022 Bond Program, (ii) to approve and make available an amount not to exceed $550,000.00 from the Project Funds to reimburse the City for the project work, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to pay the City of San Antonio for the project work in connection with the 2017 – 2022 Bond Program; now, therefore:

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

1. That the expenditure of System funds in an amount not to exceed $550,000.00 to reimburse the City for the project work in connection with 2012 - 2017 Bond Program is hereby approved.

2. That an amount not to exceed $550,000.00 for the project work is hereby made available and is to be expended from the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to pay the City an amount not to exceed $550,000.00 for environmental services by the City in connection with 2012 - 2017 Bond Program projects.

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 November, 2018.

________________________________________
Berto Guerra, Jr., Chairman

ATTEST:

________________________________________
Patricia E. Merritt, Assistant 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 AND APPROVING A PURCHASE AGREEMENT WITH ANGELA PORITZ AND VERONA CURRY FOR THE SALE OF 23011 SHADY FOREST, LOCATED IN ELMENDORF, BEXAR COUNTY, TEXAS

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution accepts an offer of $50,000.00 for the sale of 23011 Shady Forest, Elmendorf, Bexar County, Texas (the “Property”), and approves a Purchase Agreement (the “Agreement”) with Angela Poritz and Verona Curry for the sale of this Property for the purchase price of $50,000.00.

- San Antonio Water System’s (SAWS) Board of Trustees (the “Board”) declared the Property surplus by Resolution No. 16-198, which was approved on August 2, 2016.

- On September 7, 2017, by Ordinance 2017-09-07-0629, the City Council of San Antonio declared the Property surplus, and authorized SAWS to sell the Property.

- The above referenced Resolution and Ordinance authorized SAWS to sell the Property according to the requirements of Texas Local Government Code Section 253.014 which allows for SAWS to contract with a real estate broker to market the Property and to sell the Property pursuant to the highest offer.

- SAWS’ real estate broker, Cano and Company, listed the Property on the MLS beginning May 17, 2018, and negotiated directly with potential buyers for the sale of the Property. SAWS listed the Property at a sale price of $60,000.00, which was based upon recent comparable sales.

- From May 17, 2018 to September 20, 2018, SAWS received one offer for the Property in the amount of $50,000.00.
The offer received was from Angela Poritz and Verona Curry. The basic terms of the said offer are as follows:

- Purchase Price: $50,000.00
- Survey cost – none to SAWS
- Title Policy – SAWS to pay the basic premium
- Feasibility period – 21 days
- Independent consideration – $100.00
- Earnest money – $500.00
- Closing Date – November 9, 2018 (later extended to November 16, 2018) (subject to Board approval)

SAWS’ Brokerage Agreement No. S-17-019-JAM with Cano and Company, approved by the Board by Resolution No. 17-269, on December 5, 2017, 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 split between Cano and Company and Phillip Essex with Essex Properties, buyer’s real estate broker.

This resolution authorizes SAWS to pay, pursuant to the Agreement, closing costs (excluding real estate commissions) not to exceed $1,200.00.

Staff recommends that the Board approve this Resolution.

**FINANCIAL IMPACT:**

SAWS will receive $50,000.00 in cash upon the sale of this property, less related closing costs and brokerage commissions. Total closing costs are not expected to exceed $1,200.00 and brokerage commissions are not expected to exceed $3,000.00. Funds received will be deposited to the Renewal and Replacement Fund.

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 $50,000.00 FOR THE SALE OF 23011 SHADY FOREST, ELMENDORF, BEXAR COUNTY, TEXAS (THE “PROPERTY”), AND APPROVING A PURCHASE AGREEMENT WITH ANGELA PORITZ AND VERONA CURRY; 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 $1,200.00 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 located at 23011 Shady Forest, Elmendorf, Bexar County, Texas, as surplus by Resolution No. 16-198, approved on August 2, 2016 and further authorized the sale of the Property via 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; and

WHEREAS, City Ordinance No. 2017-09-07-0629 approved on September 7, 2017, declared the Property generally depicted on the Aerial Map attached as Attachment I hereto, as surplus, and further authorized the sale of the Property via Section 253.014 of the Texas Local Government Code; 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 $50,000.00 for the Property was received by Angela Poritz and Verona Curry (“Buyer”) pursuant to a Purchase Agreement (the “Purchase Agreement”), subject to Board approval; and

WHEREAS, the System’s Brokerage Agreement No. S-17-019-JAM (the “Brokerage Agreement”) with Cano and Company, approved by the Board by Resolution No. 17-269, dated December 5, 2017, 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 $1,200.00 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 $50,000.00 for the Property and approve a Purchase Agreement with Buyer 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 $1,200.00 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 $50,000.00 for the Property is hereby accepted and a Purchase Agreement (including a First Amendment to Purchase Agreement with Buyer for the sale of said Property) is hereby approved as attached hereto as Attachment II 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 $1,200.00 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 November, 2018.

__________________________________
Berto Guerra, Jr., Chairman

ATTEST:

__________________________________
Patricia E. Merritt, Assistant Secretary

Attachments:
I. Aerial Depiction
II. Purchase Agreement (including First Amendment to Purchase Agreement)
PURCHASE AGREEMENT
23011 Shady Forest, Elmendorf

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 Angela Poritz and Verona Curry, hereinafter collectively 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 2, Block 152, WATERWOOD SUBDIVISION, UNIT 47, Bexar County, Texas, according to the plat thereof recorded in Volume 9518, Page 22, Deed and Plat Records of Bexar County, Texas (the "Property"), together with Seller's right, title and interest in all improvements thereon, if any, and 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 FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00).

   b. Earnest Money. Buyer shall deposit FIVE THOUSAND AND NO/100 DOLLARS ($5,000.00) with Alamo Title Company, Attn: Laura Raul, 434 N Loop 1604 W, Suite 2208, San Antonio, Texas 78232 ("Title Company"), as earnest money ("Earnest Money"). The Earnest Money shall be credited toward the Purchase Price at closing of 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 of 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 the Date of this Agreement (hereinafter defined), Buyer shall pay to Seller by certified cashier's check the sum of ONE HUNDRED AND NO/100 DOLLARS ($100.00) (the "Independent Consideration") as independent consideration for the Agreement and for Buyer's termination rights under Section 8 hereinafter. The Independent Consideration shall be non-refundable except in the event of a Seller 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 ten (10) 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, Seller 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 all official public records (including the Deed and Plat Records, Real Property Records and Official Public Records) of Bexar County, Texas and (iii) all applicable zoning, platting and other governmental ordinances, laws, rules and regulations.

8. Feasibility Period. On or before 5:00 pm San Antonio local time on the day that is twenty one (21) days after the Effective Date (the “Feasibility Period”), the Buyer shall obtain approvals for any necessary financing and 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 Seller 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. Upon such event this Agreement shall terminate and be of no further force and effect, except for the obligations in this Section 8 that survive termination, Buyer shall receive back any 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.

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, TRUSTEES, OFFICIALS OR REPRESENTATIVES, ANY AND ALL SUCH RELIANCE BEING HEREBY EXPRESSLY AND UNCONDITIONALLY DISCLAIMED, BUT IS RELYING SOLELY AND EXCLUSIVELY UPON ITS OWN EXPERIENCE AND ITS INDEPENDENT JUDGMENT, EVALUATION AND EXAMINATION OF THE PROPERTY. BUYER FURTHER UNCONDITIONALLY DISCLAIMS (I) THE EXISTENCE OR ANY DUTY TO DISCLOSE ON THE PART OF SELLER OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS, TRUSTEES, OFFICIALS OR REPRESENTATIVES AND (II) ANY RELIANCE BY BUYER ON THE SILENCE OR ANY ALLEGED NON-DISCLOSURE OF SELLER OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS, TRUSTEES, OFFICIALS OR REPRESENTATIVES, AND HEREBY RELEASES SELLER AND ITS AGENTS, EMPLOYEES, BROKERS, TRUSTEES, OFFICIALS 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, BROKERS, TRUSTEES, OFFICIALS OR REPRESENTATIVES. BUYER TAKES THE PROPERTY UNDER THE EXPRESS UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES. BUYER EXPRESSLY DISCLAIMS ANY SUCH IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

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 November 9, 2018 (the "Closing Date"), or, provided all conditions to closing have been met, such earlier date as the parties may agree to.

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 sale 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. Seller 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 in this section shall survive Closing.

b. Title Insurance Premium. Seller shall pay the basic premium for the Title Policy and Buyer shall pay the cost of any lender’s policy, deletions or endorsements Buyer elects to obtain.

c. Fees. Any escrow fees 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, emailing 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  
Attn: Mark E. Brewton, Corporate Counsel  
2800 US 281 North  
San Antonio, Texas 78212  
mark.brewton@saws.org

Buyer:  
Angela Poritz and Verona Curry  
1302 Carmel Oaks  
San Antonio, Texas 78253  
Angie181618@aol.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, including without limitation 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. To the extent any sale from Seller to Buyer closes pursuant to this Agreement, Seller will pay at Closing a six percent (6%) brokerage fee (the “Commission”) to Cano & Company (“Seller’s Broker”) pursuant to a separate written agreement. If Buyer has engaged a broker (“Buyer’s Broker”) via written brokerage agreement, Seller’s Broker has agreed via its separate written agreement with Seller to share the Commission equally with Buyer’s Broker. To further memorialize such Commission splitting, Seller’s Broker and Buyer’s Broker shall execute the Brokers’ Addendum attached hereto. The Buyer represents and warrants that no broker other than Buyer’s Broker as identified in the Broker’s Addendum 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 THIS EFFECT IS HEREBY GIVEN TO BUYER.

   b. **Notice Regarding Possible Liability for Additional Taxes (Texas Property Code-Sec 11.5010).** If in 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 appraisals 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.

e. **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.

25. **No Prohibited Persons/Entities.** Buyer represents and warrants to Seller that Buyer is not (i) an employee of the San Antonio Water System, (ii) the spouse or domestic partner of an employee of the San Antonio Water System or (iii) an entity in which an employee of the San Antonio System or spouse or domestic partner of an employee of the San Antonio Water System owns ten percent (10%) or more of the voting stock or fair market value of the entity. The violation of this provision or determination by Seller that the Buyer is a prohibited person/entity as set forth hereinafore shall render this Agreement voidable by the President of the Board of Trustees of the San Antonio Water System.

Seller:

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

BY:

Nancy Belinsky
Vice President and General Counsel

9/15/2018 53:56 AM PDT

EXECUTED by Buyer on ____________, 2018.

Buyer:

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

Alamo Title Company ("Title Company") acknowledges receipt of $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: [Sept. 20, 2016]
GF#: [000415]
BROKER’S ADDENDUM
TO PURCHASE AGREEMENT
23011 Shady Forest, Elmdorf

Cano & Company ("Seller’s Broker") will receive a 6% commission (the “Commission”) of the Purchase Price at Closing, if and only if Closing occurs, pursuant to a separate written agreement between Seller and Seller’s Broker.

If Seller’s Broker receives the Commission, Seller’s Broker shall, at Closing, split the Commission on a 50/50 basis with George Cunningham, Essex Properties ("Buyer’s Broker"), such that Buyer’s Broker shall receive from Seller’s Broker an amount equal to 3% of the Purchase Price.

Buyer’s Broker agrees to look solely to Seller’s Broker for a share of the Commission, and releases and agrees to hold harmless Seller for any claim for a brokerage commission or fee.

Cano & Company

By: [Signature]
Printed Name: Anthony Cano
Title: President

Essex Properties

By: [Signature]
Printed Name: George Cunningham
Title: Realtor
Texas Broker’s License #: 696242
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 goodwill and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property: Lot 2, Block 152, WATERWOOD SUBDIVISION, UNIT 47, Bexar County, Texas, according to the plat thereof recorded in Volume 2418, Page 22, Deed and Plat Records of Bexar County, Texas, together with Grantee’s right, title and interest in all improvements thereon, if any, and all rights and appurtenances thereto.

Property Address: 23011 Study Forest, Elmendorf, Bexar County, Texas 78112

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 Deed and Plat Records, Real Property Records and Official Public Records of Bexar County, Texas.

Grantor, for the Consideration, grants, sells, and conveys to Grantee the Property, subject to the Exceptions to Conveyance, 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
THE PROPERTY MADE OR FURNISHED BY OR ON BEHALF OF, OR OTHERWISE
ATTRIBUTED TO, GRANTOR OR ANY OF ITS AGENTS, EMPLOYEES, BROKERS,
TRUSTEES, OFFICIALS 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, TRUSTEES,
OFFICIALS OR REPRESENTATIVES AND (II) ANY RELIANCE BY GRANTEE ON THE
SILENCE OR ANY ALLEGED NONDISCLOSURE OF GRANTOR OR ANY OF ITS AGENTS,
EMPLOYEES, BROKERS, TRUSTEES, OFFICIALS 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 2018 and all subsequent
years, which are assumed by Grantee. Any real estate 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 ____________, 2018, 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 __________, 2018
by ____________________________________.

[Seal]

Notary Public, State of Texas

After recording, return to:
First Amendment to Purchase Agreement
23011 Shady Forest, Elmendorf

This First Amendment to Purchase Agreement ("Amendment") is an amendment to that certain Purchase Agreement (the "Agreement") by and between the City of San Antonio by and through the San Antonio Water System ("Seller") and Angela Portz and Verona Curry (collectively, "Buyer") dated effective September 20, 2018, concerning property located at 23011 Shady Forest, Elmendorf, Bexar County, Texas, being more particularly described in the Agreement.

All capitalized terms herein, unless otherwise defined, have the meaning as set forth in the Agreement.

1. **Closing Date.** The Closing Date is hereby extended to occur on November 16, 2018.

2. **Other Terms.** All other terms, conditions and provisions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect as of the date thereof, except as expressly modified hereby.

3. **Counterparts.** This Amendment may be executed by facsimile or pdf transmission in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute but one and the same instrument.

EXECUTED to be effective as of the 17th day of October, 2018.

**Seller:**

City of San Antonio, Acting by and through the San Antonio Water System

[Signature]

By: Nancy Belinsky
Vice President and General Counsel

**Buyer:**

[Signature]

Angela Portz

[Signature]

Verona Curry
AGENDA ITEM NO. 17

TO: San Antonio Water System Board of Trustees

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

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

SUBJECT: AUTHORIZATION TO PURCHASE A PERMANENT WATER LINE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENTS FOR THE CENTRAL WATER INTEGRATION PIPELINE PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the purchase of a permanent water line easement containing approximately 0.104 acres and temporary construction easements containing approximately 0.228 acres (the “Easements”) for the Central Water Integration Pipeline Project (the “Project”). It also authorizes the expenditure of $206,847.03 for the Easements.

- San Antonio Water System (SAWS) has entered into the Water Transmission and Purchase Agreement with Vista Ridge, LLC to provide and deliver an alternate water supply to the System through the Vista Ridge Regional Supply Project. The Project will deliver water from the Vista Ridge Regional Supply Project to integration points within the distribution system.

- The Project consists of approximately 15 miles of new and existing transmission main beginning at the proposed pump station located at the Agua Vista Treatment Facility in north central Bexar County to the Basin Pump Station with intermediate drop-off points at Bitters and Maltzberger Pump Stations.

- Pipeline Segment 5-1, one of the portions of new transmission main, consists of approximately 10,300 feet of 54-inch diameter steel water main from the treatment facility to the intersection of South Loop 1604 frontage road and Voigt Drive where the pipeline will connect to an existing 48-inch diameter ductile iron water main.

- SAWS, the Mortgage Loan & Agency Company (the “Owner”) and, the long-term ground tenant, Short Living Trust (the “Tenant”) have agreed on a purchase amount of $206,847.03 for the Easements.
Authorization to Purchase Easements
Central Water Integration Pipeline Project

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.

The total amount is $206,847.03 for the acquisition of the Easements.

Bruce A. Haby
Manager
Corporate Real Estate

Nancy Belinsky
Vice President and General Counsel

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM (THE “SYSTEM”) BOARD OF TRUSTEES APPROVING THE ACQUISITION OF A PERMANENT WATER LINE EASEMENT BEING APPROXIMATELY 0.104 ACRES AND TEMPORARY CONSTRUCTION EASEMENTS BEING APPROXIMATELY 0.228 ACRES FROM MORTGAGE LOAN & AGENCY COMPANY (THE “OWNER”), JOINED BY SHORT LIVING TRUST (THE “TENANT”), LOCATED AT THE SOUTHWEST CORNER OF LOOP 1604 AND VOIGT DRIVE, IN BEXAR COUNTY, TEXAS (COLLECTIVELY, THE “EASEMENTS”), FOR THE CENTRAL WATER INTEGRATION PIPELINE PROJECT (THE “PROJECT”) IN AN AMOUNT NOT TO EXCEED $206,847.03; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the System has determined that acquisition of the Easements, being depicted in Attachment I and more particularly described in Attachment II, both attached hereto and incorporated herein for all purposes, is necessary for the Project; and

WHEREAS, the property on which the Easements are located was negotiated with Mortgage Loan & Agency Company (the “Owner”) and Short Living Trust (the “Tenant”); and

WHEREAS, the Owner, joined by Tenant (who has a long-term ground lease on the subject property) has agreed to grant the Easements to the System for the sum of $206,847.03; and

WHEREAS, funds in an amount not to exceed $206,847.03 are available in the Project Fund for the purchase of the Easements; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) approve the acquisition of the Easements for the Project, and (ii) authorize the expenditure of funds in an amount not to exceed $206,847.03 for the acquisition of the Easements; now, therefore:

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

1. That the acquisition of the Easements for the Project is hereby approved.

2. That the expenditure from the Project Fund in the CY 2016 Capital Improvement Program, Water Delivery Core Business, Central Water Integration Pipeline Project budget line item in a
total amount not to exceed $206,847.03 for the acquisition of the Easements is hereby approved, made available and is to be expended from the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to effectuate the acquisition of the Easements and to pay an amount not to exceed $206,847.03 to the Owner and Tenant (or any other party shown on a title report or commitment as having an interest in the real property) for the acquisition of the Easements.

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 November, 2018.

______________________________
Berto Guerra, Jr., Chairman

ATTEST:

Patricia E. Merritt, Assistant Secretary

Attachments:
I. Aerial Map
II. Permanent and Temporary Easements
NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL 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.

PERMANENT EASEMENT – WATER

STATE OF TEXAS §
COUNTY OF BEXAR §

THAT, MORTGAGE LOAN & AGENCY COMPANY, a Texas corporation, hereinafter referred to as "Grantor", whether one or more, for and in consideration in the amount of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to Grantor in hand paid by the SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, Bexar County, Texas, as given, granted, sold, conveyed, and dedicated, and by these presents, does give, grant, sell, convey, and dedicate unto the CITY OF SAN ANTONIO, a Texas Municipal Corporation for the use, benefit and control of the said SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, herein referred to as “Grantee”, as such and their successors in office appointed by the City Council of the said City of San Antonio as provided in Ordinance No. 75686, adopted at a regular meeting of said council, April 30, 1992, and subject to the terms and provisions of said ordinance, an easement to construct, reconstruct, realign, inspect, patrol, maintain, operate, repair, add, remove and replace water lines and facilities, and appurtenances thereto, in, over, and through the lands located in Bexar County, Texas as follows:

Being 0.104 acres of land in Bexar County, Texas, being out of and part of Lot 1, Block 1, New City Block 16329, Mortgage Loan & Agency Co. Subdivision Unit 1, according to the plat thereof record in Volume 9525, Page 116, Deed and Plat Records, Bexar County, Texas, and being more particularly described and depicted in Exhibits "A" and "B" attached hereto and made a part hereof (the “Easement Area”);

For the purpose of using said Easement Area for any and all things necessary for the construction, reconstruction, realignment, inspection, patrol, maintenance, operation, repair, addition, removal and/or replacement of the lines, facilities and appurtenances to be placed within the above described permanent Easement Area. The Grantee expressly agrees that it will remove from said land all surplus material and will, except for the presence of any at-grade and above ground facilities and appurtenances constructed by Grantee, cause said land to be left as nearly as possible in the condition as it existed prior to the construction of said improvements.

Together with the right of ingress and egress over said Easement Area and over Grantor’s adjoining lands for the purpose of constructing, reconstructing, realigning inspecting, patrolling, maintaining, operating, repairing, adding and removing said lines, facilities and appurtenances; the right to relocate said lines, facilities and appurtenances within said Easement Area; the right to
remove from said lands all trees and parts thereof, or other obstructions, which may interfere with the exercise of the rights granted hereunder; and the right of exercise of all other rights hereby granted; and Grantor expressly covenants and agrees for itself, its legal representatives, successors and/or assigns, that (i) no building or structure of any kind will be placed on said Easement Area and that removal of any building or structure placed on said Easement Area shall be at Grantor expense and (ii) Grantor will not change, or cause to be changed, the grade of the Easement Area, by fill or excavation, by more than two (2) feet without the prior written consent of Grantee, and that the removal and/or correction of such grade change made without Grantee’s consent shall be at Grantor expense.

TO HAVE AND TO HOLD the above described easement and rights unto the said Grantee, its successors and assigns, until the use of said easement shall be abandoned.

And Grantor does hereby bind itself, its legal representatives, successors and/or assigns to warrant and forever defend all and singular the above described easement and rights unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This Easement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Signature on following page
EXECUTED effective this __________ day of ____________, 2018

MORTGAGE LOAN & AGENCY COMPANY, a Texas corporation

By: _____________________________________
   Name: ____________________
   Title: _____________________

STATE OF TEXAS  §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this ______ day of ____________, 2018, by
____________________________________ (name), the ____________________ (title) of Mortgage Loan &
Agency Company, a Texas corporation, on behalf of same.

[Seal]      Notary Public
Consent and Joinder by Ground Tenant

The undersigned, SHORT LIVING TRUST, joins in the execution of this water easement to evidence its consent and agreement to the terms and provisions hereof, and to confirm and agree that the undersigned’s leasehold interest in the property upon which this water easement is located is subject and subordinate to the terms and provisions of this water easement, as the same may be amended or modified from time-to-time.

By: ______________________
__________________ (printed name), as Trustee of the Short Living Trust

STATE OF TEXAS §
COUNTY OF ____________ §

This instrument was acknowledged before me on this _____ day of ______________, 2018, by ____________________(printed name), as Trustee of the Short Living Trust.

[Seal] Notary Public
METES AND BOUNDS DESCRIPTION
OF
PARCEL NO. 17-241

Being a 0.104 acre tract of land, located in the City of San Antonio, Bexar County, Texas, being a portion of Lot 1, Block 1, N.C.B. 16329 of the MORTGAGE LOAN & AGENCY CO. Subdivision Unit 1 recorded in volume 9525, page 116 of the Deed and Plat Records of Bexar County, Texas and being part of that certain tract described in deed to Short Living Trust as recorded in volume 15097, page 1080 of the Official Public Records of Real Property of Bexar County Texas (O.P.R.R.P.B.C.T.).

COMMENCING, at a TxDOT Type 2 Monument found in the southerly right-of-way line of F.M. Highway 1604 (ROW VARIES), and the northerly northeast corner of said Lot 1, Block 1, and said Short Living Trust tract and also being the northerly northeast corner of Lot 1, Tract I, as described in deed to Clear Lake National Bank (Leased Agreement) as recorded in volume 8050, page 175, O.P.R.R.P.B.C.T.; THENCE, with said southerly line of F.M. Highway 1604, South 83 degrees 06 minutes 21 seconds West 159.78 feet to a found ½ inch Iron Rod at the northwest corner of the said Lot 1, Tract I, and being the point of beginning of herein described tract;

THENCE, with the west line of said Lot 1, Tract I, South 09 degrees 54 minutes 39 seconds East 29.34 feet to a set ½ inch Iron Rod with a GD Plastic Cap for the northwest corner of Lot 1, Tract III, as described in said Clear Lake National Bank (Leased Agreement);

THENCE, with the north line of said Lot I, Tract III, South 83 degrees 12 minutes 54 seconds East 13.19 feet to a set ½ inch Iron Rod with a GD Plastic Cap at the northwest corner of said Lot 1, Tract III;

THENCE, with the west line of said Lot 1, Tract III, South 06 degrees 47 minutes 06 seconds East 41.14 feet a set ½ inch Iron Rod with a GD Plastic Cap;

THENCE, through said Lot 1, Block 1, and said Short Living Trust tract, South 83 degrees 08 minutes 43 seconds West 43.82 feet to a set ½ inch Iron Rod with a GD Plastic Cap;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, North 52 degrees 07 minutes 26 seconds West 24.72 feet to a set ½ inch Iron Rod with a GD Plastic Cap;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, North 07 degrees 08 minutes 40 seconds West 52.97 feet to a set ½ inch Iron Rod with a GD Plastic Cap in the said southerly line of F.M. Highway 1604, and being the northerly line said Lot 1, Block 1, and said Short Living Trust tract;
THENCE, with said southerly line of F.M. Highway 1604, and the northerly line of said Short Living Trust tract, North 83 degrees 06 minutes 21 seconds East 73.32 feet to the POINT OF BEGINNING containing 0.104 of an acre of land. Survey plat of same date and parcel number accompanies and is a part of this description. Bearings are based on the Texas Coordinate System, South Central Zone, North American Datum of 1983, 2011 adjustment.

This the 15th day of June 2018

Ray D Wegler
Registered Professional Land Surveyor No. 4711
Rev. 1 08/16/2018
TEMPORARY CONSTRUCTION EASEMENT - WATER

STATE OF TEXAS §
COUNTY OF BEXAR §

KNOW ALL MEN BY THESE PRESENTS

THAT, MORTGAGE LOAN & AGENCY COMPANY, a Texas corporation, hereinafter referred to as "GRANTOR", for and in consideration in the amount of TEN DOLLARS ($10.00), and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, to GRANTOR in hand paid by the SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, Bexar County, Texas, has GIVEN, GRANTED, SOLD, CONVEYED, and DEDICATED, and by these presents, does GIVE, GRANT, SELL, CONVEY, and DEDICATE unto the CITY OF SAN ANTONIO, a Municipal Corporation for the use, benefit and control of the said SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, herein referred to as “Grantee”, as such and their successors in office appointed by the City Council of the said City of San Antonio as provided in Ordinance No. 75686, adopted at a regular meeting of said council, April 30, 1992 and subject to the terms and provisions of said ordinance, an easement over, across and upon the following described lands, for construction, storage and staging of materials and/or equipment for installation of water lines, facilities and appurtenances thereto:

Parcel P17-241T:
Being 0.014 acres of land in Bexar County, Texas, being out of and part of Lot 1, Block 1, New City Block 16329, Mortgage Loan & Agency Co. Subdivision Unit 1, according to the plat thereof record in Volume 9525, Page 116, Deed and Plat Records, Bexar County, Texas, and being more particularly described and depicted in Exhibits "A" and "B" attached hereto and made a part hereof;

Parcel P17-241TA:
Being 0.214 acres of land in Bexar County, Texas, being out of and part of Lot 1, Block 1, New City Block 16329, Mortgage Loan & Agency Co. Subdivision Unit 1, according to the plat thereof record in Volume 9525, Page 116, Deed and Plat Records, Bexar County, Texas, and being more particularly described and depicted in Exhibits "C" and "D" attached hereto and made a part hereof;

The areas described and depicted in Exhibits “A” through “D” are the “Temporary Construction Easement Area.”

For the purpose of using the Temporary Construction Easement Area for any and all things necessary for the construction of the aforesaid water lines, facilities and appurtenances. In further consideration of this grant, said GRANTEE expressly agrees that it will remove from the
Temporary Construction Easement Area all surplus material and will cause same to be left as nearly as possible in its condition as it existed prior to the construction of said improvements. The temporary construction easement shall commence on January 1, 2019 and expire upon December 31, 2019, provided, however, GRANTEE’s use of the Temporary Construction Easement Area shall be limited to a total of one hundred twenty (120) days (non-consecutive) during such period.

NOTWITHSTANDING THE FOREGOING, GRANTEE’S RIGHTS UPON PARCEL P17-241TA REFERENCED ABOVE AND DESCRIBED AND DEPICTED IN EXHIBITS “C” AND “D” SHALL BE LIMITED TO VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS.

Together with the right of ingress and egress over the Temporary Construction Easement Area; and GRANTOR expressly covenants and agrees for itself, its legal representatives, successors and/or assigns, that, during the term of this temporary construction easement, no building or other obstruction of any kind will be placed by or for GRANTOR or its legal representatives, successors and/or assigns, within said temporary construction easement area.

TO HAVE AND TO HOLD the above described easement and rights unto the said GRANTEE, its successors and assigns, until the expiration of this temporary construction easement according to its terms.

And GRANTOR does hereby bind itself, its legal representatives, successors and/or assigns to warrant and forever defend all and singular the above described easement and rights unto the said GRANTEE, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.
EXECUTED effective this _____________ day of _____________, 2018

MORTGAGE LOAN & AGENCY COMPANY, a Texas corporation

By: _____________________________________
   Name: ____________________
   Title: _____________________

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this ______ day of ______________, 2018, by
________________________ (name), the __________________ (title) of Mortgage Loan &
Agency Company, a Texas corporation, on behalf of same.

________________________________________
[Seal] Notary Public
Consent and Joinder by Ground Tenant

The undersigned, SHORT LIVING TRUST, joins in the execution of this temporary construction easement to evidence its consent and agreement to the terms and provisions hereof, and to confirm and agree that the undersigned’s leasehold interest in the property upon which this temporary construction easement is located is subject and subordinate to the terms and provisions of this temporary construction easement, as the same may be amended or modified from time-to-time.

By: ______________________
__________________ (printed name), as Trustee of the Short Living Trust

STATE OF TEXAS §
COUNTY OF ____________ §

This instrument was acknowledged before me on this _____ day of _______________, 2018, by ______________________ (printed name), as Trustee of the Short Living Trust.

[Seal]

__________________ Notary Public
METES AND BOUNDS DESCRIPTION
OF PARCEL NO. 17-241T

Being a 0.014 acre tract of land, located in the City of San Antonio, Bexar County, Texas, being a portion of Lot 1, Block 1, N.C.B. 16329 of the MORTGAGE LOAN & AGENCY CO. Subdivision Unit 1 recorded in volume 9525, page 116 of the Deed and Plat Records of Bexar County, Texas, and being a part of that certain tract described in deed to Short Living Trust as recorded in volume 15097, page 1080 of the Official Public Records of Real Property of Bexar County Texas (O.P.R.R.P.B.C.T.).

COMMENCING, at a ½ inch iron rod found in the southerly right-of-way line of F.M. Highway 1604 (ROW VARIES), and being in the northerly line said Lot 1, Block 1, and said Short Living Trust tract and also being the northwest corner of Lot 1, Tract I, as described in deed to Clear Lake National Bank (Leased Agreement) as recorded in volume 8050, page 112, O.P.R.R.P.B.C.T.; THENCE, with the west line of said Lot 1, Tract I, South 09 degrees 54 minutes 39 seconds East 29.34 feet to a set ½ inch Iron Rod with a GD Plastic Cap for the northeast corner of Lot 1, Tract III, as described in said Clear Lake National Bank (Leased Agreement); THENCE, with the north line of said Lot 1, Tract I, South 83 degrees 12 minutes 54 seconds East 13.19 feet to a set ½ inch Iron Rod with a GD Plastic Cap at the northwest corner of said Lot 1, Tract III; THENCE, with the west line of said Lot 1, Tract III, South 06 degrees 47 minutes 06 seconds East 40.14 feet to a set ½ inch Iron Rod with a GD Plastic Cap and being the Point of Beginning of herein described tract;

THENCE, continuing with the west line of said Lot 1, Tract III, South 06 degrees 47 minutes 06 seconds East 17.49 feet;

THENCE, through said Lot 1, Block 1, and said Short Living Trust tract, South 82 degrees 52 minutes 35 seconds West 26.01 feet;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, North 52 degrees 07 minutes 26 seconds West 25.02 feet to a set ½ inch Iron Rod with a GD Plastic Cap;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, North 83 degrees 08 minutes 43 seconds East 43.82 feet to the POINT OF BEGINNING containing 0.014 of an acre of land. Survey plat of same date and parcel number accompanies and is a part of this description. Bearings are based on the Texas Coordinate System, South Central Zone, North American Datum of 1983, 2011 adjustment.

This the 15th day of June 2018

Ray D Wegel
Registered Professional Land Surveyor No. 74711
Rev. 1 08/16/2018

www.gd-us.com
METES AND BOUNDS DESCRIPTION
OF
PARCEL NO. 17-241TA

Being a 0.214 acre tract of land, located in the City of San Antonio, Bexar County, Texas, being a portion of Lot 1, Block 1, N.C.B. 16329 of the MORTGAGE LOAN & AGENCY CO. Subdivision Unit 1 recorded in volume 9525, page 116 of the Deed and Plat Records of Bexar County, Texas, and being a part of that certain tract described in deed to Short Living Trust as recorded in volume 15097, page 1080 of the Official Public Records of Real Property of Bexar County Texas (O.P.R.B.C.T.).

COMMENCING, at a ½ inch iron rod found in the southerly right-of-way line of F.M. Highway 1604 (ROW VARIES), and being in the northerly line said Lot 1, Block 1, and said Short Living Trust tract and also being the northwest corner of Lot 1, Tract I, as described in deed to Clear Lake National Bank (Leased Agreement) as recorded in volume 8050, page 112, O.P.R.B.C.T.; THENCE, with said southerly line of F.M. Highway 1604, South 83 degrees 06 minutes 21 seconds West 73.32 feet to a set ½ inch Iron Rod with a GD Plastic Cap and being the Point of Beginning of herein described tract;

THENCE, through said Lot 1, Block 1, and said Short Living Trust tract, South 07 degrees 08 minutes 40 seconds East 52.97 feet to a set ½ inch Iron Rod with a GD Plastic Cap;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, South 52 degrees 07 minutes 26 seconds East passing a set ½ inch Iron Rod with a GD Plastic Cap at 24.72 feet and continuing a total distance of 49.74 feet;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, South 07 degrees 08 minutes 42 seconds East 138.23 feet;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, North 82 degrees 28 minutes 24 seconds East 49.06 feet to the west line of said Lot 1, Tract I, Clear Lake National Bank (Leased Agreement) tract;

THENCE, along the west line of said Lot 1, Tract I, Clear Lake National Bank (Leased Agreement) tract, South 09 degrees 54 minutes 39 seconds East 35.53 feet to the southwest corner of said Lot 1, Tract I, Clear Lake National Bank (Leased Agreement) tract;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, South 82 degrees 38 minutes 28 seconds West 76.06 feet;

THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, North 07 degrees 08 minutes 48 seconds West 176.99 feet;
THENCE, continuing through said Lot 1, Block 1, and said Short Living Trust tract, South 84 degrees 08 minutes 09 seconds West 40.87 feet;

THENCE, through said Lot 1, Block 1, and said Short Living Trust tract, North 07 degrees 21 minutes 11 seconds West 83.29 feet to the said southerly line of F.M. Highway 1604, and northerly line of said Lot 1, Block 1, and said Short Living Trust tract;

THENCE, with said southerly line of F.M. Highway 1604, North 83 degrees 08 minutes 21 seconds East 31.28 feet to the POINT OF BEGINNING containing 0.214 of an acre of land. Survey plan of same date and parcel number accompanies and is a part of this description. Bearings are based on the Texas Coordinate System, South Central Zone, North American Datum of 1983, 2011 adjustment.

This the 15th day of June 2018

Ray D Weger
Registered Professional Land Surveyor
Rev. 1 08/16/2018
TO: San Antonio Water System Board of Trustees

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

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

SUBJECT: AUTHORIZATION TO PURCHASE A PERMANENT WATER LINE EASEMENT AND TEMPORARY CONSTRUCTION EASEMENTS FOR THE CENTRAL WATER INTEGRATION PIPELINE PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the purchase of a permanent water line easement containing approximately 1.084 acres and temporary construction easements containing approximately 1.045 acres (the “Easements”) for the Central Water Integration Pipeline Project (the “Project”). It also authorizes the expenditure of $900,000.00 for the Easements.

- San Antonio Water System (SAWS) has entered into the Water Transmission and Purchase Agreement with Vista Ridge, LLC to provide and deliver an alternate water supply to the System through the Vista Ridge Regional Supply Project. The Project will deliver water from the Vista Ridge Regional Supply Project to integration points within the distribution system.

- The Project consists of approximately 15 miles of new and existing transmission main beginning at the proposed pump station located at the Agua Vista Treatment facility in north central Bexar County to the Basin Pump Station with intermediate drop-off points at Bitters and Maltzberger Pump Stations.

- Bitters Pump Station and Segment 5-3 Project, which includes one of the portions of new transmission main, consists of a new booster pump station, a new five million gallon prestressed concrete ground storage tank, a new flow control valve and associated yard piping, and approximately 1,900 feet of 48-inch steel water transmission main.

- The property on which the Easements are located is owned by Metro Creekside Texas, LLC (the “Owner”).

- SAWS and the Owner have agreed on a purchase amount of $900,000.00 for the Easements.
Authorization to Purchase Easements
Central Water Integration Pipeline Project

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.

The total amount is $900,000.00 for the acquisition of the Easements.

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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 APPROVING THE ACQUISITION OF A PERMANENT WATER LINE EASEMENT BEING APPROXIMATELY 1.084 ACRES AND TEMPORARY CONSTRUCTION EASEMENTS BEING APPROXIMATELY 1.045 ACRES IN THE AGGREGATE FROM METRO CREEKSDIE TEXAS, LLC., AND LOCATED AT THE SOUTHEAST CORNER OF WEST AVENUE AND BITTERS ROAD, IN BEXAR COUNTY, TEXAS (COLLECTIVELY, THE “EASEMENTS”), FOR THE CENTRAL WATER INTEGRATION PIPELINE PROJECT (THE “PROJECT”) IN AN AMOUNT NOT TO EXCEED $900,000.00; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the System has determined that acquisition of the Easements, being depicted in Attachment I and more particularly described in Attachment II, both attached hereto and incorporated herein for all purposes, is necessary for the Project; and

WHEREAS, the property on which the Easements are located is owned by Metro Creekside Texas, LLC (the “Owner”); and

WHEREAS, the Owner has agreed to grant the Easements to the System for the sum of $900,000.00; and

WHEREAS, funds in an amount not to exceed $900,000.00 are available in the Project Fund for the purchase of the Easements; and

WHEREAS, the San Antonio Water System Board of Trustees desires to (i) approve the acquisition of the Easements for the Project, and (ii) authorize the expenditure of funds in an amount not to exceed $900,000.00 for the acquisition of the Easements; now, therefore:

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

1. That the acquisition of the Easements for the Project is hereby approved.

2. That the expenditure from the Project Fund in the CY 2016 Capital Improvement Program, Water Delivery Core Business, Central Water Integration Pipeline Project budget line item in a total amount not to exceed $900,000.00 for the acquisition of the Easements is hereby approved, made available and is to be expended from the Project Fund.
3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to effectuate the acquisition of the Easements and to pay an amount not to exceed $900,000.00 to the Owner (or any other party shown on a title report or commitment as having an interest in the real property) for the acquisition of the Easements.

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 November, 2018.

__________________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Patricia E. Merritt, Assistant Secretary

Attachments:
I Aerial Map
II Permanent and Temporary Easements
NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL 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.

PERMANENT EASEMENT – WATER

STATE OF TEXAS

COUNTY OF BEXAR

THAT, METRO CREEKSIDE TEXAS, LLC, a Texas limited liability company, hereinafter referred to as “Grantor”, whether one or more, for and in consideration in the amount of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, to Grantor in hand paid by the SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, Bexar County, Texas, has given, granted, sold, conveyed, and dedicated, and by these presents, does give, grant, sell, convey, and dedicate unto the CITY OF SAN ANTONIO, a Texas Municipal Corporation for the use, benefit and control of the said SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, herein referred to as “Grantee”, as such and their successors in office appointed by the City Council of the said City of San Antonio as provided in Ordinance No. 75686, adopted at a regular meeting of said council, April 30, 1992, and subject to the terms and provisions of said ordinance, an easement to construct, reconstruct, realign, inspect, patrol, maintain, operate, repair, add, remove and replace water lines and facilities, and appurtenances thereto, in, over and through the lands located in Bexar County, Texas as follows:

Being 1.084 acres, located in the City of San Antonio, Bexar County, Texas, being a portion of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 as recorded in Volume 9518, Page 83 of the Deed and Plat Records of Bexar County, Texas, and being more particularly described and depicted in Exhibits "A" and "B" attached hereto and made a part hereof (the “Easement Area”);

For the purpose of using said Easement Area for any and all things necessary for the construction, reconstruction, realignment, inspection, patrol, maintenance, operation, repair, addition, removal and/or replacement of the lines, facilities and appurtenances to be placed within the above described permanent Easement Area. The Grantee expressly agrees that it will remove from said land all surplus material and will, except for the presence of any at-grade facilities and appurtenances constructed by Grantee, cause said land to be left as nearly as possible in the condition as it existed prior to the construction, repair or replacement of said improvements.

Together with the right of ingress and egress over said Easement Area and over Grantor’s adjoining lands for the purpose of constructing, reconstructing, realigning inspecting, patrolling, maintaining, operating, repairing, adding and removing said lines, facilities and appurtenances; the right to relocate said lines, facilities and appurtenances within said Easement Area; the right to remove from said lands all trees and parts thereof, or other obstructions, which may interfere with
the exercise of the rights granted hereunder; and the right of exercise of all other rights hereby granted; and Grantor expressly covenants and agrees for itself, its legal representatives, successors and/or assigns, that (i) no building or structure of any kind will be placed on said Easement Area and that removal of any building or structure placed on said Easement Area shall be at Grantor expense and (ii) Grantor will not change, or cause to be changed, the grade of the Easement Area, by fill or excavation, by more than two (2) feet without the prior written consent of Grantee, and that the removal and/or correction of such grade change made without Grantee’s consent shall be at Grantor expense, provided, however, that Grantor reserves all rights not expressly granted hereby and expressly retains the right to use the surface of the Easement Area for all purposes not inconsistent with the grant of the water line easement herein, including without limitation the right to use the surface for driveway and parking purposes and sheet flow of storm water runoff to drainage and detention facilities.

TO HAVE AND TO HOLD the above described easement and rights unto the said Grantee, its successors and assigns, until the use of said easement shall be abandoned.

And Grantor does hereby bind itself, its legal representatives, successors and/or assigns to warrant and forever defend all and singular the above described easement and rights unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This Easement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Signature on following page
EXECUTED effective this _______ day of ________, 2018

Grantor:

METRO CREEKIDE TEXAS, LLC, a Texas limited liability company

By: Creekside Metro, LLC, a California limited liability company, Sole Member

Scott C. Looney as Trustee of the 1998 S.C.L. Revocable Trust, its Manager

State of California
County of Orange

On ________, 2018, before me, WILLIAM TOMPKINS, Notary Public, personally appeared Scott C. Looney, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: __________________________
Notary Public/State of California

[Notary Public Stamp]
Consent and Subordination by Tenant

The undersigned, Hobby Lobby Stores, Inc., an Oklahoma corporation, hereby gives its consent and agreement to the terms and provisions of this Permanent Easement – Water to which this consent and subordination is attached, and to confirm and agree that any and all interest held by the undersigned pursuant to its Lease Agreement dated October 27, 1995, as amended by a certain First Amendment to Lease Agreement dated July 1, 2012, together with all other amendments, and as may be amended in the future, are subject and subordinate to the terms and provisions of this Permanent Easement – Water.

Hobby Lobby Stores, Inc., an Oklahoma corporation

By: __________________________________________
Printed name:                                                        
Title:    

STATE OF Oklahoma
COUNTY OF Oklahoma

This instrument was acknowledged before me in this 14 day of September, 2018, by __________________________________________
(name), ________________________ (title) of Hobby Lobby Stores, Inc., an Oklahoma corporation, on behalf of said corporation.

[Seal]

Notary Public

DRAFT
Exhibit "A"

GONZALEZ DE LA GARZA

4800 Fredericksburg Rd., Suite 2005
San Antonio, TX 78229
210.204.9400

TBPE Firm No. 10015
TBPLS Firm No. 10193922

METES AND BOUNDS DESCRIPTION
OF
PARCEL NO. 17-242

Being a 1.084 acre tract of land, located in the City of San Antonio, Bexar County, Texas, being a portion of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 as recorded in volume 9518, page 83 of the Deed and Plat Records of Bexar County, Texas (D.P.R.B.C.T.) and being a part of that certain tract of land described in deed to Metro Creekside Texas, L.L.C. as recorded in volume 8987, page 2055, of the Official Public Records of Real Property of Bexar County (O.P.R.R.B.C.T.);

COMMENCING, at a found ½ inch Iron Rod in the westerly right-of-way line of W Bitters Road (ROW VARIES), being the easterly corner of Lot 46, NCB 12059, Embassy North Unit-3 as recorded in volume 9523, page 142 D.P.R.B.C.T.; THENCE, with the southerly line said Lot 46, NCB 12059, Embassy North Unit-3, South 41 degrees 38 minutes 00 seconds West 4.78 feet to a set ½ inch Iron Rod with a GD Plastic Cap at a northerly northeast corner of said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being a northerly northeast corner of said Metro Creekside L.L.C tract and being the Point of Beginning of herein described tract;

THENCE, with said westerly right-of-way of W Bitters Road, said the easterly line of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being the easterly line of said Metro Creekside L.L.C tract, South 48 degrees 43 minutes 07 seconds East 294.95 feet to a set ½ inch Iron Rod with a GD Plastic Cap;

THENCE, through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 88 degrees 03 minutes 10 seconds West 47.34 feet to a set ½ inch Iron Rod with a GD Plastic Cap;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 48 degrees 43 minutes 07 seconds West 203.51 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 41 degrees 38 minutes 00 seconds West 243.46 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 81 degrees 49 minutes 02 seconds West 45.01 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 36 degrees 38 minutes 13 seconds West 208.28 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 77 degrees 58 minutes 35 seconds West 12.66 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 41 degrees 38 minutes 00 seconds West 126.18 feet to a Cut X in Concrete;
THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 87 degrees 39 minutes 22 seconds West 37.14 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 48 degrees 22 minutes 00 seconds West 37.29 feet to a set ½ inch Iron Rod with a GD Plastic Cap in the southerly right-of-way of West Avenue (68' ROW);

THENCE, with the said southerly right-of-way of West Avenue and a northerly line of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 41 degrees 38 minutes 00 seconds East 242.21 feet to a set ½ inch Iron Rod with a GD Plastic Cap at the westerly corner of the remaining portion of Lot 30, NCB 12059, Embassy North Unit -3 as recorded in volume 9518, page 500, P.R.B.C.T.;

THENCE, with the said westerly line of Lot 30, NCB 12059, Embassy North Unit -3, and an easterly line of said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract South 48 degrees 40 minutes 15 seconds East, 24.97 feet to a set ½ inch Iron Rod with a GD Plastic Cap at the point of curvature of a curve to the left, having a radius of 105.00 feet, a central angle of 37 degrees 56 minutes 09 seconds and a chord that bears South 17 degrees 40 minutes 00 seconds East 68.25 feet;

THENCE, through said Lot 34, NCB 12059, Embassy North subdivision Unit 7 and said Metro Creekside L.L.C tract, with the arc of previously cited curve 69.51 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 36 degrees 38 minutes 13 seconds East 181.63 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 41 degrees 38 minutes 00 seconds East passing the southerly corner of said Lot 46, NCB 12059, Embassy North Unit -3 approximately 68 feet and continuing a total distance of 243.24 feet to the POINT OF BEGINNING containing 1.084 acres of land. Survey Plat of same date and Parcel number accompanies and is a part of this description. Bearings are based on the Texas Coordinate System, South Central Zone, North American Datum of 1983, 2011 adjustment.

This the 19th day of June 2018

Ray D Weger
Registered Professional Land Surveyor No. 4711
NOTES:
1. BEARINGS ARE BASED ON THE TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT.
2. METES AND BOUNDS DESCRIPTION OF SAME DATE AND PARCEL NUMBER ACCOMPANIES AND IS A PART OF THIS PLAT.
- SET 1/2 INCH IRON ROD WITH A GD PLASTIC CAP
- CUT X IN CONCRETE
- FOUND 1/2 INCH IRON ROD UNLESS OTHERWISE NOTED.
- FOUND RIGHT OF WAY TYPE 2 MONUMENT.
D.P.R.B.C.T. DEED AND PLAT RECORDS BEXAR COUNTY TEXAS.
D.P.R.B.C.T. OFFICIAL PUBLIC RECORDS OF REAL PROXIMITY BEXAR COUNTY TEXAS.

EMBASSY NORTH SUBDIVISION UNIT-7
VOLUME 9518, PAGE 83 D.P.R.B.C.T.

LOT 34
HCB 12005
METRO CREESIDE TEXAS, LLC
VOL. 8687, PG. 2055 D.P.R.B.C.T.

LOT 42
VOL. 5520, PG. 117, D.P.R.B.C.T.

PROJECT: CENTRAL WATER INTEGRATION PIPELINE PROJECT
SAPWS PARCEL NO.: 197-242
PARCEL 5 OF 5

PARCEL PLAT SHOWING PERMANENT EASEMENT WIDTH VARIES

CENTRAL WATER INTEGRATION PIPELINE PROJECT

REV. 1
JUNE 19, 2018

EXHIBIT B

STATE OF TEXAS
REGISTRATION No. 4711

RAY D. WEBER
PROFESSIONAL LAND SURVEYOR

06/15/2018
MORTGAGEE CONSENT

StanCap Insurance Company, Inc., an Oregon corporation, Safeco Insurance Company of America, a New Hampshire stock insurance company, Peerless Insurance Company, a New Hampshire stock insurance company, The Ohio Casualty Insurance Company, a New Hampshire stock insurance company, Liberty Mutual Insurance Company, a Massachusetts stock insurance company, Liberty Mutual Fire Insurance Company, a Wisconsin stock insurance company, Liberty Life Assurance Company of Boston, a New Hampshire stock life insurance company, Employers Insurance Company of Wausau, a Wisconsin stock insurance company, Banner Life Insurance Company, a Maryland insurance company, and Banner Bank, a Washington chartered commercial bank, all as to an undivided interest ("Lender"), owner and holder of a note secured by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated March 19, 2015, recorded April 10, 2015 in Document No. 20150061303 Book 17177 Page 134, in the county of Bexar, and Assignment of Lessor's Interest in Leases of even date recorded in Document No. 20150061304 Book 17177 Page 166, in the aforesaid county, the interests in the foregoing documents being assigned by that Corrective Assignment of Beneficial Interest in Deed of Trust and Related Loan Documents, dated effective May 12, 2015, recorded July 17, 2017 in Document No. 20170137533 Book 18627 Page 272, for the property located at 286 Bitters Road, San Antonio, TX 78216, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, hereby consents to the creation of the Easement as described in Permanent Easement - Water for Parcel P17-242 and agrees that said Easement shall remain in effect even in the event of foreclosure of its Deed of Trust.

LENDER:

Banner Bank,
a Washington chartered commercial bank
by StanCorp Mortgage Investors, LLC,
an Oregon limited liability company,
its Attorney in Fact

By: _______________________
   Amy Frazey, Assistant Vice President

ATTEST:

By: _______________________
   Jason F. Wells, Manager

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW
[Signatures continue on following pages.]
Banner Life Insurance Company, a Maryland insurance company, by StanCorp Mortgage Investors, LLC, an Oregon limited liability company, its Attorney in Fact

By: ____________________________
   Amy Frazey, Assistant Vice President

ATTEST:

By: ____________________________
   Jason F. Wells, Manager

Liberty Life Assurance Company of Boston, a New Hampshire stock life insurance company, by StanCorp Mortgage Investors, LLC, an Oregon limited liability company, its Attorney in Fact

By: ____________________________
   Amy Frazey, Assistant Vice President

ATTEST:

By: ____________________________
   Jason F. Wells, Manager

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW

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[Signatures continue on following pages.]
Liberty Mutual Insurance Company, a Massachusetts stock insurance company,
Liberty Mutual Fire Insurance Company, a Wisconsin stock insurance company,
Peerless Insurance Company, a New Hampshire stock insurance company,
Employers Insurance Company of Wausau, a Wisconsin stock insurance company,
The Ohio Casualty Insurance Company, a New Hampshire stock insurance company,
Safeco Insurance Company of America, a New Hampshire stock insurance company
by StanCorp Mortgage Investors, LLC, an Oregon limited liability company,
their Attorney in Fact

By: [Signature]
Amy Frazey, Assistant Vice President

Attest: [Signature]
Jason F. Wells, Manager

NOTARY ACKNOWLEDGMENT TO BE ATTACHED
IN ACCORDANCE WITH STATE LAW

[Signatures continue on following page.]
On this 12th day of October, 2018, before me Leonardo De Lima Prado appeared AMY FRAZEY and JASON F. WELLS both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President and (s)he, the said JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, as the attorney in fact for BANNER BANK, a Washington chartered commercial bank, the within named company, and that the said document was signed on their behalf, and AMY FRAZEY and JASON F. WELLS acknowledged said document to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

[Signature]

Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020

STATE OF OREGON

COUNTY OF WASHINGTON

On this 12th day of October, 2018, before me Leonardo De Lima Prado appeared AMY FRAZEY and JASON F. WELLS both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President and (s)he, the said JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, as the attorney in fact for BANNER LIFE INSURANCE COMPANY, a Maryland insurance company, the within named company, and that the said document was signed on their behalf, and AMY FRAZEY and JASON F. WELLS acknowledged said document to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

[Signature]

Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020
STATE OF OREGON

COUNTY OF WASHINGTON

On this 12th day of October, 2018, before me, Leonardo De Lima Prado, appeared AMY FRAZEY and JASON F. WELLS both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President and he, the said JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, as the attorney in fact for LIBERTY LIFE ASSURANCE COMPANY OF BOSTON, the within named companies, and that the said document was signed on their behalf, and AMY FRAZEY and JASON F. WELLS acknowledged said document to be the free act and deed of said companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

[Signature]
Notary: Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020
On this 12th day of October, before me, Leonardo De Lima Prado, appeared AMY FRAZEY and JASON F. WELLS both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President and he, the said JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, as the attorney in fact for LIBERTY MUTUAL INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, EMPLOYERS INSURANCE COMPANY OF WAUSAU, THE OHIO CASUALTY INSURANCE COMPANY, and SAFECO INSURANCE COMPANY OF AMERICA the within named companies, and that the said document was signed on their behalf, and AMY FRAZEY and JASON F. WELLS acknowledged said document to be the free act and deed of said companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

[Signature]

Notary: Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020
StanCap Insurance Company, Inc.,
an Oregon corporation

By: [Signature]
Robert M. Erickson,
Treasurer

ATTEST:
By: [Signature]
Scott Hibbs
Sr. VP

STATE OF OREGON
COUNTY OF MULTNOMAH

On this 16th day of October, 2018, before me, Tommy Jones, a Notary Public in and for said County and State, personally appeared ROBERT M. ERICKSON and Scott Hibbs (name of attest), both to me personally known, who being duly sworn did say that he, the said ROBERT M. ERICKSON is the Treasurer and (s)he, the said Scott Hibbs (name of attest) is the Sr. VP and CIO (title of attest) of STANCAP INSURANCE COMPANY, INC. the within named corporation, and that the said document was signed in behalf of said corporation, and ROBERT M. ERICKSON and Scott Hibbs (name of attest) acknowledge said document to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last written.

[Notary Seal]

My Commission Expires: July 18, 2022
TRACT I
A 9.527 acre, or 415,008 square foot more or less, being the remaining portion of Lot 34 of the EMBASSY NORTH SUBDIVISION, UNIT 7, recorded in Volume 9518, Pages 82-83 of the Deed and Plat Records of Bexar County, Texas, being the same tract of land as conveyed to Metro Creekside Texas, L.L.C. in Special Warranty Deed with Vendor’s Lien recorded in Volume 8987, Pages 2055-2065 of the Official Public Records of Real Property of Bexar County, Texas, all in New City Block (N.C.B.) 12059 of the City of San Antonio, Bexar County, Texas. Said 9.527 acre tract of land being more particularly described by metes and bounds on Exhibit "A-I" attached hereto.

TRACT II
A non-exclusive easement for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, over, through and around a 3.246 acre tract of land (save and except 0.600 acre thereof) of Lot 35, New City Block 12059, EMBASSY NORTH SUBDIVISION, UNIT 7, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9518, Pages 82-83 of the Deed and Plat Records, as created and granted by that certain Easement With Covenants And Restrictions Affecting Land ("ECR") recorded in Volume 4184, Page 817 of the Real Property Records of Bexar County, Texas, as amended and supplemented by those two certain Affidavits Of Reciprocal Parking Rights recorded in Volume 4158, Page 1836 and Volume 4158, Page 1838 of the Real Property Records of Bexar County, Texas.

NOTE: The Company does not represent that any acreage or square footage calculations in the above description or in any exhibit attached hereto are correct.
EXHIBIT A-1

FIELD NOTES
FOR

TRACT I

A 9.527 acre, or 415,008 square foot more or less, tract of land being all of the remaining portion of Lot 34 of the Embassy North Subdivision, Unit 7 recorded in Volume 9518, Page 83 of the Deed and Plat Records of Bexar County, Texas, being the same tract of land as conveyed to Metro Creekside Texas, L.L.C. in Special Warranty Deed with Vendor's Lien recorded in Volume 8987, Pages 2055-2065 of the Official Public Records of Real Property of Bexar County, Texas, all in New City Block (N.C.B.) 12059 of the City of San Antonio, Bexar County, Texas. Said 9.527 acre tract being more fully described as follows, with the basis of bearing on the North American Datum of 1983 (CORS 1996), from the Texas coordinate system established for the South Central Zone:

BEGINNING: At a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the southeast right-of-way line of West Avenue, a 86-foot right-of-way, the northwest corner of the remainder of Lot 30 recorded in Volume 7675, Pages 925-929 of the Official Public Records of Real Property of Bexar County, Texas, the north corner of said remaining portion of Lot 34;

THENCE:
S 48°39'59"E, departing the southeast right-of-way line of said West Avenue, along and with a northeast line of said remaining portion of Lot 34, the northwest line of said remainder of Lot 30, at a distance of 162.04 feet passing the southeast corner of said remainder of Lot 30, the west corner of Lot 46 of the Embassy North Subdivision recorded in Volume 9523, Page 142 of the Deed and Plat Records of Bexar County, Texas, continuing along and with the southwest line of Lot 46 of said Embassy North Subdivision, Unit 3, for a total distance of 261.50 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:
N 41°38'16"E, along and with a north line of said remaining portion of Lot 34, the southeast line of said Lot 46, a distance of 170.22 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the southwest right-of-way line of Bitters Road a variable width right-of-way;

THENCE:
S 48°42'52"E, along and with the southwest right-of-way line of said Bitters Road, a northeast line of said remaining portion of Lot 34, a distance of 312.61 feet to the northeast comer of Lot 42 of Embassy North Subdivision, Unit 8 recorded in Volume 9520, Pages 116-117 of the Deed and Plat Records of Bexar County, Texas, the east comer of said remaining portion of Lot 34;

THENCE:
S 41°26'22"W, departing the southwest right-of-way line of said Bitters Road, and with a southeast line of said remaining portion of Lot 34, the northwest line of said Lot 42, at a distance of 167.49 feet passing the northwest comer of said Lot 42, the northeast corner of a 2.245 acre tract recorded in Volume 9386, Page 1828-1840 of the Official Public Records of Real Property of Bexar County, Texas, continuing along and with a northwest line of said 2.245 acre tract, a southeast line of said remaining portion of Lot 34, for a total distance of 327.81 feet to a found PK nail, a south corner of said remaining portion of Lot 34;
THENCE:
N 48°33'38"W, along and with a southwest line of remaining portion of Lot 34, a northeast line of said 2.245 acre tract, a distance of 145.03 feet to a set PK nail, a re-entrant corner of said remaining portion of Lot 34;

THENCE:
S 41°26'22"W, along and with the northwest line of said 2.245 acre tract, the southeast line of said remaining portion of Lot 34, at a distance of 254.30 feet passing the northwest corner of said 2.245 acre tract, the northeast corner of Lot 40 of the Embassy North Subdivision, Unit 8 recorded in Volume 9320, Pages 116-117 of the Deed and Plat Records of Bexar County, Texas, continuing along and with the northeast line of said Lot 40, a southwest line of remaining portion of Lot 34, for a total distance of 845.00 feet to a found ½" iron rod on the northeast right-of-way line of Embassy Oaks a 60-foot right-of-way as recorded in Volume 9516, Page 111-115 of the Deed and Plat Records of Bexar County, Texas, a south corner of said remaining portion of Lot 34;

THENCE:
N 52°13'33"W, along and with the northeast right-of-way line of said Embassy Oaks, a southwest line of said remaining portion of Lot 34, a distance of 40.08 feet to a found 1/2" iron rod marked "Sunbelt", the south corner of Lot 57 of Embassy North Subdivision, Unit 7 recorded in Volume 9532, Page 186 of the Deed and Plat Records of Bexar County, Texas, the southwest comer of said remaining portion of Lot 34;

THENCE:
N 41°26'22"E, departing the northeast right-of-way line of said Embassy Oaks, along and with the southwest line of said Lot 57, a southwest line of said remaining portion of Lot 34, a distance of 240.00 feet to a set "x" in concrete, the east corner of said Lot 57, a re-entrant corner of said remaining portion of Lot 34;

THENCE:
N 48°33'38"W, along and with a southwest line of said remaining portion of Lot 34, the northwest line of said Lot 57, at a distance of 176.10 feet passing the north corner of said Lot 57, the east corner of Lot 56 of said Embassy North Subdivision, Unit 7, continuing along and with a southwest line of said remaining portion of Lot 34, the northeast line of said Lot 56 for a total distance of 392.00 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the southeast right-of-way line of said West Avenue, the north corner of said Lot 56, the west corner of said remaining portion of Lot 34;

THENCE:
N 41°26'22"E, along and with the southeast line of said West Avenue, the northwest line of said remaining portion of Lot 34, a distance of 91.39 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:
N 41°38'16"E, continuing along and with the southeast line of said West Avenue, the northwest line of said remaining portion of Lot 34, a distance of 672.44 feet to THE POINT OF BEGINNING and containing 9.527 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.
NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL 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.

TEMPORARY CONSTRUCTION EASEMENT - WATER

STATE OF TEXAS  §  KNOW ALL MEN BY THESE PRESENTS
COUNTY OF BEXAR  §

THAT METRO CREEKSIDE TEXAS, LLC, a Texas limited liability company hereinafter referred to as "Grantor", for and in consideration of the amount of TEN DOLLARS ($10.00), and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, to GRANTOR in hand paid by the SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, Bexar County, Texas, has GIVEN, GRANTED, SOLD, CONVEYED, and DEDICATED, and by these presents, does GIVE, GRANT, SELL, CONVEY, and DEDICATE unto the CITY OF SAN ANTONIO, a Municipal corporation for the use, benefit and control of the said SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, herein referred to as "Grantee", as such and their successors in office appointed by the City Council of the said City of San Antonio as provided in Ordinance No. 75686, adopted at a regular meeting of said council, April 30, 1992 and subject to the terms and provisions of said ordinance, an easement over, across and upon the following described lands, for construction, storage and staging of materials and/or equipment for installation of water lines, facilities and appurtenances thereto:

Parcel P17-242T
Being 0.795 acres, located the City of San Antonio, Bexar County, Texas, being a portion of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 as recorded in Volume 9518, Page 83 of the Deed and Plat Records of Bexar County, Texas being more particularly described and/or depicted in Exhibits "A" and "B" attached hereto and made a part hereof;

Parcel 17-242TA
Being 0.250 acres, located the City of San Antonio, Bexar County, Texas, being a portion of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 as recorded in Volume 9518, Page 83 of the Deed and Plat Records of Bexar County, Texas being more particularly described and/or depicted in Exhibits "C" and "D" attached hereto and made a part hereof;

For the purpose of using the said temporary construction easement area for any and all things necessary for the construction of the aforesaid water lines, facilities and appurtenances. In further consideration of this grant, said Grantee expressly agrees that it will remove from said land all surplus material and will cause said land to be left as nearly as possible in its condition as it existed prior to the construction of said improvements. The temporary construction easement shall expire at the completion of construction of the aforesaid improvements, demobilization and restoration.
work and in conjunction therewith Grantee shall, at its expense file a notice of completion and termination of this Temporary Easement in the Official Public Records of Bexar County, Texas.

Together with the right of ingress and egress over said temporary construction easement area as delineated in the attached Phasing Plan; and Grantor expressly covenants and agrees for itself, its legal representatives, successors and/or assigns, that, during the term of this temporary construction easement and as to each part of the Property while it is affected by said Phasing Plan, no building or other obstruction of any kind will be placed by or for Grantor or its legal representatives, successors and/or assigns, within said affected portion of such temporary construction easement area.

NOTWITHSTANDING THE FOREGOING, (i) Grantee’s use of Parcel 17-242TA, as described above and in Exhibits “C” and “D”, shall be limited to access, ingress and egress, (ii) Grantee may not perform construction related activities pursuant to this temporary easement during the months of October, November and December and (iii) Grantee’s construction activities shall proceed in accordance with the phasing plan attaching hereto as Exhibit “E” and incorporated herein, whereby Grantee shall proceed sequentially from phase to phase and may not perform construction activities in more than one phase at a time, or at any time during the months of October, November and December

TO HAVE AND TO HOLD the above described easement and rights unto the said Grantee, its successors and assigns, until the expiration of this temporary construction easement according to its terms.

And Grantor does hereby bind itself, its legal representatives, successors and/or assigns to warrant and forever defend all and singular the above described easement and rights unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Signature on following page
Project: Central Water Integration Pipeline Project
Parcel: P17-242T and 242TA

EXECUTED effective this 17th day of September, 2018

METRO CREEKSIDE TEXAS, LLC, a Texas limited liability company

By: Creekside Metro, LLC, a California limited liability company, Sole Member

Scott C. Looney, Trustee of the
1998 S.C.L. Revocable Trust,
its manager

[ A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document. ]

State of California
County of Orange

On September 17, 2018, before me, WILLIAM TOMPKINS, Notary Public, personally appeared Scott C. Looney, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 
Notary Public/State of California
Consent and Subordination by Tenant

The undersigned, Hobby Lobby Stores, Inc., an Oklahoma corporation, hereby gives its consent and agreement to the terms and provisions of this temporary construction easement to which this consent and subordination is attached, and to confirm and agree that any and all interest held by the undersigned pursuant to its Lease Agreement dated October 27, 1995, as amended by a certain First Amendment to Lease Agreement dated July 1, 2012, together with all other amendments, and as may be amended in the future, are subject and subordinate to the terms and provisions of this temporary construction easement.

Hobby Lobby Stores, Inc., an Oklahoma corporation

By: Randy Chiles
Printed name: Randy Chiles
Title: Vice President Real Estate

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

This instrument was acknowledged before me on this 14 day of September, 2018, by Randy Chiles (name), Vice President Real Estate (title) of Hobby Lobby Stores, Inc., an Oklahoma corporation, on behalf of said corporation.

[Seal]
Notary Public
METES AND BOUNDS DESCRIPTION
OF
PARCEL NO. 17-242T

Being a 0.795 acre tract of land, located in the City of San Antonio, Bexar County, Texas, being a portion of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 as recorded in volume 9518, page 83 of the Deed and Plat Records of Bexar County, Texas (D.P.R.B.C.T.) and being a part of that certain tract of land described in deed to Metro Creekside Texas, L.L.C. as recorded in volume 8987, page 2055, of the Official Public Records of Real Property of Bexar County Texas (O.P.R.R.B.C.T.);

COMMENCING, at a found \( \frac{1}{2} \) inch Iron Rod in the westerly right-of-way line of W Bitters Road (ROW VARIES), being the easterly corner of Lot 46, NCB 12059, Embassy North Unit-3 as recorded in volume 9523, page 142 D.P.R.B.C.T.; THENCE, with the southerly line said Lot 46, NCB 12059, Embassy North Unit-3, South 41 degrees 38 minutes 00 seconds West 4.78 feet to a set \( \frac{1}{2} \) inch Iron Rod with a GD Plastic Cap at a northerly northeast corner of said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being a northerly northeast corner of said Metro Creekside L.L.C tract; THENCE, with said westerly right-of-way of W Bitters Road and the easterly line of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being the easterly line of said Metro Creekside L.L.C tract, South 48 degrees 43 minutes 07 seconds East 294.95 feet to a set \( \frac{1}{2} \) inch Iron Rod with a GD Plastic Cap and being the Point of Beginning of herein described tract;

THENCE, continuing with said westerly right-of-way of W Bitters Road and the easterly line of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being the easterly line of said Metro Creekside L.L.C tract, South 48 degrees 43 minutes 07 seconds East 294.95 feet to a set \( \frac{1}{2} \) inch Iron Rod with a GD Plastic Cap and being the Point of Beginning of herein described tract;

THENCE, with the northerly line of said Lot 42 Embassy North Unit-8 and being a southerly line of said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being a southerly line of said Metro Creekside L.L.C tract, South 41 degrees 26 minutes 06 seconds West 24.37 feet;

THENCE, through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 88 degrees 03 minutes 10 seconds West 56.22 feet;

THENCE, through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 48 degrees 43 minutes 07 seconds West 184.41 feet;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 41 degrees 38 minutes 00 seconds West 244.16 feet;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 81 degrees 49 minutes 03 seconds West 77.75 feet;
THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 36 degrees 38 minutes 13 seconds West 175.28 feet;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 41 degrees 38 minutes 00 seconds West 74.46 feet;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 87 degrees 39 minutes 22 seconds West 84.23 feet;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 48 degrees 22 minutes 00 seconds West 49.40 feet to the southerly right-of-way of West Avenue (68' ROW);

THENCE, with the said southerly right-of-way of West Avenue and a northerly line of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being a northerly line of said Metro Creekside L.L.C tract, North 41 degrees 38 minutes 00 seconds East 30.01 feet to a 1/4 inch Iron Rod with a GD Plastic Cap;

THENCE, through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 48 degrees 22 minutes 00 seconds East 37.22 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 87 degrees 39 minutes 22 seconds East 37.14 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 77 degrees 58 minutes 35 seconds East 12.66 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 36 degrees 38 minutes 13 seconds East 208.28 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 81 degrees 49 minutes 02 seconds East 45.01 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, North 41 degrees 38 minutes 00 seconds East 243.46 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 48 degrees 43 minutes 07 seconds East 203.50 feet to a Cut X in Concrete;
THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and said Metro Creekside L.L.C tract, South 88 degrees 03 minutes 10 seconds East 47.34 feet to the POINT OF BEGINNING containing 0.795 of an acre of land. Survey Plat of same date and Parcel number accompanies and is a part of this description. Bearings are based on the Texas Coordinate System, South Central Zone, North American Datum of 1983, 2011 adjustment.

This the 19th day of June 2018

Ray D. Wegner
Registered Professional Land Surveyor
METES AND BOUNDS DESCRIPTION
OF
PARCEL NO. 17-242TA

Being a 0.250 acre tract of land, located in the City of San Antonio, Bexar County, Texas, being a portion of Lot 34, NCB 12059, Embassy North Subdivision Unit 7 as recorded in volume 9523, page 83 of the Deed and Plat Records of Bexar County, Texas (D.P.R.B.C.T.) and being a part of that certain tract of land described in deed to Metro Creekside Texas, L.L.C. as recorded in volume 8987, page 2055, of the Official Public Records of Real Property of Bexar Count Texas (O.P.R.R.B.C.T.);

COMMENCING, at a found ½ inch Iron Rod in the westerly right-of-way line of W Bitters Road (ROW VARIES), being the easterly corner of Lot 46, NCB 12059, Embassy North Unit-3 as recorded in volume 9523, page 142 of D.P.R.B.C.T.; THENCE, with the southerly line said Lot 46, NCB 12059, Embassy North Unit-3, South 41 degrees 38 minutes 00 seconds West 4.78 feet to a set ½ inch Iron Rod with a GD Plastic Cap at a northerly northeast corner of said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being a northerly northeast corner of said Metro Creekside L.L.C tract; THENCE, continuing with the southerly line said Lot 46, NCB 12059, Embassy North Unit-3, and a northerly line of said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being a northerly line of said Metro Creekside L.L.C. tract, South 41 degrees 38 minutes 00 seconds West 170.22 feet to the southerly corner of said Lot 46, NCB 12059, Embassy North Unit-3, and being the Point of Beginning of herein described tract;

THENCE, through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being the said Metro Creekside L.L.C tract, South 41 degrees 38 minutes 00 seconds West 73.02 feet to a Cut X in Concrete;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being the said Metro Creekside L.L.C. tract, North 36 degrees 38 minutes 13 seconds West 181.63 feet to a Cut X in Concrete at the point of curvature of a curve to the right, having a radius of 105.00 feet, a central angle of 37 degrees 56 minutes 15 seconds and a chord that bears North 17 degrees 40 minutes 20 seconds west 68.25 feet;

THENCE, continuing through said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being the said Metro Creekside L.L.C. tract, with the arc of previously cited curve 69.51 feet to a set ½ inch Iron Rod with a GD Plastic Cap in the westerly line of the remaining portion of Lot 30, NCB 12059, Embassy North Unit-3 as recorded in volume 9518, page 56 D.P.R.B.C.T. and an easterly line of said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being an easterly line of said Metro Creekside L.L.C tract;
THENCE, with the said westerly line of Lot 30, NCB 12059, Embassy North Unit -3, and an easterly line of said Lot 34, NCB 12059, Embassy North Subdivision Unit 7 and also being an easterly line of said Metro Creekside L.L.C tract South 48 degrees 40 minutes15 seconds East, passing the westerly corner of said Lot 46, NCB 12059, Embassy North Unit-3 at approximately 137 feet and continuing a total distance of 236.53 feet to the POINT OF BEGINNING containing 0.250 of an acre of land. Survey Plat of same date and Parcel number accompanies and is a part of this description. Bearings are based on the Texas Coordinate System, South Central Zone, North American Datum of 1983, 2011 adjustment.

This the 19th day of June 2018

Ray D Weber
Registered Professional Land Surveyor No. 4711
<table>
<thead>
<tr>
<th>PROJECT LOCATION</th>
<th>LOCATION MAP</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image-url" alt="Map Image" /></td>
<td><img src="image-url" alt="Map Image" /></td>
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</table>

**EMBASSY NORTH SUBDIVISION UNIT-7 VOLUME 9518, PAGE 83 D.P.R.B.C.T.**

**Notes:**
2. Metes and bounds description of same date and parcel number accompanies and is a part of this plat.
3. Set 1/2 inch iron rod with a red plastic cap.
5. Found 1/2 inch iron rod unless otherwise noted.
6. Found right of way type 2 monument.

**Line Measurements Permanant Easement:**
- **Lot 34:**
  - HCD 10050
  - Metro Creekside Texas, LLC.
  - Vol. 8987, pg. 2055 D.P.R.B.C.T.

**Parcel Plat Showing Temporary Access Easement Width Varies**
- **Central Water Integration Pipeline Project**
- **Exhibit B**

**Ray D. Wegner, R.P.L.S. #4711**

**4800 Fredericksburg Road**
**Suite 200**
**San Antonio, TX 78229**
**D: (210) 206-1944**
**F: (210) 206-9401**
**TRP FILE #: 10015**
**TRP9 FILE #: 10193992**

**Gonzalez de la Garza**

**Rev. 1**
**June 19, 2018**
MORTGAGEE CONSENT

StanCap Insurance Company, Inc., an Oregon corporation, Safeco Insurance Company of America, a New Hampshire stock insurance company, Peerless Insurance Company, a New Hampshire stock insurance company, The Ohio Casualty Insurance Company, a New Hampshire stock insurance company, Liberty Mutual Insurance Company, a Massachusetts stock insurance company, Liberty Mutual Fire Insurance Company, a Wisconsin stock insurance company, Liberty Life Assurance Company of Boston, a New Hampshire stock life insurance company, Employers Insurance Company of Wausau, a Wisconsin stock insurance company, Banner Life Insurance Company, a Maryland insurance company, and Banner Bank, a Washington chartered commercial bank, all as to an undivided interest ("Lender"), owner and holder of a note secured by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixtures Filing dated March 19, 2015, recorded April 10, 2015 in Document No. 2015061303 Book 17177 Page 134, in the county of Bexar, and Assignment of Lessor's Interest in Leases of even date recorded in Document No. 2015061304 Book 17177 Page 166, in the aforesaid county, the interests in the foregoing documents being assigned by that Corrective Assignment of Beneficial Interest in Deed of Trust and Related Loan Documents, dated effective May 12, 2015, recorded July 17, 2017 in Document No. 20170137533 Book 18627 Page 272, for the property located at 286 Bitters Road, San Antonio, TX 78216, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, hereby consents to the creation of the Temporary Easements as described in Temporary Construction Easements - Water for Parcels P17-242T and P17-242TA and agrees that said Easements shall remain in effect until the completion of construction of the improvements, demobilization and restoration work stated in said easement agreement, even in the event of foreclosure of its Deed of Trust.

LENDER:

Banner Bank,
a Washington chartered commercial bank
by StanCorp Mortgage Investors, LLC,
an Oregon limited liability company,
its Attorney in Fact

By: _______________________

Amy Frazey, Assistant Vice President

ATTEST:

By: _______________________

Jason F. Wells, Manager

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED IN ACCORDANCE WITH STATE LAW
[Signatures continue on following pages.]
Banner Life Insurance Company,
a Maryland insurance company,
by StanCorp Mortgage Investors, LLC,
an Oregon limited liability company,
its Attorney in Fact

By: __________________________
   Amy Frazey, Assistant Vice President

ATTEST:

By: __________________________
   Jason F. Wells, Manager

Liberty Life Assurance Company of Boston, a
New Hampshire stock life insurance company,
by StanCorp Mortgage Investors, LLC,
an Oregon limited liability company,
its Attorney in Fact

By: __________________________
   Amy Frazey, Assistant Vice President

ATTEST:

By: __________________________
   Jason F. Wells, Manager

NOTARY ACKNOWLEDGMENTS TO BE ATTACHED
IN ACCORDANCE WITH STATE LAW

//

//

[Signatures continue on following pages.]
Liberty Mutual Insurance Company, a Massachusetts stock insurance company,
Liberty Mutual Fire Insurance Company, a Wisconsin stock insurance company,
Peerless Insurance Company, a New Hampshire stock insurance company,
Employers Insurance Company of Wausau, a Wisconsin stock insurance company,
The Ohio Casualty Insurance Company, a New Hampshire stock insurance company,
Safeco Insurance Company of America, a New Hampshire stock insurance company
by StanCorp Mortgage Investors, LLC, an Oregon limited liability company,
their Attorney in Fact

By: [Signature]
Amy Frazey, Assistant Vice President

Attest: [Signature]
Jason F. Wells, Manager

NOTARY ACKNOWLEDGMENT TO BE ATTACHED
IN ACCORDANCE WITH STATE LAW

[Signatures continue on following page.]
STATE OF OREGON

COUNTY OF WASHINGTON

On this 12th day of October, 2018, before me Leonardo De Lima Prado appeared AMY FRAZEY and JASON F. WELLS both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President and (s)he, the said JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, as the attorney in fact for BANNER BANK, a Washington chartered commercial bank, the within named company, and that the said document was signed on their behalf, and AMY FRAZEY and JASON F. WELLS acknowledged said document to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

[Signature]

Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020
STATE OF OREGON  
)  
COUNTY OF WASHINGTON  ) ss:

On this 12th day of October, 2018, before me, Leonardo De Lima Prado, appeared AMY FRAZEEY and JASON F. WELLS both to me personally known, who being duly sworn did say that she, the said AMY FRAZEEY is the Assistant Vice President and he, the said JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, as the attorney in fact for LIBERTY LIFE ASSURANCE COMPANY OF BOSTON, the within named companies, and that the said document was signed on their behalf, and AMY FRAZEEY and JASON F. WELLS acknowledged said document to be the free act and deed of said companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

[Signature]

Notary: Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020
STATE OF OREGON

COUNTY OF WASHINGTON

On this 12th day of October, before me, Leonardo De Lima Prado, appeared AMY FRAZEY and JASON F. WELLS both to me personally known, who being duly sworn did say that she, the said AMY FRAZEY is the Assistant Vice President and he, the said JASON F. WELLS is the Manager of STANCORP MORTGAGE INVESTORS, LLC, as the attorney in fact for LIBERTY MUTUAL INSURANCE COMPANY, LIBERTY MUTUAL FIRE INSURANCE COMPANY, PEERLESS INSURANCE COMPANY, EMPLOYERS INSURANCE COMPANY OF WAUSAU, THE OHIO CASUALTY INSURANCE COMPANY, and SAFECO INSURANCE COMPANY OF AMERICA the within named companies, and that the said document was signed on their behalf, and AMY FRAZEY and JASON F. WELLS acknowledged said document to be the free act and deed of said companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last above written.

[Signature]

Notary: Leonardo De Lima Prado
Notary Public for Oregon
My Commission Expires: October 17, 2020

[Stamp]
StanCap Insurance Company, Inc.,
an Oregon corporation

By:

Robert M. Erickson,
Treasurer

ATTEST:

By:

Scott Hibbs
Sr. Vt

STATE OF OREGON )
COUNTY OF MULTNOMAH ) ss:

On this 16th day of October, 2018, before me, Tommy Jones, a Notary
Public in and for said County and State, personally appeared ROBERT M. ERICKSON and
Scott Hibbs (name of attests) both to me personally known, who being duly
sworn did say that he, the said ROBERT M. ERICKSON is the Treasurer and (s)he, the said
Scott Hibbs (name of attests) is the (title of attest) of
STANCAP INSURANCE COMPANY, INC., the within named corporation, and that the said
document was signed in behalf of said corporation, and ROBERT M. ERICKSON and
Scott Hibbs (name of attests) acknowledge said document to be the free act and deed of
said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year last
written.

OFFICIAL STAMP

TOMMY A. JONES
NOTARY PUBLIC-OREGON
COMMISSION NO. 976985
MY COMMISSION EXPIRES JULY 18, 2022

Tommy Jones
Notary Public for Oregon
My Commission Expires: July 18, 2022
EXHIBIT "A" to Mortgagee Consent
SIC Loan B5012806
Legal Description
October 12, 2018

TRACT I
A 9.527 acre, or 415,008 square foot more or less, being the remaining portion of Lot 34 of the EMBASSY NORTH SUBDIVISION, UNIT 7, recorded in Volume 9518, Pages 82-83 of the Deed and Plat Records of Bexar County, Texas, being the same tract of land as conveyed to Metro Creekside Texas, L.L.C. in Special Warranty Deed with Vendor's Lien recorded in Volume 8987, Pages 2055-2065 of the Official Public Records of Real Property of Bexar County, Texas, all in New City Block (N.C.B.) 12059 of the City of San Antonio, Bexar County, Texas. Said 9.527 acre tract of land being more particularly described by metes and bounds on Exhibit "A-II" attached hereto.

TRACT II
A non-exclusive easement for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, over, through and around a 3.246 acre tract of land (save and except 0.600 acre thereof) of Lot 35, New City Block 12059, EMBASSY NORTH SUBDIVISION, UNIT 7, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9518, Pages 82-83 of the Deed and Plat Records, as created and granted by that certain Easement With Covenants And Restrictions Affecting Land ("ECR") recorded in Volume 4184, Page 817 of the Real Property Records of Bexar County, Texas, as amended and supplemented by those two certain Affidavits Of Reciprocal Parking Rights recorded in Volume 4158, Page 1836 and Volume 4158, Page 1838 of the Real Property Records of Bexar County, Texas.

NOTE: The Company does not represent that any acreage or square footage calculations in the above description or in any exhibit attached hereto are correct.

[Legal Description continues on following pages.]
TRACT I

A 9.527 acre, or 415,008 square foot more or less, tract of land being all of the remaining portion of Lot 34 of the Embassy North Subdivision, Unit 7 recorded in Volume 9518, Page 83 of the Deed and Plat Records of Bexar County, Texas, being the same tract of land as conveyed to Metro Creekside Texas, L.L.C. in Special Warranty Deed with Vendor's Lien recorded in Volume 8987, Pages 2055-2065 of the Official Public Records of Real Property of Bexar County, Texas, all in New City Block (N.C.B.) 12059 of the City of San Antonio, Bexar County, Texas. Said 9.527 acre tract being more fully described as follows, with the basis of bearing on the North American Datum of 1983 (CORS 1996), from the Texas coordinate system established for the South Central Zone:

BEGINNING: At a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the southeast right-of-way line of West Avenue, a 86-foot right-of-way, the northwest corner of the remainder of Lot 30 recorded in Volume 7675, Pages 925-929 of the Official Public Records of Real Property of Bexar County, Texas, the north corner of said remaining portion of Lot 34;

THENCE:
S 48°39'59"E, departing the southeast right-of-way line of said West Avenue, along and with a northeast line of said remaining portion of Lot 30, the northwest line of said remainder of Lot 30, at a distance of 162.04 feet passing the southeast corner of said remainder of Lot 30, the west corner of Lot 46 of the Embassy North Subdivision recorded in Volume 9523, Page 142 of the Deed and Plat Records of Bexar County, Texas, continuing along and with the southwest line of Lot 46 of said Embassy North Subdivision, Unit 3, for a total distance of 261.50 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:
N 41°38'16"E, along and with a north line of said remaining portion of Lot 34, the southeast line of said Lot 46, a distance of 170.22 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the southwest right-of-way line of Bitters Road a variable width right-of-way;

THENCE:
S 48°42'52"E, along and with the southwest right-of-way line of said Bitters Road, a northeast line of said remaining portion of Lot 34, a distance of 312.61 feet to the northeast corner of Lot 42 of Embassy North Subdivision, Unit 8 recorded in Volume 9520, Pages 116-117 of the Deed and Plat Records of Bexar County, Texas, the east corner of said remaining portion of Lot 34;

THENCE:
S 41°26'22"W, departing the southwest right-of-way line of said Bitters Road, along and with a southeast line of said remaining portion of Lot 34, the northwest line of said Lot 42, at a distance of 167.49 feet passing the northwest corner of said Lot 42, the northeast corner of a 2.245 acre tract recorded in Volume 9386, Page 1828-1840 of the Official Public Records of Real Property of Bexar County, Texas, continuing along and with a northwest line of said 2.245 acre tract, a southeast line of said remaining portion of Lot 34, for a total distance of 327.81 feet to a found PK nail, a south corner of said remaining portion of Lot 34;
THENCE:
N 48°33'38"W, along and with a southwest line of remaining portion of Lot 34, a northeast line of said 2.245 acre tract, a distance of 145.03 feet to a set PK nail, a re-entrant corner of said remaining portion of Lot 34;

THENCE:
S 41°26'22"W, along and with the northwest line of said 2.245 acre tract, the southeast line of said remaining portion of Lot 34, at a distance of 254.30 feet passing the northwest corner of said 2.245 acre tract, the northeast corner of Lot 40 of the Embassy North Subdivision, Unit 8 recorded in Volume 9320, Pages 116-117 of the Deed and Plat Records of Bexar County, Texas, continuing along and with the northeast line of remaining portion of Lot 34, for a total distance of 845.00 feet to a found ½" iron rod on the northeast right-of-way line of Embassy Oaks a 60-foot right-of-way as recorded in Volume 9516, Page 111-115 of the Deed and Plat Records of Bexar County, Texas, a south corner of said remaining portion of Lot 34;

THENCE:
N 52°13'33"W, along and with the northeast right-of-way line of said Embassy Oaks, a southwest line of said remaining portion of Lot 34, a distance of 40.08 feet to a found 1/2" iron rod marked "Sunbelt", the south corner of Lot 57 of Embassy North Subdivision, Unit 7 recorded in Volume 9532, Page 186 of the Deed and Plat Records of Bexar County, Texas, the southwest corner of said remaining portion of Lot 34;

THENCE:
N 41°26'22"E, departing the northeast right-of-way line of said Embassy Oaks, along and with the southwest line of said Lot 57, a southeast line of said remaining portion of Lot 34, a distance of 240.00 feet to a set "x" in concrete, the east corner of said Lot 57, a re-entrant corner of said remaining portion of Lot 34;

THENCE:
N 48°33'38"W, along and with a southwest line of said remaining portion of Lot 34, the northwest line of said Lot 57, at a distance of 176.10 feet passing the north corner of said Lot 57, the east corner of Lot 56 of said Embassy North Subdivision, Unit 7, continuing along and with a southwest line of said remaining portion of Lot 34, the northeast line of said Lot 56 for a total distance of 392.00 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson" on the southeast right-of-way line of said West Avenue, the north corner of said Lot 56, the west corner of said remaining portion of Lot 34;

THENCE:
N 41°26'22"E, along and with the southeast line of said West Avenue, the northwest line of said remaining portion of Lot 34, a distance of 91.39 feet to a set 1/2" iron rod with a yellow cap marked "Pape-Dawson";

THENCE:
N 41°38'16"E, continuing along and with the southeast line of said West Avenue, the northwest line of said remaining portion of Lot 34, a distance of 672.44 feet to THE POINT OF BEGINNING and containing 9.527 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey map prepared by Pape-Dawson Engineers, Inc.
TO: San Antonio Water System Board of Trustees

FROM: Marty Jones, P.E., Manager, Water Resources, and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

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

SUBJECT: APPROVAL OF AN AGREEMENT IN CONNECTION WITH THE DESIGN AND CONSTRUCTION OF ELECTRICAL SERVICE FOR THE VISTA RIDGE REGIONAL SUPPLY WELL FIELD FACILITIES 4, 5, AND 6

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution approves an agreement with Bluebonnet Electric Cooperative (the “Cooperative”), a nonprofit electrical power distribution cooperative, in connection with the San Antonio Water System’s (the “System”) obligation to provide electric power service for project facilities to be constructed for the Vista Ridge Regional Supply Project (the “Project”). The agreement, in an amount not to exceed $456,346.00, is for design and construction of electrical service for the Vista Ridge Regional Supply Well Field Facilities 4, 5, and 6.

The Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (the “WTPA”) places on Vista Ridge, LLC (the “Project Company” the responsibility for developing, financing, constructing, and operating the Project in exchange for a fixed price for water delivered and reimbursement of O&M costs incurred. After expiration of the WTPA at the end of the 30-year term, ownership of Project assets will transfer to the System.

The WTPA places upon the System the responsibility for establishing electric power service for Project facilities. Electric service is essential for completion and operation of the Project and must be ready for performance testing of the Project no later than 39 months following the financial closing date of the WTPA.

The System is working with three different electrical service providers to establish electrical service at the five different Project facilities to be constructed by the Project Company. The Cooperative will design and construct the electrical power service for the Intermediate Pump Station 1 Facilities, High Service Pump Station, and Well Field Facilities. Guadalupe Valley Electric Cooperative will design and construct the electrical power service for the Intermediate Pump Station 2 Facilities, and CPS Energy will design and construct the electrical power service for the Vista Ridge Regional Supply Project treatment site in San Antonio. The System will also work with the electrical service providers to establish electrical service for the pipeline cathodic protection system equipment in their service areas.
Approval of Agreement for Design and Construction of Electrical Infrastructure for Vista Ridge Project

- The scope of services for this agreement includes the design and construction of approximately one and a half miles of overhead and underground electrical feeder from existing nearby electrical service. The scope of services also includes three transformers, and one primary service meter.

- The amount not to exceed $456,346.00 provides funds to the Cooperative for the design and construction of the overhead electrical service feeder that will serve Well Field Facilities 4, 5, and 6 in the Vista Ridge Well Field located in Caldwell, Texas. The total value of all the agreements to be awarded to this Cooperative is $5,279,251.07. This does not include the cost to design and construct electrical service for the pipeline cathodic protection system. Staff will propose additional electrical service agreements for the cathodic protection in late 2018 and 2019.

- The Board has previously approved, by Resolution Nos. 18-041, 18-135, and 18-237, agreements with the Cooperative for design and construction of electrical service for the Intermediate Pump Station 1 Facilities, High Service Pump Station Facilities, and Well Field Facilities 1, 2, 3, 7, 8, and 9. These facilities all fall within the Cooperative’s exclusive service area.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Funds for services to be expended during FY 2018 are included in the five-year Water Supply O&M Budget that was approved in conjunction with the FY 2018 Annual Operating Budget. Expenditures will be funded with revenues from the System Fund. Services will be paid from the Vista Ridge Water Supply Project (Company: 1000, Accounting Unit: 5046500, Account Code: 511312, Total 2018 amount: $456,346.00).

Marty Jones, P.E.
Manager
Water Resources Engineering

Donovan Burton
Vice President
Water Resources and Governmental Relations
Approval of Agreement for Design and Construction of Electrical Infrastructure for Vista Ridge Project

APPROVED:

[Signature]

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING AN AGREEMENT (THE “AGREEMENT”) WITH BLUEBONNET ELECTRIC COOPERATIVE IN AN AMOUNT NOT TO EXCEED $456,346.00 IN CONNECTION WITH THE DESIGN AND CONSTRUCTION OF ELECTRICAL FACILITIES FOR THE VISTA RIDGE REGIONAL SUPPLY PROJECT WELL FIELD FACILITIES 4, 5, AND 6 IN FULFILLING OBLIGATIONS TO ESTABLISH ELECTRIC POWER SERVICE; AUTHORIZING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $456,346.00 FROM THE SYSTEM FUND FOR ELECTRICAL POWER SERVICE CONSTRUCTION; 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 Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement (the “WTPA”) places on Vista Ridge, LLC (the “Project Company”) the responsibility for developing, financing, constructing, and operating the Vista Ridge Regional Supply Project (the “Project”) in exchange for a fixed price for water delivered and reimbursement of O&M costs incurred. After expiration of the WTPA at the end of the 30-year term, ownership of the Project assets will transfer to the San Antonio Water System (the “System”); and

WHEREAS, the WTPA places upon the System the responsibility for establishing electric service for Project facilities to be constructed by the Project Company. Electric service is essential for completion and operation of the Project and must be ready for performance testing of the Project no later than 36 months following the financial closing date of the WTPA; and

WHEREAS, the System is working with three different electrical service providers to establish electrical service at the five different Project facilities to be constructed by the Project Company. Bluebonnet Electric Cooperative (the “Cooperative”) will design and construct the electrical power service for the Well Field Facilities, High Service Pump Station Facilities, and Intermediate Pump Station 1 Facilities. Guadalupe Valley Electric Cooperative will design and construct the electrical power service for the Intermediate Pump Station 2 Facilities, and CPS Energy will design and construct the electrical power service for the Vista Ridge Regional Supply Project Terminus Site. The System will also work with the electrical service providers to establish electrical service for the pipeline cathodic protection system equipment in their service areas; and

WHEREAS, the Vista Ridge Regional Supply Intermediate Pump Station 1 Facilities, Well Field Facilities, and High Service Pump Station Facilities all fall within the Cooperative’s exclusive service area; and
WHEREAS, the scope of services for this Agreement includes the design and construction of approximately one and a half miles of overhead and underground electrical feeder from existing nearby electrical service, as illustrated in the exhibit attached hereto as Attachment I. The scope also includes three transformers, and one primary service meter; and

WHEREAS, the amount not to exceed $456,346.00 provides funds to the Cooperative for the design and construction of the overhead electrical service feeder that will serve Well Field Facilities 4, 5, and 6 in the Vista Ridge Well Field located in Caldwell, Texas; and

WHEREAS, the amount, not to exceed $456,346.00 is available from the System Fund for the Project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve the Agreement with the Cooperative in an amount not to exceed $456,346.00 for the design and construction of electrical facilities in connection with the Vista Ridge Regional Supply Project, (ii) to authorize and make available an amount not to exceed $456,346.00 from the System Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute the Agreement with the Cooperative, and to pay the Cooperative an amount not to exceed $456,346.00; now, therefore:

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

1. That an Agreement with the Cooperative in an amount not to exceed $456,346.00 for the design and construction of electrical facilities in connection with the Project is hereby approved.

2. That the expenditure of funds in an amount not to exceed $456,346.00 is hereby approved and made available from the System Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute an agreement with Bluebonnet Electric Cooperative, and to pay Bluebonnet Electric Cooperative an amount not to exceed $456,346.00 for the design and construction of electrical power service for Vista Ridge Regional Supply Well Field Facilities 4, 5, and 6.

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 November, 2018.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Patricia E. Merritt, Assistant Secretary

Attachment:
I. Vista Ridge Well Field Facilities Electrical Service Route Exhibit
SUMMARY AND RECOMMENDATION:

The attached resolution approves a Transfer of Use Agreement for Lease of Groundwater Rights (Agreement) between City Public Service Energy (CPSE) and the San Antonio Water System (SAWS). The Agreement is for SAWS use of Edwards Aquifer groundwater withdrawal rights held by CPSE in the amount of 2,000 acre-feet, for a term of five years from January 1, 2019 through December 31, 2023.

- The attached resolution seeks approval for the lease, through the Agreement, of Edwards Aquifer Authority (EAA) permitted groundwater withdrawal rights, in the amount of 2,000 acre-feet, by SAWS from CPSE in order to meet the immediate and short-term demands of SAWS.

- SAWS and CPSE have a history of forward thinking solutions. In 1990, the decision to switch from freshwater to treated wastewater effluent as the source of cooling water for the power plants was made to save freshwater and use a more sustainable source moving forward.

- Staff from both entities worked cooperatively towards the development and the ultimate approval of the Edwards Aquifer Habitat Conservation Plan (EAHCP). The approval of the EAHCP secured the interests of all permit holders within the Edwards Aquifer region and provided the long term protection to the endangered species at both springs (Comal and San Marcos).

- In 2014, CPSE and SAWS continued their relationship and entered into a five-year lease agreement that benefitted both entities thus leading to another five-year water use agreement. CPSE is able to increase the 2014 leased amount by 100 percent from 1,000 acre-feet to 2,000 acre-feet.
Transfer of Use Agreement

- SAWS 2017 Water Management Plan outlines water management strategies that include the acquisition of Edwards Aquifer groundwater rights via purchase and/or lease.

- Acquisition of the groundwater rights will be used to maintain a certain level of Edwards assets, off-set regulatory pumping cut-backs established by the EAA, and compliment the regionally agreed to Habitat Conservation Plan.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Transfer of Use Agreement for Lease of Groundwater Rights will result in payments to CPSE in an annual amount not to exceed $260,000.00 and not to exceed $1,300,000.00 over the term of the Agreement. Additionally, SAWS will also be responsible for paying the associated Aquifer Management Fees (AMF) to the EAA for the term of the Agreement. AMF will be invoiced by the EAA on an annual basis. In 2019, AMF will be $84.00 per acre-foot. Future AMF will be determined by the EAA on an annual basis.

Payments under the Agreement and all other necessary procedures will be paid starting with the 2019 budgeted System Funds (Company: 1000, Accounting Unit: 5008100, Account: 511261). Future payments will be subject to approval of the payment line item(s) in future year’s budgets by the SAWS Board of Trustees.

APPROVED:

Darren Thompson
Director
Water Resources

Donovan S. Burton
Vice President
Water Resources & Governmental Relations

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING A TRANSFER OF USE AGREEMENT FOR LEASE OF GROUNDWATER RIGHTS WITH CITY PUBLIC SERVICE ENERGY FOR 2,000 ACRE-FEET OF EDWARDS AQUIFER GROUNDWATER RIGHTS FOR A FIVE-YEAR TERM AT A COST OF $260,000.00 PER YEAR FOR A TOTAL OBLIGATION NOT TO EXCEED $1,300,000.00; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) desires to enter into a Transfer of Use Agreement for Lease of Groundwater Rights (the “Agreement”) with City Public Service Energy (CPSE) for 2,000 acre-feet of Edwards Aquifer permitted groundwater rights held by CPSE, at a cost of $130.00 per acre-foot, for a total cost of $260,000.00 per year for the five-year duration of the Agreement; and

WHEREAS, the System and CPSE have had a working relationship since 1990 when recycled water was substituted for freshwater as the cooling source for local power plants; and

WHEREAS, the reduction in use of Edwards Aquifer Groundwater has attributed to the success of the Edwards Aquifer Habitat Conservation Plan (EAHCP); and

WHEREAS, in 2014, CPSE and the System continued their relationship and entered into a five-year lease agreement that benefitted both entities leading to another five-year water use agreement increasing the 2014 leased amount by 100 percent from 1,000 acre-feet to 2,000 acre-feet; and

WHEREAS, the Agreement allows the System to maintain inventory according to the System’s 2017 Water Management Plan, which identifies a portfolio of water supply projects that include both short and long-term goals for the acquisition of Edwards Aquifer groundwater rights; and

WHEREAS, it is in the best interest of the ratepayers of the System to obtain necessary amounts of Edwards Aquifer groundwater rights to maintain planned supplies; and

WHEREAS, the System Board of Trustees desires (i) to approve the Agreement, in substantially the form attached hereto as Attachment I, to provide for the lease of 2,000 acre-feet of Edwards Aquifer permitted groundwater rights at a cost of $260,000.00 per annum for the five-year term of the Agreement for a total obligation not to exceed $1,300,000.00, (ii) to approve
the expenditure of funds for the System’s obligations under the Agreement for 2019 from the System Fund in an initial amount of $260,000.00, and (iii) to authorize the execution of the Agreement by the President/Chief Executive Officer or his duly appointed designee, to take such steps necessary to secure the groundwater rights for the System’s use and to pay any ancillary costs related to same (including transfer fees and recording fees), to make the initial payment to CPSE, and subsequent payments in accordance with the terms of the Agreement, subject to approval of such line item in future year’s budgets; now, therefore:

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

1. That the Agreement for the lease of Edwards Aquifer permitted groundwater rights between the System and CPSE for 2,000 acre-feet per annum, at a cost of $260,000.00 per year for a five-year term for a total obligation not to exceed $1,300,000.00, is hereby approved in substantially the form attached hereto as Attachment I.

2. That the expenditure of funds for the System’s obligations under the Agreement for 2019 are hereby authorized and are to be expended from the System Fund in the initial amount of $260,000.00 payable to CPSE.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute the Agreement, to take all such steps necessary to secure the groundwater rights for the System use and to pay any ancillary costs related to same (including transfer fees and recording fees) and, to make the initial payment to CPSE, and subsequent payment in accordance with the terms of the Agreement subject to approval of such line item in future year’s budgets.

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 notices of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given as required by the Texas Code 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 November, 2018.

____________________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Patricia E. Merritt, Assistant Secretary

Attachment I: Transfer of Use Agreement
TRANSFER OF USE AGREEMENT FOR LEASE OF GROUNDWATER

This Transfer of Use Agreement for Lease of Groundwater ("Agreement") is entered into to be effective this ____ day of ____, 2018 the "Effective Date"), by and between the City Public Service Board ("CPS Energy") and the San Antonio Water System ("SAWS"). CPS Energy hereby transfer use to SAWS the following unrestricted, fully transferable Edwards Aquifer water rights and related rights, on the following terms and conditions:


CPS Energy transfers use by way of lease to SAWS of CPS Energy’s groundwater rights and CPS Energy’s permit rights from the Edwards Aquifer Authority ("EAA") to withdraw 2,000 acre-feet of unrestricted Edwards Aquifer groundwater per annum, under EAA Initial Regular Permit No. P100-307 (BE 00100) recorded as Document No.20150236050 of the Official Public Records of Bexar County, Texas, originally permitted from the tract(s) of land more fully described in Warranty Deed recorded as Document No. 498139, Volume 2397, Pages 255-256, Warranty Deed dated 5/11/1950 as recorded with Clerk as Document #657326, Volume 2835, Pages 549-551, the tract(s) of land more fully described in Deed dated 8/19/1907 as recorded with Clerk as Volume 276, Pages 60-N/A, and the tracts of land more fully described in Warranty Deed dated 8/27/1947 as recorded with Clerk as Volume 2427, Pages 265-266, all of the Official Public Records of Bexar County, Texas, and any successor permits (the "Groundwater Withdrawal Permit") (the "Water Rights"). The Water Rights include rights to and for the quantity of rights above referenced, including the right to withdraw and/or beneficially use the Water Rights.

2. Additional Lease Rights.

The Agreement of the Water Rights as defined above shall also expressly include all withdrawal or other permits pertaining to the Water Rights, and all modifications, amendments, renewals, extensions or successor or substitute permits relating to any of the above described items, and the right to withdraw and/or beneficially use the Edwards Aquifer water related to or pertaining to the Water Rights.

3. Term.

The term of this Agreement ("Term") shall be for a period of 5 years commencing on January 1, 2019 (the "Commencement Date") and continuing through December 31, 2023 (the "Expiration Date"). Under this Agreement, each calendar year that this Agreement is in effect, beginning with the calendar year in which the Commencement Date occurs, is an Agreement Year.

CPS Energy shall also have the right to terminate the Agreement, in whole or in part, at its sole option by delivering notice to SAWS on or before July 31 of an Agreement Year. Upon the exercise of this right, this Agreement will terminate on December 31 of such...
Agreement. Upon the exercise of this right for a partial termination, the remaining Rent payments shall be adjusted accordingly, and the terminated portion of the Water Rights under this Lease will expire on December 31 of such Agreement Year. The remaining portion of the Water Rights not terminated under a partial termination shall remain in full force and effect.

4. Appropriation.

Notwithstanding anything contained herein to the contrary, SAWS shall have the right to terminate this Agreement at the end of each of its annual budget periods if it has not appropriated the necessary funds for payment of the Agreement payment due during the next annual budget period. Such election shall be made in writing to CPS Energy on or before December 1 of a given Agreement Year and shall be effective upon December 31 of that Agreement Year. Provided, however, SAWS agrees to use its best efforts to obtain and appropriate funds for the payment of all Agreement payments and other expenses and obligations due under the terms of this Agreement. Pursuant to Section 271.903 of the Texas Local Government Code, CPS Energy acknowledges and agrees that all Agreement payments and other expenses and obligations due under the terms of the Agreement shall be deemed to be the commitment of SAWS current revenues only.

5. Intentionally omitted.

6. Payments.

Payments shall be made to the address given in Section 15 or such other address as may be provided by CPS Energy in the manner provided for notices in Section. For each of the Agreement Years, payment for the Water Rights will be one hundred thirty and no/100 dollars ($130.00) per acre-foot, for a total lease payment of Two hundred Sixty-Thousand and no/100 dollars ($260,000.00) per Lease Year (“Rent”).

All Payments are subject to any adjustment pursuant to Section 5 above (Feasibility Period) and Section 7 below (“Reductions and Changes in Designation”). Payment for each Agreement Year is due in one lump-sum payment on or before January 31st of each Agreement Year, but, notwithstanding the foregoing, in no event will a payment be made earlier than the recognition by the EAA of the transfer of the Water Rights. On or before the Effective Date of this Agreement, CPS Energy agrees to provide to SAWS its Tax Identification Number.

7. Reductions and Changes in Designation.

In the event that there is a permanent reduction by the EAA or other governmental authority of the maximum authorized withdrawal amount of the Groundwater Withdrawal Permit(s) (“Permanent Reduction”), CPS Energy must elect one of the two following options within sixty (60) days of the effective date of such Permanent Reduction: (1) CPS Energy may elect that the amount of the Water Rights agreed to by SAWS under this Agreement shall be reduced on an equal percentage basis (or such method adopted by the EAA or other
governmental authority) as of the effective date of the reduction of each Groundwater Withdrawal Permit under the Permanent Reduction, and the Payment shall be reduced accordingly on the per acre foot basis as described in Section 6 of this Agreement for the first Agreement Year in which the Permanent Reduction is applicable and each subsequent Agreement Year; or (2) if CPS Energy, after such Permanent Reduction, owns sufficient rights under the Groundwater Withdrawal Permit(s) relating to the Water Rights to provide the full amount of the Water Rights described in Section 1, CPS Energy may elect that there is no reduction of the Water Rights or the Payment under this Agreement. If, as a result of the first election, SAWS has prepaid a Payment for an Agreement Year in which Payment is reduced, then CPS Energy shall refund to SAWS the amount of the reduction in the Payment within 30 days of date CPS Energy makes such election if the reduction in Payment occurs in the final Agreement Year. If it is not the final Agreement Year, then CPS Energy shall refund to SAWS the amount of the reduction in the Payment for the Agreement Year within 30 days after SAWS make such request. If SAWS does not make such request, SAWS will set off such refund amount against any Payment due CPS Energy in subsequent Agreement Years. In the event of the second election, the parties agree to execute and deliver any documents which are required by the EAA or any other governmental authority.

This section 7 does not apply to a temporary reduction in the use of any part of the Water Rights due to demand management, critical period or similar rules of the EAA or other governmental authority.

8. Documents to be Delivered on Effective Date of Lease.

On the Effective Date of this Agreement, CPS Energy shall deliver to SAWS the following documents executed and acknowledged by CPS Energy: (a) an EAA Application to Transfer and Amend Initial Regular Permit for the Water Rights, including all Exhibits and other forms or documents required by the EAA to approve the transfer of the use of the Water Rights to SAWS; (b) a signed consent, on a form provided by SAWS (attached hereto as Exhibit A), granting SAWS access to information maintained by the EAA relating to CPS Energy’s Groundwater Withdrawal Permit(s) and to CPS Energy’s compliance and/or noncompliance with the EAA Act and Rules; and (c) a Memorandum of Transfer of Use Agreement in the form provided by SAWS and attached hereto as Exhibit “B” for each Groundwater Withdrawal Permit relating to the Water Rights. SAWS shall be responsible for any EAA and recording fees associated with the transfer of the Water Rights.


SAWS shall have the right but not the duty to initiate, seek party status in, and/or prosecute any proceedings relating to the Water Rights including, at its election, CPS Energy’s Groundwater Withdrawal Permit as may be necessary for the protection of SAWS’s interests in the Water Rights, including but not limited to (i) contesting the validity of law or regulatory action; (ii) contesting fees assessed to or levied upon the Water Rights; or (iii) protecting, defending, and/or preserving the rights to withdraw water from the Edwards Aquifer. CPS Energy shall cooperate with SAWS’s efforts in connection
therewith. If SAWS elects not to prosecute or defend the Water Rights leased herein, CPS Energy retains the rights to do so at its election.

10. Water Rights Information.

CPS Energy shall furnish to SAWS notice of actual or threatened litigation or administrative actions matters or actions related to or affecting the Water Rights within ten (10) business days of the date CPS Energy is aware of such matters or actions. CPS Energy agrees to furnish to SAWS information concerning and copies of documents pertaining to such matters or actions within ten (10) business days of the date that SAWS requests such information or documents.

11. Continued Operation and Compliance with Lease.

From the Effective Date of this Lease, CPS Energy shall not take any actions (or omit to take any actions) which will harm or diminish SAWS’s interests in the Water Rights. CPS Energy and SAWS agree to comply with all applicable EAA rules or regulations and other applicable federal, state or local laws, regulations or ordinances relating to Water Rights and the Groundwater Withdrawal Permit.

12. Quiet Enjoyment.

In the event CPS Energy deprives SAWS of quiet enjoyment of all or any of the Water Rights at any time during the term of this Agreement, SAWS may terminate this Agreement in whole, or in part with respect to that portion of the Water Rights that SAWS is unable to quietly enjoy.

13. Cooperation.

CPS Energy will use its best efforts, take such actions and execute and deliver such documents necessary to fully vest Lessee with and protect Lessee’s interests in the Water Rights and make effective this Lease.


15. Notices.

Any notices to be given hereunder shall be given by placing the notice in the United States mail, certified or registered, properly stamped and addressed to the address shown below or such other addresses as the respective party may direct in writing to the other, by overnight delivery service, or by personal delivery to such address. Notice shall be deemed effective upon such placing in the mail, on the next business day following delivery and acceptance for next day delivery by any overnight delivery service, or upon actual delivery if by personal delivery:

Lessor: CPS Energy
16. Fees.

SAWS will pay the EAA transfer application fees and county recordation fees necessary for the right to use the agreed upon Water Rights. SAWS will also pay all EAA Aquifer Management and HCP fees associated with the Water Rights for the term of this Agreement, or if CPS Energy has paid some or all of the EAA Aquifer Management and HCP Fees for the initial Agreement Year prior to the Effective Date of this Agreement, SAWS shall reimburse CPS Energy for such payment. SAWS shall not be liable for any fees, taxes or assessments on the Real Property, or for any EAA fees assessed on or related to water or permit rights not agreed to be used under this Agreement.

17. Default.

If either party fails to comply with any provision of the Agreement and such failure continues for a period of thirty (30) days after receiving written notice of such failure, the other party may, as its sole and exclusive remedy terminate the Agreement.

18. Waiver.

The failure on the part of either party to require the performance by the other of any portion of this Agreement shall not be deemed a waiver of, or in any way affect that party’s rights to enforce such provision. Any waiver by either party of any provision of this Agreement shall not be a waiver of any other provision hereof.


The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

This Agreement shall be governed by the laws of the State of Texas and is performable in Bexar County, Texas.

21. Authority.

Each of the persons signing on behalf of CPS Energy and SAWS hereby represent and warrant that they have the authority to execute this Agreement on behalf of the party indicated by their signature and have the authority to bind such party thereto.

22. Force Majeure.

If SAWS is denied its use of all or a part of the Water Rights by reason of any laws, regulations, or governmental action or other acts outside of the control of CPS Energy and SAWS, other than as described in Section 7 above, then SAWS and CPS Energy shall be excused from their obligations hereunder for so long as these circumstances exist; provided, however, that in the event the Water Rights are reduced as described in Section 7 above, the provisions of Section 7 shall control.

23. Further Assurances.

CPS Energy and SAWS shall take all further actions and shall execute and deliver to the other any other document or instrument which is necessary or useful to fully carry out the transactions evidenced by this Agreement, including any amendments to the Permit Rights carried out in conformance with applicable EAA regulations or any documentation required by the EAA to evidence the termination of SAWS's interest in the Water Rights upon the termination of this Agreement. In addition, the parties agree to amend this Agreement in any manner necessary to cause this Agreement to be in compliance with EAA rules and regulations. SAWS shall have the authority to file a Memorandum of Transfer of Use Agreement for Lease of Groundwater of public record to reflect its interest in the Water Rights as set out under the terms of this Agreement. CPS Energy agrees to execute any such form of Memorandum of Transfer of Use Agreement for Lease of Groundwater or any amendment of such Memorandum of Agreement of Groundwater provided by SAWS.

24. Entire Agreement.

This Agreement contains all agreements between the parties hereto and any agreement not contained herein shall not be recognized by the parties. The captions used herein are for convenience only and shall not be used to construe this Agreement. Words of gender shall be construed to include any other gender, and words in the singular number shall include the plural and vice versa unless the context requires otherwise.
25. **Counterparts.**

This Agreement may be executed by the parties in any number of counterparts, each of which when so executed and delivered shall be deemed an original instrument, but all such counterparts together shall constitute but one and the same instrument.

*Signature Page to Follow*
CPS Energy
City Public Service Board
Cris Eugster
Title: Chief Operating Officer

SAWS
San Antonio Water System
Robert R. Puente
Title: President/Chief Executive Officer
EXHIBIT “A”

CONSENT TO REVIEW OF EDWARD AQUIFER AUTHORITY (“EAA”) RECORDS

The undersigned, as the owner or representative acting on behalf of the owner of certain water rights (“Consenting Party”), has entered into a Transfer of Use Agreement for Lease of Groundwater (“Agreement”) with the San Antonio Water System as (“SAWS”) for the lease of those water rights to SAWS. In conjunction with such Agreement, Consenting Party hereby consents to and agrees to allow the review and copying by SAWS of any and all EAA records relating to Consenting Party and the Consenting Party’s EAA Initial Regular Permit No(s). P100-307 (BE00100), as contained in the files of the Edwards Aquifer Authority (“EAA”) at any location of the EAA. Such right granted hereby to SAWS includes but is not limited to files relating to permit issuance, amendment, revocation, application, adjudication or other action affecting such permit or permits, all files relating to compliance or noncompliance with the terms of such permit(s), compliance or noncompliance with EAA Act, rules and regulations, any and all correspondence by and between Consenting Party and the EAA or involving any third party, all materials relating to fees assessed, paid, adjudicated or protested with respect to such permit(s), all information relating to pumpage, water measurement, critical period/demand management withdrawal allocation schedules, water usage or non-usage, all files relating to transfers of water rights into and/or out of Consenting Party’s EAA Initial Regular Permit No(s). P100-307 (BE00100), and any other data or information affecting such permit(s) as contained in the files of the EAA.

This consent is effective for the term of the lease between the Consenting Party and SAWS.

Date: ____________________________

CONSENTING PARTY:

[Signature]
Cris Eugster
CPS Energy
Chief Operating Officer
EXHIBIT "B"

MEMORANDUM OF TRANSFER OF USE AGREEMENT FOR LEASE OF GROUNDWATER
MEMORANDUM OF TRANSFER OF USE AGREEMENT FOR LEASE OF GROUNDWATER

This Memorandum of Transfer of Use Agreement for Lease of Groundwater ("Memorandum") is executed this ______ day of ________, 2018 by and between City Public Service Board ("CPS Energy") and San Antonio Water System ("SAWS").

WITNESSETH:

1. On __________________, CPS Energy and SAWS entered into a Transfer of Use Agreement for Lease of Groundwater (the "Agreement") of the Water Rights described below:

   Water Rights:

   The Water Rights consist of CPS Energy's groundwater rights and CPS Energy's permit rights from the Edwards Aquifer Authority ("EAA") to withdraw 2,000 acre-feet of unrestricted Edwards Aquifer groundwater per annum, under EAA Initial Regular Permit No. P100-307 (BE 00100) recorded as Document No. 20150236050 of the Official Public Records of Bexar County, Texas, originally permitted from the tract(s) of land more fully described in Warranty Deed recorded as Document No. 498139, Volume 2397, Pages 255-256, Warranty Deed dated 5/11/1950 as recorded with Clerk as Document #657326, Volume 2835, Pages 550-551, the tract(s) of land more fully described in Deed dated 8/19/1907 as recorded with Clerk as Volume 276, Pages 60-N/A, and the tracts of land more fully described in Warranty Deed dated 8/27/1947 as recorded with Clerk as Volume 2427, Pages 265-266, all in the Official Public Records of Bexar County, Texas (the "Groundwater Withdrawal Permit") (the "Water Rights"). The Groundwater Withdrawal Permit authorizes the withdrawal and beneficial use of groundwater from the Edwards Aquifer pursuant to the terms and conditions of the Groundwater Withdrawal Permit.

2. The Agreement sets out the rights and obligations of CPS Energy and SAWS to the Groundwater Withdrawal Permit.

3. The term of the Agreement is for 5 years, from January 1, 2019 to December 31, 2023, provided, however, CPS Energy has an option to terminate the Agreement.

4. In accordance with the terms of the Agreement, CPS Energy agreed to transfer use of a total of 2,000 acre-feet per annum of Water Rights to SAWS.

5. This Memorandum is intended to act only as the notice of the existence of the Agreement and its general terms. To the extent the terms of this Memorandum conflict with the terms of the Agreement, the terms of the Agreement shall control.
Lessor:
City Public Service Board

Cris Eugster
Title: Chief Operating Officer

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 15th day of October, 2018 by Cris Eugster, Chief Operating Officer, of the City Public Service Board, on behalf of same.

HELEN C. MONTOYA
NOTARY PUBLIC, State of Texas

(Seal)
Lessee:
San Antonio Water System

Robert R. Puente
Title: President/Chief Executive Officer

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ______________ day of ______________, 2018 by Robert R. Puente, President/Chief Executive Officer of the San Antonio Water System, on behalf of same.

NOTARY PUBLIC, State of Texas

(Seal)

After recording return to:

Water Resources
Attn: Brandon Payne
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449
TO: San Antonio Water System Board of Trustees

FROM: Karen L. Guz, Director, Conservation, and Gavino Ramos, Vice President, Communications and External Relations

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

SUBJECT: APPROVAL TO EXPAND THE WATERSAVER COUPON PROGRAM TO INCLUDE BOTH LOCAL AND NON-LOCAL VENDORS AND TO BE USED FOR TECHNOLOGIES, PRODUCTS AND SERVICES

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution approves expansion of the WaterSaver Coupon Program under the San Antonio Water System’s (SAWS) Conservation Department to include both local and non-local vendor participation as well as coupons issued to save water using technologies, products and services.

- The reduction of per capita water consumption is a goal in the SAWS 2017 Water Management Plan and conserving water in the San Antonio service area has been identified by SAWS as a cost-effective approach to managing water resources.

- Incentive coupons for landscape and irrigation supplies from local vendors have been popular with SAWS customers causing a broader participation in conservation opportunities.

- Additional opportunities to save water through innovative technologies can be provided by working with vendors who are both local and non-local to San Antonio.

- Using coupons for a variety of materials, services and technologies allows the Conservation Department to better deploy water saving programs to meet the needs of more customers.

- The approval to expand this program will better improve the effectiveness of conservation programs because coupons are often viewed more favorably than rebates.

- Offering a variety of coupon agreements for materials, technology and water saving practices will encourage more vendors to partner with SAWS to advance water efficiency.

- The coupon program is deployed through agreements signed between SAWS and participating businesses to accept WaterSaver Coupons from qualified customers and to bill SAWS accordingly.
• The expansion of the WaterSaver Coupon Program, previously approved by the Board via Resolution No. 13-107, would allow for non-local, as well as local, business to participate, and to expressly expand the Program to allow for adoption of water saving technologies and services.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Amounts expended under each agreement will be pursuant to and within the limits of the Board approved annual budget for Conservation programs and rebates. No additional funds are being requested.

Karen L. Guz  
Director  
Conservation Department

Gávino Ramos  
Vice President  
Communications and External Relations

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING EXPANSION OF THE WATERSAVER COUPON PROGRAM UNDER THE SAN ANTONIO WATER SYSTEM’S CONSERVATION DEPARTMENT; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE AGREEMENTS WITH LOCAL AND NON-LOCAL QUALIFYING BUSINESSES THAT PROVIDE DESIRED CONSERVATION TECHNOLOGIES, SERVICES AND MATERIALS; AUTHORIZING REIMBURSEMENT TO PARTICIPATING BUSINESSES FOR ACCEPTING WATERSAVER COUPONS FROM PREAPPROVED CUSTOMERS UNDER SUCH AGREEMENTS; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, conserving water in the San Antonio region has been identified by the San Antonio Water System (the “System”) as a cost-effective approach to managing water resources; and

WHEREAS, the System’s goal is to continue efforts that reduce the utility per capita consumption; and

WHEREAS, one of the successful strategies to reduce per capita water consumption is the use of incentives that accelerate the adoption of new technologies, water efficient materials and water efficient practices by all customers; and

WHEREAS, the System’s Conservation staff has worked closely with Residential, Irrigation and General Class customers for the purpose of identifying and bringing forth new efforts that will continue to reduce water consumption; and

WHEREAS, the use of a local vendor coupon incentive program for landscape and irrigation efforts, the WaterSaver Coupon Program (the “Program”) was approved by Resolution No. 13-107; and

WHEREAS, the System’s Program can be expanded to provide effective incentives for technologies and services beyond traditional landscape and irrigation programs; and
WHEREAS, opportunities for cost-effective water saving incentives can be found by encouraging national competition among coupon vendors who may provide technologies, materials and services for the System’s customers; and

WHEREAS, the approved annual Water Conservation Budget includes authorization for WaterSaver Coupons, which save water by encouraging the adoption of water saving technologies and practices; and

WHEREAS, amounts expended under each agreement will be pursuant to and within the limits of the Board approved annual budget for Conservation programs and rebates; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to reaffirm the WaterSaver Coupon Program under the San Antonio Water System’s Conservation Department and authorize its expansion to water-saving technologies and services, (ii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute agreements with qualifying participating local and non-local businesses, and (iii) authorize reimbursement to participating businesses for accepting WaterSaver Coupons from preapproved customers under such agreements; now, therefore:

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

1. That the expansion of the WaterSaver Coupon Program under the San Antonio Water System’s Conservation Department is hereby reaffirmed and authorized to be expanded to include water-saving technologies and services.

2. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute agreements with qualifying participating local and non-local businesses that provide desired conservation technologies, services and materials under the San Antonio Water System’s Conservation Department in substantially the forms attached hereto as Attachment I, which agreements are hereby approved, and is hereby authorized to reimburse participating businesses for accepting WaterSaver Coupons from preapproved customers under such Agreements.

3. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

4. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.
5. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 13th day of November, 2018.

______________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Patricia E. Merritt, Assistant Secretary

Attachments:

I: WaterSaver Coupon Program Participation Agreement
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: RECOMMENDING AND REQUESTING SAN ANTONIO CITY COUNCIL APPROVE AN APPLICATION FOR FINANCIAL ASSISTANCE TO THE TEXAS WATER DEVELOPMENT BOARD FOR PARTICIPATION IN THE CLEAN WATER STATE REVOLVING FUND PROGRAM AND ADOPTION OF A REIMBURSEMENT RESOLUTION

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution recommends and requests the San Antonio City Council take certain actions to approve and authorize an application for financial assistance to the Texas Water Development Board (TWDB) for participation in the Clean Water State Revolving Fund Program in an amount not to exceed $25,285,000.00, and the adoption of a reimbursement resolution.

- The application is a request for financial assistance through TWDB’s Clean Water State Revolving Fund (CWSRF). Projects must qualify for financial assistance through a needs assessment, and an environmental impact and engineering review.

- TWDB’s CWSRF Program provides subsidized loans for qualified projects.

- The projects submitted for review and eligible to receive financial assistance through the CWSRF Program are listed in Attachment A. The financial assistance being requested is for the construction phase of the qualified projects, estimated to be approximately $24,672,000.00, and funds to pay the cost of issuance and fund any Reserve Fund Requirement.

- The process to receive financial assistance under the CWSRF Program consists of a submittal of an application for participation. No financial commitment on the San Antonio Water System’s (SAWS) part is made at the application stage. A financial commitment by SAWS is made at a later date when bond proceeds are received to finance the projects. SAWS will seek additional Board of Trustee and City Council approval prior to the issuance of any bonds under this program.

- The acceptance of the application by TWDB is a commitment by TWDB to provide financing for eligible projects to SAWS. SAWS is not required to accept this funding;
however, if approved and accepted, SAWS must close on the loan within one year of TWDB’s approval of the application.

- A reimbursement resolution allows SAWS to reimburse itself with bond proceeds for eligible capital expenditures made 60 days prior to the adoption of the reimbursement resolution through the issuance of the bonds.

Staff recommends that the Board approve this Resolution.

**FINANCIAL IMPACT:**

The submittal of the application has no financial impact to SAWS. Should SAWS’ application be approved and the issuance of debt be ultimately authorized, the benefit of participation in the CWSRF program is a reduction of 130 basis points or 1.30 percent below the market rate of interest when the bonds are issued.

Douglas P. Evanson  
Senior Vice President/Chief Financial Officer

APPROVED:

Robert R. Puente  
President/Chief Executive Officer

Attachment:

A. Texas Water Development Board Project List
Attachment A

Texas Water Development Board Project List
Clean Water State Revolving Fund

Dos Rios WRCs Electrical System Improvements – Phase 2
This construction project will replace various electrical switchgear, motor control centers, and transformers that are aging, in poor condition, and/or do not meet Federal, State, and Local electrical codes. The Dos Rios WRC has been in operation since 1987 and the plants electrical equipment is in poor condition. Failure of this equipment could interrupt the treatment process, require emergency generators, and cause a fire or other safety issue.

Estimated Construction Costs: $20,046,000

Leon Creek Electrical Switchgear
This construction project will replace various electrical switchgear, motor control centers, and transformers that are aging, in poor condition, and/or do not meet Federal, State, and Local electrical codes. The Leon Creek WRC has been in operation since the 1960’s and the plants electrical equipment is in poor condition. Failure of this equipment could interrupt the treatment process, require emergency generators, and cause a fire or other safety issue.

Estimated Construction Costs: $4,626,000
RESOLUTION NO.

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE SAN ANTONIO WATER SYSTEM RECOMMENDING AND REQUESTING THAT THE SAN ANTONIO CITY COUNCIL TAKE CERTAIN ACTIONS WITH RESPECT TO AN APPLICATION TO THE TEXAS WATER DEVELOPMENT BOARD’S CLEAN WATER STATE REVOLVING FUND PROGRAM; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; RECOMMENDING THAT THE SAN ANTONIO CITY COUNCIL ADOPT A REIMBURSEMENT RESOLUTION; ESTABLISHING AN EFFECTIVE DATE; AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the San Antonio Water System (the System) deems it necessary to apply to the Texas Water Development Board (TWDB) for financial assistance from the TWDB’s Clean Water State Revolving Fund Program; and

WHEREAS, the System’s Board of Trustees (Board) desires to request financial assistance from the TWDB in an amount not to exceed $25,285,000 for the design and construction of improvements to the System’s utility system; and

WHEREAS, the Board has determined that the System should apply to the TWDB for financial assistance in an amount not to exceed $25,285,000 which will be evidenced by the issuance of one or more series of revenue and/or revenue and refunding bonds payable from and secured by a junior and inferior lien on and pledge of the net revenues of the System, by the City and purchased by the TWDB to provide funds to acquire, purchase, design, construct, improve, extend, enlarge, and repair the System pursuant to the TWDB’s programs, to reimburse itself for prior expenses (if any), to refund certain currently outstanding Commercial Paper (if any), and to pay certain costs of issuance; and

WHEREAS, by virtue of the authority and power vested in the Board with reference to the expenditure and application of the revenues of the System and to comply with the terms and conditions prescribed by the TWDB and in the City ordinances authorizing the issuance of currently-outstanding City bonds payable from and secured by a junior and inferior lien on and pledge of the net revenues of the System, which terms and conditions provide for the issuance of additional City bonds payable from and secured by a junior and inferior lien on and pledge of the net revenues of the System, it is necessary and proper for the Board to formally request the City Council of the City to approve the application for financial assistance to the TWDB; and

WHEREAS, it is hereby found and determined that financing the improvements through the TWDB’s Clean Water State Revolving Fund Program presents the most economical option to the System and its ratepayers; and
WHEREAS, in accordance with the rules and regulations of the Board, which govern the procedures in making such an application, the governing body of the System is required to pass a resolution to accompany such application; and

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

1. The City Council of the City of San Antonio, Texas is hereby formally requested to authorize and approve the application for financial assistance to the TWDB for designing and constructing improvements to the System, to reimburse itself for prior expenses (if any), to refund certain currently outstanding Commercial Paper (if any), and to pay the costs of issuing the revenue bonds and/or revenue and refunding bonds described in the preamble hereof by adopting a Resolution in substantially the form attached hereto as Exhibit A.

2. The Chair or Vice Chair, the President/Chief Executive Officer, and the Senior Vice President/Chief Financial Officer of the System are hereby authorized to execute and submit to the TWDB the application for such financial assistance, and the Chair or Vice Chair, and the President/Chief Executive Officer and the Senior Vice President/Chief Financial Officer of the System, together with the co-bond counsel, co-financial advisors, and consulting engineers named in such application, are authorized to appear before the TWDB in support of such application.

3. The Chair or Vice Chair of the System is further specifically authorized to make the required assurances to the Board in accordance with the rules, regulations, and policies of the Board.

4. A certified copy of this Resolution shall be attached to the application for financial assistance herein authorized to be prepared and submitted to the TWDB, and the Secretary or Assistant Secretary of the System is authorized and directed to prepare and certify such number of copies of this Resolution as may be required for purposes of supporting the submission of such application to the TWDB.

5. The recitals contained in the preamble hereof 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.

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

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

8. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board hereby declares that this Resolution would have been enacted without such invalid provision.
9. To permit the reimbursement for expenses incurred using proceeds of bonds to be issued, the Board hereby recommends that the City Council adopt the reimbursement resolution attached hereto as Exhibit B and incorporated by reference for all purposes to this Resolution.

10. 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.

11. This Resolution shall be in force and effect from and after its passage on the date shown below.

[The remainder of this page intentionally left blank.]
PASSED AND APPROVED this the 13th day of November, 2018.

______________________________
Berto Guerra, Jr., Chairman

Attest:

______________________________
Patricia E. Merritt, Assistant Secretary
EXHIBIT A

Application Resolution

See Tab No. _
EXHIBIT B

Reimbursement Resolution
TO: San Antonio Water System Board of Trustees

FROM: Nancy Belinsky, Vice President & General Counsel

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

SUBJECT: AUTHORIZATION FOR SETTLEMENT OF THE LAWSUIT OF MARY ALICE PASTRANO AND SOUTHERN COUNTY MUTUAL INSURANCE CO. AGAINST THE SAN ANTONIO WATER SYSTEM

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution authorizes the President/Chief Executive Officer and the System’s Legal Counsel to execute a settlement agreement in connection with the lawsuit of Mary Alice Pastrano (“Plaintiff Pastrano”) and Southern County Mutual Insurance Co. (collectively, the “Plaintiffs”) against the San Antonio Water System (the “System”).

- Plaintiff Pastrano alleged that on October 7, 2015, she was traveling north on Interstate 35 in San Antonio, Texas, when a System vehicle operated by System employee Robert Cruz, entered into her lane of traffic and struck her vehicle on the left side. The force of this impact caused her vehicle to spin and strike other vehicles, including a vehicle operated by an employee of Defendant C-6 Disposable Systems, Inc. (“Defendant C-6”), all of which caused a multi-vehicle collision and resulted in bodily injuries to Plaintiff Pastrano. Plaintiff Pastrano subsequently filed a lawsuit seeking damages for bodily injuries sustained in the accident. In addition, two subrogation lawsuits were filed for property damage. The lawsuits were consolidated in a Motion to Consolidate granted on January 27, 2017, and styled Cause No. 2016-CI-15148; Mary Pastrano v. Robert Cruz, in the 407th Judicial District Court, Bexar County, Texas.

- Liability is disputed and the amount of damages claimed by Plaintiff Pastrano for past and future necessary medical expenses, past and future pain, suffering and mental anguish; past and future physical impairment; and all other future damages, in addition to lost wages and loss of earning capacity in the past, and loss of earning capacity in the future by Plaintiff Pastrano is disputed by the System.

- The suit was mediated and settled on September 26, 2018, subject to Board approval.
Settlement of a Lawsuit

- Plaintiff Pastrano sought an amount of damages in excess of the jurisdictional limits of the court, but agreed to settle the claim for personal injuries and all other damages for an amount totaling $150,000.00; and Plaintiff Southern County sought an amount in excess of the jurisdictional limits of the court but agreed to the settle the subrogation claim for property damage in an amount totaling $10,000.00.

- Total amount of the settlement for the Plaintiffs is $160,000.00, to be divided evenly between the System and Defendant C-6, as follows: the System and Defendant C-6 to each pay $75,000.00 to Plaintiff Mary Alice Pastrano; and the System and Defendant C-6 to each pay $5,000.00 to Plaintiff Southern County Mutual Insurance Co.

- The System and Plaintiffs desire to resolve all differences and all outstanding claims. The System recommends settlement of this lawsuit in the total amount for the System of $80,000.00.

- The System has agreed to pay $75,000.00 to Mary Alice Pastrano, and her attorneys, Bayne, Snell & Krause, and $5,000 to Southern County Mutual Insurance Co., for a total amount of $80,000.00, subject to Board approval.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

Settlement of this lawsuit is for the total amount of $80,000.00, and will be paid from the System Fund. The required funding is available in FY 2018 from the System Fund budget (Company: 1000, Accounting Unit: 8111800, Account: 511510, Total 2018 amount: $80,000.00).

Nancy Beninsky
Vice President and General Counsel

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING SETTLEMENT OF THE LAWSUIT OF MARY ALICE PASTRANO AND SOUTHERN COUNTY MUTUAL INSURANCE COMPANY AGAINST THE SAN ANTONIO WATER SYSTEM; APPROVING THE SYSTEM’S FINANCIAL OBLIGATION UNDER THE SETTLEMENT; AUTHORIZING EXPENDITURES IN THE TOTAL AMOUNT OF $80,000.00 FROM THE SYSTEM FUND FOR PURPOSES OF THE SETTLEMENT; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER AND THE SYSTEM’S LEGAL COUNSEL TO EXECUTE THE SETTLEMENT AGREEMENT AND TO PAY $75,000.00 TO MARY ALICE PASTRANO AND HER ATTORNEY AND $5,000.00 TO SOUTHERN COUNTY MUTUAL INSURANCE COMPANY, FOR THE SYSTEM’S OBLIGATIONS UNDER THE TERMS OF THE SETTLEMENT AGREEMENT; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Plaintiff Mary Alice Pastrano (“Plaintiff Pastrano”) filed a lawsuit against the San Antonio Water System (“System”), seeking damages for personal injuries as a result of an accident that occurred or about October 7, 2015, in San Antonio, Bexar County, Texas; and

WHEREAS, Plaintiff Pastrano alleged she was travelling north on Interstate 35 in San Antonio, Texas, when a System vehicle operated by System employee Robert Cruz, entered into her lane of traffic and struck her vehicle on the left side. The force of this impact caused her vehicle to spin and strike other vehicles which caused a multi-vehicle collision and resulted in bodily injuries to her; and

WHEREAS, Plaintiff Southern County Insurance Co. (“Plaintiff Southern County”) made a subrogation claim for reimbursement of payments made to Plaintiff Pastrano for property damage, and it subsequently filed a lawsuit against the System; and

WHEREAS, three lawsuits were filed as a result of this accident as follows: Cause No. 2016-CI-11214; EMC Insurance Companies. v. San Antonio Water System, in the 150th Judicial District Court, Bexar County, Texas (the “Lawsuit”); Cause No. 2016-CI-15148; Mary Pastrano v. Robert Cruz, in the 407th Judicial District Court, Bexar County, Texas; Cause No. 2016-CV-007016; Southern County Mutual Insurance Co., as Subrogee of Mary Alice Pastrano v. The San Antonio Water System and Robert Cruz, in the County Court at Law No. 10, Bexar
County. The lawsuits were consolidated in a Motion to Consolidate which was granted on January 27, 2017 into Cause No. 2016-CI-15148; *Mary Pastrano v. Robert Cruz*, in the 407th Judicial District Court, Bexar County, Texas; and

WHEREAS, the liability of the System for the incident is disputed and the amount and extent of damages claimed by Plaintiff Pastrano for past and future medical care expenses, past and future physical pain and mental anguish, past and future physical impairment, and all other future damages claimed by Plaintiff Pastrano, in addition to lost wages and loss of earning capacity in the past, and loss of earning capacity in the future by Plaintiff Pastrano, was disputed by the System; and

WHEREAS, Plaintiff Pastrano claimed an amount of damages in excess of the jurisdictional limits of the court, and she has agreed to settle all personal injury and other claims against the System for an amount totaling $75,000.00; and

WHEREAS, Plaintiff Southern County claimed an amount of damages in excess of the jurisdictional limits of the court, and has agreed to settle all property damage and other claims against the System for an amount totaling $5,000.00; and

WHEREAS, Plaintiffs’ claims were mediated and settled on September 26, 2018, subject to Board approval; and

WHEREAS, the nature of the facts of this case, the avoidance of further legal expense, and other relevant circumstances favor settlement of this lawsuit; and

WHEREAS, both the System and Plaintiffs now desire to resolve all differences and settle all claims against the System; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve the settlement of the lawsuit of Mary Alice Pastrano and Southern County Mutual Insurance Co., against the System, (ii) to approve the System’s financial obligation of $80,000.00, which includes all alleged damages, fees and costs under the settlement, (iii) to authorize expenditures in the total amount of $80,000.00 from the System Fund for the purposes of the settlement, and (iv) to authorize the President/Chief Executive Officer and the System’s Legal Counsel to execute the settlement agreement and pay $75,000.00 to Plaintiff Mary Alice Pastrano and her attorneys, and $5,000.00 to Plaintiff Southern County Mutual Insurance Co. for the total amount of $80,000.00, for obligations under the terms of the settlement agreement; now, therefore:

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

1. That the settlement of the lawsuit by Mary Alice Pastrano, and Southern County Mutual Insurance Co. against the San Antonio Water System is hereby approved.
2. That the amount authorized to settle the lawsuit, including all alleged damages, costs and fees, shall hereby consist of $75,000.00, payable to Mary Alice Pastrano and her attorneys, Bayne, Snell & Krause; and $5,000.00, payable to Southern County Mutual Insurance Co.

3. That the total amount of $80,000.00 is hereby authorized to be expended from the System Fund for the System’s obligations under the authorized settlement agreement.

4. That the President/Chief Executive Officer and the System’s Legal Counsel are hereby authorized to execute the settlement agreement between the System, Mary Alice Pastrano and Southern County Mutual Insurance Co. for the System’s obligations under the terms of the settlement 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 the resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

6. If any section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, inoperative, or invalid.

7. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 13th day of November, 2018.

__________________________________________
Berto Guerra, Jr., Chairman

ATTEST:

__________________________________________
Patricia E. Merritt, Assistant 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: APPROVING THE SAN ANTONIO WATER SYSTEM ANNUAL BUDGET FOR THE FISCAL YEAR ENDING DECEMBER 31, 2019, APPROVING EXPENDITURES IN AN AMOUNT NOT TO EXCEED $12,778,964 FOR OWNER CONTROLLED CONSTRUCTION CHANGES FOR THE FISCAL YEAR ENDING DECEMBER 31, 2019; AND APPROVING ADJUSTMENTS FOR CERTAIN SPECIAL SERVICES FEES FOR 2019 AS PROVIDED BY THE CITY CODE

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

In accordance with the San Antonio Water System’s founding City Ordinance No. 75686 (SAWS Creation Ordinance), the Board shall prepare an annual budget to serve as a tool in controlling and administering the management and operation of the San Antonio Water System (SAWS). The annual budget shall reflect an estimate of Gross Revenues and an estimate of the disposition of those revenues in accordance with the flow of funds requirements set forth in the SAWS Creation Ordinance. The attached Resolution approves the 2019 Annual Budget, and authorizes the budget to be submitted to San Antonio City Council for review and consultation. The Resolution also approves increases for certain Special Services Fees as authorized by the City Code.

2019 Annual Budget

The 2019 Annual Budget, as set forth in Attachment I, balances revenue requirements for the fiscal year ending December 31, 2019, with available revenues and other funding sources. Staff will submit an amendment to the 2019 Annual Budget to the Board for approval in the event the actual amount Available for R&R – Unrestricted will be less than the amount shown in Attachment I or Debt Service and Expenses or Draw on Equity will be greater than the amount shown in Attachment I.

Sources of Funds

Total Sources of Funds are estimated to be $828.3 million, which is $47.5 million or 6.1% higher than the Budgeted 2018 Sources of Funds and is comprised of:

- Operating revenues totaling $729.4 million
- Non-Operating revenues totaling $24.6 million
- Draw on Equity of $1.4 million
- Capital recovery fees of $72.9 million
Operating revenues include $26.9 million of additional revenues associated with the following rate adjustments already approved for 2019 by the City Council in December 2017: 0.4% for Water Delivery rates, 4.3% for Water Supply Fee rates, 8.0% for Wastewater rates, and 1.8% for Recycled Water rates. These rate adjustments result in a combined average increase of 4.7% to the bill for the average SAWS residential customer, assuming water usage of 7,092 gallons and wastewater usage of 5,668 gallons per month.

Water related operating revenues assume billed water usage of 65.9 billion gallons, 0.76% more than the 65.4 billion gallons budgeted for 2018, and customer growth of 1.5%. Wastewater related operating revenues assume customer growth of 1.6%.

Uses of Funds

Funds generated through fees, rates, and other charges are used to support the operation of SAWS, make all required annual debt service payments on existing and proposed outstanding debt, and provide sufficient additional funds to support SAWS desired financial metrics. Any additional funds generated during the year are transferred to the Renewal and Replacement (R&R) fund. R&R funds can be used for any lawful purpose but are primarily used to provide a portion of the funding needed for future capital improvement projects.

Budgeted Uses of Funds total $828.3 million and consist of:

- Operating & Maintenance expenses totaling $350.4 million
- Debt service and other debt expenses of $240.6 million
- Transfers to the City of San Antonio of $19.3 million
- Transfers to the Renewal & Replacement Fund of $218.0 million

2019 Capital Improvement Program

The Capital Improvement Program consists of capital improvement projects focused on sustaining, restoring and modernizing SAWS facilities and infrastructure. The 2019 Capital Improvements Program totals $377.3 million and includes:

- $68.8 million in Water Supply projects, of which $52.4 million will provide additional funding for the construction of the Central Water Integration Pipeline that will integrate Vista Ridge Water Supply Project water into the SAWS transmission and distribution system beginning in 2020
- $108.2 million in Water Delivery projects, including main replacements and production facility upgrades
- $200.2 million in Wastewater projects, of which $138.7 million supports SAWS commitments under the Environmental Protection Agency Consent Decree
Included in the above totals is $12.8 million for Owner Controlled Construction Changes that may arise related to new or existing construction contracts.

Approximately 51% of the 2019 Capital Improvement Program will be funded with existing renewal and replacement funds, capital recovery fees and investment income with the remaining 49% to be funded with the issuance of new debt.

Special Services Fees

The City Code, by Ordinances 2015-11-19-0956 and 2017-12-07-0928, authorize that certain Special Services Fees be automatically increased each year at the annual rate of inflation or by the annual percentage change in related service rates as appropriate. Attachment II contains a table listing each affected fee, the 2018 fee amount, the 2019 fee amount, the basis for the fee change and the City Code section authorizing the change. Attachment III contains the changes needed in Chapter 34 of the City Code to accommodate the fee changes in 2019. It is recommended that the Chapter 34 changes be transmitted to the City Clerk for incorporation into the City Code.

Staff recommends that the Board approve this Resolution.

FINANCIAL IMPACT:

Attachment I presents the 2019 SAWS Annual Budget in the form of estimated sources and uses of funds. The approval of the Special Services Fees adjustments shown in Attachments II and III are projected to recover an additional approximately $211,000 beginning in 2019.

Douglas P. Evanson
Senior Vice President/Chief Financial Officer

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachments:

ATTACHMENT I: 2019 SAWS Annual Budget
ATTACHMENT II: Special Services Fees Table of Changes
ATTACHMENT III: Special Services Fees Changes to Chapter 34 of the City Code
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING THE ANNUAL BUDGET FOR THE SAN ANTONIO WATER SYSTEM FOR THE FISCAL YEAR ENDING DECEMBER 31, 2019, AS SET FORTH IN ATTACHMENT I; AUTHORIZING THE APPROVED ANNUAL BUDGET FOR THE FISCAL YEAR ENDING DECEMBER 31, 2019, BE SUBMITTED TO THE CITY COUNCIL FOR REVIEW AND CONSULTATION; DIRECTING THE STAFF TO SUBMIT A BUDGET AMENDMENT TO THE BOARD IN CERTAIN INSTANCES; AUTHORIZING EXPENDITURES OF FUNDS FOR OWNER CONTROLLED CONSTRUCTION CHANGES FOR THE YEAR ENDED DECEMBER 31, 2019, IN AN AMOUNT NOT TO EXCEED $12,778,964.00; DETERMINING THAT THE CITY CODE OF THE CITY OF SAN ANTONIO PROVIDES THAT CERTAIN SPECIAL SERVICES FEE AMOUNTS AUTOMATICALLY ADJUST BASED ON CERTAIN CRITERIA AS SET FORTH IN ATTACHMENT II; APPROVING ADJUSTMENTS TO CERTAIN SPECIAL SERVICES FEES AS ALLOWED BY THE CITY CODE EFFECTIVE AS OF JANUARY 1, 2019; DIRECTING STAFF TO FILE WITH THE SAN ANTONIO CITY CLERK CERTAIN AMENDMENTS TO CHAPTER 34 OF THE CITY CODE INCORPORATED THEREIN CONCERNING THE SPECIAL SERVICES FEE ADJUSTMENTS AS SET FORTH IN ATTACHMENT III; 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 preparation of the Annual Budget, along with other policies and procedures consistent with prudent utility practice, is a management tool that is utilized in decision making and in managing the financial affairs of the San Antonio Water System (the “System”); and

WHEREAS, Ordinance No. 75686 adopted on April 30, 1992, by the City Council of the City of San Antonio, Texas (System Creation Ordinance), requires that the System’s Board of Trustees (the “Board”) prepare an Annual Budget; and

WHEREAS, the System Creation Ordinance requires that the Board shall determine the rates, fees and charges for services rendered and to be rendered by the System with
due consideration being accorded to the terms, covenants, and conditions contained in such Ordinance; and

WHEREAS, the System Creation Ordinance requires that the Annual Budget be submitted to the City Council for review and consultation; and

WHEREAS, the 2019 Annual Budget reflects an estimate of the Gross Revenues and disposition of those revenues for the year ended December 31, 2019, in accordance with the flow of funds as set forth in the System Creation Ordinance and as set forth in Attachment I; and

WHEREAS, the 2019 Annual Budget includes the financing plan for a Capital Improvement Program, which has been prepared to serve as a plan for the implementation of capital improvements to the System; and

WHEREAS, the 2019 Annual Budget includes $12,778,964.00 for potential construction contract changes; and

WHEREAS, the San Antonio City Council, on December 7, 2017, by Ordinance 2017-12-07-0928, has already approved and adopted rate adjustments effective January 1, 2019 to support planned 2019 expenditures: 0.4% for Water Delivery rates, 4.3% for Water Supply Fee rates, 8.0% for Wastewater rates, and 1.8% for Recycled Water rates; these rate adjustments result in a combined average increase of 4.7% to the bill for the average residential customer, assuming water usage of 7,092 gallons and wastewater usage of 5,668 gallons per month; and

WHEREAS, the City Code, by ordinances 2015-11-19-0956 and 2017-12-07-0928, authorizes that certain special services fees be automatically increased each year at the annual rate of inflation or by the annual percentage change in related service rates as appropriate as set forth in Attachment II; and

WHEREAS, the Board desires to approve the special services fee adjustments allowed by the City Code effective January 1, 2019, along with changes to certain sections of Chapter 34 of the City Code to accommodate the special services fee adjustments as set forth in Attachment III; and

WHEREAS, the Board desires to direct staff to transmit the special services fee changes to Chapter 34 to the City Clerk for incorporation into the City Code; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve the Annual Budget of the System for the Fiscal Year ending December 31, 2019, as set forth in Attachment I; (ii) to submit the Annual Budget, as set forth in Attachment I, and a report detailing the estimated sources and uses of funds and the Capital Improvement Program for the Fiscal Year ending December 31, 2019, to the City Council for their review and consultation; (iii) to direct System staff to submit an amendment of the 2019 Annual Budget to the Board for approval only if any of the following is projected to occur: the actual amount of funds available for deposit to the R&R – Unrestricted will be less than the amount shown in Attachment I or Debt Service and Expenses or Draw on Equity will be greater than the amount shown in Attachment I; (iv) to authorize the expenditure of funds for owner controlled construction changes for the year ending December 31, 2019, in an amount not to exceed $12,778,964.00; (v) to determine that
the City Code of the City of San Antonio provides that certain special services fee amounts automatically adjust each year at the annual rate of inflation or by the annual percentage change in related service rates as appropriate as set forth in Attachment II; (vi) to approve the special services fee adjustments allowed by the City Code effective January 1, 2019 along with changes to certain sections of Chapter 34 of the City Code to accommodate the special services fee adjustments at set forth in Attachment III; and (vii) to direct staff to transmit the special services fee changes in Attachment III to Chapter 34 to the City Clerk for incorporation into the City Code; now, therefore:

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

1. That the Annual Budget of the System for the Fiscal Year ending December 31, 2019, as set forth in Attachment I is hereby approved; such Annual Budget is incorporated herein by reference and a report detailing the estimated sources and uses of funds and the Capital Improvement Program for the fiscal year ending December 31, 2019, is available for inspection at the office of the Board of Trustees Administrator. Capitalized terms utilized hereby and not defined shall have the meanings ascribed in the Creation Ordinance.

2. That the submittal of the Annual Budget, as set forth in Attachment I, and a report detailing the estimated sources and uses of funds and the Capital Improvement Program for the Fiscal Year ending December 31, 2019, for the System to the City Council for their review and consultation, pursuant to the City Ordinance No. 75686 is hereby authorized.

3. That the Board directs System staff to submit an amendment of the 2019 Annual Budget to the Board for approval in the event the net amount Available for R&R – Unrestricted will be less than the amount shown in Attachment I or Debt Service and Expenses or Draw on Equity will be greater than the amount shown in Attachment I.

4. The expenditure of funds for owner controlled construction changes for the year ending December 31, 2019, in an amount not to exceed $12,778,964.00 is hereby authorized.

5. That the City Code of the City of San Antonio provides that certain special services fee amounts automatically adjust each year at the annual rate of inflation or by the annual percentage change in related service rates as appropriate as set forth in Attachment II is hereby determined.

6. That the special services fee adjustments allowed by the City Code are approved effective January 1, 2019, along with changes to certain sections of Chapter 34 of the City Code to accommodate the special services fee adjustments at set forth in Attachment III.

7. That the Board directs System staff to transmit the special services fee changes in Attachment III to Chapter 34 to the City Clerk for incorporation into the City Code.

8. 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.
9. If any part, section, paragraph, sentence, phrase of word of this Resolution is for any reason held to be unconstitutional, illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid, or ineffective, the remainder of this Resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid, or ineffective.

10. This Resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 13th day of November, 2018.

__________________________________
Berto Guerra, Jr., Chairman

ATTEST:

____________________________
Patricia E. Merritt, Assistant Secretary
### ATTACHMENT I
San Antonio Water System
2019 Operating Budget
Estimated Sources and Uses of Funds

<table>
<thead>
<tr>
<th>Sources of Funds</th>
<th>Millions $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating Revenues</td>
<td>$729.4</td>
</tr>
<tr>
<td>Non-operating Revenues</td>
<td>24.6</td>
</tr>
<tr>
<td>Draw on Equity</td>
<td>1.4</td>
</tr>
<tr>
<td>Capital Recovery Fees</td>
<td>72.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$828.3</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Uses of Funds</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations and Maintenance</td>
<td>$350.4</td>
</tr>
<tr>
<td>Debt Service &amp; Expenses</td>
<td>240.6</td>
</tr>
<tr>
<td>Transfer to COSA</td>
<td>19.3</td>
</tr>
<tr>
<td>Available for R&amp;R – Restricted</td>
<td>88.8</td>
</tr>
<tr>
<td>Available for R&amp;R – Unrestricted</td>
<td>129.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$828.3</strong></td>
</tr>
</tbody>
</table>
## ATTACHMENT II
### SPECIAL SERVICES FEES TABLE OF CHANGES

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Fee Name</th>
<th>2018 Fee Amounts</th>
<th>2019 Fee Amounts</th>
<th>Basis for Changes</th>
<th>City Code Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservation</td>
<td>Irrigation System Inspection Compliance Annual Enforcement Fee</td>
<td>$150.00</td>
<td>$157.42</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-134</td>
</tr>
<tr>
<td></td>
<td>Irrigation System Inspection Compliance Volumetric Rate (per 100 gallons)</td>
<td>$0.1950</td>
<td>$0.2019</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-134</td>
</tr>
<tr>
<td></td>
<td>Account Deposit (Water and Sewer Service)</td>
<td>$67.00</td>
<td>$91.59</td>
<td>Updated by percentage rate change approved in a given year after 2018 for the average SAWS residential customer. (4.7% for 2019)</td>
<td>Sec. 34.3.91</td>
</tr>
<tr>
<td></td>
<td>Account Deposit (Water and Sewer Service) for Affordability Customers</td>
<td>$67.00</td>
<td>$79.75</td>
<td>Updated by percentage rate change approved in a given year after 2018 for the average SAWS residential customer. (4.7% for 2019)</td>
<td>Sec. 34.3.91</td>
</tr>
<tr>
<td></td>
<td>Account Deposit (Sewer Service Only)</td>
<td>$44.00</td>
<td>$46.07</td>
<td>Updated by percentage rate change approved in a given year after 2018 for the average SAWS residential customer. (4.7% for 2019)</td>
<td>Sec. 34.3.91</td>
</tr>
<tr>
<td></td>
<td>Account Deposit (Sewer Service Only) for Affordability Customers</td>
<td>$22.00</td>
<td>$23.03</td>
<td>Updated by percentage rate change approved in a given year after 2018 for the average SAWS residential customer. (4.7% for 2019)</td>
<td>Sec. 34.3.91</td>
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<tr>
<td></td>
<td>Added Fee for Removal of Illegal Straight Connection</td>
<td>$25.00</td>
<td>$25.00</td>
<td>Added cost of estimated water usage during illegal straight connection usage.</td>
<td>Sec. 34.5.02 (b)</td>
</tr>
<tr>
<td>Customer Service-Related</td>
<td>Wastewater Plug &amp; Removal Fee - 4 inch pipeline</td>
<td>$820.00</td>
<td>$805.11</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.238</td>
</tr>
<tr>
<td></td>
<td>Wastewater Plug &amp; Removal Fee - 6 inch pipeline</td>
<td>$904.00</td>
<td>$1,022.69</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.238</td>
</tr>
<tr>
<td></td>
<td>Wastewater Plug &amp; Removal Fee - 8 inch pipeline</td>
<td>$1,117.00</td>
<td>$1,148.24</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.238</td>
</tr>
<tr>
<td></td>
<td>Dye Testing Fee</td>
<td>$57.00</td>
<td>$58.65</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.237</td>
</tr>
<tr>
<td></td>
<td>Same Day Turn-On Fee</td>
<td>$34.00</td>
<td>$34.89</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.132</td>
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<tr>
<td></td>
<td>Valve Tampering Fee</td>
<td>$60.00</td>
<td>$61.73</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.5.02 (a)</td>
</tr>
<tr>
<td></td>
<td>Lock Tampering Fee</td>
<td>$40.00</td>
<td>$40.39</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.5.02 (a)</td>
</tr>
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<td></td>
<td>5/8&quot; Meter Tampering Fee</td>
<td>$73.00</td>
<td>$75.11</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.5.02 (a)</td>
</tr>
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<td></td>
<td>3/4&quot; Meter Tampering Fee</td>
<td>$90.00</td>
<td>$94.05</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.5.02 (a)</td>
</tr>
<tr>
<td></td>
<td>1&quot; Meter Tampering Fee</td>
<td>$119.00</td>
<td>$122.43</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.5.02 (a)</td>
</tr>
<tr>
<td></td>
<td>3/8&quot; Bench Meter Test Fee</td>
<td>$124.00</td>
<td>$127.58</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.133</td>
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<tr>
<td></td>
<td>3/4&quot; Bench Meter Test Fee</td>
<td>$143.00</td>
<td>$147.13</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.133</td>
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<tr>
<td></td>
<td>1&quot; Bench Meter Test Fee</td>
<td>$170.00</td>
<td>$174.91</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.133</td>
</tr>
<tr>
<td></td>
<td>1 1/2&quot; Bench Meter Test Fee</td>
<td>$316.00</td>
<td>$318.95</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34.133</td>
</tr>
<tr>
<td>Development Services</td>
<td>2&quot; Bench Water Test Fee</td>
<td>$454.00</td>
<td>$457.10</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-133</td>
</tr>
<tr>
<td></td>
<td>Enroachment or Easement Release Application Processing Fee</td>
<td>$790.00</td>
<td>$802.52</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-137</td>
</tr>
<tr>
<td></td>
<td>Fireflow Test Fee</td>
<td>$56.00</td>
<td>$59.87</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-128</td>
</tr>
<tr>
<td></td>
<td>Lift Station Maintenance Fee</td>
<td>$200,130</td>
<td>$205,907</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-235</td>
</tr>
<tr>
<td>Fire Hydrant Water Meter</td>
<td>Metered Water Sales (per 100 gallons)</td>
<td>$0.2500</td>
<td>$0.2710</td>
<td>Updated by percentage rate change approved for Water Delivery in a given year after 2018. (4.4% in 2019) The current SAA Permit Fee will be added.</td>
<td>Sec. 34-131</td>
</tr>
<tr>
<td></td>
<td>Water Supply Fee (per 100 gallons)</td>
<td>$0.2163</td>
<td>$0.2288</td>
<td>Updated by percentage rate change approved for Water Supply in a given year after 2018. (4.3% in 2019) The current SAA Permit Fee will be added.</td>
<td>Sec. 34-131</td>
</tr>
<tr>
<td></td>
<td>Fire Hydrant Meter Daily Availability Charge</td>
<td>$6.80</td>
<td>$7.79</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-131</td>
</tr>
<tr>
<td></td>
<td>Fire Hydrant Meter Deposit</td>
<td>$1,637.00</td>
<td>$1,664.00</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-131</td>
</tr>
<tr>
<td></td>
<td>Monthly Penalty for Failure to Bring in Fire Hydrant Meter for Calibration and Inspection</td>
<td>$99.90</td>
<td>$100.4</td>
<td>Updated by percentage rate change approved for Water Delivery in a given year after 2018. (4.3% in 2019) The current SAA Permit Fee will be added.</td>
<td>Sec. 34-131</td>
</tr>
<tr>
<td></td>
<td>Fire Hydrant Meter Irrigation Use Metered Irrigation QCL Water Sales (per 100 gallons)</td>
<td>$0.8802</td>
<td>$0.8841</td>
<td>Updated by percentage rate change approved for Water Supply in a given year after 2018. (4.3% in 2019) The current SAA Permit Fee will be added.</td>
<td>Sec. 34-131</td>
</tr>
<tr>
<td></td>
<td>Fire Hydrant Meter Irrigation Use Water Supply Fee Rate (per 100 Gallons)</td>
<td>$0.5900</td>
<td>$0.5903</td>
<td>Updated by percentage rate change approved for Water Supply in a given year after 2018. (4.3% in 2019) The current SAA Permit Fee will be added.</td>
<td>Sec. 34-131</td>
</tr>
<tr>
<td>Fee Type</td>
<td>Fee Name</td>
<td>2018 Fee Amounts</td>
<td>2019 Fee Amounts</td>
<td>Basis for Changes</td>
<td>City Code Reference</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-----------------------------------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>-----------------------------------------------------------------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$ 13,854.50</td>
<td>$ 14,254.42</td>
<td>2019 rate of inflation as applicable to fees as described below; CPI Change (July 2017 to July 2018)</td>
<td>Sec. 34-484</td>
</tr>
<tr>
<td></td>
<td>Categorical Industrial Waste Permit (five years)</td>
<td></td>
<td></td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-484</td>
</tr>
<tr>
<td></td>
<td>Non-Categorical Industrial Waste Permit (five years)</td>
<td>$ 10,390.88</td>
<td>$ 10,690.82</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-484</td>
</tr>
<tr>
<td></td>
<td>SIU Sampling Fee</td>
<td>$ 615.76</td>
<td>$ 633.53</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-484</td>
</tr>
<tr>
<td></td>
<td>Non-SIU Sampling Fee (per month)</td>
<td>$ 10.90</td>
<td>$ 11.21</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-484</td>
</tr>
<tr>
<td></td>
<td>Liquid Waste Permit Fee (Annual)</td>
<td>$ 341.74</td>
<td>$ 351.61</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-521</td>
</tr>
<tr>
<td></td>
<td>Liquid Waste Permit Vehicle Reinspection Fee</td>
<td>$ 190.89</td>
<td>$ 196.39</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-521</td>
</tr>
<tr>
<td></td>
<td>Liquid Waste Manifest Book</td>
<td>$ 44.13</td>
<td>$ 45.40</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-521</td>
</tr>
<tr>
<td></td>
<td>Liquid Waste Disposal Site Fee (per 100 Gallons)</td>
<td>$ 8.95</td>
<td>$ 9.21</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-521</td>
</tr>
<tr>
<td></td>
<td>FOG Monthly Fee (Flat Fee for All FOG Customers)</td>
<td>$ 21.14</td>
<td>$ 21.75</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-530</td>
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<tr>
<td>Industrial Waste</td>
<td>Laboratory Test Fees (different fee per procedure)</td>
<td>(See Lab Fees Table)</td>
<td>(See Lab Fees Table)</td>
<td>Updated annually by inflation after 2015.</td>
<td>Sec. 34-484</td>
</tr>
<tr>
<td></td>
<td>Liquid Waste Disposal Site Holiday Access Fee Per Hour</td>
<td>$ 63.00</td>
<td>$ 64.82</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-521</td>
</tr>
<tr>
<td></td>
<td>Liquid Waste Disposal Site Weekend Access Fee Per Hour</td>
<td>$ 38.00</td>
<td>$ 39.10</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-521</td>
</tr>
<tr>
<td></td>
<td>Dispatch Fee for Response to Damaged Mains (EOC, Claims, D&amp;C)</td>
<td>$ 48.00</td>
<td>$ 49.39</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-125.1</td>
</tr>
<tr>
<td>Pipeline Damage Cost Recovery</td>
<td>Flat Avg. Fees for Flowable Fill and Plates for Contractor Main Damage</td>
<td>$ 236.00</td>
<td>$ 242.81</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-125.1</td>
</tr>
<tr>
<td></td>
<td>Lost Water Rate (per 100 gallons; Highest Water Supply/Water Delivery Outside City Limits Rate)</td>
<td>$ 1.7151</td>
<td>$ 1.7506</td>
<td>Updated by percentage rate changes approved for Water Delivery and Water Supply in a given year after 2018. The current EAA Permit Fee will be added.</td>
<td>Sec. 34-125.1</td>
</tr>
<tr>
<td>Underground Storage Tank Regulation</td>
<td>Underground Storage Tank (UST) Initial Site Registration Fee</td>
<td>$ 220.00</td>
<td>$ 226.35</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-1008</td>
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<tr>
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<td>UST Annual Site Inspection Fee</td>
<td>$ 150.00</td>
<td>$ 154.33</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-1008</td>
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<tr>
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<td>UST Follow-Up Site Inspection Fee</td>
<td>$ 120.00</td>
<td>$ 123.46</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-1008</td>
</tr>
<tr>
<td></td>
<td>UST Permit Renewal Fee (Tanks 0-4,999 Gallons)</td>
<td>$ 525.00</td>
<td>$ 540.15</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-1008</td>
</tr>
<tr>
<td></td>
<td>UST Permit Renewal Fee (Tanks 5,000 to 10,000 Gallons)</td>
<td>$ 650.00</td>
<td>$ 668.76</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-1008</td>
</tr>
<tr>
<td></td>
<td>UST Permit Renewal Fee (Tanks Greater Than 10,000 Gallons)</td>
<td>$ 750.00</td>
<td>$ 771.65</td>
<td>Updated annually by inflation after 2018.</td>
<td>Sec. 34-1008</td>
</tr>
<tr>
<td>Laboratory Test</td>
<td>2018 Fees</td>
<td>2019 Fees</td>
<td>Difference 2019 vs. 2018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------</td>
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<td>-----------</td>
<td>--------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alkalinity</td>
<td>$17.67</td>
<td>$18.18</td>
<td>$0.51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ammonia Direct</td>
<td>$20.61</td>
<td>$21.21</td>
<td>$0.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ammonia Distillation</td>
<td>$41.23</td>
<td>$42.42</td>
<td>$1.19</td>
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</tr>
<tr>
<td>Biochemical Oxygen Demand</td>
<td>$35.34</td>
<td>$36.36</td>
<td>$1.02</td>
<td></td>
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<tr>
<td>Chemical Oxygen Demand</td>
<td>$36.81</td>
<td>$37.87</td>
<td>$1.06</td>
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<tr>
<td>Conductivity</td>
<td>$11.78</td>
<td>$12.12</td>
<td>$0.34</td>
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<tr>
<td>Cyanide - Total (with Post Amending)</td>
<td>$47.41</td>
<td>$48.78</td>
<td>$1.37</td>
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<tr>
<td>Nitrogen, total Kjeldahle (TKN)</td>
<td>$39.75</td>
<td>$40.90</td>
<td>$1.15</td>
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<tr>
<td>Phosphorus - Total</td>
<td>$26.36</td>
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<td>$0.76</td>
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<tr>
<td>Total Dissolved Solids</td>
<td>$15.90</td>
<td>$16.36</td>
<td>$0.46</td>
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<tr>
<td>Total Suspended Solids</td>
<td>$18.85</td>
<td>$19.39</td>
<td>$0.54</td>
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<tr>
<td>Turbidity</td>
<td>$15.15</td>
<td>$15.58</td>
<td>$0.44</td>
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<td>Volatile Organic Compounds SDWA (Drinking Water)</td>
<td>$132.51</td>
<td>$136.34</td>
<td>$3.83</td>
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<tr>
<td>Total Petroleum Hydrocarbons</td>
<td>$117.79</td>
<td>$121.19</td>
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<tr>
<td>Hardness</td>
<td>$18.85</td>
<td>$19.39</td>
<td>$0.54</td>
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<tr>
<td>Hexavalent Chromium</td>
<td>$33.86</td>
<td>$34.84</td>
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<td>Mercury</td>
<td>$35.34</td>
<td>$36.36</td>
<td>$1.02</td>
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<td>Metals</td>
<td>$16.49</td>
<td>$16.97</td>
<td>$0.48</td>
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<tr>
<td>Total Coliform - Present/Absent</td>
<td>$21.20</td>
<td>$21.81</td>
<td>$0.61</td>
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<tr>
<td>Escherichia Coli - Present/Absent</td>
<td>$22.38</td>
<td>$23.03</td>
<td>$0.65</td>
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<tr>
<td>Fecal Coliform</td>
<td>$21.20</td>
<td>$21.81</td>
<td>$0.61</td>
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<td>Fecal Streptococcus</td>
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<td>Escherichia Coli - Membrane Filtration</td>
<td>$21.20</td>
<td>$21.81</td>
<td>$0.61</td>
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<td>Fats, Oil and Grease</td>
<td>$64.78</td>
<td>$66.65</td>
<td>$1.87</td>
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<tr>
<td>IC (Nitrite, Sulfate, Chloride, Nitrite/Nitrate Combined, Nitrate, Fluoride)</td>
<td>$18.30</td>
<td>$18.83</td>
<td>$0.53</td>
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<tr>
<td>Organochlorine Pesticides</td>
<td>$200.24</td>
<td>$206.02</td>
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<tr>
<td>Organophosphorus Pesticides (8 compounds)</td>
<td>$229.35</td>
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<td>Semi-Volatile Organic Compounds (70 - 110 compounds)</td>
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<td>$454.45</td>
<td>$12.75</td>
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<tr>
<td>Volatile Organic Compounds - Waste Water (31 compounds)</td>
<td>$178.15</td>
<td>$183.30</td>
<td>$5.14</td>
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<tr>
<td><strong>AVERAGE</strong></td>
<td><strong>$66.54</strong></td>
<td><strong>$68.46</strong></td>
<td><strong>$1.92</strong></td>
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</tbody>
</table>
ATTACHMENT III

SPECIAL SERVICES FEES-RELATED AMENDMENTS TO CHAPTER 34 OF THE SAN ANTONIO CITY CODE

Section 34-3.01. Deposits.

An advance deposit of an amount reasonably adequate to secure payment of the customer's final bill shall be required of all new customers. For a new residential water/wastewater account, the amount of the deposit shall be eighty-seven dollars ($87.00) ninety-one dollars and nine cents ($91.09). For a new residential water/wastewater customer who qualifies for participation in the SAWS affordability program, the amount of the deposit shall be sixty-seven dollars ($67.00) seventy dollars and fifteen cents ($70.15). For a new residential wastewater-only account, the amount of the deposit shall be forty-four dollars ($44.00) forty-six dollars and seven cents ($46.07). For a new residential wastewater-only account for a customer who qualifies for participation in the SAWS affordability program the amount of the deposit shall be twenty-two dollars ($22.00) twenty-three dollars and three cents ($23.03). Such amounts for other types of accounts shall be determined in accordance with system Resolution No. 93-107, and as amended which establishes a policy for customer deposits. These deposit amounts are effective for new accounts established on or after January 1, 2018. The deposit amounts shall be adjusted on January 1 of each year thereafter by the percentage of any approved monthly charge change (greater than zero (0)) for the next year in the monthly water and sewer charges for the average SAWS residential customer.

Section 34-3.07. - Encroachment or easement release application processing fee.

A request to allow an encroachment on, over and/or across an existing SAWS easement or to release (in whole or in part) an existing SAWS easement must be submitted to SAWS development engineering services in accordance with procedures and requirements established by SAWS. The non-refundable application processing fee for the encroachment or release request is seven hundred eighty dollars ($780.00) eight hundred two dollars and fifty-two cents ($802.52). SAWS may require applicant to verify ownership, and if property owner is a legal entity, documentation will be required demonstrating applicant's authority to make an application on behalf of the entity. If the encroachment is approved by SAWS, an agreement, prepared by SAWS corporate real estate, will be entered into between the property owner and SAWS granting the encroachment. If the easement release request is approved, SAWS corporate real estate will either (i) if SAWS paid consideration for the easement, enter into negotiations for consideration for the full or partial release of the easement, or (ii) if the easement was dedicated to SAWS, prepare the release for SAWS execution. This fee amount is effective January 1, 2018. The fee amount shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero (0)) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fee charged does not exceed the cost of providing the service.
Section 34-5.02. Other reinstatement charges.

Additionally, under certain special conditions or events, the procedures and charges relative to reinstatement of water service are as follows:

(a) If a customer, whose service has been discontinued in accordance with Division 4 is found to have reinstated his water service at the curb stop without approval of the system, the customer's meter shall be removed to preclude illegal reinstatement of service by the customer, and an additional turn-on fee of ten dollars ($10.00) shall be added to the customer's account. If the customer is found to have damaged the meter or the associated valve or the associated lock, one or more of the following charges shall be added to the customer's account depending on the piece of equipment damaged:

- Valve tampering fee: $60.00 $61.73
- Lock tampering fee: $45.00 $46.30
- 5/8” meter tampering fee: $73.00 $75.11
- ¾” meter tampering fee: $92.00 $94.66
- 1” meter tampering fee: $149.00 $152.43

These fee amounts are effective January 1, 2018. The fee amounts shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

(b) In addition to the turn-on fees a charge of twenty-five dollars ($25.00) shall be added to the customer's account for the removal of each illegal straight connection. In addition, the customer shall be charged the cost of the estimated amount of water used between the time the customer’s service was disconnected for non-payment and the time the customer’s illegal straight connection was discovered. For a residential customer, the charge for the water used will be calculated using the winter average (see Sec. 34-226.1) for all SAWS residential customers. For a general class customer, the charge for water used will be calculated using the appropriate average monthly consumption amount by meter size listed in the table of average monthly consumptions by general class sub-classification and meter size as defined in Sec. 34-2.01.

c) In addition to the turn-on fees, any meter/lock/valve tampering fees, estimated water usage charge, and straight connection removal fee, depending on the method selected by the system, a charge of seventy-eight dollars ($78.00) (service plug and removal fee) shall be added to the customer’s account for plugging of the service line or a charge of one hundred seventy-five dollars ($175.00) (service-capping fee) shall be added to the customer’s account for the capping of the service line.

d) In addition to the turn-on fees, any meter/lock/valve tampering fees, estimated water usage charge, straight connection removal fee, service plug and removal fee, and service-capping fee, a charge of twenty-five dollars ($25.00) shall be added to the customer’s account for the reinstallation of service.

e) Full payment of all charges incurred including the turn-on-fees, any meter/lock/valve tampering fees, estimated water usage charge, straight connection...
removal fee, service plug and removal fee or service capping fee, and meter reinstallation
fee must be paid prior to the reinstatement of service.

(f) If a customer presents a check or other negotiable instrument in payment of service
fees that is not honored by the bank or other financial institution upon which the check or
other negotiable instrument is drawn, a service charge of thirty dollars ($30.00) shall be
added to the amount due the system by the customer; provided, however, that if the
instrument is returned by the financial institution because of error on its part, the service
charge will not be added.

(g) In addition to the foregoing there shall be deposited an amount reasonably adequate
to secure payment of the customer's final bill. Such amount shall be determined in
accordance with System Resolution No. 93-107, and as amended, which establishes a
policy for customer deposits.

Section 34-125.1. Pipeline damage cost recovery fees.

The following fees are established for the purpose of recovering certain costs incurred by SAWS
in connection with each instance of damage to a SAWS pipeline from the party which caused the
damage:

(a) Dispatch fee for response to damaged mains: forty-eight dollars ($48.00) forty-nine
dollars and thirty-nine cents ($49.39) per instance reported to the SAWS emergency
operations center.
(b) Flowable fill and bulk material usage fee: two hundred thirty-six dollars ($236.00)
two hundred forty-two dollars and eighty-one cents ($242.81) two hundred fortytwo
dollars per instance reported to the SAWS emergency operations center.
(c) The amounts for the dispatch fee, and the flowable fill and bulk material usage fee
are effective January 1, 2018 2019. The fee amounts shall be adjusted on January 1
of each year thereafter by the percentage difference (greater than zero) between the
Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the
United States Bureau of Labor Statistics at the end of the month of July prior to the
next year and as it was calculated at the end of the month of July one year earlier.
SAWS will periodically perform a cost of service analysis to ensure that the fees
charged do not exceed the cost of providing the services.
(d) Lost water charge: the cost of water lost as a result of each instance of damage to a
pipeline shall be recovered through the assessment on the estimated water loss
volume of the current highest tier water supply fee rate assessed by SAWS, the
current highest tier outside-the-city-limits (OCL) water delivery rate assessed by
SAWS, and the current Edwards Aquifer Authority (EAA) permit fee rate.

Section 34-126. Fire flow test fee.

Upon request, a fire flow test will be conducted by personnel of the system to provide flow data in
support of any fire protection system located within the board's service area. An advance fee of
fifty-eight dollars ($58.00) fifty-nine dollars and sixty-seven cents ($59.67) shall be applicable for
each fire flow test requested for purposes of obtaining fire flow data for a specific piece of property
or building in order for the owner of the property or building to obtain insurance rating or coverage
or to assist in the design and construction of an interior fire protection system. This fee amount is
effective January 1, 2018. The fee amount shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fee charged does not exceed the cost of providing the service.

Section 34-131. Fire hydrant water usage regulation, rates, and meter fees.

(a) General. SAWS may authorize a meter to be connected temporarily to a fire hydrant during construction operations in lieu of installing a temporary service line provided the customer:

1. Executes a contract for fire hydrant meter usage,
2. Pays the customer account deposit and all other applicable rates and fees as established in this section,
3. Assumes responsibility for the safekeeping of the meter, fitting and fire hydrant, and
4. Complies with backflow prevention requirements as established in the SAWS Utility Service Regulations.

(b) Fire hydrant meter deposit, and daily availability charge.

1. Prior to obtaining a fire hydrant meter, the customer will be required to pay a fire hydrant meter deposit of one thousand six hundred thirty-seven dollars ($1,637.00) one thousand six hundred eighty-four dollars ($1,684.00).
   a. The customer shall indicate on the fire hydrant meter usage contract the location of usage of the meter by street address or by street name with the nearest cross street, and the estimated duration of meter usage at the designated location.
   b. The customer shall indicate whether the fire hydrant meter will be used for irrigation or non-irrigation purposes for the purpose of being assessed the appropriate water usage rates; a single meter may not be used for both types of usages during a given six-month usage period.

2. The daily availability charge for use of a fire hydrant meter shall be six dollars and sixty cents ($6.60) six dollars and seventy-nine cents ($6.79).

3. The fee amounts for the fire hydrant meter deposit and the daily availability charge are effective January 1, 2018 2019. The fee amounts shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

(c) Requirements for Fire Hydrant Meter Periodic Calibration and Meter Readings. A customer authorized by SAWS to use a fire hydrant meter must meet the following requirements:

1. Return the meter to SAWS for inspection and re-calibration every six (6) months from the original date of the customer’s fire hydrant meter contract; if the customer fails to meet this requirement, the customer will:
   a. Forfeit the fire hydrant meter deposit, and
   b. Be charged ninety-nine dollars ($99.00) ninety-nine dollars and forty cents ($99.40) per month in addition to all other fees and charges until the meter
in question is returned for inspection and re-calibration (this monthly fee will not be prorated if the meter is returned in the middle of a billing period), and

c. Be unable to obtain any additional fire hydrant meters from SAWS until the meter in question is returned for inspection and re-calibration.

(2) Provide meter readings to SAWS on a monthly basis and report the location of the usage by the meter by street address, or by street name with the nearest cross street; if the customer fails to provide a meter reading for a given month on the day designated by SAWS, the customer shall be billed a flat fee equal to the volumetric cost of water usage of 74,810 gallons (100 CCF) for the month.

(3) The additional ninety-nine dollars ($99.00) ninety-nine dollars and forty cents ($99.40) per month fee amount indicated in Sec. 34-131(c)(1), above, is effective on January 1, 2018. The fee shall be adjusted on January 1 of each year thereafter by the percentage of any approved monthly change (greater than zero) for the next year in SAWS domestic water delivery rates.

(d) Fire hydrant water usage rate classes. Two separate classes of fire hydrant water usage rates are established one or the other to be assessed on monthly water consumption measured by the fire hydrant meter based on the type of usage declared by the customer at the time of entering into a contract with SAWS for use of a fire hydrant meter:

(1) Non-irrigation usage. The customer shall be charged using the second tier general class water delivery outside the city limits (OCL) rates currently assessed by SAWS, the second tier general class water supply fee rates currently assessed by SAWS, and the current Edwards Aquifer Authority (EAA) permit fee rate.

(2) Irrigation usage. The customer shall be charged using the highest tier irrigation class OCL rates currently assessed by SAWS, the highest irrigation water supply fee rates currently assessed by SAWS, and the current Edwards Aquifer Authority (EAA) permit fee rate.

(e) Regulations for fire hydrant meter irrigation meter usage.

(1) Fire hydrant meters may not be used for irrigation if regular metered SAWS irrigation service is available at the desired location of meter usage; if regular SAWS irrigation service becomes available after fire hydrant meter irrigation usage begins, the fire hydrant meter must be returned to SAWS immediately or else the meter is subject to unannounced retrieval by SAWS.

(2) Customers using fire hydrant meters for irrigation purposes are subject to all drought management restrictions contained in Article IV and must not irrigate between 11:00 A.M. and 7:00 P.M.

(3) Fire hydrant meters may only be used for irrigation purposes at one location for six-months at a time; if customer desires to use the meter beyond the six-month period at one location, the customer must apply to the SAWS Director of Conservation for a variance using the procedure defined in Sec. 34-276.

(4) Fire hydrant meter irrigation usage found to be unauthorized by SAWS subjects the meter in question to unannounced retrieval by SAWS.

(f) Regulations for unauthorized SAWS fire hydrant water usage.

(1) Withdrawal of water directly from a SAWS fire hydrant without the use of a SAWS-issued fire hydrant meter as authorized under the terms of a duly executed fire hydrant meter contract is prohibited.

(2) Should SAWS staff encounter and document an instance of such unauthorized usage, the person or entity making the withdrawal shall be assessed and billed a flat fee equal to the volumetric cost of water usage of 74,810 gallons (100 CCF) plus
the equivalent of 30 days of daily availability charges.

(3) The fees and charges listed in Section 34-131(f)(2) above shall be assessed in addition to any legal enforcement action undertaken by the City of San Antonio for criminal theft of water.

**Section 34-132. Same-day meter turn-on fee.**

A customer requesting that the system initiate or reinstate water service on the same day the application for service is made shall be assessed a fee of thirty-four dollars ($34.00) thirty-four dollars and ninety-eight cents ($34.98) for this service. The fee amount is effective January 1, 2018 2019. The fee amount shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fee charged does not exceed the cost of providing the services.

**Section 34-133. Bench meter test fee.**

A customer requesting that the system apply a bench test at the system’s meter shop to the meter serving the customer’s account shall be assessed one of the following charges only if the system finds that the meter being tested is accurate:

- 5/8” bench meter test fee: $124.00 $127.58
- ¾” bench meter test fee: $143.00 $147.13
- 1” bench meter test fee: $170.00 $174.91
- 1.5” bench meter test fee: $310.00 $318.95
- 2” bench meter test fee: $454.00 $467.10

The fee amounts are effective January 1, 2018 2019. The fee amounts shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

**Section 34-134. Irrigation system inspection compliance fees.**

Failure to comply with the annual inspection requirements contained in subsection 34-273(3) shall result in the assessment of the following additional charges on the account associated with the irrigation system:

(a) Annual enforcement fee in the amount of one hundred fifty-three dollars ($153.00) one hundred fifty-seven dollars and forty-two cents ($157.42); this fee shall be assessed on an annual basis until the requirements of subsection 34-273(3) have been met; and

(b) Additional volumetric rate of $0.1963 $0.2019 per one hundred (100) gallons on all irrigation consumption on a monthly basis; this additional rate shall continue to be assessed until the requirements of subsection 34-273(3) have been met.
(c) The fee amounts are effective January 1, 2018. The fee amounts shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

Section 34-236. Lift station maintenance fee.

A customer-developer wishing to install a lift station as an element of an off-site wastewater collection system to serve a specific area must meet all SAWS regulatory requirements as they relate to lift stations and, in addition, pay to SAWS a one-time lift station maintenance fee of two hundred thousand one hundred thirty dollars ($200,130.00) two-hundred thousand nine hundred and seven dollars ($205,907.00) that will be used to offset annual lift station maintenance expenses over a ten-year period. The fee amount is effective January 1, 2018. The fee amount shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero (0)) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fee charged does not exceed the cost of providing the services.

Section 34-237. Dye testing fee.

A person requesting that the system provide a dye test to confirm the presence of a connection of a property to the system’s sewer system shall be assessed a fee of fifty-seven dollars ($57.00) fifty-eight dollars and sixty-five cents ($58.65) for the conduct of the test. The fee amount is effective January 1, 2018. The fee amount shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero (0)) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fee charged does not exceed the cost of providing the services.

Section 34-238. Unauthorized sewer connection cap and removal fee.

If a customer who has made an unauthorized connection to the system’s sewer system wishes to establish authorized sewer service from the system after discovery by the system of the unauthorized service connection, the customer shall be assessed one of the following charges that must be paid before authorized sewer service can be established:

- 4” pipeline unauthorized sewer connection cap and removal fee: $870.00 $895.11
- 6” pipeline unauthorized sewer connection cap and removal fee: $994.00 $1,022.69
- 8” pipeline unauthorized sewer connection cap and removal fee: $1,117.00 $1,149.24

The fee amounts are effective January 1, 2018. The fee amounts shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of...
Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

Section 34-484. Fees.

It is the purpose of this section to provide for the recovery of costs from users of the control authority wastewater disposal system for the implementation and continued operation of the pretreatment program established herein. All industrial users shall pay the following fees, as appropriate, and in accordance with the current fee schedule, within thirty (30) days of billing:

(a) A permit application fee
(b) A permit fee;
(c) Sampling fee;
(d) Analysis fee;
(e) Environmental assessment;
(f) Other fees as the control authority may deem necessary to carry out the requirements contained herein, such as, but not limited to emergency response fees, special sampling fees, monitoring equipment reset fees, etc. These fees relate solely to the matters covered by this division and are separate from all other fees, fines, and penalties chargeable by the control authority or any other agency.

The special services charges outlined in Schedule E, industrial waste fee schedule, relating to industrial waste permits and services shall be lawful rates charged by the system effective January 1, 2019. The Schedule E charges shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

Section 34-521. Fees.

All liquid waste transporters shall pay the following fees, as appropriate, and in accordance with the current fee schedule:

(1) A permit fee for each vehicle to be permitted;
(2) A fee for each reinspection required for a vehicle to qualify for an annual liquid waste hauling permit;
(3) A sampling fee;
(4) An analysis fee;
(5) A disposal site fee for disposing of septic or chemical toilet wastes at a control authority disposal facility;
(6) A manifest booklet fee;
(7) A disposal site holiday access fee (transporters must give two weeks’ notice to SAWS to schedule access when fee is paid);
(8) A disposal site weekend access fee (transporters must give two weeks’ notice to SAWS to schedule access when fee is paid);
(9) Other fees as the control authority may deem necessary to carry out the requirements contained herein, such as, but not limited to emergency response fees or special sampling fees. These fees relate solely to the matters covered by this division and are separate from all other fees, fines and penalties chargeable by the control authority or any other agency.

The special service charges outlined in Schedule F, liquid waste hauler fee schedule, relating to liquid waste hauler permits shall be lawful rates charged by the system effective January 1, 2018. The Schedule F charges shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

Sec. 34-530. Fees

(a) In order to recover the costs for the implementation of this division, each SAWS account associated with each FSE and each FPE shall be assessed a fee of twenty-one dollars and fourteen cents ($21.14) twenty-one dollars and seventy-five cents ($21.75) per month.

(b) This fee shall be effective January 1, 2018. These fees shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

Sec. 34-1008. Permit procedures.

(a) Any facility regulated by this division shall submit a completed permit application in accordance with Section 34-1006 and Section 34-1007 of this division. The application shall be signed by the operator and/or UST owner; and the signed application, together with the appropriate fee as set forth in the ERZD and Edwards Transition Zone UST Fees Schedule set forth in subsection e) of this Section 34-108 shall be submitted to the resource protection and compliance department. The fee amounts listed in the ERZD and Edwards Transition Zone UST Fees Schedule are effective January 1, 2018. The fee amounts shall be adjusted on January 1 of each year thereafter by the percentage difference (greater than zero) between the Consumer Price Index for All Urban Consumers (CPI-U) as it is calculated by the United States Bureau of Labor Statistics at the end of the month of July prior to the next year and as it was calculated at the end of the month of July one year earlier. SAWS will periodically perform a cost of service analysis to ensure that the fees charged do not exceed the cost of providing the services.

(b) After a complete and signed application has been received and the appropriate fee collected, the applicant's monitoring plan will be reviewed, and compliance with the regulations of this division will be verified by an on-site inspection by a staff member
of the resource protection and compliance department. The initial inspection will be considered the first annual inspection for the purpose of administering this division.

(c) Upon receipt of all required information, approval of the monitoring plan, and the return of a favorable inspection report by the staff inspector, the resource protection and compliance department will issue a permit to the applicant. Each permit shall be valid for a period of three (3) years from the date it is issued.

(d) In the event a deficiency in the monitoring plan is found to exist, or in the event the facility is found to be non-compliant with the requirements of this division during the application process and initial inspection, the applicant will be notified in writing and may correct any deficiencies in the application or the monitoring plan or at the regulated facility within thirty (30) days from the date of notification. If the corrections cannot be made within the thirty-day period, the applicant may request an extension in writing from the resource protection and compliance department. An extension of up to sixty (60) days may be granted upon a showing of good cause. Upon the earlier of notification by the applicant or expiration of the period for corrections, the application will be re-evaluated. If the required corrections have not been made at the time of the application is re-evaluated, the application will be denied.

(e) **ERZD and Edwards Transition Zone UST fees schedule.**

<table>
<thead>
<tr>
<th>(1) Initial registration fee (per site)</th>
<th>$220.00</th>
<th>$226.35</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) Annual inspection fee (per site)</td>
<td>$150.00</td>
<td>$154.33</td>
</tr>
<tr>
<td>(3) Follow-up inspection fee (per site, per occurrence, if prior inspection fails)</td>
<td>$120.00</td>
<td>$123.46</td>
</tr>
<tr>
<td>(4) 3rd year renewal fee (per tank):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tank sizes:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0 – 4,999 gallons</td>
<td>$525.00</td>
<td>$540.15</td>
</tr>
<tr>
<td>5,000 – 10,000 gallons</td>
<td>$650.00</td>
<td>$668.76</td>
</tr>
<tr>
<td>Greater than 10,000 gallons</td>
<td>$750.00</td>
<td>$771.65</td>
</tr>
</tbody>
</table>
SCHEDULE E

SAN ANTONIO WATER SYSTEM
SAN ANTONIO, TEXAS

INDUSTRIAL WASTE FEE SCHEDULE

Under Article V, Sewage Transportation, Treatment and Disposal, Division 3, Sec. 34-484, et seg.
Effective 12:01 a.m., January 1, 2018
Ordinance No. 2015-11-19-0956 dated November 19, 2015

<table>
<thead>
<tr>
<th>Name of Fee</th>
<th>Fee Amount</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial Waste Discharge Permit - Categorical</td>
<td>$13,854.50</td>
<td>Per Five (5) Year Permit with annual pro</td>
</tr>
<tr>
<td></td>
<td>$14,254.42</td>
<td>rata payments</td>
</tr>
<tr>
<td>Industrial Waste Discharge Permit - Non-Categorical</td>
<td>$10,390.88</td>
<td>Per Five (5) Year Permit with annual pro</td>
</tr>
<tr>
<td></td>
<td>$10,690.82</td>
<td>rata payments</td>
</tr>
<tr>
<td>Sampling Fee - Significant Industrial Users</td>
<td>$615.76</td>
<td>Per sample of discharge from Significant</td>
</tr>
<tr>
<td></td>
<td>$633.53</td>
<td>Industrial User collected under Industrial</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pre-Treatment Program</td>
</tr>
<tr>
<td>Sampling Fee - Non-Significant Industrial Users</td>
<td>$10.90</td>
<td>Per month billed to Non-Significant</td>
</tr>
<tr>
<td></td>
<td>$11.21</td>
<td>Industrial User under Industrial Pre-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Treatment Program</td>
</tr>
</tbody>
</table>

**Laboratory Testing Fees:**

<table>
<thead>
<tr>
<th>Name of Fee</th>
<th>Fee Amount</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alkalinity</td>
<td>$17.67</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$18.18</td>
<td></td>
</tr>
<tr>
<td>Ammonia Direct</td>
<td>$20.61</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$21.21</td>
<td></td>
</tr>
<tr>
<td>Ammonia Distillation</td>
<td>$41.23</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$42.42</td>
<td></td>
</tr>
<tr>
<td>Biochemical Oxygen Demand</td>
<td>$35.34</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$36.36</td>
<td></td>
</tr>
<tr>
<td>Chemical Oxygen Demand</td>
<td>$36.81</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$37.87</td>
<td></td>
</tr>
<tr>
<td>Conductivity</td>
<td>$11.78</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$12.12</td>
<td></td>
</tr>
<tr>
<td>Cyanide - Total (with Post Amending)</td>
<td>$47.44</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$48.78</td>
<td></td>
</tr>
<tr>
<td>Phosphorus – Total</td>
<td>$26.36</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$27.12</td>
<td></td>
</tr>
<tr>
<td>Name of Fee</td>
<td>Fee Amount</td>
<td>Unit</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>------------</td>
<td>--------</td>
</tr>
<tr>
<td>Total Kjeldahl Nitrogen</td>
<td>$39.75</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$40.90</td>
<td>Per test</td>
</tr>
<tr>
<td>Total Dissolved Solids</td>
<td>$15.90</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$16.36</td>
<td>Per test</td>
</tr>
<tr>
<td>Total Suspended Solids</td>
<td>$18.85</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$19.39</td>
<td>Per test</td>
</tr>
<tr>
<td>Turbidity</td>
<td>$15.15</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$15.58</td>
<td>Per test</td>
</tr>
<tr>
<td>Escherichia Coli - Present/Absent</td>
<td>$22.38</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$23.03</td>
<td>Per test</td>
</tr>
<tr>
<td>Total Coliform - Present/Absent</td>
<td>$21.20</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$21.81</td>
<td>Per test</td>
</tr>
<tr>
<td>Fecal Coliform</td>
<td>$21.20</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$21.81</td>
<td>Per test</td>
</tr>
<tr>
<td>Fecal Streptococcus</td>
<td>$29.45</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$30.30</td>
<td>Per test</td>
</tr>
<tr>
<td>Escherichia Coli - Membrane Filtration</td>
<td>$21.20</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$21.81</td>
<td>Per test</td>
</tr>
<tr>
<td>Mercury</td>
<td>$35.34</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$36.36</td>
<td>Per test</td>
</tr>
<tr>
<td>Hardness</td>
<td>$18.85</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$19.39</td>
<td>Per test</td>
</tr>
<tr>
<td>Hexavalent Chromium</td>
<td>$33.86</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$34.84</td>
<td>Per test</td>
</tr>
<tr>
<td>Metals</td>
<td>$16.49</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$16.97</td>
<td>Per test</td>
</tr>
<tr>
<td>Name of Fee</td>
<td>Fee Amount</td>
<td>Unit</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
<td>------------</td>
<td>----------</td>
</tr>
<tr>
<td>Fats, Oil and Grease</td>
<td>$64.78</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$66.65</td>
<td></td>
</tr>
<tr>
<td>IC (Nitrite, Sulfate, Chloride, Nitrite/Nitrate Combined, Nitrate, Fluoride)</td>
<td>$18.30</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$18.83</td>
<td></td>
</tr>
<tr>
<td>Organochlorine Pesticides</td>
<td>$200.24</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$206.02</td>
<td></td>
</tr>
<tr>
<td>Organophosphorus Pesticides (8 compounds)</td>
<td>$229.35</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$235.97</td>
<td></td>
</tr>
<tr>
<td>Semi-Volatile Organic Compounds (70 - 110 compounds)</td>
<td>$441.70</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$454.45</td>
<td></td>
</tr>
<tr>
<td>Total Petroleum Hydrocarbons</td>
<td>$117.79</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$121.19</td>
<td></td>
</tr>
<tr>
<td>Volatile Organic Compounds - Drinking Water (48 - 84 compounds)</td>
<td>$132.54</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$136.34</td>
<td></td>
</tr>
<tr>
<td>Volatile Organic Compounds - Waste Water (31 compounds)</td>
<td>$178.15</td>
<td>Per test</td>
</tr>
<tr>
<td></td>
<td>$183.30</td>
<td></td>
</tr>
</tbody>
</table>
**SCHEDULE F**

LIQUID WASTE HAULER FEE SCHEDULE

Under Article V, Sewage Transportation, Treatment and Disposal, Division 4, Sec. 34-521, et seq.

Effective 12:01 a.m., January 1, 2018

Ordinance No. 2015-11-19-0956 dated November 19, 2015

<table>
<thead>
<tr>
<th>Name of Fee</th>
<th>Fee Amount</th>
<th>Fee Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liquid Waste Permits and Coupons - Truck Permit</td>
<td>$341.74</td>
<td>Per annual permit per liquid waste hauling truck</td>
</tr>
<tr>
<td></td>
<td>$351.61</td>
<td></td>
</tr>
<tr>
<td>Liquid Waste Permits and Coupons – Truck Permit Reinspection Fee</td>
<td>$190.88</td>
<td>Per each reinspection of a truck required for the truck to qualify for an annual liquid waste hauling permit</td>
</tr>
<tr>
<td></td>
<td>$196.39</td>
<td></td>
</tr>
<tr>
<td>Liquid Waste Permits and Coupons - Manifest Coupon Books</td>
<td>$44.13</td>
<td>Per manifest book</td>
</tr>
<tr>
<td></td>
<td>$45.40</td>
<td></td>
</tr>
<tr>
<td>Disposal Site Fee</td>
<td>$8.95</td>
<td>Per 100 gallons of disposed waste</td>
</tr>
<tr>
<td></td>
<td>$9.21</td>
<td></td>
</tr>
<tr>
<td>Disposal Site Holiday Access Fee</td>
<td>$63.00</td>
<td>Per hour of access on holidays</td>
</tr>
<tr>
<td></td>
<td>$64.82</td>
<td></td>
</tr>
<tr>
<td>Disposal Site Weekend Access Fee</td>
<td>$38.00</td>
<td>Per hour of access on weekends</td>
</tr>
<tr>
<td></td>
<td>$39.10</td>
<td></td>
</tr>
</tbody>
</table>
TO: San Antonio Water System Board of Trustees
FROM: Donovan S. Burton, Vice President, Water Resources and Governmental Relations
THROUGH: Robert R. Puente, President/Chief Executive Officer
SUBJECT: CONSENTING TO THE SELECTION OF EPCOR SERVICES, INC. BY VISTA RIDGE, LLC AS THE OPERATING SERVICE PROVIDER FOR THE VISTA RIDGE PROJECT, AND APPROVING THE TERMS OF THE OPERATING SERVICE AGREEMENT BETWEEN VISTA RIDGE, LLC, CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION AND EPCOR SERVICES, INC.

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution approves the selection of EPCOR Services, Inc. (“EPCOR”) by Vista Ridge, LLC (“Project Company”) to be the Operating Service Provider (“OSP”) for the Vista Ridge Project (“Project”). The resolution also consents to the Operating Service Agreement (“OSA”) between the Project Company and EPCOR and authorizes the execution of a Water Transmission and Purchase Agreement (“WTPA”) Contract Administration Memorandum (“CAM”) between the Project Company and the San Antonio Water System (“SAWS”) confirming the OSP selection and form of OSA, as well as ancillary matters of WTPA interpretation.

The WTPA between the City of San Antonio, acting by and through the System, and Vista Ridge, requires the Project Company to engage a firm to act as the OSP for the Project, which OSP would have the primary day to day responsibility for operating the Project following commencement of operations. The WTPA provides that certain costs of the Project are compensable by SAWS, and such compensable expenses, plus an 11.1 percent management fee to the OSP, constitutes the OSP’s compensation for its services. An O&M Budget Panel will be established to set an annual operating budget for the Project and to determine which operating costs are compensable by SAWS. The budget panel will be made up of five individuals: one selected by SAWS, one by the Project Company, one selected by the individual selected by SAWS, one selected by the individual selected by the Project Company, and a fifth panelist selected by the third and fourth selections.

On May 18, 2016, the WTPA was amended in connection with SAWS’ approval of the change in control of the Project Company from Spanish-based Abengoa to Garney Construction. In connection with this approval of change of control, the WTPA was amended to provide that SAWS, in its discretion, has the right to approve the designation of the OSP, as well as the terms of the OSA. The WTPA also provides for a process by which the Project Company would designate the OSP no later than 18 months prior to the Commercial Operations Date, which can occur no earlier than April 15, 2020.
Early in 2018, the Project Company, together with Ridgewood Infrastructure, LLC, an equity holder of the Project Company, embarked on a solicitation process to seek a qualified firm to become the OSP. After months of interviews and negotiations by the Project Company, as well as discussions with the System, the Project Company has decided to designate EPCOR as the OSP. System staff agrees with the recommendation and recommend consenting to the OSP designation. Additionally, the various parties associated with the Project, including the Project Company, the lender group, Central Texas Regional Water Supply Corporation (“WSC”), EPCOR and the System have negotiated various terms of the OSA and the System’s staff recommends approval of the OSA draft provided.

The OSP will work under the direction of the Project Company and the WSC; however, the WTPA calls for a significant role by the O&M Budget Panel process discussed above.

The primary duties of the OSP include:

- Producing a reliable source of water consistent with the WTPA and an operating protocol to be established by the Project Company and SAWS
- Operating the Project efficiently
- Ensuring appropriate water quality
- Regular housekeeping and preventative and predictive maintenance
- Managing all major equipment repair and replacement activity
- Maintaining close communications with SAWS

The primary business terms of the OSA include:

- A contract term to be co-extensive with the term of the WTPA
- The primary source of compensation to the OSP is through the WTPA budget panel compensable costs process
- The OSA can be terminated for cause
- A parent company guaranty of the OSA obligations by EPCOR USA, Inc.

SAWS staff recommends approval of the selection of EPCOR Services, Inc. by the Project Company to serve as the Operating Service Provider and approval of the terms of the OSA between EPCOR Services, Inc., the WSC and the Project Company.

Additionally, SAWS staff recommends authorization to execute the CAM attached to this Resolution, which CAM (i) formalizes the approval of EPCOR Services, Inc. and the form of the OSA, (ii) clarifies ancillary matters related thereto, including the establishment of the breakage costs payable by SAWS in the event of Project buy-out and OSA termination resulting therefrom, and (iii) includes as an attachment and approves and authorizes the execution of the Operating Service Provider Substitution Agreement, the form of which is a previously approved Transaction
FINANCIAL IMPACT:

This specific proposed action does not require expenditures by the System. The annual operating budget will be set through an O&M Budget Panel Process detailed in the WTPA. Payments to the Operating Service Provider will begin following commencement of commercial operations of the Project, which cannot occur earlier than April 15, 2020.

Donovan S. Burton  
Vice President  
Water Resources and Governmental Relations

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES CONSENTING TO THE SELECTION OF EPCOR SERVICES, INC. BY VISTA RIDGE, LLC (THE “PROJECT COMPANY”) AS THE OPERATING SERVICE PROVIDER FOR THE VISTA RIDGE PROJECT (“PROJECT”), AND APPROVING THE OPERATING SERVICE AGREEMENT BETWEEN THE PROJECT COMPANY, THE CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION AND EPCOR SERVICES, INC.; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONTRACT ADMINISTRATION MEMORANDUM AND THE OPERATING SERVICE PROVIDER SUBSTITUTION AGREEMENT ATTACHED 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 Water Transmission and Purchase Agreement (“WTPA”) between the City of San Antonio, acting by and through the San Antonio Water System (“System”) and the Project Company provides that the System, in its discretion, has the right to approve the designation of the Operating Service Provider (“OSP”) for the Project, as well as the terms of the Operating Service Agreement (“OSA”); and

WHEREAS, the Project Company has selected EPCOR Services, Inc. (“EPCOR”) as the OSP, and with the input of the Project stakeholders, including the System, the lender group, and the Central Texas Regional Water Supply Corporation (“WSC), have negotiated an OSA; and

WHEREAS, System staff recommends approval of the selection of EPCOR as the OSP and approval of the terms of the OSA between EPCOR, the WSC and the Project Company; and

WHEREAS, System staff recommends authorization to execute the WTPA Contract Administration Memorandum (“CAM”) attached to this Resolution as Attachment I, which CAM formalizes the approval of EPCOR as the OSP and the form of the OSA, as well as clarifying ancillary matters related thereto, together with authorization to execute the Operating Service Provider Substitution Agreement attached to the CAM; now, therefore:
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF
TRUSTEES:

1. That the selection of EPCOR Services, Inc. by Vista Ridge, LLC to serve as the Operating
Service Provider for the Project is hereby approved.

2. That the Operating Service Agreement attached to the CAM, attached hereto as Attachment
I, is hereby approved.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby
authorized to execute the CAM and the Operating Service Provider Substitution Agreement
attached thereto.

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 November, 2018.

_____________________________
Berto Guerra, Jr., Chairman

ATTEST:

_____________________________
Patricia E. Merritt, Assistant Secretary

Attachment:
I Contract Administration Memorandum No. 2018-1
This CONTRACT ADMINISTRATION MEMORANDUM ("CAM") is made pursuant to Section 26.6(D) (Contract Administration Memoranda) of the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement between the City of San Antonio, Texas (the "City") acting by and through the San Antonio Water System Board of Trustees ("SAWS") and Vista Ridge LLC (the "Project Company"), dated November 4, 2014 and amended on June 10, 2016, November 2, 2016, and April 5, 2017 (the "WTPA"), for the purpose of confirming the agreement of SAWS and the Project Company ("Parties") as to certain matters of interpretation and application under the WTPA. All capitalized terms used, but not defined herein, shall have the meanings defined in the WTPA.

Subject: Renumbering of CAM 2017-1 (dated April 5, 2017); Inflation Index; Project Company Public Water Supplier Designation; Delivery of Complaints and Communications; SAWS Approval of Operating Service Provider and Operating Service Agreement and Related Matters

The Parties acknowledge and agree that:

1. **Renumbering of CAM 2017-1 (dated April 5, 2017).**

   CAM 2017-1 regarding the “Conformed Water Transmission and Purchase Agreement,” dated as of April 5, 2017, is hereby renumbered as CAM 2017-2.

2. **Inflation Index.**

   Because the Bureau of Labor Statistics of the United States Department of Labor does not currently publish a Consumer Price Index for the San Antonio MSA, the Consumer Price Index geographic area to be used for purposes of the definition of Inflation Index in Section 1.1 (Definitions) of the WTPA shall be the South Region.

3. **Project Company Public Water Supplier Designation.**

   The application for the Project Company Public Water Supplier Designation may be made in the name of the Water Supply Corporation; provided, however, that the Project Company shall remain responsible for obtaining and maintaining the Project Company Public Water Supplier Designation and any Interim Operations Approval in accordance with Section 8.2 (Operations Approval and Project Company Public Water Supplier Designation) of the WTPA.

4. **Delivery of Complaints and Communications.**

   Complaints and communications required to be faxed to SAWS on a daily basis pursuant to Section 9.2(C) of the WTPA may also be delivered to SAWS by email.
5. SAWS Approval of Operating Service Provider and Operating Service Agreement and Related Matters.

A. SAWS Approval.

i. In accordance with Section 13.1(F) (Operating Service Provider) of the WTPA, the Project Company has designated, and SAWS hereby approves, EPCOR Services Inc., a corporation organized and existing under the laws of the State of Arizona, as the Operating Service Provider.

ii. Pursuant to its rights under Section 13.1(F) (Operating Service Provider) of the WTPA, SAWS hereby approves the final draft of the Operating Service Agreement for execution in the form attached to this CAM as Attachment 1.

iii. Although the Operating Service Provider is or may become an equity investor in the Project, no equity contribution agreement under Section 13.1(F) (Operating Service Provider) of the WTPA is required and no such agreement will be entered into by the Operating Service Provider for the Project.

iv. As required by Section 13.1(F) (Operating Service Provider) of the WTPA, the final draft of the Operating Service Provider Substitution Agreement for execution in the form attached to this CAM as Attachment 2 shall be executed and delivered by the Water Supply Corporation, the Operating Service Provider and SAWS, concurrently with the execution and delivery of the Operating Service Agreement.

B. No Effect on Compensable Costs.

The Operating Service Agreement is a contractual arrangement between the Project Company, Water Supply Corporation and Operating Service Provider, and SAWS shall have no liability for making any payments directly to the Operating Service Provider by virtue of such agreement. Notwithstanding SAWS' review and approval of the Operating Service Provider and Operating Service Agreement, nothing in the Operating Service Agreement shall be construed in any manner to alter, further interpret, or create any liability or responsibility of SAWS with respect to the Operating Service Provider, except as set forth in Section C below relating to Operating Service Provider Breakage Costs Payable by SAWS to the Project Company. The Project Company acknowledges that the Operating Service Provider may incur costs in performing its obligations under the Operating Service Agreement that are not Compensable Costs. To the extent that any costs incurred under the Operating Service Agreement are not Compensable Costs, such costs shall not be the responsibility of SAWS but shall be the responsibility of the Operating Service Provider, Water Supply Corporation or Project Company, as applicable. Further, the Project Company acknowledges that SAWS shall not be responsible for any Fees and Costs incurred by the Project Company, Water Supply Corporation or Operating Service Provider related to litigation in connection with the termination of the Operating Service Agreement, as provided in Section 19.5(6) of Appendix 19 of the WTPA.

C. Confirmation of Operating Service Provider Breakage Costs Payable by SAWS.

The Parties acknowledge that, pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option during the Term) of the WTPA or Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets) of the WTPA, SAWS is obligated to pay to the Project Company certain costs, including certain Operating Service Provider Breakage Costs. Pursuant to Section 13.1(F) (Operating Service Provider) of the WTPA and the definition of Operating Service Provider Breakage Costs in Section 1.1 (Definitions) of the WTPA, the Parties further acknowledge and agree that, notwithstanding anything to the
contrary in the Operating Service Agreement, such Operating Service Provider Breakage Costs for purposes of the WTPA and SAWS payment obligation thereunder shall consist of: (i) a fixed convenience termination fee equal to the product of $5,000,000, multiplied by a fraction the numerator of which is the number of remaining months of the Term (including the month in which the Termination Date occurs and without taking into account any extension of the Term) on the Termination Date and the denominator of which is 360; and (ii) any reasonable costs and expenses of demobilization of the O&M Personnel and Subcontractors (as defined in the Operating Service Agreement). Accordingly, SAWS shall not be responsible for funding or payment of any other amounts that may be payable to the Operating Service Provider by the Water Supply Corporation, Project Company or any other party upon termination of the Operating Service Agreement, including but not limited to any unpaid Monthly Water Payments (as defined in the Operating Service Agreement), other amounts owed to the Operating Service Provider and not paid pursuant to Article XI (Compensation and Payment) of the Operating Service Agreement.

D. Project Company Representation.

The Project Company acknowledges that SAWS’ approval of the Operating Service Provider and the Operating Service Agreement hereunder is based on the Project Company’s representation that the Project Company has provided to SAWS copies of any and all agreements between the Project Company or the Water Supply Corporation and the Operating Service Provider relating to the Operating Service Agreement.

6. Entire Agreement.

This CAM, together with the WTPA, contains the entire agreement between the Parties with respect to the above matters and supersedes all oral negotiations and prior writings with respect thereto.

7. Counterparts.

This CAM may be executed in any number of original counterparts. All such counterparts shall constitute one and the same CAM.

[Signature page follows]
IN WITNESS WHEREOF, the Parties have caused this CAM to be executed by their duly authorized representatives as of the day and year first above written.

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

By: ___________________________________________________________
Douglas P. Evanson
SAWS Representative

VISTA RIDGE LLC

By: _____________________________________________________________
Scott Parrish
Project Company Representative

Acknowledgement and Agreement by Operating Service Provider:

EPCOR SERVICES INC., having been approved as the Operating Service Provider by SAWS hereunder, hereby acknowledges and agrees that, in the event of a purchase of the Project Assets by SAWS pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option during the Term of the WTPA) or Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets) of the WTPA, SAWS’ payment obligation with respect to any related termination of the Operating Service Agreement is limited to the Operating Service Provider Breakage Costs described in this CAM and the Operating Service Provider shall have no right or claim against SAWS for reimbursement or payment of any other amount.

EPCOR SERVICES INC.

By: ___________________________________________________________
Printed Name: ____________________________
Title: _____________________________

[Signature Page to CAM No. 2018-1]
ATTACHMENT 1
OPERATING SERVICE AGREEMENT

See attached.
Dated as of November [●], 2018

Operating Service Agreement

among

Central Texas Regional Water Supply Corporation,

Vista Ridge LLC,

and

EPCOR Services Inc.
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OPERATING SERVICE AGREEMENT

THIS OPERATING SERVICE AGREEMENT (this “Agreement”) is dated as of November [●], 2018 (the “Effective Date”), between the Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code (“CTRWSC”), Vista Ridge LLC, a limited liability company organized under the laws of the State of Delaware (the “Project Company”) and EPCOR Services Inc., an Arizona corporation (the “Operating Service Provider”, and together with the CTRWSC and the Project Company, the “Parties”).

RECITALS

WHEREAS, the Project Company and the City of San Antonio (the “City”), acting by and through the San Antonio Water System Board of Trustees established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”), have entered into that certain Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement dated as of November 4, 2014, as amended pursuant to a Consent to the Garney Change of Control and Conforming Amendments to the Water Transmission and Purchase Agreement, dated as of June 10, 2016, as further amended by that certain Second Amendment to the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November 2, 2016, as further amended by that certain Third Amendment to the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of April 5, 2017 (as further amended or otherwise modified from time to time, the “WTPA”);

WHEREAS, CTRWSC has been formed in furtherance of the Project for the purpose of acquiring easements, rights of way and other interests necessary to construct, own and operate a transmission line for the transportation of potable water to SAWS for the public use of the citizens of the City and regional communities; and

WHEREAS, the Project Company and CTRWSC entered into that certain Amended and Restated Water Transportation Agreement, dated as of November 2, 2016 (as amended or otherwise modified from time to time, the “Water Transportation Agreement”), where CTRWSC agreed to transport groundwater for the Project Company to SAWS in accordance with the terms of the WTPA;

WHEREAS, the Project Company and CTRWSC wish to contract with the Operating Service Provider to operate and maintain the Project subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 Definitions. For the purposes of this Agreement, the following capitalized words, terms and phrases, including in the recitals and exhibits hereof, shall have the following meanings:

“Acceptable Disposal Site” has the meaning set forth in Section 8.03(b) (Acceptable Disposal Site).

“Acceptance” means satisfaction of the conditions for achievement of the Commercial Operation Date pursuant to the WTPA.
“Acre Foot” means 43,560 cubic feet, which is equal to 325,851.42 U.S. gallons.

“Actual Annual Electricity Costs” means the sum of all actual annual electricity costs resulting from the Operating Service Provider’s performance of this Agreement as reflected in the electricity bills paid by SAWS pursuant to Section 3.06(b) (SAWS Payment of Project Electricity Costs During the Operating Period), excluding any fines, charges and penalties imposed by the electricity provider which are required to be reimbursed by the Operating Service Provider to the Project Company on a monthly basis as provided in such Section.

“Actual Compensable Costs” has the meaning set forth in Section 10.09 (Actual Compensable Costs).

“Additional Product Water Quality Standards” has the meaning set forth in Section 6.01(c) (Additional Product Water Quality Standards).

“Administrative Services” means those administrative services to be performed by the Operating Service Provider from the Effective Date through the Expiration Date as set out in Section 2.02(d) (Administrative Services).

“Advance Operating Service Provider Make-Up Units” has the meaning set forth in Section 6.02(a) (Definitions).

“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.

“Agreement” has the meaning set forth in the Preamble.

“Annual Settlement Statement” has the meaning set forth in Section 11.05 (Annual Settlement).

“Appendix” means any of the Appendices and, as applicable, any schedules and attachments thereto, that are appended to this Agreement and identified as such in the Table of Contents.

“Applicable Law” means: (1) any federal, state or local law, statute, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and (3) any Governmental Approval, in each case having the force of law and applicable from time to time to the Project.

“Asset Registry” means the asset registry prepared by the Design Build Contractor in accordance with Section 11.3(A) (Asset Registry) of the WTPA, as updated from time to time by the Operating Service Provider in accordance with Section 5.10 (Asset Registry) of this Agreement.

“Avoidable Costs” means, when used in relation to an event or circumstance, all costs and expenditures which:

(1) Are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or
(2) If the Operating Service Provider did not act reasonably and in accordance with this Agreement (including Section 15.09 (Duty to Mitigate), such additional costs and expenses that would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects if the Operating Service Provider had acted reasonably and in accordance herewith.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time, and any successor statute thereto. “Bankruptcy Law” also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Baseline Annual Volume” has the meaning set forth in Section 6.02(a) (Definitions).

“Baseline Daily Volume” has the meaning set forth in Section 6.02(a) (Definitions).

“Billing Period” means each month of a Contract Year, except that: (1) the first Billing Period of the first Contract Year shall begin on the Commercial Operation Date and shall continue to the last day of the month in which the Commercial Operation Date occurs, and (2) the last Billing Period of the last Contract Year shall end on the last day of the Term. Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Blue Water Systems, LP” means Blue Water Systems, LP, a limited partnership organized and existing under the laws of the State of Texas.

“Blue Water Vista Ridge, LLC” means Blue Water Vista Ridge, LLC, a limited liability company organized and existing under the laws of the State of Texas.

“Budgeted Compensable Costs” has the meaning set forth in Section 10.05 (Budgeted Annual Compensable Costs).

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

“Capital Modification” means a material change to the physical assets constituting the Project (including the alteration, addition, demolition, removal, extension or expansion of the physical assets constituting the Project or the installation of new structures, equipment, systems or technology) made after the Commercial Operation Date for any reason that, individually or in the aggregate, exceeds US$2,000,000 (Index Linked) in capital cost or that materially impairs the quality, integrity, durability or reliability of the Project or materially alters the original design of the Project as set forth in the Design Requirements. Repairs or replacements of the Project Equipment or the Project Structures shall not constitute Capital Modifications.

“Carrizo-Wilcox Aquifer” means the Carrizo-Wilcox Aquifer, as delineated by the TWDB.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Chief Operator” has the meaning set forth in Section 3.17(a) (Operating Service Provider’s Chief Operator).

“City” has the meaning set forth in the Recitals.

“CMMS” has the meaning set forth in Section 5.12 (Computerized Maintenance Management System).
“Collection Pipelines” means the pipelines for the conveyance to the High Service Pump Station of Raw Groundwater pumped from the Wells, as further described in Appendix 1 (Description of the Project) of the WTPA.

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

“Commercial Operation Date” has the meaning set forth in the WTPA.

“Commercial Operation Longstop Date” means April 10, 2021.

“Commissioning Date” means the date when CTRWSC notifies the Operating Service Provider in writing that CTRWSC has authorized the Design Build Contractor to commence the commissioning of the Project.

“Compensable Costs” has the meaning set forth in Section 10.03 (General Principles).

“Confidential Information” has the meaning set forth in Section 21.02(a) (Confidential Information).

“Contract Administration Memorandum” has the meaning set forth in Section 21.03(d) (Contract Administration Memoranda).

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) the Design Requirements; (3) Good Engineering and Construction Practice; (4) the Maintenance, Repair and Replacement Plan; (5) the Maintenance, Repair and Replacement Schedule; (6) the Performance Guarantees; (7) the Operating and Maintenance Standards; (8) Good Management Practice; (9) applicable written equipment manufacturers’ specifications; (10) applicable Insurance Requirements; and (11) any other standard, term, condition or requirement specifically provided in this Agreement to be observed by the Operating Service Provider. Section 1.02(s) (Interpretation) shall govern issues of interpretation related to the applicability and stringency of the Contract Standards.

“Contract Year” means each of: (1) the period from the Effective Date to the next December 31; (2) each subsequent period of twelve (12) calendar months commencing on January 1; and (3) the period from January 1 in the year in which this Agreement expires or is terminated (for whatever reason) to and including the Termination Date. Any computation made or requirement established on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than three hundred sixty-five (365) or three hundred sixty-six (366) days, whichever is applicable.

“Cost Substantiation” has the meaning set forth in Section 11.07 (Cost Substantiation).

“Counties” means each of the counties in which the Project Sites are located, including Burleson, Lee, Bastrop, Caldwell, Guadalupe, Comal and Bexar Counties.

“CTRWSC” has the meaning set forth in the Preamble.

“CTRWSC Event of Default” has the meaning set forth in Section 16.02(b) (CTRWSC Events of Default).

“CTRWSC Representative” means the individual specified in writing by CTRWSC as the representative of CTRWSC from time to time for all purposes of this Agreement.

“Daily Delivered Water Units” has the meaning set forth in Section 6.02(a) (Definitions).
“Daily Maximum Volume” has the meaning set forth in Section 6.02(a) (Definitions).

“Deductions” means those deductions from the otherwise applicable Monthly Operating Service Payments that CTRWSC is permitted to take as offsets (1) on account of SAWS having taken delivery of Off-Specification Water, pursuant to Section 6.01(e) (Remedies for Breach of Product Water Quality Guarantee; Off-Specification Product Water) and (2) on account of any electrical power consumption of the Project exceeding the Guaranteed Maximum Electricity Utilization and Guaranteed Maximum Electricity Demand pursuant to Appendix 5 (Guaranteed Maximum Electricity Utilization and Demand).

“Deductions Credit” has the meaning set forth in Section 11.01(b) (Deductions Credit).

“Defect” means a defect, deficiency or deviation (other than an Operation and Maintenance Defect) of any part, component or system forming part of the Project from the functional and technical requirements following on from the Contract Standards.

“Defects Liability Period” means, subject to Section 2.03(d) (Remediation of Defects), a period of one (1) year commencing on the Commercial Operation Date; provided, however, that the period for any leaks at O-ring joints caused by installation issues and for pipe defects, in each case as set forth in Attachment 3A – Technical Memorandum of Appendix 3 (Technical Specifications) of the WTPA, is five (5) years commencing with the Commercial Operation Date.

“Delivery Tank” has the meaning set forth in Section 6.02(a) (Definitions).

“Demand Shortfall Units” has the meaning set forth in Section 6.02(a) (Definitions).


“Design Build Contractor” means Garney Companies, Inc.

“Design Documents” means the Project Company’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Construction Work (as defined in the WTPA).

“Design Requirements” means the design requirements for the Project set forth in Appendix 3 (Technical Specifications) of the WTPA and Appendix 13 (SAWS Interconnection Improvements) to the WTPA.

“Design Requirements Change” means a change in the Design Requirements made prior to the Commercial Operation Date (1) as a result of a Project Company request agreed to by SAWS pursuant to Section 5.7 (Project Company-Requested Design Requirements Changes) of the WTPA, or (2) at the request of SAWS pursuant to Section 5.8 (SAWS-Requested Design Requirements Changes) of the WTPA.

“Direct Payments” has the meaning set forth in Section 11.02(b) (Direct Payments by the Parties).

“Disclosed Data” means any information, data and documents made available or issued to the Operating Service Provider or a Subcontractor in connection with the Project by or on behalf of CTRWSC, the Project Company or SAWS, including any information relating to the Project or the requirements of any Governmental Body, whether before or after the execution of this Agreement.

“Draft Reinstatement Plan” has the meaning set forth in Section 15.06(a) (Draft Reinstatement Plan).

“Effective Date” has the meaning set forth in the Preamble.
“Electronic Operation and Maintenance Manual” means the final electronic manual prepared by the Design Build Contractor as described in the Design Requirements and delivered by CTRWSC to the Operating Service Provider and updated from time to time by the Operating Service Provider in accordance with Section 5.02 (Electronic Operation and Maintenance Manual).

“End of Term Performance Evaluation Period” has the meaning set forth in Section 9.02(e) (Applicable End of Term Performance Evaluation Period).

“End of Term Performance Evaluation Requirements” has the meaning set forth in Section 6.5.2 (End of Term Performance Evaluation Requirements) of Appendix 6 (End of Term Project Condition Requirements).

“Environmental Mitigation Measures” means any environmental mitigation measures set forth in the Governmental Approvals required to be obtained by CTRWSC, the Project Company or the Operating Service Provider.

“EPA” means the United States Environmental Protection Agency and any successor agency.

“Equivalent Project Relief” has the meaning set forth in Section 15.12 (Equivalent Project Remedies).

“Excess Product Water” has the meaning set forth in Section 6.02(a) (Definitions).

“Excused Supply Shortfall Units” has the meaning set forth in Section 6.02(a) (Definitions).

“Exit Performance Test” has the meaning set forth in Section 9.02(d) (Non-Compliance With End of Term Performance Evaluation Requirements).

“Expiration Date” has the meaning set forth in Section 2.01 (Term).

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Fitch” means Fitch Ratings Ltd., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by CTRWSC.

“Fixed Compensable Costs” has the meaning set forth in Section 10.04 (Determination of Compensable Costs).

“Flow Curtailment Tank Level” has the meaning set forth in Section 6.02(a) (Definitions).

“Flow Rate” means the rate of flow of Product Water delivered to SAWS measured at the Project Flow Meter, and expressed in GPM.

“Flow Shutdown Tank Level” has the meaning set forth in Section 6.02(a) (Definitions).

“Force Majeure Event” has the meaning given to such term in the WTPA.

“GAAP” means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).
“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the design and construction of drinking water wells, treatment and pumping facilities and pipelines as observed in the State.

“Good Management Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices as observed for drinking water wells, treatment, storage and pumping facilities, and pipelines as observed in the State.

“Governmental Approvals” means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Project and the Operating Work.

“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 the WTPA), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Agreement or the Project. A Governmental Body includes the POSGCD and any other Governmental Body with jurisdiction over Raw Groundwater or the Project Site Conveyance Instruments.

“Groundwater Drilling and Operating Permit” means the Amended and Restated Drilling and Operating Permit (Permit No. POS-D850/A85M-0001), issued and effective on April 18, 2017, by Direction of the Board of Trustees of the POSGCD to the Project Company, or a successor Drilling and Operating Permit to be issued by POSGCD to the Project Company as a partial replacement of the foregoing permit.

“Groundwater Lease Conveyance Agreement” means the Groundwater Lease Conveyance Agreement, dated January 31, 2015, between the Project Company, Blue Water Vista Ridge, LLC, Blue Water Regional Supply Project LP, and the Master Lease Trust, as amended by the First Amendment thereto dated July 15, 2016, the Second Amendment thereto dated as of October 31, 2016 and the Master Amendment to Blue Water Agreements dated June 2, 2017, as further amended or modified from time to time.

“Groundwater Leases” means the leases listed in Exhibit A to the Groundwater Lease Conveyance Agreement.

“Groundwater Lessors” means the owners of the fee interest in the Raw Groundwater and the lessors under the Groundwater Leases.

“Groundwater Transportation Permit” means the Amended and Restated Transport Permit (Permit No. POS-T-0001b), issued by Direction of the Board of Trustees of the POSGCD to the Project Company on April 18, 2017, or any new permit issued to the Project Company that allows the Project Company to transport Raw Groundwater from the POSGCD, or a successor Groundwater Transportation Permit to be issued by POSGCD to the Project Company as a partial replacement of the foregoing permit.

“Guaranteed Maximum Annual Electricity Costs” means the Operating Service Provider’s guaranteed maximum annual electricity costs for the Project for which SAWS is responsible and which are calculated based on the applicable Guaranteed Maximum Electricity Utilization, the Guaranteed Maximum
Electricity Demand, Product Water delivered, and the electricity provider’s applicable per unit electric rate, all as provided in Section 11.05(b) (Annual Settlement of Electricity Costs).

“Guaranteed Maximum Electricity Demand” has the meaning specified in Appendix 5 (Guaranteed Maximum Electricity Utilization and Demand).

“Guaranteed Maximum Electricity Utilization” has the meaning specified in Appendix 5 (Guaranteed Maximum Electricity Utilization and Demand).

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment or otherwise, or is capable of causing harm to human health or the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

“Hazardous Substance Management Program” means the written Hazardous Substances management program developed by the Design Build Contractor in accordance with Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) of the WTPA, and updated by the Operating Service Provider during the Operating Period in accordance with Section 8.01 (Hazardous Substance Management) of this Agreement.

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

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

“Income Tax” means any tax imposed on the income of a person by any federal, State or local Governmental Body.

“Independent Evaluator” means a qualified independent evaluator or evaluation firm with demonstrated skill and experience of water utility property similar to the Project, not otherwise associated with the transactions contemplated hereby, selected with the mutual consent of CTRWSC, the Project Company and the Operating Service Provider for the purpose of evaluating and determining the condition of the Project pursuant to Section 11.3 (Project Evaluations) and Appendix 11 (End of Term Project Condition Requirements) of the WTPA. The Independent Evaluator may be an engineer or other technical professional competent to perform such services.

“Index Linked” means, with respect to an amount at any time, that the amount is increased as of January 1 of each calendar year (commencing on January 1 of the calendar year ending on December 31, 2016) by adding to it (1) an amount equal to such amount, multiplied by (2) the percentage representing the increase in the Inflation Index from (a) the Inflation Index for the last six months of the calendar year ending on December 31, 2014, to (b) the Inflation Index for the last six months of the calendar year immediately preceding the calendar year for which a determination is to be made.

“Inflation Index” means, with respect to items related to the Operating Work, the Consumer Price Index, All Urban Consumers (CPI-U) (1982-84 = 100) for South Region published by the Bureau of Labor Statistics of the United States Department of Labor (CPI STH Index); provided, however, that if such Consumer Price Index shall cease to exist or is changed, then the term “Inflation Index” shall mean such
other or similar index or formula as CTRWSC, the Project Company and the Operating Service Provider reasonably select.

“Initial Operating Spare Parts” means the spare parts as recommended by the manufacturers and agreed to by the CTRWSC during the Operating Period.

“Initial Staffing Plan” means the initial Staffing Plan for the O&M Personnel proposed by the Operating Service Provider and approved by CTRWSC pursuant to Section 3.17(g) (Staffing Plan) indicating, among other matters, the overall number and role of O&M Personnel at the Project.

“Insurance Proceeds” means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Operating Service Provider under this Agreement.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

“Intellectual Property” means any trade secrets, proprietary rights, patents, copyrights, or trademarks recognized under Applicable Law.

“Interim Operations Approval” has the meaning set forth in Section 3.14(a) (Authorization of Operation and Water Introduction).

“Intermediate Pump Station #1” has the meaning set forth in Appendix 1 (Description of the Project) of the WTPA.

“Intermediate Pump Station #2” has the meaning set forth in Appendix 1 (Description of the Project) of the WTPA.

“Joint Inspection and Survey” has the meaning set forth in Section 9.03(c) (Transfer Condition Survey and Work Plan).

“Lease Administration Agreement” means the Lease Administration Agreement, dated June 24, 2015, between the Project Company, Blue Water Vista Ridge, LLC and the Master Lease Trust, as amended by the Master Amendment to Blue Water Agreements dated June 2, 2017, as further amended or modified from time to time.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement, and all appeals therefrom.

“Lien” means any and every lien against the Project, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Loss-and-Expense” means, and is limited to (in each case subject to Section 18.01 (No Consequential Losses)), any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims for which the Operating Service Provider is obligated to indemnify the Project Indemnites hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Agreement.

“Maintenance, Repair and Replacement Plan” means the maintenance, repair and replacement plan prepared by the Operating Service Provider pursuant to Appendix 2 (Operating and Maintenance Standards).
“Maintenance, Repair and Replacement Schedule” means the maintenance, repair and replacement schedule prepared by the Operating Service Provider pursuant to Appendix 2 (Operating and Maintenance Standards).

“Major Repair and Replacement Compensable Costs” has the meaning set forth in Section 10.04 (Determination of Compensable Costs).

“Make-Up Units” has the meaning set forth in Section 6.02(a) (Definitions).

“Master Lease Trust” means the Burleson/Milam Master Lease Trust, a Texas trust formed under the Texas Trust Act.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 20.03 (Non-Binding Mediation).

“Midrange Partial Flow” has the meaning set forth in Section 5.5 (Performance Test Sequence of Events) of Appendix 5 (Performance Test Procedures and Standards) of the WTPA.

“Minimum Performance Criteria” has the meaning set forth in Section 5.4 (Minimum Performance Criteria) of Appendix 5 (Performance Test Procedures and Standards) of the WTPA.

“Monthly Delivered Water Units” means, for any Billing Period and subject to Section 6.01(f) (Remedies for Breach of Product Water Quality Guarantee Unacceptable Product Water) the number of Units actually made available by the Operating Service Provider and received and taken by SAWS.

“Monthly Operating Service Payment” means the monthly amount to be paid by CTRWSC to the Operating Service Provider for its services hereunder, calculated as provided in Section 11.01(a) (Monthly Operating Service Payments).

“Moody’s” means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by CTRWSC.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 20.03 (Non-Binding Mediation) for addressing disputes arising under this Agreement.

“O&M Budget Panel” has the meaning set forth in Section 10.03 (General Principles).

“O&M Personnel” means the employees of the Operating Service Provider providing the Operating Work.

“Off-Specification Product Water” means Product Water conveyed to SAWS that does not strictly conform to the Product Water Quality Guarantee in every respect and to any extent whatsoever, irrespective of whether any such non-conformity as to any Product Water quality parameter may be considered material or immaterial. Off-Specification Product Water does not include Unacceptable Product Water.

“Operating and Maintenance Standards” means the standards for the operation, maintenance and management of the Project as set forth in Appendix 2 (Operating and Maintenance Standards).

“Operating Notice” means a written notice given by CTRWSC to the Operating Service Provider or vice versa hereunder relating to routine operational matters arising under this Agreement following the Commercial Operation Date specifically required hereunder to be given as an “Operating Notice”.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 20.03 (Non-Binding Mediation).

“Midrange Partial Flow” has the meaning set forth in Section 5.5 (Performance Test Sequence of Events) of Appendix 5 (Performance Test Procedures and Standards) of the WTPA.

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“Monthly Operating Service Payment” means the monthly amount to be paid by CTRWSC to the Operating Service Provider for its services hereunder, calculated as provided in Section 11.01(a) (Monthly Operating Service Payments).

“Moody’s” means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by CTRWSC.

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“Operating and Maintenance Standards” means the standards for the operation, maintenance and management of the Project as set forth in Appendix 2 (Operating and Maintenance Standards).

“Operating Notice” means a written notice given by CTRWSC to the Operating Service Provider or vice versa hereunder relating to routine operational matters arising under this Agreement following the Commercial Operation Date specifically required hereunder to be given as an “Operating Notice”.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 20.03 (Non-Binding Mediation).

“Midrange Partial Flow” has the meaning set forth in Section 5.5 (Performance Test Sequence of Events) of Appendix 5 (Performance Test Procedures and Standards) of the WTPA.

“Minimum Performance Criteria” has the meaning set forth in Section 5.4 (Minimum Performance Criteria) of Appendix 5 (Performance Test Procedures and Standards) of the WTPA.

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“Monthly Operating Service Payment” means the monthly amount to be paid by CTRWSC to the Operating Service Provider for its services hereunder, calculated as provided in Section 11.01(a) (Monthly Operating Service Payments).

“Moody’s” means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by CTRWSC.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 20.03 (Non-Binding Mediation) for addressing disputes arising under this Agreement.

“O&M Budget Panel” has the meaning set forth in Section 10.03 (General Principles).

“O&M Personnel” means the employees of the Operating Service Provider providing the Operating Work.

“Off-Specification Product Water” means Product Water conveyed to SAWS that does not strictly conform to the Product Water Quality Guarantee in every respect and to any extent whatsoever, irrespective of whether any such non-conformity as to any Product Water quality parameter may be considered material or immaterial. Off-Specification Product Water does not include Unacceptable Product Water.

“Operating and Maintenance Standards” means the standards for the operation, maintenance and management of the Project as set forth in Appendix 2 (Operating and Maintenance Standards).

“Operating Notice” means a written notice given by CTRWSC to the Operating Service Provider or vice versa hereunder relating to routine operational matters arising under this Agreement following the Commercial Operation Date specifically required hereunder to be given as an “Operating Notice”.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 20.03 (Non-Binding Mediation).

“Midrange Partial Flow” has the meaning set forth in Section 5.5 (Performance Test Sequence of Events) of Appendix 5 (Performance Test Procedures and Standards) of the WTPA.

“Minimum Performance Criteria” has the meaning set forth in Section 5.4 (Minimum Performance Criteria) of Appendix 5 (Performance Test Procedures and Standards) of the WTPA.

“Monthly Delivered Water Units” means, for any Billing Period and subject to Section 6.01(f) (Remedies for Breach of Product Water Quality Guarantee Unacceptable Product Water) the number of Units actually made available by the Operating Service Provider and received and taken by SAWS.

“Monthly Operating Service Payment” means the monthly amount to be paid by CTRWSC to the Operating Service Provider for its services hereunder, calculated as provided in Section 11.01(a) (Monthly Operating Service Payments).

“Moody’s” means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by CTRWSC.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 20.03 (Non-Binding Mediation) for addressing disputes arising under this Agreement.

“O&M Budget Panel” has the meaning set forth in Section 10.03 (General Principles).

“O&M Personnel” means the employees of the Operating Service Provider providing the Operating Work.

“Off-Specification Product Water” means Product Water conveyed to SAWS that does not strictly conform to the Product Water Quality Guarantee in every respect and to any extent whatsoever, irrespective of whether any such non-conformity as to any Product Water quality parameter may be considered material or immaterial. Off-Specification Product Water does not include Unacceptable Product Water.

“Operating and Maintenance Standards” means the standards for the operation, maintenance and management of the Project as set forth in Appendix 2 (Operating and Maintenance Standards).

“Operating Notice” means a written notice given by CTRWSC to the Operating Service Provider or vice versa hereunder relating to routine operational matters arising under this Agreement following the Commercial Operation Date specifically required hereunder to be given as an “Operating Notice”.
“Operating Period” means the period between the Commercial Operation Date and the Termination Date.

“Operating Protocol” means the protocol governing operation of the Project, including all interface, coordination, and water delivery and supply policies, procedures, plans and protocols, to be provided by CTRWSC to the Operating Service Provider and thereafter revised by the Operating Service Provider in accordance with Section 5.01 (Operating Protocol) of this Agreement and Appendix 2 (Operating and Maintenance Standards).

“Operating Service Provider” has the meaning set forth in the Preamble.

“Operating Service Provider Bankruptcy-Related Event” has the meaning set forth in Section 16.01(b)(iii) (Operating Service Provider Events of Default).

“Operating Service Provider Event of Default” has the meaning set forth in Section 16.01(a) (CTRWSC Termination Rights).

“Operating Service Provider Indemnitee” has the meaning set forth in Section 17.01 (Indemnification by CTRWSC and the Project Company).

“Operating Service Provider Make-Up Units” has the meaning set forth in Section 6.03(a) (Operating Service Provider Make-Up Units).

“Operating Service Provider Parent Guarantor” means EPCOR USA Inc., a Delaware corporation.

“Operating Service Provider Person” means: (1) Any owner, shareholder, or member holding five percent (5%) or more of the equity ownership interest of the Operating Service Provider, or a director, officer, employee or agent of the Operating Service Provider, in each case acting as such; or (2) the Operating Service Provider, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Operating Service Provider, in any such person’s capacity as a provider of services directly or indirectly to the Operating Service Provider in connection with the Project.

“Operating Service Provider Remediable Breach” has the meaning set forth in Section 16.01(b) (Operating Service Provider Events of Default).

“Operating Service Provider Representative” means the individual specified in writing by the Operating Service Provider as the representative of the Operating Service Provider from time to time for all purposes of this Agreement.

“Operating Service Provider’s Intellectual Property” has the meaning set forth in Section 14.02 (Ownership of Operating Service Provider’s Intellectual Property).

“Operating Services” means those services to be performed by the Operating Service Provider during the Operating Period as set out in Section 2.02(c) (Operating Period Services).

“Operating Spare Parts” means the spare parts necessary for the operation and maintenance of the Project in accordance with this Agreement.

“Operating Work” means the Administrative Services, the Pre-Operating Services and the Operating Services.

“Operation and Maintenance Defect” means any defect, deficiency or deviation of any part, component, or system forming part of the Project arising as a result of: (a) the improper or negligent storage, installation, operation or maintenance by or on behalf of the Operating Service Provider of the Project or any part, component or system forming part of the Project; or (b) the operation and maintenance of the
Project or any part, component or system forming part of the Project in a manner inconsistent with the specifications set out in the Electronic Operation and Maintenance Manual, the Operating Protocol or otherwise in breach of the Operating Service Provider’s obligations under this Agreement.

“OSHA” means the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Other Project Assets” has the meaning set forth in Section 12.4 (Other Project Assets) of Appendix 12 (Project Assets and Liabilities) to the WTPA.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or seven point five percent (7.5%) annually, whichever is lower.

“Owner Intellectual Property” has the meaning set forth in Section 14.01 (Ownership and License of CTRWSC’s and the Project Company’s Intellectual Property).

“Parent Company Guarantee” has the meaning set forth in Section 12.02 (Parent Company Guarantee).

“Parties” has the meaning set forth in the Preamble.

“Performance Bond” has the meaning set forth in Section 2.01(a) (Performance Bond).

“Performance Guarantees” means the guarantees of performance made by the Operating Service Provider specifically set forth in Section 6.01 (Product Water Quality Guarantee); Section 8.03 (Disposal of Residuals); Section 8.04 (Disposal of Waste Water) and Appendix 4 (Performance Guarantee Requirements).

“Performance Test” means the performance test to be conducted pursuant to the WTPA for the achievement of Acceptance of the Project.

“Permits Conveyance and Administration Agreement” means the Permits Conveyance and Administration Agreement, dated June 24, 2015, between the Project Company and Blue Water Vista Ridge, LLC, as amended by the Master Amendment to Blue Water Agreements dated June 2, 2017, as further amended or modified from time to time.

“Personal Information” means information about a person, the disclosure of which would constitute an unwarranted invasion of privacy.

“POSGCD” means the Post Oak Savannah Groundwater Conservation District, located in Milam and Burleson Counties, Texas, Ground Water Management Area 12.

“Pre-Operating Period” means the period from the Effective Date until the Commercial Operation Date.

“Pre-Operating Services” means those services to be performed by the Operating Service Provider during the Pre-Operating Period as set out in Section 2.02(b) (Pre-Operating Services).

“Product Water” means Raw Groundwater which has been treated at the Project in accordance with the Contract Standards. Product Water includes Off-Specification Product Water, but does not include Unacceptable Product Water.

“Product Water Delivery Point” means the point in the pipe between the Project Flow Meter and the Project Company Storage Tank proximate to the property line separating Terminus Site Lot 1 and
Terminus Site Lot 2 (each as defined in the WTPA) designated by SAWS and the Project Company under the WTPA for determining the point of transfer of ownership of Product Water from the Project Company to SAWS and, in the event SAWS exercises its right to sell Product Water to any person pursuant to Section 26.5 (Opportunities) of the WTPA, the delivery points established pursuant to such section of the WTPA, as each such point has been notified by the CTRWSC or the Project Company to the Operating Service Provider.

“Product Water Quality Guarantee” has the meaning set forth in Section 6.01(c) (Additional Product Water Quality Standards).

“Product Water Quality Sampling Location” means the location at which the quality of Product Water is sampled and measured for purposes of determining compliance with the Performance Guarantees, which shall be proximate to the Product Water Delivery Point or at another location approved by SAWS and the Project Company under the WTPA, as such location has been notified by CTRWSC or the Project Company to the Operating Service Provider.

“Project” means the Vista Ridge Regional Supply Project, consisting of (1) the withdrawing of Raw Groundwater pursuant to the Groundwater Lease Conveyance Agreement, the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit, and (2) the construction on the Project Sites of the Project Improvements for the production and treatment of Raw Groundwater and the transmission and making available of Product Water at the Product Water Delivery Point. The Project includes all Project Real Property, related structures and equipment, and roads, grounds, fences and landscaping appurtenant thereto, and all Capital Modifications. The Project does not include the SAWS Distribution System, including the SAWS Interconnection Improvements. On and after the Notice of Acceptance Date (as defined in the WTPA), the Project shall not include the Project Company Storage Tank and the Project Real Property shall not include Terminus Site Lot 2 (as defined in the WTPA), and the Project Company Storage Tank and Terminus Site Lot 2 shall be part of the SAWS Distribution System.

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

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

“Project Assets Purchase Termination Costs” means the sum of (a) all unpaid Monthly Operating Service Payments and other amounts owed to the Operating Service Provider and not paid pursuant to Article XI (Compensation and Payment) until the Termination Date, plus (b) the Unamortized Breakage Amount, plus (c) any reasonable costs and expenses of demobilization of the O&M Personnel and Subcontractors.

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

“Project By-Products” means Residuals and Wastewater requiring disposal by the Operating Service Provider in accordance with this Agreement.

“Project Company” has the meaning set forth in the Preamble.

“Project Company Rights” has the meaning set forth in Section 15.12 (Equivalent Project Remedies).
“Project Company Storage Tank” means the Product Water holding structure, to be designed, constructed and tested by CTRWSC on Terminus Site Lot 2 (as defined in the WTPA) for the storage of Product Water, and all related valves, piping, structures, facilities, equipment and improvements, as more particularly described in Appendix 13 (SAWS Interconnection Improvements) of the WTPA.

“Project Contracts” means the WTPA, the Public-Private Partnership Framework Agreement, the Design Build Contract, the Water Transportation Agreement, the Groundwater Lease Conveyance Agreement, the Lease Administration Agreement, the Permits Conveyance and Administration Agreement and this Agreement.

“Project Equipment” means all manufactured equipment, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, including tanks (other than concrete tanks), basins (other than concrete basins), process and treatment, mechanical, piping (with an original useful life of less than twenty (20) years), electrical, instrumentation and controls, remote monitoring and communications, HVAC, chemical and other storage and feed systems, cranes and hoists, and any ancillary, appurtenant and support equipment and systems utilized in or at the Project.

“Project Flow Meter” means the flow meter built in conformance with the requirements of Appendix 3 (Technical Specifications) of the WTPA for measuring the volume of Product Water of which SAWS has taken delivery, and located upstream of the Product Water Delivery Point or at another location agreed to by SAWS and the Project Company under the WTPA, as such other location may be notified in writing to the Operating Service Provider.

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

“Project Indemnitee” has the meaning set forth in Section 17.02 (Indemnification by the Operating Service Provider).

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

“Project Site Leases” means any lease of all or any portion of the Project Sites.

“Project Site Lessors” means the Groundwater Lessors and the Transmission Pipeline Easement Grantors.

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

“Project Structures” means all structures, buildings, concrete tanks and basins, appurtenances (including valves, gates and weirs), and piping (with an original useful life of equal to or greater than twenty (20) years) constituting part of the Project, other than Project Equipment.

“Projected Annual Supply Schedule” has the meaning set forth in Section 6.04(a) (Projected Annual Supply Schedules).

“Projected Monthly Supply” has the meaning set forth in Section 6.04(c) (Projected Monthly Supply).
“Public Information Act” means the Texas Public Information Act, Chapter 552 of the Texas Government Code.


“Public Water Supplier Designation” means the public water supplier designation required to be issued by TCEQ authorizing the use of Product Water as a source of potable water for public consumption through the SAWS Distribution System.

“Qualified Commercial Bank” means a reputable domestic or foreign commercial bank:

1. Whose long term and short term debt is rated “A3” or higher by Moody’s, “A” or higher by Standard & Poor’s, and “A” or higher by Fitch (the lower of the three applying if there is a split rating); and

2. Which maintains a banking office, branch or agency in San Antonio or Houston, Texas and in New York, New York.

“Qualified Insurer” means a reputable insurer authorized to conduct business in the State and having a credit rating of:

1. A-VIII or better with A.M. Best or

2. The equivalent thereof by any other recognized insurance rating agency.

“Rating Service” means Moody’s, Standard & Poor’s or Fitch.

“Raw Groundwater” means groundwater drawn from the Carrizo-Wilcox Aquifer or the Simsboro Aquifer for treatment and conveyance to SAWS by the Operating Service Provider in accordance with the Contract Standards.

“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.

“Regulated Substance” means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, or industrial waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Substances and contaminated soils requiring special handling or disposal.

“Reinstatement Plan” has the meaning set forth in Section 15.06(c) (Reinstatement Plan).

“Reinstatement Works” has the meaning set forth in Section 15.06(a) (Draft Reinstatement Plan).

“Required Insurance” means the insurance specified in Appendix 3 (Insurance Requirements)

“Residuals” means any semi-solid or solid material resulting from the treatment of Raw Groundwater which requires disposal as waste material.

“Response Plan” means a Hazardous Substance emergency / spill response plan developed by the Design Build Contractor in accordance with the requirements of Appendix 4 (Design and Construction Review Procedures, Commissioning and Substantial Completion) of the WTPA and updated by the
Operating Service Provider during the Operating Period in accordance with Section 8.01(Hazardous Substance Management) of this Agreement.

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which): (1) is disbarred, suspended, or otherwise disqualified from federal, State, SAWS, Counties or City contracting for any services similar in nature to the Operating Work; (2) was or is subject to any material claim of the United States, State, SAWS, Counties or City in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in either case, be reasonably likely to materially affect the ability of the Operating Service Provider to perform its obligations under this Agreement; (3) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of trustees or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offenses or misdemeanors) less than five (5) years prior to the date at which the determination of whether the person falls within this definition is being made; (4) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies; (5) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or (6) is any other person whose work on or association with the Project would be detrimental to the reputation of SAWS, as formally determined by SAWS in its discretion.

“SAWS” has the meaning set forth in the Recitals.

“SAWS Distribution System” means the water transmission and distribution system (including all pipes, pipelines, pumping stations, mains, valves, distribution facilities and equipment, treatment works, and related buildings, structures, improvements and appurtenances thereto) owned by SAWS and serving the Service Area, including the SAWS Interconnection Improvements. The “SAWS Distribution System” shall not include the Project, except that, on and after the Notice of Acceptance Date (as defined in the WTPA), the SAWS Distribution System shall include the Project Company Storage Tank and Terminus Site Lot 2 (as defined in the WTPA).

“SAWS Fault” has the meaning given to such term in the WTPA.

“SAWS Interconnection Improvements” means the SAWS Storage Tank and the other improvements required to be constructed by SAWS pursuant to Section 6.2 (SAWS Interconnection Improvements) of the WTPA, as generally described in Appendix 13 (SAWS Interconnection Improvements) of the WTPA and, after the Notice of Acceptance Date (as defined in the WTPA), the Project Company Storage Tank.

“SAWS Interface Cabinet” means the antenna or other device or equipment serving as an interface for electronic communications and security information between SAWS and the Project Company and constituting the operating interface between the SAWS Distribution System and the Project to be installed by SAWS at the Transmission Pipeline Terminus Site.

“SAWS Make-Up Units” has the meaning specified in Section 6.03(b) (SAWS Make-Up Units).

“SAWS-Requested Capital Modifications” means a Capital Modification that SAWS has directed the Project Company to make in accordance with Section 12.3 (Capital Modifications at SAWS Request) of the WTPA.
“SAWS Storage Tank” means the storage tank(s) to be constructed by SAWS on Terminus Site Lot 3 (as defined in the WTPA) as part of the SAWS Interconnection Improvements, as generally described in Appendix 13 (SAWS Interconnection Improvements) to the WTPA.

“SCADA” means supervisory control and data acquisition.

“Scheduled Commercial Operation Date” means April 15, 2020.

“Scheduled Company Shutdown Hours” has the meaning set forth in Section 6.04(b) (Delivery Schedule Factors).

“Scheduled SAWS Shutdown Hours” has the meaning set forth in Section 6.04(b) (Delivery Schedule Factors).

“Scheduled Utility Shutdown Hours” has the meaning set forth in Section 6.04(b) (Delivery Schedule Factors).

“Security Plan” has the meaning set forth in Section 3.07 (Security).

“Service Area” means all territory in which customers are served by the SAWS Distribution System during the Term of the WTPA.

“Service Change” has the meaning set forth in Section 2.08 (Changes to the Operating Work; Additional Services).

“Service Change Notice” has the meaning set forth in Section 2.08 (Changes to the Operating Work; Additional Services).

“Service Change Objection” means where compliance with a Service Change Notice would (1) result in a breach of this Agreement or any other Project Contract, or constitute a hazard to the safety of personnel, or the Project; (2) be contrary to Applicable Law, Good Engineering and Construction Practice, or Good Management Practice; (3) render any policy of Required Insurance void or voidable unless CTRWSC agrees to provide replacement insurance or other security reasonably satisfactory to the Operating Service Provider; (4) be the revocation of any Governmental Approval required to be obtained by CTRWSC, the Project Company or the Operating Service Provider in connection with the Project; (5) require a new Governmental Approval to be obtained by CTRWSC, the Project Company or the Operating Service Provider in connection with the Project, which Governmental Approval would not, using reasonable efforts, be obtainable; or (6) materially and adversely affect the risk allocation, ability to perform (including any material increase in the risk of non-performance) or cost of performance under this Agreement with respect to the Operating Work, unless the material and adverse effects of such requirement are remedied by CTRWSC to the Operating Service Provider’s reasonable satisfaction.

“Shareholder” means any holder or owner of Shares.

“Shares” means shares or other equity interests of any class in the capital of the Operating Service Provider.

“Simsboro Aquifer” means the Simsboro aquifer, as delineated by the TWDB.

“SMWB” has the meaning set forth in Section 3.04(b) (Small, Minority and Women-Owned Business Opportunities).

“Staffing Plan” means the relevant staffing plan for the O&M Personnel proposed by the Operating Service Provider and approved by CTRWSC pursuant to Section 3.17(g) (Staffing Plan) indicating, among other matters, the overall number and role of O&M Personnel at the Project.
“Standard & Poor’s” means Standard & Poor’s Financial Services LLC, a division of The McGraw-Hill Companies, Inc., or any of its successors and assigns. If such company shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by SAWS under the WTPA.

“State” means the State of Texas.

“Subcontract” means any contract entered into by the Operating Service Provider (except the Project Contracts), or a subcontractor of the Operating Service Provider of any tier, with one or more persons in connection with the carrying out of the Operating Service Provider’s obligations under this Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Subcontractor” means any person that enters into a Subcontract.

“Supply Shortfall Units” has the meaning set forth in Section 6.02(a) (Definitions).

“Tank Structural Failure Units” has the meaning set forth in Section 6.02(a) (Definitions).

“Tax” means, from time to time, all taxes, surtaxes, fees, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, in lieu of or for non-collection.

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

“Term” has the meaning set forth in Section 2.01 (Term).

“Termination Date” means the earlier of (i) the Expiration Date, (ii) if this Agreement is terminated pursuant to Section 16.01(e)(ii) (Termination Right), the date specified in the termination notice as the effective date of termination or (iii) if this Agreement is otherwise terminated pursuant to any other provision of Article XVI (Termination; Remedies of the Parties), the date notice of early termination of this Agreement is given by CTRWSC or the Project Company to the Operating Service Provider or vice versa.

“Transaction Form” means any of the Transaction Forms appended to the WTPA.

“Transfer Condition Plan” has the meaning set forth in Appendix 6 (End of Term Project Condition Requirements).

“Transfer Condition Plan Completion Certificate” has the meaning set forth in Section 9.03(g) (Final CTRWSC Condition Assessment).

“Transfer Condition Requirements” has the meaning set forth in Section 9.03(b) (Required Project Condition).

“Transfer Condition Retainage” has the meaning set forth in Section 9.03(d) (Determination of Transfer Condition Retainage).

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

“Transmission Pipeline Alignment” means the real property over or within which the Transmission Pipeline is to be constructed.
“Transmission Pipeline Easement Grantors” means the grantors of the Transmission Pipeline Easements.

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

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

“Transmission Pipeline System” means the Transmission Pipeline and, prior to the Notice of Acceptance Date (as defined in the WTPA), the Project Company Storage Tank.

“Transmission Pipeline Terminus Site” means the parcel of approximately twenty (20) acres located in the City at the terminus of the Transmission Pipeline designated as the “Transmission Pipeline Terminus Site” in Attachment 13E of Appendix 13 (SAWS Interconnection Improvements) of the WTPA.

“TWDB” means the Texas Water Development Board, or any predecessor or successor agency.

“Unacceptable Product Water” means water produced by the Operating Service Provider and made available to SAWS that does not comply with the Product Water Quality Guarantee to such an extent that it (1) does not meet primary and secondary drinking water standards under Applicable Law; (2) presents a risk to public health or safety; or (3) has the potential to materially damage or destroy SAWS’ property or private property or create an imminent need to clean, repair, replace or restore any such property.

“Unamortized Breakage Amount” means a fixed termination amount equal to the product of $14,200,000 multiplied by a fraction the numerator of which is the number of remaining months of the Term (including the month in which the Termination Date occurs and without taking into account any extension of the Term) on the Termination Date and the denominator of which is 360. For the avoidance of doubt, the calculation of the Unamortized Breakage Amount shall not take into account any extension of the Term pursuant to Section 6.06 (Extension of Term) hereof.

“Uncontrollable Circumstances” has the meaning given to such term in the WTPA.

“Unexcused Supply Shortfall Units” has the meaning set forth in Section 6.02(a) (Definitions).

“Unit” means an Acre Foot of Product Water, or the equivalent in gallons or cubic feet, as applicable in the circumstances.

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Variable Compensable Costs” has the meaning set forth in Section 10.04 (Determination of Compensable Costs).

“Variable Compensable Costs Unit Price” has the meaning set forth in Section 10.07 (Budgeted Variable Compensable Costs Unit Price).

“Wastewater” means (1) any process wastewater produced at the Project, and (2) any Product Water produced at the Well Field Facilities that requires discharge from the Transmission Pipeline before reaching the Product Water Delivery Point for any reason, including flushing requirements or any failure to meet disinfection standards under the Product Water Quality Guarantee.
“Water Availability Incentive Payment” means an incentive payment payable to the Operating Service Provider pursuant to Section 12.03 (Incentive Payments).

“Water Shortfall Liquidated Damages” means liquidated damages payable to CTRWSC (for the account of the Project Company) pursuant to Section 12.04 (Liquidated Damages).

“Water Transportation Agreement” has the meaning set forth in the Recitals.

“Well Field Facilities” means the facilities and roads to be constructed on the Well Field Facilities Site for the production, collection, treatment, storage and pumping of Raw Groundwater, consisting of the Wells and the Collection Pipelines.

“Well Field Facilities Site” means the land upon which the Well Field Facilities are to be constructed, including approximately fifty thousand (50,000) acres located in Burleson County, Texas, near the intersection of SH 21 and FM 696, approximately eight (8) miles from the City of Caldwell, Texas. The Well Field Facilities Site is more particularly described in Appendix 1 (Description of the Project) to the WTPA.

“Well Field Facilities Site Real Property Interests” means (1) a fee simple absolute or other real property interest approved by SAWS in the Well Sites, and (2) permanent easements for the Collection Pipelines Rights-of-Way.

“Well Field Meters” has the meaning set forth in Section 3.08(c) (Well Field Meters).

“Well Sites” means each of the sites of approximately two (2) acres upon which the Wells are to be constructed.

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

“WTPA” has the meaning set forth in the Recitals.

Section 1.02 Interpretation. In this Agreement, unless the context otherwise requires:

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

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

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

(d) The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(e) All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Central Standard time or Central Daylight Saving time, as the case may be.
The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

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.

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.

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 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.

The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of any 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 any other Party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

The terms “treat,” “treated,” “treatment,” “treating” and any similar terms, when used with respect to Raw Groundwater, shall mean and refer to the operation of the Project by the Operating Service Provider to clarify, filter, disinfect and treat Raw Groundwater and make available Product Water to SAWS in accordance with this Agreement.

The expressions “making available,” “make available,” “made available” and any similar expressions, when used with respect to Product Water, shall mean and refer to conditions described in Section 6.02(d) (Determination of Water Made Available).

The expression “take delivery of”, and any similar expressions, when used with respect to Product Water, shall mean and refer to the movement of Product Water from the Project to the SAWS Distribution System through the Product Water Delivery Point. The number of Units that SAWS takes delivery of on any day shall be measured by the totalizer attached to the Project Flow Meter.

The Parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

All calculations hereunder involving Acre Feet shall be rounded to the nearest one-tenth of an Acre-Foot.
(q) 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.

(r) All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(s) The Parties understand that one or more of the Contract Standards applicable to a performance obligation of the Operating Service Provider may include a range of applicable criteria; in such circumstances, performance by the Operating Service Provider shall be deemed to have satisfied such Contract Standard so long as it is within such range. Where more than one Contract Standard applies to any particular performance obligation of the Operating Service Provider hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. Any reference in this Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Operating Service Provider to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Agreement.

(t) The obligations of a Party to cooperate with, to assist or to provide assistance to any other Party hereunder shall be construed as an obligation to use such Party’s personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third-party expense unless requested and reimbursed by the assisted Party.

(u) 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 such 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 Agreement. When a Party does not have “discretion”, it means that such Party shall act reasonably. A Party may exercise any termination right of such Party hereunder in its discretion.

ARTICLE II

APPOINTMENT OF THE OPERATING SERVICE PROVIDER AND TERM

Section 2.01 Term. This Agreement shall become effective, and the term hereof (the “Term”) shall commence, on the Effective Date. The Term shall continue until the date that is thirty (30) years following the Commercial Operation Date, or such later date not to exceed fifty (50) years following the Commercial Operation Date as may be established pursuant to Section 6.06 (Extension of Term) (the “Expiration Date”), unless this Agreement is earlier terminated by CTRWSC or the Operating Service Provider in accordance with their respective termination rights under Article XVI (Termination; Remedies of the Parties).

Section 2.02 Scope of Services.

(a) Generally.

(i) The Operating Service Provider shall, from the Commercial Operation Date, operate and maintain the Project in a safe and reliable manner and in accordance with the terms of this Agreement.

(ii) The Operating Service Provider shall (A) during the Pre-Operating Period, provide the Pre-Operating Services, (B) during the Operating Period, provide the Operating Services and (C) during the Term, provide the Administrative Services.
(iii) The Operating Service Provider shall establish policies, procedures, plans and budgets that will allow the operation and maintenance of the Project to be performed safely, reliably and in accordance with the provisions of this Agreement.

(b) **Pre-Operating Services.** During the Pre-Operating Period, the Operating Service Provider shall:

(i) Participate in meetings or conference calls related to the status of the Project at least twice a month and contribute meaningfully;

(ii) Provide recommendations related to the construction and commissioning of the Project;

(iii) Obtain, pay for and maintain in effect all Governmental Approvals required to be obtained and maintained by the Operating Service Provider for the performance of the Operating Work and provide such other services relating to those Governmental Approvals required to be obtained and maintained by CTRWSC or the Project Company, as the case may be, in connection with the Project as further specified in Section 3.14 *(Operating Service Provider’s Permits)*;

(iv) Perform those tasks reasonably necessary to prepare for the performance of the Operating Services;

(v) Obtain, pay for and maintain in effect all Required Insurance;

(vi) Perform all of its other obligations set forth elsewhere in this Agreement that are required to be performed prior to the Commercial Operation Date;

(vii) Provide such O&M Personnel as agreed between CTRWSC and the Operating Service Provider for training by the Design Build Contractor as necessary to allow the Operating Service Provider to perform the Operating Work in accordance with Good Management Practice and this Agreement, which O&M Personnel shall have the necessary qualifications to operate and maintain the Project; and

(viii) Promptly notify CTRWSC and SAWS if, in the opinion of the Operating Service Provider, any action taken, or proposed to be taken, by the Design Build Contractor may be unsafe or be likely to cause damage to the Project or any other property and/or is not in accordance with the Contract Standards.

(c) **Operating Period Services.** During the Operating Period, the Operating Service Provider shall:

(i) Operate and manage the Project; treat Raw Groundwater; produce, supply, make available and deliver Product Water to SAWS; transport and dispose of Project By-Products; provide all information necessary to secure and maintain Governmental Approvals to the extent required under this Agreement; and otherwise operate and manage the Project on behalf of CTRWSC pursuant to the Water Transportation Agreement and on behalf of the Project Company pursuant to the WTPA and the other Project Contracts so as to comply with the Contract Standards applicable to such activities as contemplated by this Agreement and the WTPA;

(ii) Deliver to SAWS at the Product Water Delivery Point quantities of Product Water, as required under this Agreement, of a quality that complies with the Product Water Quality Guarantee, subject to the terms of this Agreement;
(iii) Continue to maintain in effect all necessary Governmental Approvals required to be obtained or maintained by the Operating Service Provider for the performance of the Operating Work as further specified in Section 3.14 (Operating Service Provider’s Permits);

(iv) Protect and maintain the components and generally operate and maintain the Project as set out in this Agreement such that, at the end of the Operating Period, fully operational Project Assets are transferred to SAWS in accordance with the requirements set forth in Article IX (Project Assets Transfer);

(v) Perform all corrective, predictive, preventive and routine maintenance, repair and renovation of the Project (including any renewal thereof) in accordance with this Agreement;

(vi) Otherwise operate, maintain, repair, and administer the Project in accordance with this Agreement, the rights and obligations of the Project Company under the WTPA and the other Project Contracts and the rights and obligations of CTRWSC under the Water Transportation Agreement, all as more specifically described in this Agreement; and

(vii) Perform all its other obligations as set out elsewhere in this Agreement that are required to be performed on or after the Commercial Operation Date.

(d) Administrative Services. During the Term, the Operating Service Provider shall perform the following administrative services on behalf of the Project Company:

(i) Provide access to qualified corporate personnel, data and systems as may be required for the management of CTRWSC and the Project Company;

(ii) Implement and maintain a treasury function and financial controls (internal and external) for CTRWSC and the Project Company;

(iii) Implement and maintain appropriate administrative and accounting functions for CTRWSC and the Project Company, including maintenance of books and records, accounts payable and receivable, billing, collection, and general accounting;

(iv) Coordinate the performance of all financial and accounting reporting required by Applicable Law for CTRWSC and the Project Company, including, without limitation, providing the following reports to each member of the board of directors of CTRWSC and the Project Company:

(A) within one hundred twenty (120) days of CTRWSC’s and the Project Company’s year-end, consolidated financial statements of each of CTRWSC and the Project Company, audited by an independent public accounting firm selected by the board of directors of CTRWSC and the Project Company, as the case may be, and a schedule showing any variance between actual and budgeted figures;

(B) within one hundred (100) days of CTRWSC’s and the Project Company’s year-end, a draft of the annual financial statements referenced in Section 2.02(d)(iv)(A);

(C) within forty-five (45) days of the end of each fiscal quarter of CTRWSC and the Project Company, quarterly unaudited consolidated financial statements of each of CTRWSC and the Project Company for the previous quarter and a schedule showing any variance between actual and budgeted figures; and
(D) within thirty (30) days of the end of each month, an unaudited income statement and statement of cash flows for such month, and an unaudited balance sheet and statement of stockholders’ equity as of the end of such month of each of CTRWSC and the Project Company, all prepared in accordance with generally accepted accounting principles consistently applied (except that such financial statements may be subject to normal year-end and quarterly adjustments and may not contain all footnotes required by generally accepted accounting principles);

(v) Prepare a business plan and administrative budget for each of CTRWSC and the Project Company no later than May 1 of each Contract Year in respect of the upcoming Contract Year for approval by the board of directors of the Project Company and perform the Administrative Services in accordance with such approved budgets;

(vi) Coordinate the preparation of all operating and financial reports and other written deliverables required by the lenders of CTRWSC and the Project Company in connection with the Project and submit such reports and deliverables to CTRWSC and the Project Company, as the case may be, for approval reasonably in advance of the date on which such reports and deliverables are required to be provided to such lenders;

(vii) Prepare such other reports and information (in any form, electronic or otherwise) as any member of the board of directors of CTRWSC and any member of the Project Company or its board of directors may reasonably request from time to time;

(viii) Provide centralized recruiting and other human resources related guidance for CTRWSC and the Project Company; including implementing appropriate policies and practices;

(ix) Prepare and review procurement documents for CTRWSC and the Project Company and, where appropriate, participate in the award recommendation process;

(x) Provide centralized procurement guidance and assistance for CTRWSC and the Project Company;

(xi) Prepare and timely file all U.S. federal, state, local and foreign tax and information returns required to be filed by CTRWSC and the Project Company; provided that (x) unless otherwise determined by the board of directors of CTRWSC or the Project Company, as applicable, any income tax return of such Party shall be prepared by an independent public accounting firm selected by such board of directors and (y) each of CTRWSC and the Project Company shall furnish to the Operator all pertinent information in its possession relating to such Party’s business or its members as may be reasonable necessary to enable all tax returns to be timely prepared and filed;

(xii) Deliver to the Project Company as soon as practicable after the end of each calendar year, but in any event before March 15 of the subsequent year, in respect of each member of the Project Company, an Internal Revenue Service Schedule K-1 together with such additional information as any such member may require to file their individual returns;

(xiii) Attend the meetings of the board of directors of CTRWSC and the Project Company and prepare and present at such meetings such ordinary course matters relating to the business of the CTRWSC and the Project Company, as the case may be, and such other matters as any member of such boards of directors may reasonably require; and

(xiv) Assist CTRWSC with any responses to any requests for information made to CTRWSC pursuant to the Public Information Act.
The Operating Service Provider will afford to CTRWSC, the Project Company and each member thereof, and to each such person’s accountants and counsel, reasonable access during normal business hours to all of the properties, books and records of CTRWSC and the Project Company being kept by the Operating Service Provider in accordance with this Agreement and such other access to management and information as is necessary for it to comply with applicable laws and regulations and reporting obligations.

Section 2.03 Remediation of Defects.

(a) The Operating Service Provider shall be responsible for remedying any Operation and Maintenance Defect that arises during the Term at no cost to CTRWSC or the Project Company and without prejudice to: (i) the Operating Service Provider’s other obligations and liabilities under this Agreement; and (ii) CTRWSC’s or the Project Company’s other rights and remedies under this Agreement. The Operating Service Provider shall not be considered to be in breach of this Agreement or liable to CTRWSC or the Project Company to the extent its inability to perform its obligations under this Agreement is caused by any Defect other than an Operation and Maintenance Defect.

(b) During the Defects Liability Period, at intervals of not more than two (2) months, the Operating Service Provider shall submit to CTRWSC and the Project Company a notice stating it is in accordance with this Section 2.03 (Remediation of Defects) and including:

(i) a list of any Defects in the Project; and

(ii) a request for a Service Change, in accordance with Section 2.08 (Changes to the Operating Work; Additional Services), detailing the effect of such Defect on the Operating Service Provider’s obligations and liabilities under this Agreement, including the effect up to the date of submission of the notice and the Operating Service Provider’s reasonable estimate of the ongoing effect of such Defect on the Operating Service Provider’s obligations and liabilities under this Agreement, should such Defect not be remedied by the Design Build Contractor within a reasonable time period.

(c) Following submission of the Operating Service Provider’s notice in accordance with Section 2.03(b) (Remediation of Defects), the Parties shall meet and negotiate in good faith to agree upon the Defects and the effect, if any, of the Defects on the Operating Service Provider’s obligations and liabilities under this Agreement.

(d) The Defects Liability Period for any part, component or system forming part of the Project repaired, replaced or made good will restart from the date of completion of such repair, replacement or making good.

(e) CTRWSC shall require that the Design Build Contractor remedy Defects during the Defects Liability Period. The Operating Service Provider shall use all reasonable efforts to mitigate the effects of any Defect, and shall cooperate with CTRWSC, the Project Company and the Design Build Contractor during the Defects Liability Period so as to allow the Design Build Contractor to carry out its warranty obligations. Following the expiry of the Defects Liability Period, at CTRWSC’s request pursuant to a Service Change Notice and otherwise in accordance with Section 2.08 (Changes to the Operating Work; Additional Services), the Operating Service Provider shall be responsible for remedying all Defects at the Project Company’s sole cost and expense without prejudice to the Operating Service Provider’s mitigation obligations under this Section.

Section 2.04 Spare Parts Inventory.

(a) On the Commercial Operation Date, the Operating Service Provider shall provide stock of Initial Operating Spare Parts at the Project Sites.
(b) At least twelve (12) months prior to the Scheduled Commercial Operation Date, CTRWSC and the Operating Service Provider shall meet and negotiate in good faith the type and quantity of spare parts that will comprise the Initial Operating Spare Parts, provided that such Initial Operating Spare Parts shall be reasonable and consistent with the Project Equipment manufacturer’s recommendations.

(c) During the Operating Period, the Operating Service Provider shall procure and maintain a full stock of Operating Spare Parts, replacement spare parts and consumables in accordance with the Project Equipment manufacturer’s recommendations in order for the Operating Service Provider to perform its obligations as set out in this Agreement. CTRWSC shall require that the Design Build Contractor replace any Operating Spare Parts used by the Design Build Contractor to remedy a Defect during the Defects Liability Period, at no cost to the Operating Service Provider.

Section 2.05 Assistance with Third Parties The Operating Service Provider shall provide CTRWSC and the Project Company with all reasonable assistance in:

(a) The resolution by CTRWSC and/or the Project Company of any disputes arising between CTRWSC and/or the Project Company and any third party in relation to, or arising out of, the operation and maintenance of the Project;

(b) The resolution by the Project Company of any disputes or claims arising between the Project Company and SAWS relating to the Product Water Quality Guarantee and the water supply obligations under Section 6.02 (Product Water Supply Following Commercial Operation Date) or otherwise in connection with the Project Company’s rights and obligations under the WTPA;

(c) The resolution by CTRWSC and/or the Project Company of any disputes or claims arising between CTRWSC and/or the Project Company on the one hand and its contractual counterparty on the other hand relating to or otherwise in connection with CTRWSC and/or the Project Company’s rights and obligations under the other Project Contracts;

(d) The establishment by the Project Company of whether or not any event or circumstance should be considered as a Force Majeure Event, an Uncontrollable Circumstance or any other similar event for the purposes of the WTPA and the exercise by the Project Company of its rights and remedies thereunder in connection with any such event;

(e) The negotiation by CTRWSC and/or the Project Company of any claims available to CTRWSC and/or the Project Company as a result of defects discovered in the Project or as a result of damage caused to the Project due to the failure of any supplier to provide any products or services as required by the terms of the supply contract entered into by CTRWSC and/or the Project Company and that supplier;

(f) The defense by CTRWSC and/or the Project Company of any actions brought against CTRWSC and/or the Project Company by any Governmental Body arising out of the operation of the Project; and

(g) The administration and management of any procedure or other development before any Governmental Body, including TCEQ and the POSGCD, related to the operation of the Project, including by participating in all meetings of such Governmental Bodies where the Project is included in the relevant agenda.

Section 2.06 Maintenance, Repair and Replacement

(a) Ordinary Maintenance, Repairs and Replacements. The Operating Service Provider shall perform all normal and ordinary maintenance of the machinery, equipment structures,
improvements and all other property constituting the Project, shall keep the Project in good working order, condition and repair, in a neat and orderly condition and in accordance with the Contract Standards, and shall maintain the aesthetic quality of the Project as originally constructed and in accordance with the Design Requirements. The Operating Service Provider shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, and services which are necessary for the normal and ordinary maintenance of the Project and shall conduct predictive, preventive and corrective maintenance of the Project as required by the Contract Standards. The Operating Service Provider shall keep maintenance logs in accordance with the Maintenance, Repair and Replacement Plan.

(b) Major Maintenance, Repairs and Replacements. The Operating Service Provider shall perform all major maintenance, repair and replacement of the machinery, equipment, structures, improvements and all other property constituting the Project during the Term of this Agreement required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as “major” or “capital” in nature. The obligations of the Operating Service Provider under this Agreement are intended to assure that the Project is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency.

(c) Repair and Maintenance of Project Sites. The Operating Service Provider, in accordance with the Contract Standards, shall keep the grounds of the Project Sites in a neat and orderly condition. The Operating Service Provider shall also maintain and repair all Project Sites signage, fencing and other security systems. In addition, the Operating Service Provider shall provide all landscaping services for the Project Sites.

Section 2.07 Procurement.

(a) The Operating Service Provider is responsible for the procurement and for the testing and maintenance of supplies of all goods and services necessary to ensure compliance with the Operating Service Provider’s obligations under this Agreement. The Operating Service Provider shall use all reasonable efforts to obtain all items and services required for the operation and maintenance of the Project (including, without limitation, spare parts and replacements), taking into account quality and safety.

(b) No later than 180 days prior to the Commercial Operation Date, CTRWSC and the Operating Service Provider shall agree which items of Project Equipment and supplies shall be deemed key Project Equipment and supplies. The Operating Service Provider shall procure all such items of key Project Equipment and supplies from suppliers who are reputable and in stable financial condition.

(c) The Operating Service Provider shall take good care of and transport, with transportation insurance, all items so procured by the Operating Service Provider and shall store the same at the Project Site unless authorized in writing by CTRWSC to do otherwise.

Section 2.08 Changes to the Operating Work; Additional Services.

(a) The Operating Service Provider shall not carry out any material changes to the Operating Work or the Project (including any Capital Modification) without the prior consent of CTRWSC.

(b) CTRWSC may, by written notice (a “Service Change Notice”) to the Operating Service Provider, request a change to the Operating Work (a “Service Change”).

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(c) As soon as practicable and in any event within thirty (30) days after having received the Service Change Notice, the Operating Service Provider shall prepare and submit to CTRWSC and the Project Company a statement setting out:

(i) An estimate of (A) the increase or decrease in the Budgeted Compensable Costs to the extent that the Service Change entails additional Operating Work and (B) the increase or decrease in the Budgeted Compensable Costs and any other costs to be incurred by the Operating Service Provider to the extent that the Service Change entails additional work not already within the scope of the Operating Work;

(ii) Any effects that such Service Change will have on the Operating Work;

(iii) Any proposed modification to this Agreement and/or the effect that such Service Change will have on any other provision of this Agreement; and

(iv) If the Operating Service Provider is of the view that it cannot implement the Service Change due to a Service Change Objection, a statement to that effect.

(d) Following receipt of the Operating Service Provider’s statement, CTRWSC may instruct the Operating Service Provider to implement the Service Change, unless there is a Service Change Objection that has not been resolved by CTRWSC and the Operating Service Provider. Following such instruction, the Operating Service Provider agrees to implement such Service Change provided that, in the case of Service Changes in connection with a SAWS-Required Capital Modification, SAWS and the Project Company have agreed to any increases to the Variable Compensable Costs Unit Price and any related adjustments to the terms of the WTPA and CTRWSC, the Project Company and the Operating Service Provider have agreed to any corresponding adjustments to the terms of this Agreement, except where such Service Change is necessary because of the Operating Service Provider’s breach of its obligations under this Agreement, and further, that, where such Service Change reduces the Budgeted Compensable Costs of providing the Operating Work, CTRWSC shall be entitled to a reimbursement following the end of the relevant Contract Year in accordance with Section 10.09 (Actual Compensable Costs).

(e) The Operating Service Provider may propose to CTRWSC a Service Change which the Operating Service Provider considers necessary or desirable to improve the quality, efficiency or safety of the Project. The Operating Service Provider shall give a Service Change Notice to CTRWSC accompanied by a statement setting out the matters in clauses (c)(i) to (c)(iii) above. CTRWSC may, in its absolute discretion, approve or reject any Service Change proposed by the Operating Service Provider.

(f) In any case, where the Operating Service Provider is instructed to proceed with the Service Change, the Operating Service Provider shall keep and maintain full, complete and detailed contemporary records of the cost of making the Service Change in accordance with Section 11.07 (Cost Substantiation) and of time expended. The Operating Service Provider shall keep and maintain full, complete and detailed fiscal records and books of account pertaining to the Service Change in accordance with Section 5.07 (Maintenance of Records). The Operating Service Provider authorizes CTRWSC and independent third parties, appointed by CTRWSC, to inspect and audit such records in accordance with Section 5.05(b) (Inspection, Audit and Adjustment).

(g) The Operating Service Provider acknowledges that, pursuant to the WTPA, SAWS has the right to direct the Project Company to make Design Requirements Changes and Capital Modifications at any time and for any reason whatsoever prior to the Commercial Operation Date and after the Commercial Operation Date (including Capital Modifications to expand the capacity of the Project), respectively, subject to certain limitations, and acknowledges the Project Company’s need to comply with such directions from SAWS, which may result in Service Changes. The Operating Service Provider shall
use all reasonable efforts to promptly overcome any Service Change Objections and implement any Service Change resulting from such SAWS-directed Capital Modification.

ARTICLE III

STANDARD OF PERFORMANCE; OPERATING SERVICE PROVIDER’S OBLIGATIONS

Section 3.01 Compliance with Applicable Law.

(a) Compliance Obligation. The Operating Service Provider shall perform the Operating Work in accordance with Applicable Law, and shall cause all Subcontractors to comply with Applicable Law, including all registration, licensing and certification requirements imposed by any Governmental Body. The Operating Service Provider shall comply with the terms of all Governmental Approvals and other Applicable Law pertaining to the Project, Raw Groundwater, Product Water, Project By-Products, air emissions, noise, light, emissions and odor. The Operating Service Provider shall comply with and perform all Environmental Mitigation Measures in a timely manner to the extent required under applicable Governmental Approvals. At the request of CTRWSC, the Operating Service Provider shall assist with general regional facility evaluation and water quality surveys conducted by the TCEQ or the EPA.

(b) Sampling, Testing and Laboratory Work. The Operating Service Provider shall perform and provide, or arrange for the performance and provision of, all sampling, laboratory testing and analyses, and quality assurance and quality control procedures and programs required by the Contract Standards. All testing laboratories shall be TCEQ, State and EPA certified, as applicable, for the applicable test, shall be operated in accordance with Good Management Practice. All sampling and test data shall be available for review by, and reported to, CTRWSC in accordance with Section 3.14 (Operating Service Provider’s Permits). The Operating Service Provider explicitly assumes the risk of incorrect sampling, testing and laboratory work and any consequences thereof or actions taken or corrections needed based thereon, whether such work is performed by itself or third parties, both as to failures to detect and as to false detections. The Operating Service Provider shall, at their expense, perform any testing, sampling or analytical procedure it deems appropriate, using the Project, laboratory services available to the Operating Service Provider, or otherwise.

(c) Registration, Licensing and Certification Requirements. The Operating Service Provider shall ensure that all persons performing the Operating Work, including all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(d) Investigations of Non-Compliance.

(i) In connection with any actual or alleged event of material non-compliance with Applicable Law in the performance of the Operating Work, the Operating Service Provider shall, in addition to any other duties which Applicable Law may impose:

(A) Fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;

(B) Attend all meetings and hearings with respect to the Project required by any Governmental Body;

(C) Provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to CTRWSC and the Project Company; and
(D) Promptly upon receipt thereof, provide CTRWSC and the Project Company with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

(ii) The Operating Service Provider shall furnish CTRWSC and the Project Company with a prompt written notice describing the occurrence of any event or the existence of any circumstance which results, or could reasonably be expected to result, in any such notice of violation or non-compliance to the extent the Operating Service Provider has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance.

(iii) The Operating Service Provider shall provide CTRWSC and the Project Company a reasonable opportunity to review and comment on any proposed Operating Service Provider response to any material non-compliance with Applicable Law hereunder prior to its implementing such response.

(e) Fines, Penalties and Remediation. In the event that the Operating Service Provider or any Subcontractor fails at any time to materially comply with Applicable Law with respect to the Operating Work, the Operating Service Provider shall:

(i) Promptly notify CTRWSC, the Project Company and SAWS of such failure;

(ii) Correct such failure and resume compliance with Applicable Law as soon as practicable;

(iii) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;

(iv) Indemnify, defend and hold harmless the Project Indemnitees in accordance with Section 17.02 (Indemnification by the Operating Service Provider) from any Loss-and-Expense resulting therefrom;

(v) Make all commercially reasonable changes in performing the Operating Work which are necessary to assure that the failure of compliance with Applicable Law will not recur; and

(vi) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Operating Service Provider or any Subcontractor to comply with Applicable Law.

(f) No Nuisance Covenant. The Operating Service Provider shall ensure that the operation of the Project does not create any material odor, litter, noise, rust, corrosion, fugitive dust, vector, excessive light or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law and, to the extent that any such nuisance condition results from a Defect, the Operating Service Provider shall use all reasonable efforts to mitigate such nuisance condition as necessary or desirable and consistent with Applicable Law. Subject to Section 2.03 (Remediation of Defects) in respect of any nuisance condition that results from a Defect, should any such nuisance condition occur, the Operating Service Provider shall, as soon as practicable remedy the condition, pay any fines or penalties relating thereto, make all commercially reasonable capital investments, improvements or modifications and changes in operating and management practices necessary to prevent a recurrence of the nuisance condition, and indemnify and hold harmless the Project Indemnitees from any Loss-and-Expense relating thereto in the manner provided in Section 17.02 (Indemnification by the Operating Service Provider).
Section 3.02 Good Management Practice and Good Engineering and Construction Practice. Good Management Practice and Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Good Management Practice or Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Operating Service Provider, the Operating Service Provider shall be relieved of its obligation to comply with such evolved Good Management Practice and Good Engineering and Construction Practice unless CTRWSC agrees to adjust the Variable Compensable Costs Unit Price (subject to Cost Substantiation) to account for such additional costs.

Section 3.03 Delivery of Documents.

(a) Operating Service Provider. In this Agreement, the Operating Service Provider is obligated, subject to the terms and conditions hereof, to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Operating Service Provider agrees that all such documents shall be submitted to CTRWSC and, if required by the terms hereof, the Project Company in digital form, unless copies are specifically required to be delivered under this Agreement. Digital copies shall consist of computer readable data submitted in any standard interchange format which CTRWSC or the Project Company, as the case may be, may reasonably request to facilitate the administration and enforcement of this Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(b) CTRWSC and the Project Company. CTRWSC and the Project Company shall provide to the Operating Service Provider upon request copies of all information relating to the Project which is in the possession of such Party and material to the Operating Service Provider’s performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirement.

Section 3.04 Compliance with SAWS Policies.

(a) Non-Discrimination. The Operating Service Provider and the Subcontractors (i) shall comply with the “Non-Discrimination Policy” of the City contained in Chapter 2, Article X of the City Code, and (ii) shall not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age, disability, or political belief or affiliation, unless exempted by state or federal law. In the event non-compliance occurs with this paragraph occurs, the Operating Service Provider, upon written notification by CTRWSC or the Project Company, shall commence compliance procedures within twenty (20) days.

(b) Small, Minority and Women-Owned Business Opportunities. The Operating Service Provider acknowledges that it is the policy of SAWS to assist in increasing the competitiveness and qualifications of Small, Minority, and Woman-owned Businesses (“SMWB”) to afford greater opportunity for such groups to obtain and participate in SAWS contracts. The Operating Service Provider agrees to assist CTRWSC and the Project Company to accomplish the SMWB outreach and goals for the Project similar to those employed by the SAWS SMWB Program. Facilitation of reasonable outreach to SMWB firms shall be accomplished by the following:

(i) Appointment by the Operating Service Provider of a diversity coordinator, who, along with his or her other duties at the Operating Service Provider, will work with the SAWS SMWB program manager to monitor and facilitate the Project Company’s progress in meeting its SMWB goals and compliance reporting requirements. The name, telephone number, and email address of the diversity
The Operating Service Provider shall be provided to CTRWSC and the Project Company. In the event that the diversity coordinator is no longer able to fulfill his or her duties, the Operating Service Provider shall appoint a new diversity coordinator as soon as possible, and supply the new diversity coordinator’s contact information to CTRWSC and the Project Company. This procedure shall remain in effect for the duration of the Term.

(ii) Obtaining direct access to the South Central Texas Regional Certification Agency’s database, for the purposes of conducting reasonable means of outreach to SMWB firms, shall be accomplished through a corporate sponsorship agreement between Operating Service Provider and the South Central Texas Regional Certification Agency. The Operating Service Provider’s membership shall be renewed annually for the duration of the Term, until further notice, and proof of corporate membership shall be reported on an annual basis to the SAWS SMWB program manager.

(iii) The Operating Service Provider shall take reasonable steps to achieve fifteen (15%) percent SMWB participation in the Operating Work for the duration of the Term. The SMWB goal is expressed as a percentage of the total dollar amount involved.

(iv) SMWB firms must be certified through the South Central Texas Regional Certification Agency. Actual SMWB participation is the percent of SMWB participation that is actually awarded to Subcontractors that are awarded contracts. Within three (3) days of a contract award, the Operating Service Provider shall report relevant SMWB information to CTRWSC and the Project Company.

(v) On a bi-annual basis, the Operating Service Provider will provide CTRWSC and the Project Company with a SMWB plan showing how the SMWB goals are intended to be achieved. Each bi-annual report will document how the SMWB plan goals were achieved through certification, contracts and actual payment evidence.

(vi) Electronic submittal of payment information will be accessed through a link on SAWS’ “Business Center” webpage. The Operating Service Provider and Subcontractors will be provided a unique log-in credential and password to access the SAWS S.P.U.R. System. The link may also be accessed through the following internet address: https://saws.smwbe.com. The Operating Service Provider and its Subcontractors may contact the SMWB program manager at 210-233-3420 for assistance or clarification with issues specifically related to the SMWB Program and S.P.U.R. System reporting.

(c) Ethics. The Operating Service Provider shall comply with the following ethics obligations:

(i) Except to the extent permitted by Applicable Law, the Operating Service Provider warrants that neither it nor any of its Affiliates nor (to the knowledge, without inquiry, of the Operating Service Provider) any Operating Service Provider Person has employed or retained any company or person other than a bona fide employee working solely for the Operating Service Provider, to solicit or secure this Agreement, and that neither it nor any of its Affiliates nor (to the knowledge, without inquiry, of the Operating Service Provider) any Operating Service Provider Person has, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, other than a bona fide employee working solely for the Operating Service Provider 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 Agreement.

(ii) The Operating Service Provider acknowledges and agrees that no member of the Board of Trustees of SAWS, nor any officer, agent or employee of the Board of Trustees of SAWS, nor any officer or employee of the City, (A) shall have a financial interest, direct or indirect, in any contract or agreement with SAWS or (B) 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 Operating Service Provider 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.

(iii) The Operating Service Provider acknowledges and agrees that SAWS employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources and that a copy of SAWS’ Policy 2-17 “Procedures for Gift and Meal Policy” is available upon request from SAWS.

(iv) The Operating Service Provider acknowledges and agrees that SAWS Ethics Hotline for reporting suspected ethics violations is 1-800-687-1918.

Section 3.05 Protection of SAWS Distribution Systems. The Operating Service Provider shall operate and maintain the Project in a manner such that the Project cannot be damaged or destroyed by any actions that SAWS may take, whether intentionally or unintentionally, or not take with respect to the operation or maintenance of the SAWS Distribution System, including the operation and maintenance of the SAWS Interconnection Improvements, the SAWS Interface Cabinet, or any other electrical, digital or mechanical operating interface between the SAWS Distribution System and the Project. The Operating Service Provider acknowledges that CTRWSC, the Project Company and SAWS shall have no liability to the Operating Service Provider for any damage to or destruction of the Project or otherwise resulting from or alleged to result from any SAWS actions or inactions with respect to the SAWS Distribution System.

Section 3.06 Utilities.

(a) General. The Operating Service Provider acknowledges that CTRWSC has required the Design Build Contractor to arrange for and establish the supply of gas, water, sewer and other utility service required for the Project in accordance with the Design Requirements, and agrees that electric service during the Operating Period shall be arranged for and established by SAWS as provided in the WTPA.

(b) SAWS Payment of Project Electricity Costs During the Operating Period. The Operating Service Provider acknowledges and agrees that SAWS (i) shall have the exclusive right and obligation during the Operating Period to enter into contracts or other arrangements for the supply of electricity to the Project to determine the electricity supplier, and to negotiate and establish electric rates with the electricity supplier, all as set forth in greater detail in Appendix 5 (Guaranteed Maximum Electrical Utilization and Demand) and (ii) shall pay all electricity bills during or related to the Operating Period in a timely manner, subject to annual reimbursement by the Operating Service Provider to CTRWSC as part of the Annual Settlement Statement process set forth in Section 11.05 (Annual Settlement) in the event that the Guaranteed Maximum Annual Electricity Costs are exceeded as provided in Section 11.05(b) (Annual Settlement of Electricity Costs). Notwithstanding the preceding sentence, the Operating Service Provider shall reimburse CTRWSC on a monthly basis in an amount equal to all fines and penalties imposed by the electricity provider resulting from the Operating Service Provider’s failure to operate in accordance with the Contract Standards. The Operating Service Provider shall operate the Project in a manner which minimizes, to the maximum extent reasonably practicable in light of its obligation to provide the Operating Work, charges for electricity use, demand, transmission and distribution which are payable by SAWS under the WTPA.

(c) No Liability. Notwithstanding SAWS role in the selection of any electricity supply, in no event shall SAWS, CTRWSC, the Project Company or (to the extent not caused by any action of omission of the Operating Service Provider) the Operating Service Provider have any liability or responsibility for the performance or non-performance of any electricity supplier, including any failure to supply electricity in a timely or reliable manner as required for the Project or any additional costs or delays in providing Product Water that may result therefrom.
Section 3.07 Security. The Operating Service Provider, in accordance with the Contract Standards, shall be responsible for the security and protection of the Project. The Operating Service Provider acknowledges and agrees that the Design Build Contractor will prepare a security plan for the Project prior to the initiation of the Operating Period and, thereafter, the Operating Service Provider shall keep such security plan current and conduct vulnerability assessments in accordance with the requirements of Section 2.5 (Security Plan) of Appendix 2 (Operating and Maintenance Standards) (the “Security Plan”), and shall comply with the requirements of the Security Plan. The Operating Service Provider shall guard against all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall operate, maintain, repair and replace all surveillance and other security equipment and assets constituting fixtures of the Project in accordance with the Contract Standards.

Section 3.08 Metering and Testing.

(a) Testing. The Operating Service Provider shall conduct all tests of Raw Groundwater and Product Water in accordance with the Contract Standards and in accordance with the Operating Protocol. The tests shall be made at State-certified laboratories to the extent required by the Contract Standards and, prior to the Commercial Operation Date, shall be conducted at CTRWSC’s sole cost and expense; thereafter, the cost and expense of such tests shall constitute Compensable Costs. All Raw Groundwater and Product Water sampling and testing for contract performance shall be conducted at the testing locations identified in the testing and sampling standards set forth in Appendix 4 (Performance Guarantee Requirements) and the other Contract Standards. CTRWSC shall have the right to approve all testing locations, acting reasonably.

(b) SAWS, CTRWSC and Project Company Testing Rights. The Operating Service Provider acknowledges and agrees that SAWS, CTRWSC and/or the Project Company, using their own personnel or another designated person, shall have the right from time to time, upon reasonable notice to the Operating Service Provider, to enter the Project for the purpose of conducting tests of the Raw Groundwater and the Product Water at the approved testing locations, and to conduct such tests in accordance with Good Management Practice in a manner that does not materially interfere with the Operating Service Provider’s performance of the Operating Work. If requested by the Operating Service Provider, CTRWSC shall furnish split samples and copies of all test reports prepared pursuant to this Section to the Operating Service Provider.

(c) Well Field Meters. In accordance with Appendix 2 (Operating and Maintenance Standards), the Operating Service Provider shall maintain in good working order and repair, and replace when necessary, flow metering devices capable of metering the daily total volume of Raw Groundwater received at the Well Field Facilities (the “Well Field Meters”).

(d) Project Flow Meter. After Acceptance, the Operating Service Provider shall be responsible for the routine servicing and maintenance of the Project Flow Meter and appurtenant field mounted instruments, and for all major maintenance, repairs and replacements with respect thereto.

(e) Meter Inspections. The Operating Service Provider shall engage a qualified third-party inspection firm to confirm the accurate calibration and proper functioning of the Well Field Meters and the Project Flow Meter. The inspection firm shall perform quarterly inspections and provide copies to its inspection reports promptly to SAWS, CTRWSC, the Project Company and the Operating Service Provider.

(f) Operating Service Provider Estimates During Meter Incapacitation or Testing. To the extent any metering device is incapacitated or is being tested, CTRWSC and the Operating Service Provider shall estimate as accurately as practicable, based on all available relevant information, the data required by the Operating Service Provider to perform the Operating Work and to invoice CTRWSC. This
estimate and methodology shall be used as the basis for determining the operating data required hereunder during the outage.

(g) **Extended Project Flow Meter Incapacitation.** The Operating Service Provider shall repair or replace the Project Flow Meter with the utmost urgency in the event the Project Flow Meter is incapacitated. In the event any period of Project Flow Meter incapacitation extends beyond 24 hours, any water made available to SAWS thereafter shall not constitute Monthly Delivered Water Units and CTRWSC shall have no obligation to compensate the Operating Service Provider for any such water.

**Section 3.09 Communications with CTRWSC, the Project Company and SAWS.** The Operating Service Provider shall provide SAWS, CTRWSC and the Project Company with access to the Operating Service Provider and its Subcontractors as follows:

(a) **General Communications.** The Operating Service Provider shall grant SAWS’ Director of Engineering and Director of Operations (or management personnel senior to such positions), the CTRWSC Representative and the Project Company’s senior management direct access to the Operating Service Provider and its Subcontractors and its and their senior management personnel (including the head of security) for meetings and email, telephone and fax communications regarding any material aspect of the work being performed by the Operating Service Provider or its Subcontractors. This right of direct access shall apply during normal business hours and at any time during emergencies. The Operating Service Provider shall respond promptly to any communication from SAWS’ Director of Engineering and Director of Operations (or management personnel senior to such positions), the CTRWSC Representative or the Project Company’s senior management to attend any meeting reasonably called by such SAWS representative, the CTRWSC Representative or such Project Company’s senior manager, and to furnish any material information requested by such person in each case that has a bearing on the performance of the Operating Work.

(b) **Other Communications During the Operating Period.** During the Operating Period, the Chief Operator or its designee shall be available to be contacted by SAWS, CTRWSC and the Project Company on a twenty-four (24) hour per day basis for emergency response and operational coordination.

**Section 3.10 General Operating Standards.**

(a) **Application of Industry Experience.** The Operating Service Provider shall use all reasonable efforts to apply at the Project the benefit of the advances and improvements in technology, management practices and operating efficiencies which are developed by the Operating Service Provider and its Affiliates through the operation of their water businesses and industry research and development activities conducted over the Term, and which are useful and appropriate in the good faith judgment of the Operating Service Provider for carrying out the Operating Work in a manner which improves upon the Contract Standards.

(b) **SAWS Administrative Space.** The Operating Service Provider shall provide office space at or adjacent to the permanent offices of the Operating Service Provider (if located outside Bexar County) for the exclusive use of SAWS’ compliance personnel and advisors in accordance with Appendix 2 (Operating and Maintenance Standards). The cost related to SAWS’ use of such office space (including janitorial services to be provided by the Operating Service Provider) shall constitute a Compensable Cost.

(c) **Limitations on Operating Service Provider Rights.** The Operating Service Provider shall not treat water other than Raw Groundwater, and shall not use the Project for any purpose other than the purposes contemplated hereby or to serve or benefit any person other than CTRWSC, the Project Company and SAWS. Except at the direction and with the permission of SAWS given under Section 26.5 (Opportunities) of the WTPA, the Operating Service Provider shall not deliver Product Water.
to any person other than SAWS, and shall not impose a fee or charge on any person other than CTRWSC for the supply of Product Water. The only compensation to the Operating Service Provider for the supply of Product Water and for performing the Operating Work shall be the Monthly Operating Service Payments and other amounts payable by CTRWSC hereunder.

**Section 3.11 Operating Service Provider’s Acceptance of the Project.**

(a) The Operating Service Provider hereby declares that, prior to entering into this Agreement, it has fully acquainted itself, as at the date of the Agreement, as to all local, regional and national conditions which could affect its performance of the Operating Work including, without limitation, the following:

(i) The intended location of the Project;
(ii) As applicable, the local atmospheric and meteorological conditions;
(iii) The equipment, facilities and resources needed for the performance of the Operating Work on the basis that the Project is designed and constructed in accordance with the WTPA;
(iv) The availability of labor, equipment, parts, consumables, procurement items, fuel, water and other utilities;
(v) The Applicable Law, local customs, health and safety at work requirements, fiscal and social legislation and practices, and customs regulations; and
(vi) Generally, all and any other local conditions and/or other conditions of the Project and its location that affect or may affect the performance of the Operating Work and the Operating Service Provider’s other obligations under this Agreement,

and the Operating Service Provider therefore accepts all responsibility for having properly evaluated as at the date of this Agreement all costs and contingencies for successfully performing the Operating Work and satisfying all the Operating Service Provider’s obligations, and agrees to bear all and any consequences resulting from any improper evaluation; provided, however, that the Operating Service Provider has no obligation to inspect or evaluate the construction of the Project and, except for the Operating Service Provider’s obligation to operate and maintain the Project in accordance with this Agreement (including to remedy Operation and Maintenance Defects and, pursuant to a Service Change Notice, Defects in accordance with section 2.03 (Remediation of Defects)), the Operating Service Provider is not assuming responsibility for any defects or contingencies resulting from the construction of the Project prior to Commercial Operation Date.

(b) The Operating Service Provider shall perform the Operating Work as an independent contractor.

**Section 3.12 Consistency with WTPA Obligations.** The Operating Service Provider shall perform its obligations in a manner that is consistent with the Project Company’s obligations under the WTPA and the other Project Contracts and CTRWSC’s obligations under the Water Transportation Agreement, which relate to the operation and maintenance of the Project and shall not, by its acts or omissions in breach of this Agreement:

(a) Cause any breach of the Project Company’s obligations under the WTPA or any other Project Contract or of CTRWSC’s obligations under the Water Transportation Agreement;
(b) Give rise to any liability on the part of the Project Company in connection with the WTPA and the other Project Contracts or of CTRWSC in connection with the Water Transportation Agreement; and

(c) Reduce any rights or benefits of the Project Company under the WTPA and the other Project Contracts or of CTRWSC under the Water Transportation Agreement.

Section 3.13 Protection of Construction Contract Warranties. The Operating Service Provider shall perform its obligations in accordance with the Contract Standards and so as not to discharge the warranties or other obligations or liabilities provided by the Design Build Contractor pursuant to the Design Build Contract.

Section 3.14 Operating Service Provider's Permits.

(a) Authorization of Operation and Water Introduction. The Operating Service Provider acknowledges that the operation of the Project and the introduction of Product Water into the SAWS Distribution System are prohibited by Applicable Law until an Interim Operations Approval, as defined below, and the Public Water Supplier Designation are issued by TCEQ. The Operating Service Provider acknowledges TCEQ may, but is not legally obligated to, issue a letter, permit with provisions, or other instrument authorizing temporary operation of the Project and introduction of Product Water into the SAWS Distribution System until such time as the conditions of such letter, permit with provisions, or other instrument have been satisfied and the Public Water Supplier Designation is issued (an “Interim Operations Approval”). The Operating Service Provider further acknowledges that the terms and conditions, as well as the issuance, of an Interim Operations Approval are a matter of administrative discretion on the part of TCEQ.

(b) Operating Service Provider Obligations regarding the Public Water Supplier Designation and any Interim Operations Approval. The Operating Service Provider shall cooperate with CTRWSC and the Project Company and all other relevant parties, including TCEQ and any other Governmental Body, during the Pre-Operating Period, in connection with all applications and other action required to be made or taken by CTRWSC or the Project Company, or both, to obtain and maintain the Public Water Supplier Designation and any Interim Operations Approval. The Operating Service Provider shall cooperate and assist CTRWSC and the Project Company in the management of any processes for obtaining the Public Water Supplier Designation and any Interim Operations Approval and, where the Operating Service Provider is requested to assist with any submittals, it shall provide CTRWSC and the Project Company at least ten (10) Business Days to review such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 1 (Governmental Approvals). The Operating Service Provider shall not, unless required by Applicable Law, knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Public Water Supplier Designation and any Interim Operations Approval or the terms and conditions thereof that would impose any material cost or burden on (i) SAWS in its capacity as a buyer of Product Water under the WTPA or that would contravene any SAWS policies with respect to the matters contained therein; (ii) the Project Company in its capacity as a seller of Product Water to SAWS under the WTPA or (iii) CTRWSC in its capacity as transporter of Product Water under the Water Transportation Agreement. CTRWSC and the Project Company reserve the right, and the Operating Service Provider acknowledges that SAWS, CTRWSC and the Project Company shall have the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Operating Service Provider which would have the effect described in the preceding sentence. The Operating Service Provider also shall assist CTRWSC, the Project Company and SAWS and provide any information concerning the Project in its possession that may reasonably be required to be furnished by any such parties to any Governmental Body relating to the effect of the delivery of Product Water to SAWS and the use of Product Water in the SAWS Distribution System.

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(c) **Operating Service Provider Obligations regarding Operating Governmental Approvals.**

(i) The Operating Service Provider shall obtain and maintain, and make all filings, applications and reports necessary to obtain and maintain all Governmental Approvals required to be made, obtained, maintained, renewed or extended by or in the name of the Operating Service Provider or, with the cooperation of CTRWSC and the Project Company, in the name of CTRWSC or the Project Company, as applicable, under Applicable Law in order to operate the Project and otherwise perform the Operating Work, including those set forth in Appendix I (Governmental Approvals), but excluding (A) the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit and (B) during the Pre-Operating Period, the Public Water Supplier Designation and any Interim Operations Approval (except as set forth in Section 3.14(b)). All permit and filing fees in connection with Governmental Approvals required to be obtained or maintained by the Operating Service Provider in accordance with this Section 3.14 (Operating Service Provider’s Permits) shall be paid by the Operating Service Provider, regardless of the identity of the applicant, subject to reimbursement in the case of Governmental Approvals required to be in the name of CTRWSC or the Project Company. For the avoidance of doubt, the Operating Service Provider shall not be responsible for obtaining and maintaining the Groundwater Drilling and Operating Permit, the Groundwater Transportation Permit or any Governmental Approvals required for the design and construction of the Project prior to the Commercial Operation Date, but shall remain subject to its other obligations under this Agreement, including Section 2.05 (Assistance with Third Parties), Section 3.14(c)(vii) and Section 3.16 (Interfacing; Other Project Contracts), as they may relate to such Governmental Approvals.

(ii) All data, information and action required to be supplied or taken in connection with the Governmental Approvals required for the Operating Work shall be supplied and taken on a timely basis by the Operating Service Provider considering the requirements of Applicable Law. The data and information supplied by the Operating Service Provider to CTRWSC and the Project Company, as the case may be, and all regulatory agencies in connection therewith shall be correct and complete in all material respects. The Operating Service Provider shall provide all material documentation to be submitted to a Governmental Body in connection with the Governmental Approvals for CTRWSC’s and the Project Company’s review and comment, as the case may be, at least twenty-one (21) days prior to submission to the applicable Governmental Body. The Operating Service Provider shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information. Unless required under Applicable Law, the Operating Service Provider shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose an unreasonable cost or burden on (i) SAWS in its capacity as a buyer of Product Water under the Water Transportation Agreement or that would contravene any SAWS policies with respect to the matters contained therein; (ii) the Project Company in its capacity as a seller of Product Water to SAWS under the Water Transportation Agreement; or (iii) CTRWSC in its capacity as transporter of Product Water under the Water Transportation Agreement. The Operating Service Provider acknowledges and agrees that each of CTRWSC and the Project Company reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Operating Service Provider which would have the effect described in the preceding sentence, provided that any such action by CTRWSC or the Project Company, as the case may be, shall not cause the Operating Service Provider to fail to comply with Applicable Law.

(iii) The Operating Service Provider shall report to CTRWSC and the Project Company, immediately upon obtaining knowledge thereof, all notices or communications it receives with respect to violations of the terms and conditions of any Project Site Lease, Governmental Approval or Applicable Law pertaining to the Project. The failure of the Operating Service Provider to comply with any Governmental Approval in all material respects shall constitute a breach of this Agreement.
(iv) The Operating Service Provider shall, in accordance with the Contract Standards, prepare all periodic reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals (other than the Groundwater Drilling and Operating Permit and the Groundwater Transportation Permit) and under Applicable Law with respect to the Operating Work, including sampling and testing results. Such reports shall contain all information required by the Governmental Body, and may be identical to comparable reports prepared for CTRWSC and/or the Project Company, if such are acceptable to the Governmental Body. The Operating Service Provider first shall provide CTRWSC and the Project Company with copies of such regulatory reports prior to their filing as and to the extent required pursuant to Section 3.14(c)(ii) above.

(v) The Operating Service Provider shall make available for review and copying by CTRWSC and the Project Company, upon request, copies of the Governmental Approvals and related applications in possession of the Operating Service Provider.

(vi) The Operating Service Provider shall keep CTRWSC and the Project Company regularly advised as to potential material changes in regulatory requirements affecting the Project or the Raw Groundwater of which the Operating Service Provider becomes aware, together with anticipated responses to such potential changes (including potential Capital Modifications and the acquisition of additional water rights).

(vii) The Operating Service Provider shall cooperate and assist the Project Company and CTRWSC to obtain and maintain the Governmental Approvals required for the Project, which are not required to be obtained and maintained by the Operating Service Provider hereunder.

Section 3.15 Review of Design and Manuals. As and when reasonably directed by CTRWSC, the Operating Service Provider shall review any drawings, data and other design materials provided to the Operating Service Provider by CTRWSC or the Project Company that relate to the design, construction, operation or maintenance of the Project. The Operating Service Provider shall conduct its review diligently and the Operating Service Provider shall provide CTRWSC with written comments and observations on such drawings, data or other design materials, including any recommendations for modification to the design of any portion of the Project, within ten (10) days after receipt or observation of the same by the Operating Service Provider (together with all other information reasonably requested by the Operating Service Provider in order to provide such comments or observations). The scope of the Operating Service Provider’s review of such drawings, data or other design materials shall be limited to examining such materials for conformity with the Contract Standards, potential improvements in Project reliability, availability and performance and potential measures to lower the cost of providing or operating and maintaining the Project and performing the Operating Work.

Section 3.16 Interfacing; Other Project Contracts.

(a) The Operating Service Provider shall be responsible for coordinating, for and on behalf of CTRWSC and the Project Company (insofar as such coordination relates to the operation and maintenance of the Project), the Project Contracts (other than the Design Build Contract prior to the Commercial Operation Date and this Agreement), as well as those other agreements that CTRWSC or the Project Company has designated and disclosed to the Operating Service Provider and for which the Operating Service Provider has agreed in writing to assume responsibility. In connection with the administration and coordination of Project Contracts in accordance with this Section, the Operating Service Provider shall oversee the performance of the relevant contractual counterparties and, particularly in respect of the Groundwater Lease Conveyance Agreement, the Lease Administration Agreement, the Permits Conveyance and Administration Agreement, the Operating Service Provider shall maintain conference calls with Blue Water Vista Ridge, LLC, Blue Water Regional Supply Project LP, and the Master Lease Trust no less frequently than quarterly to assess their performance of such contracts.
(b) Except as approved by CTRWSC (with respect to any right or obligation of CTRWSC) and except as approved by the Project Company (with respect to any right or obligation of the Project Company), the Operating Service Provider may not (i) enter into, amend, or supplement any agreement on behalf of or in the name of CTRWSC or the Project Company or (ii) sell, mortgage or otherwise dispose of any property or asset of CTRWSC or the Project Company except as expressly permitted in this Agreement. Except as provided in this Agreement or under express written approval of CTRWSC or the Project Company, as applicable, the Operating Service Provider shall not describe itself as the agent or representative of CTRWSC or the Project Company and may not make any representation or warranty relating to CTRWSC or the Project Company.

(c) In the administration of the Project Contracts, the Operating Service Provider’s role is solely administrative and, as part thereof, the Operating Service Provider shall keep CTRWSC and the Project Company informed of any material matters or circumstances (which shall include but not be limited to any breach or any anticipated breach of a Project Contract of which the Operating Service Provider is aware having exercised reasonable diligence) arising in connection therewith to allow CTRWSC and the Project Company to exercise any rights it may have under the Project Contracts. The Operating Service Provider shall take no action to prejudice CTRWSC’s and the Project Company’s material rights under any Project Contract. Notwithstanding the foregoing, nothing in this Section 3.16 (Interfacing; Other Project Contracts) shall limit the Operating Service Provider’s rights against CTRWSC or the Project Company under this Agreement.

(d) The Operating Service Provider hereby agrees to execute and deliver, concurrently with this Agreement, (i) a joinder agreement in respect of the Public-Private Partnership Framework Agreement substantially in the form of Exhibit B thereto and (ii) an Operating Service Provider Substitution Agreement substantially in the form set forth as Transaction Form C of the WTPA.

Section 3.17 Personnel

(a) **Operating service provider’s Chief Operator.** The Operating Service Provider shall appoint a full-time manager for the Project (the “Chief Operator”). The Chief Operator shall have a TCEQ Grade A operator’s certification as of the date of the commencement of start-up and commissioning of the Project and shall be appropriately certified under Applicable Law. The sole employment responsibility of the Chief Operator shall be managing the operation of the Project. In the event CTRWSC or SAWS determines that (1) the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, or (2) an unworkable relationship (as defined below) has developed, CTRWSC shall provide the Operating Service Provider with written notice, describing such failure or development of an unworkable relationship (as defined below) and its duration in reasonable detail. An unworkable relationship shall be deemed to have developed if the Chief Operator, by his or her persistent conduct, is non-responsive or non-communicative with Governmental Bodies, Project Site Lessors, SAWS, the Project Company or CTRWSC; makes misrepresentations; provides false or incomplete information; dishonors commitments; fails to make timely decisions; or fails to manage or control the employees under his or her managerial control. The Operating Service Provider and CTRWSC shall thereupon schedule a meeting to discuss and seek to resolve SAWS’, the Project Company’s or CTRWSC’s, as applicable, concerns, to be held not more than twenty (20) days following delivery of such notice, which meeting shall be attended by senior executives of SAWS, the Project Company and CTRWSC (as applicable) and the Operating Service Provider with authority to resolve the dispute. If, following such meeting, based on the persistent conduct that prompted the meeting or conduct occurring following the meeting, CTRWSC or SAWS, as the case may be, acting reasonably, still determines that an unworkable relationship exists or that the Chief Operator has persistently failed to manage the operation of the Project in accordance with the Contract Standards, CTRWSC shall so notify the Operating Service Provider and the Operating Service Provider shall remove such Chief Operator as soon as reasonably practicable, but in no event later than fifty (50) days.

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Communications and Meetings. On or before the Commercial Operation Date, the Operating Service Provider shall provide CTRWSC with contact information for the Chief Operator and senior management representatives of the Operating Service Provider. CTRWSC shall furnish to the Operating Service Provider comparable communications information with respect to the contract administrator appointed by SAWS with respect to the WTPA. The Operating Service Provider shall meet with CTRWSC, the Project Company and SAWS each month to review the contents of the monthly operations reports required to be prepared pursuant to Section 5.03 (Periodic Reports). The Chief Operator (or other senior representative of the Operating Service Provider acceptable to CTRWSC) and, if requested by CTRWSC, a senior management representative of the Operating Service Provider each shall personally attend the monthly operations meetings with the Project Company and SAWS, and all special meetings which CTRWSC may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Project and this Agreement. The Operating Service Provider shall have the right to request that the Project Company use all reasonable efforts to have SAWS agree to have a representative of the Operating Service Provider present at all meetings requested by SAWS pursuant to Section 9.2(B) of the WTPA. Any issue in dispute which CTRWSC and the Operating Service Provider are unable to resolve at such monthly and special meetings may be referred to Non-Binding Mediation in accordance with Section 20.03 (Non-Binding Mediation), and the resolution of any issues resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum or an amendment to this Agreement as applicable.

Complaints and Communications. The Operating Service Provider shall respond in a timely and effective manner to all complaints and communications received by the Operating Service Provider or received by CTRWSC, the Project Company or SAWS and forwarded to the Operating Service Provider regarding the treatment and distribution of water, odor and air emissions, noise, light emissions, construction or any other matter related to the Operating Work to which there is a Contract Standard, provided, however, that the Operating Service Provider shall have no obligation to rectify a matter raised in a complaint or communication if the Operating Service Provider is in compliance with the Contract Standards with respect to the matter. The Operating Service Provider shall respond to complaints and communications concerning (i) emergencies related to the Project within one hour; (ii) material spillages, leaks, breaks, noise, light, and emissions relating to the Project as soon as reasonably possible; and (iii) other material communications within one (1) Business Day. All such complaints and communications shall be immediately logged and responded to in writing, faxed or emailed to CTRWSC, the Project Company and SAWS on a daily basis, and reported to CTRWSC, the Project Company and SAWS as part of the monthly operations reports delivered pursuant to Section 5.03 (Periodic Reports). The Operating Service Provider shall establish, maintain and make publicly known, on behalf of CTRWSC and the Project Company, a telephone number, e-mail address and mailing address to which public complaints and communications may be directed.

Staffing Generally. The Operating Service Provider shall staff the Project during the Term in accordance with the Contract Standards with qualified O&M Personnel who meet the licensing and certification requirements of the State. The O&M Personnel, taken as a whole, shall be trained, experienced and proficient in the management and operation of water treatment systems using treatment processes similar to the Project. The Operating Service Provider shall appropriately discipline or replace, as appropriate, any O&M Personnel engaging in unlawful, unruly or objectionable conduct. The Operating Service Provider shall notify CTRWSC and the Project Company of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would adversely materially and adversely affect the ability of the Operating Service Provider to provide the Operating Work in accordance with the Contract Standards. The Operating Service Provider further agrees to provide CTRWSC and the Project Company fifteen (15) Business Days’ written notice of the
selection of (or change in) any operations supervisor staffed by the Operating Service Provider and to meet with SAWS, the Project Company and CTRWSC, as applicable, to resolve any reasonable concerns that such party may have in respect of the qualifications of any such proposed operations supervisor.

(c) **Key Operations Staff.** Collectively, the Chief Operator and those reporting directly to the Chief Operator shall have experience with all of the technologies and practices utilized in the Project sufficient to operate and maintain the Project and perform the Operating Work in accordance with the Contract Standards.

(f) **Training.** The Operating Service Provider shall ensure that the Chief Operator and other O&M Personnel are available for training to be provided by the Design Build Contractor under the Design Build Contract in accordance with Section 9.3(C) (Training) of the WTPA and Section 2.02(b) (Pre-Operating Period Services) of this Agreement.

(g) **Staffing Plan.** The Operating Service Provider shall prepare and submit the Initial Staffing Plan for CTRWSC’s approval no later than 180 days prior to the Commercial Operation Date. Once such Initial Staffing Plan has been approved by CTRWSC, the Operating Service Provider shall staff the O&M Personnel in accordance with the Initial Staffing Plan or the subsequent Staffing Plan. If at any time the Operating Service Provider proposes to materially amend or revise the Initial Staffing Plan or any subsequent Staffing Plan, then it may prepare, submit and negotiate with CTRWSC a proposed staffing plan. CTRWSC shall within fourteen (14) days from receipt of the proposed staffing plan notify the Operating Service Provider if it reasonably determines that the staffing levels set out in the proposed staffing plan will jeopardize the safe operation of the Project in accordance with the Contract Standards. In the event CTRWSC rejects the Operating Service Provider’s proposed staffing plan in accordance with this Section, the Staffing Plan most recently accepted by CTRWSC shall remain in effect (or, if no Staffing Plan has been so approved, the Initial Staffing Plan).

Section 3.18 Facilities, Equipment and Personnel Safety. The Operating Service Provider shall maintain the safety of the Project at a level consistent with all federal, State and local safety and health rules and regulations, and the Contract Standards. Without limiting the foregoing, the Operating Service Provider shall:

(a) Take reasonable precautions for the safety of, and provide reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Project to:

(i) All O&M Personnel performing the Operating Work and other persons who may be directly affected thereby;

(ii) All visitors to the Project;

(iii) All materials and equipment under the care, custody or control of the Operating Service Provider on the Project Sites;

(iv) Other property constituting part of the Project, and

(v) SAWS property affected by Project operations;

(b) Give all notices and comply with all Applicable Laws relating to the safety of persons or property or their protection from damage, injury or loss;

(c) Designate a qualified and responsible employee at the Project whose duty shall be the development and implementation of safety and health requirements at the Project, the prevention of fires and accidents and the coordination of such activities, with federal, State, local and SAWS officials;
(d) Operate all equipment in a manner consistent with the manufacturer’s safety requirements; and

(e) Develop and implement a health and safety program that includes a written site-specific health and safety plan designed to implement the requirements of this Section 3.18 (Facilities, Equipment and Personnel Safety). The Operating Service Provider shall make all modifications to the Project which are or may be required under OSHA.

Section 3.19 Warranty Records. The Operating Service Provider shall maintain warranty records for all Project Equipment and supplies covered by the manufacturer’s or Design Build Contractor’s warranties and shall use all reasonable efforts to identify and inform CTRWSC and the Project Company of any claims or potential claims which may be available to CTRWSC or the Operating Service Provider thereunder.

Section 3.20 Transactions with Affiliates. The Operating Service Provider shall not enter into any material transaction relating to the Operating Work or any other obligation of the Operating Service Provider under this Agreement with any Affiliate of the Operating Service Provider, unless the terms of such transaction are no less favorable to the Operating Service Provider than would at the time be obtainable for a comparable transaction in arm’s length dealings with an unrelated party and approved by the CTRWSC and the Project Company.

Section 3.21 Transfer of Title; Liens

(a) The Operating Service Provider shall ensure the immediate delivery and passage of title to CTRWSC (or its designee) of any part of the Project or any Project Equipment and supplies procured pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, the Operating Service Provider shall not cause or consent to, by any act or omission, directly or indirectly, the passage of title from CTRWSC (or its designee) to (i) the Project or (ii) any Project Equipment and supplies.

(b) The Operating Service Provider shall keep and maintain the Project and the Project Sites free and clear of any and all Liens, resulting from the act or omission of the Operating Service Provider.

(c) The Operating Service Provider shall indemnify, defend and hold harmless the Project Indemnitees from and against all Loss-and-Expense incurred by the Project Indemnitees as a result of any breach of this provision, including legal fees in connection with any claim or Lien, and in any event shall secure the prompt passage of good title to CTRWSC (or its designee) or the prompt removal of any such Lien.

Section 3.22 Subcontracting

(a) Terms and Actions. The Operating Service Provider shall retain full responsibility to CTRWSC and the Project Company under this Agreement for all matters related to the Operating Work. Notwithstanding any consent provided by CTRWSC pursuant to Section 3.22(c), no failure of a Subcontractor used by the Operating Service Provider in connection with the provision of the Operating Work shall relieve the Operating Service Provider from its obligations hereunder to perform the Operating Work. The Operating Service Provider shall be responsible for settling and resolving with all Subcontractors all claims arising from the actions or inactions of the Subcontractors.

(b) Indemnity for Claims. The Operating Service Provider shall pay or cause to be paid to the Subcontractors all amounts due in accordance with their respective Subcontracts. No Subcontractor shall have any right against SAWS, the Project Company or CTRWSC for labor, services, materials or equipment furnished for the Operating Work. The Operating Service Provider acknowledges
that its indemnity obligations under Section 17.02 (Indemnification by the Operating Service Provider) shall include all claims for payment or damages by a Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Operating Work to the extent that those claims fall within the scope of the indemnity in Section 17.02 (Indemnification by the Operating Service Provider).

(c) Required Consent. The Operating Service Provider may subcontract any portion, but not all or substantially all, of the Operating Work with such Subcontractors that, in the Operating Service Provider’s reasonable opinion, are appropriately qualified and experienced; provided, however, that the Operating Service Provider receives CTRWSC’s prior written consent; provided, further, that CTRWSC’s prior written consent shall not be required for the retention of Subcontractors providing particular expertise or equipment that is not required in connection with services rendered by licensed operators in relation to the Project.

(d) Assignment of Subcontracts. During its negotiations with any potential Subcontractors, the Operating Service Provider shall use its best efforts to procure that such Subcontracts are assignable to CTRWSC (or its designee) or any successor operator in the event of a change in the Operating Service Provider for any reason. At the end of the Term or the early termination thereof, the Operating Service Provider shall, where permitted and at CTRWSC’s request, assign to CTRWSC (or its designee) its rights and the obligations under any Subcontract relating to the performance of the Operating Work. In the event that the Operating Service Provider is, despite its best efforts, precluded from assigning any such Subcontract, then the Parties shall cooperate in ensuring, so far as is possible, that CTRWSC (or its designee) obtains the benefit, subject always to the burden, of such Subcontract.

(e) Restricted Persons. In performing the Operating Work, the Operating Service Provider shall not contract with, or allow any of its Subcontractors to contract with, any person that is a Restricted Person. In the event that CTRWSC or SAWS determines that the Operating Service Provider has entered into a material contract with a person that is, in CTRWSC’s or SAWS’ reasonable opinion, a Restricted Person, CTRWSC shall notify the Operating Service Provider and the Operating Service Provider shall replace such person within twenty (20) days.

ARTICLE IV

RIGHTS AND RESPONSIBILITIES OF CTRWSC AND THE PROJECT COMPANY

Section 4.01 General Responsibilities. Each of CTRWSC and the Project Company shall:

(a) Provide the Operating Service Provider with access to such portions of the Project Sites and the Project under the control of such Party as required for the performance by the Operating Service Provider of the Operating Work under this Agreement;
(b) Make available to the Operating Service Provider all documentation available to such Party relating to the Project;

(c) Procure that the Design Build Contractor shall train the appropriate O&M Personnel nominated by the Operating Service Provider in accordance with Section 3.17(f) (Training) and Section 2.02(b) (Pre-Operating Services);

(d) Solely in the case of CTRWSC, pay to the Operating Service Provider the amounts due with respect to the Operating Work under Section 11.01 (Payments during the Operating Period); and

(e) Comply with all of its other obligations under this Agreement.

Section 4.02 Technical Information. Each of CTRWSC and the Project Company shall provide to the Operating Service Provider, in relation to the Project, all technical and operational information in such Party’s possession or produced by or produced to such Party during the Term, including copies of any operation and maintenance manuals, drawings and design materials (or, to the extent that final versions have not yet been produced, drafts thereof) supplied to it by SAWS or the Design Build Contractor prior to or as soon as reasonably practical following the Commercial Operation Date. If the Operating Service Provider identifies technical and operational information that should be available in relation to the Project but which is not in CTRWSC’s or the Project Company’s possession and is required by the Operating Service Provider in order to operate and maintain the Project in accordance with this Agreement, the Parties shall in cooperation use all reasonable efforts to obtain such technical and operational information.

Section 4.03 Access to Site. In order to permit the Operating Service Provider to perform the Operating Work, each of CTRWSC and the Project Company shall provide and grant or cause to be provided and granted, to the Operating Service Provider and its authorized Subcontractors right to ingress and egress to and from each portion of the Project Sites under such Party’s control at all reasonable times prior to the Commercial Operation Date and at all times thereafter. For the avoidance of doubt, the Operating Service Provider and its authorized Subcontractors shall not be permitted to access the Project Sites for any reason other than to perform the Operating Work.

Section 4.04 Construction Progress and Milestones. CTRWSC shall keep the Operating Service Provider informed on a monthly basis of the progress of the work being carried out pursuant to the Design Build Contract.

ARTICLE V

PLANS, REPORTS, RECORDS, ACCESS AND AUDITS

Section 5.01 Operating Protocol.

(a) Operating Protocol. CTRWSC shall use all reasonable efforts to provide the Operating Service Provider with a copy of the Operating Protocol at least ninety (90) days prior to the Commercial Operation Date.

(b) Service Coordination. At least eighty (80) days prior to the commencement of each Contract Year following the Commercial Operation Date, the Operating Service Provider shall update, subject to the approval of CTRWSC, the Operating Protocol consistent with the Contract Standards. The Operating Protocol shall set forth all practices, procedures and protocols which are necessary or useful in coordinating the activities of the Parties hereunder, including particularly the establishment and modification from time to time of SAWS’ demands for Product Water, all operational and informational communications between CTRWSC, the Project Company and SAWS, on the one hand,
and the Operating Service Provider, on the other hand, and all data and information required to demonstrate the extent to which the Project is being operated in compliance with the Performance Guarantees. The Operating Protocol also shall provide for such matters as CTRWSC and the Operating Service Provider may mutually deem necessary or desirable in the implementation of this Agreement. The CTRWSC Representative and the Chief Operator shall be responsible for coordinating all matters relating to the Operating Protocol, including with SAWS to the extent coordination with SAWS is required under the WTPA.

Section 5.02 Electronic Operation and Maintenance Manual. CTRWSC shall use all reasonable efforts to provide the Operating Service Provider with a copy of the interim Electronic Operation and Maintenance Manual at least one hundred twenty (120) days prior to the Commissioning Date. The Operating Service Provider shall provide any comments to such interim Electronic Operation and Maintenance Manual within fifteen (15) days from receipt thereof and CTRWSC shall use all reasonable efforts to provide the Operating Service Provider with a copy of the final Electronic Operation and Maintenance Manual within fifteen (15) days from its receipt of the Operating Service Provider’s comments. The Operating Work shall be performed substantially in compliance with the Electronic Operation and Maintenance Manual, the Operating Protocol and the CMMS. The Operating Service Provider shall keep the Electronic Operation and Maintenance Manual current in accordance with the Contract Standards, including changes required to reflect updates to record documents made on account of Capital Modifications or made pursuant to Section 5.06(c) (Record Documents).

Section 5.03 Periodic Reports.

(a) Monthly Operations. The Operating Service Provider shall provide CTRWSC and the Project Company with monthly operations reports no later than ten (10) days after the end of each Billing Period. In addition to the operating data specified in Appendix 2 (Operating and Maintenance Standards), the monthly operations reports shall include a report by the Operating Service Provider as to the following:

(i) A table or data information format acceptable to CTRWSC setting forth all results of operations pertaining to the availability or unavailability of Product Water, presented using each of the categories used for billing and tracking purposes under Section 11.01 (Payments during the Operating Period);

(ii) Summary of the quantities and characteristics of Raw Groundwater and Product Water produced during the prior month, in a manner consistent with the listing of the characteristics set forth in Appendix 4 (Performance Guarantee Requirements);

(iii) Summary of all sampling and test data required by this Agreement;

(iv) Quantities of electricity, natural gas, water and other Utility services used during such month;

(v) Summary of staffing levels, job positions and workforce turnover;

(vi) Statement of any complaints or communications received by the Operating Service Provider in relation to the Operating Work as to which the Operating Service Provider is obligated to respond under Section 3.17(e) (Complaints and Communications), and how each such complaint and communication was addressed by the Operating Service Provider;

(vii) Description of the maintenance, repair and replacement activities performed and Capital Modifications made during the prior month and anticipated during the current month;
(viii) Description of maintenance backlog and status of work orders of preventative and unplanned maintenance;

(ix) List of material machinery and equipment which was unavailable for service during the prior month, and a timetable for repair and replacement;

(x) Description of any asset abandoned in place pursuant to Section 2.2.14(b) of Appendix 2 (Operating and Maintenance Standards);

(xi) Description of partial or total Project equipment shutdowns for maintenance and repairs during the prior month and anticipated during the current month;

(xii) Adverse conditions which may be expected to arise during the current month that may affect the ability of the Operating Service Provider to pump or treat Raw Groundwater and produce Product Water in accordance with the terms and conditions of this Agreement;

(xiii) Results of any regulatory or insurance inspections conducted during the prior month;

(xiv) Information on any Utility outages occurring during the prior month;

(xv) Descriptions of any failure to meet the Performance Guarantees and data required to determine performance liquidated damages under this Agreement, if any;

(xvi) Listing and description of any reports or other submittals made to or received from any Governmental Body with respect to any environmental, health or safety tests or monitoring procedures conducted by the Governmental Body during the prior month;

(xvii) Notices of material violations of any Governmental Approval received during the prior month; and

(xviii) List of visitors to the Project in the prior month.

(b) Annual Operations and Maintenance Reports. The Operating Service Provider shall submit for CTRWSC’s review and approval, acting reasonably, in accordance with Section 2.3.1 of Appendix 2 (Operating and Maintenance Standards), the proposed format of the monthly operations report required to be provided by the Operating Service Provider pursuant to this Section.

The Operating Service Provider shall furnish CTRWSC and the Project Company, within forty-five (45) days after the end of each Contract Year following the Commercial Operation Date, an annual summary of the information contained in the monthly operations reports, including a report by the Operating Service Provider of any administrative fine, penalty or consent order against it or any of its Affiliates with respect to the performance of operation and maintenance services at other water projects located in the State. The Operating Service Provider shall also perform and report to CTRWSC and the Project Company, as part of its annual operations and maintenance report and in accordance with the Contract Standards, a review and analysis of the administrative, operational and maintenance practices employed in the management of the Project. The annual operations and maintenance report shall also include a summary of all replacements or retirement of material Project Equipment and Capital Modifications. The annual record drawing updates required by Section 5.06(d) (Annual Update of Record Drawings and Documents) shall be prepared as a separate submittal to CTRWSC.
(c) **Default Reports.** The Operating Service Provider shall provide to CTRWSC and the Project Company, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Subcontract.

Section 5.04 **Access to Project.**

(a) **General Access.** Subject to (1) reasonable safety precautions and execution of waivers of liability on the part of any visitors, (2) reasonable prior notice requirements required by the Operating Service Provider, and (3) reasonable limitations imposed by the Operating Service Provider for purposes of assuring minimum disruption to operations of the Project (in all cases to be established in the Operating Protocol), the Operating Service Provider acknowledges that CTRWSC, the Project Company and SAWS shall have the right at any time to visit and inspect the Project and related records and observe the Operating Service Provider’s performance of the Operating Work in order to determine compliance with the Contract Standards, including the Operating Service Provider’s obligations under Section 2.06 (Maintenance, Repair and Replacement); provided that unless an Operating Service Provider Event of Default shall have occurred and be continuing directly from an alleged failure of the Operating Service Provider to act within Contract Standards, or other exigent circumstances exist which, in CTRWSC’s, the Project Company’s or SAWS’ reasonable opinion, as the case may be, create an imminent risk to the health and safety of SAWS’ customers, any such visitation rights shall be limited to normal business hours, except for visits in and around the Product Water Delivery Point. CTRWSC shall give reasonable prior notice to the Operating Service Provider of any visit outside the immediate vicinity of the Product Water Delivery Point and afford the Operating Service Provider a reasonable opportunity to enable an Operating Service Provider representative to accompany any visit by CTRWSC, Project Company or SAWS personnel. To the extent personnel visit or inspect the Project unaccompanied, such CTRWSC, Project Company or SAWS personnel (including agents and contractors) shall announce themselves to the staff and Operating Service Provider employees that may be present at or near each location visited. The Operating Service Provider shall permit and facilitate access to the Project for such purposes by personnel and by agents and contractors designated by CTRWSC, the Project Company or SAWS. All visitors and on-site CTRWSC, Project Company and SAWS personnel are required to comply with the Project Sites’ specific health and safety plan and rules, and shall not interfere with the Operating Service Provider operation of the Project.

(b) **Tours.** The Operating Service Provider shall conduct public tours of the Project during normal business hours, and take visitors through such portions of the Project as are suitable for public visitation, all during normal business hours and in a pre-arranged and mutually agreed upon manner by CTRWSC and the Operating Service Provider that does not interfere with the Operating Service Provider’s performance of the Operating Work.

Section 5.05 **Financial Books and Records.**

(a) **Recordkeeping Requirements.** The Operating Service Provider shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Operating Work, including, to the extent available to the Operating Service Provider, all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Operating Work, this Agreement, any Subcontract or any transactions in which CTRWSC or the Project Company has or may have a financial or other material interest hereunder, in each case to the extent required to determine the costs of Design Requirements Changes, SAWS Fault costs, or other adjustments to the Variable Compensable Costs Unit Price or other payments based on costs for which SAWS is responsible under the WTPA. The Operating Service Provider shall produce such financial books and records for examination and copying for all such purposes promptly upon request by CTRWSC or the Project Company. All such
information upon delivery to CTRWSC and the Project Company shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP, to the extent applicable. The Operating Service Provider shall not be required to provide CTRWSC and the Project Company any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to CTRWSC and the Project Company through the Cost Substantiation process upon the delivery of financial records for the purposes hereof. The Operating Service Provider shall keep and maintain all such financial books and records with respect to each Contract Year until at least the tenth (10th) anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending for which such financial books and records are relevant. In the event the Operating Service Provider fails to prepare or maintain any financial books, records or accounts as required under this Section 5.05 (Financial Books and Records), the Operating Service Provider shall not be entitled to any requested payments or adjustments to the extent such failure prevented verification or Cost Substantiation as required by this Agreement.

(b) Inspection, Audit and Adjustment. CTRWSC and the Project Company shall have the right, at their cost and expense, to perform or commission an inspection or independent audit of the financial information required to be kept under this Section 5.05 (Financial Books and Records), and shall provide the results of such inspection or audit to the Operating Service Provider. If an inspection or audit reveals that the Operating Service Provider has overstated any component of the Monthly Operating Service Payments, then the Operating Service Provider shall, at the election of CTRWSC, either immediately reimburse CTRWSC or adjust the Monthly Operating Service Payments based on the overstated amount, plus interest at the Overdue Rate, from the time such amount was initially overpaid until reimbursed or credited to CTRWSC. If the overpayment exceeds one percent (1%) of the total amount that should have been properly paid by CTRWSC during the period audited, then the Operating Service Provider shall, in addition, reimburse CTRWSC for any and all fees and costs reasonably incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies CTRWSC may have hereunder, including remedies for an Operating Service Provider Event of Default. If an inspection or audit reveals that the Operating Service Provider has understated any component of the Monthly Operating Service Payments, then the Operating Service Provider shall include the amount of the understated payment in the next Billing Period invoice for payment in the regular course under Section 11.03 (Billing and Payment).

Section 5.06 Asset Records.

(a) Information Systems. The Operating Service Provider, on and after the Commercial Operation Date, shall establish and maintain computerized information systems with respect to the Project for operations and maintenance data and process control, including the information necessary to verify calculations made pursuant to this Agreement and demonstrate compliance with the Contract Standards. The Operating Service Provider shall grant SAWS real time, continuous access to such computerized information systems through the SAWS Interface Cabinet.

(b) Availability of Project Records. The Operating Service Provider shall make available for inspection and copying by CTRWSC, the Project Company and SAWS, upon request, copies of all operations, maintenance, performance, Project By-Products management, process control and similar records and data kept by the Operating Service Provider in its performance of the Operating Work.

(c) Record Documents. The Operating Service Provider has received copies of all material Design Documents, record drawings and documents pertaining to the Project and similar documents relating to any Capital Modifications as specified under Section 9.10(C) (Record Documents) of the WTPA. The Operating Service Provider shall maintain such documents and any similar documents relating to Capital Modifications at the Project and make the same available to CTRWSC, the Project
Company and SAWS upon request for review and copying. The Operating Service Provider shall: (i) update annually all such records to show any material changes to the Project made by the Operating Service Provider in the performance of the Operating Work (which shall include any change that alters the functionality, performance or usability of any Project Equipment and Project Structures, or which could impact Product Water quality or SAWS aqueduct operations); and (ii) provide advice and assistance to SAWS, based on such records, in establishing and maintaining any SAWS geographic mapping and information systems.

(d) **Annual Update of Record Drawings and Documents.** The Operating Service Provider, within forty five (45) days following the end of each Contract Year, shall deliver to CTRWSC and the Project Company an electronic copy of an updated set of as-built drawings reflecting any material changes to the Project during such Contract Year, of any updates to record drawings and documents that were made during the previous Contract Year. The annual record drawings and documents update shall be prepared in accordance with the requirements of Section 5.07(d) (Drawing Requirements) and delivered separately from the annual operation and maintenance reports delivered pursuant to Section 5.03(b) (Annual Operations and Maintenance Reports).

**Section 5.07 Maintenance of Records**

(a) **Duty to Maintain Records.** The Operating Service Provider shall retain and maintain all the records (including superseded records) referred to in Section 5.07(e) (Records to Be Kept) in accordance with this Article V (Plans, Reports, Records, Access and Audits) and other applicable terms of this Agreement, in chronological order, in a form that is capable of audit. The Operating Service Provider shall make such records (other than books of account) available to CTRWSC, the Project Company and SAWS for inspection during normal business hours upon reasonable notice.

(b) **Maintenance of Records.**

(i) Wherever practical and unless otherwise agreed, the Operating Service Provider shall retain and maintain original records in electronic form and, to the extent legally required, in hard copy form. True copies of the original records may be kept by the Operating Service Provider if it is not practicable to retain original records.

(ii) The Operating Service Provider shall retain and maintain all records referred to in Section 5.07(e) (Records to Be Kept) for a period of at least ten (10) years from the Contract Year to which such records relate, or such longer period as may be required by Applicable Law, all in sufficient detail, in appropriate categories and generally in such a manner to enable each Party to comply with its obligations and exercise its rights under this Agreement.

(iii) On the expiration of such period or at the earlier request of CTRWSC, the Operating Service Provider shall deliver all those records (or, if those records are required by statute to remain with the Operating Service Provider, copies thereof) to CTRWSC (or its designee) in the manner and at the location as CTRWSC specifies, acting reasonably. CTRWSC shall make available to the Operating Service Provider for inspection during normal business hours all records the Operating Service Provider delivers pursuant to this Section 5.07 (Maintenance of Records) upon reasonable notice.

(c) **Disposal of Records.** During the Term, the Operating Service Provider may dispose of any records referred to in Section 5.07(e) (Records to Be Kept) if any are more than ten (10) years old or in respect of which the required period for their retention has expired, provided that the Operating Service Provider first notifies CTRWSC and the Project Company in writing and provides CTRWSC and the Project Company with eighty (80) days to elect to receive delivery of such records.
(d) **Drawing Requirements.** Any drawings required to be made or supplied pursuant to this Agreement shall be prepared in accordance with the requirements of Attachment 4B (*SAWS Drawing Requirements*) of Appendix 4 (*Design and Construction Review Procedures, Commissioning and Substantial Completion*) of the WTPA, and shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids. Where, by prior agreement with the Operating Service Provider, CTRWSC has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), the Operating Service Provider shall make or supply, or have made or supplied, drawings and other documents in such agreed upon form.

(e) **Records to Be Kept.** The Operating Service Provider shall retain the following:

(i) This Agreement and any documents executed based on the Transaction Forms, including all amendments to such agreements;

(ii) Records relating to the appointment and supervision of CTRWSC Representative and the Operating Service Provider Representative;

(iii) Documents relating to Government Approvals, including applications, refusals and appeals;

(iv) Notices, reports, results and certificates relating to completion of commissioning and Capital Modifications delivered to it by CTRWSC;

(v) All operation and maintenance manuals;

(vi) Record drawings and documents and periodic updates;

(vii) Documents relating to Uncontrollable Circumstances;

(viii) All notices made to or received from the CTRWSC Representative or any SAWS representative;

(ix) Tax invoices and records applicable to the Project (other than any income tax records for the Operating Service Provider or records pertaining to other taxes personal to the Operating Service Provider);

(x) Records required by Applicable Law (including in relation to health and safety matters) to be maintained by the Operating Service Provider with respect to the Operating Work;

(xi) Documents relating to the Required Insurance; and

(xii) All other records, notices or certificates required to be produced or maintained by the Operating Service Provider pursuant to the express terms of this Agreement.

**Section 5.08 Maintenance, Repair and Replacement Plan.** Appendix 2 (*Operating and Maintenance Standards*) contains requirements for preparing the Maintenance, Repair and Replacement Plan. The Maintenance, Repair and Replacement Plan is intended to establish a minimum standard by which to measure the Operating Service Provider’s performance of its ongoing maintenance, repair and replacement obligations hereunder, and to assure that no material deferred or sub-standard maintenance, repair or replacement occurs. Within eighty (80) days following the Commercial Operation Date, the Operating Service Provider shall incorporate the Maintenance, Repair and Replacement Plan into the Electronic Operation and Maintenance Manual. The Operating Service Provider shall adhere to these plans as incorporated in the Electronic Operation and Maintenance Manual, except where it can demonstrate to CTRWSC that changes are reasonable under Good Management Practice. The timing and extent of maintenance, repair and replacement activities performed by the Operating Service Provider hereunder with
respect to the Project, taken as a whole, shall equal or exceed the standard set for those activities by Appendix 2 (Operating and Maintenance Standards), as incorporated in the Electronic Operation and Maintenance Manual, and shall take into account the Transfer Condition Requirements that are applicable at the end of the Term. The Operating Service Provider shall also perform any additional maintenance, repair and replacement work which is necessary in order to comply with the Contract Standards.

Section 5.09 Maintenance, Repair and Replacement Schedule. Appendix 2 (Operating and Maintenance Standards) sets forth the requirements for major equipment repair and replacement activities which would be required to be performed by the Operating Service Provider over the Term hereof in order to achieve the standard of overall Project maintenance and repair for the proper operability, durability and reliability of the Project in accordance with the Contract Standards. Without limiting any of the Operating Service Provider’s obligations under this Article V (Plans, Reports, Records, Access and Audits), the Operating Service Provider shall make and complete all major equipment repairs and replacements which are necessary to achieve such standard of repair and replacement by performing maintenance, repair and replacement in accordance with the Maintenance, Repair and Replacement Schedule, as such schedule may be altered or amended pursuant to this Section. Downtime for scheduled maintenance, repair and component replacement shall, to the extent practicable, be scheduled for the months of November, December, January and February. The Parties acknowledge that, in light of the long term nature of the Agreement and the practical limitations on predicting with specificity the useful life of any particular asset, it may be appropriate from time to time to alter the Maintenance, Repair and Replacement Schedule. Accordingly, the Operating Service Provider shall have the right to deviate from the Maintenance, Repair and Replacement Schedule at any time during the Term, provided that the Operating Service Provider provides CTRWSC with a reasonable justification in advance for such deviation and that such deviation shall be consistent with the requirements set forth in Appendix 2 (Operating and Maintenance Standards). Any alterations to the Maintenance, Repair and Replacement Schedule shall be reflected in a Contract Administration Memorandum and specifically identified in budget variance reports. The Operating Service Provider shall coordinate with CTRWSC with respect to any unscheduled or unanticipated maintenance or repair which would reasonably lead to failure to comply with the Operating Work.

Section 5.10 Asset Registry. The Operating Service Provider acknowledges that it has received a copy of the Asset Registry and agrees the Asset Registry shall be kept in a secure environment at a location other than the Project Sites. The Asset Registry (except the photographs and video components thereof) shall be annually updated by the Operating Service Provider as required by Appendix 2 (Operating and Maintenance Standards), and reflected in a report that is separate from the annual operations and maintenance reports prepared pursuant to Section 5.03(b) (Annual Operations and Maintenance Reports).

Section 5.11 Periodic Maintenance Inspections.

(a) Annual Maintenance Inspection. CTRWSC, the Project Company and SAWS may, at their own expense and upon reasonable written notice (and otherwise in all respects in accordance with Section 5.04 (Access to Project) and the Operating Protocol), perform an inspection of the Project and relevant records of the Operating Service Provider each Contract Year following the Commercial Operation Date to determine compliance with the Contract Standards. CTRWSC’s or the Project Company’s annual inspection, as applicable, may include the inspection of: (i) the Project and the Project Sites; (ii) all in-house laboratories where tests are conducted for samples from the Project; (iii) all areas where chemicals are stored or used; and (iv) all operations, maintenance, repair and replacement records kept by the Operating Service Provider.

(b) Full-Scale Biennial Inspections. Every full second Contract Year following the Commercial Operation Date, CTRWSC, the Project Company and SAWS may, at their own expense and
upon reasonable written notice (and otherwise in all respects in accordance with Section 5.04 (Access to Project) and the Operating Protocol), perform a full-scale inspection and review of the state of repair, working condition and performance capability of the Project, including testing of equipment to determine its physical and operational conditions, and inspection of the general status of repairs of all Project Equipment and Project Structures, pipelines, grounds, utility lines, spare parts, inventories, and operation, maintenance, repair and replacement records. Any such inspection and review shall be performed by or on behalf of CTRWSC, the Project Company or SAWS, as applicable, by an engineer at CTRWSC’s, the Project Company’s or SAWS’ expense, and shall take place at such time as CTRWSC, the Project Company or SAWS shall determine upon three months’ written notice to the Operating Service Provider. The principal purpose of the inspection and review shall be to permit CTRWSC, the Project Company and SAWS to ascertain on a comprehensive and focused basis the extent to which the Project is being properly maintained, repaired and replaced in accordance with the Contract Standards. The inspection shall include a concurrent review of all relevant data, records and reports.

(c) **Non-Interference.** The Operating Service Provider shall cooperate fully with all inspections conducted pursuant to this Section 5.11 (Periodic Maintenance Inspections), which shall not materially interfere with the Operating Service Provider’s performance of the Operating Work and shall not impose any material costs on the Operating Service Provider.

**Section 5.12 Computerized Maintenance Management System.** The Operating Service Provider acknowledges that it will receive the computerized maintenance management system to be developed by the Design Build Contractor in accordance with Section 11.5 (Computerized Maintenance Management System) of the WTPA (the “CMMS”). The Operating Service Provider shall modify the CMMS as and when appropriate during the Term to take account of removals from and additions to the Project. The Operating Service Provider shall utilize the CMMS to provide CTRWSC with documentation which allows it to efficiently monitor compliance by the Operating Service Provider with its maintenance, repair and replacement obligations hereunder. CTRWSC, the Project Company and SAWS shall have computer-based real-time, read-only access to the CMMS. The Operating Service Provider shall permit all electronic data to be replicated and provided to CTRWSC and SAWS for review except for information regarding costs incurred by the Operating Service Provider.

**Section 5.13 Information Regarding Breaches.** CTRWSC and the Project Company shall have the right at any time to issue the Operating Service Provider a written request for information relating to a possible breach of this Agreement. Any such written request with respect to a material breach designated as a “priority request” shall be responded to by the Operating Service Provider within two (2) Business Days.

**Section 5.14 Notice of Litigation.** In the event the Operating Service Provider, the Project Company or CTRWSC receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the Party receiving such notice or undertaking such defense or prosecution (or if notice is received or defense or prosecution is undertaken by the Project Company, CTRWSC) shall give each of the other Parties timely notice of such proceedings and shall inform each of the other Parties 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 5.15 Texas Public Information Act.** CTRWSC is not currently subject to the Public Information Act. The Parties agree that at such time as CTRWSC shall become subject to the Public Information Act, the Operating Service Provider will cooperate and assist CTRWSC in responding to any requests received by CTRWSC under the Public Information Act, including but not limited to providing CTRWSC with responsive documents that are in the control of the Operating Service.
ARTICLE VI

QUALITY AND QUANTITY OF WATER

Section 6.01 Product Water Quality Guarantee

(a) Operating Service Provider Acknowledgment. The Operating Service Provider acknowledges that the Project will constitute: (i) a significant source of treated drinking water for conveyance to the SAWS Distribution System; and (ii) a critical part of SAWS’ long term water supply availability program. The Parties acknowledge and agree that this Section shall not be construed to expand or otherwise modify the Operating Service Provider’s obligations under this Agreement.

(b) Applicable Law Limits. The Operating Service Provider shall operate the Project so as to produce Product Water from Raw Groundwater in compliance with the quality and other requirements of Applicable Law and this Agreement. In no event shall the Operating Service Provider make available Product Water that is not in compliance with the requirements of Applicable Law.

(c) Additional Product Water Quality Standards. In addition to its obligation to comply with the Product Water requirements imposed by Applicable Law as provided in Section 6.01(b) (Applicable Law Limits), the Operating Service Provider shall make available Product Water in compliance with the quality requirements set forth in Appendix 4 (Performance Guarantee Requirements), including the bacterial testing and rectification requirements set forth therein (the “Additional Product Water Quality Standards”). The Additional Product Water Quality Standards and the requirements in Section 6.01(b) (Applicable Law Limits) shall collectively mean the “Product Water Quality Guarantee”.

(d) Compliance. Compliance with the Product Water Quality Guarantee shall be measured at the Product Water Quality Sampling Location. The Operating Service Provider acknowledges and agrees that none of CTRWSC, the Project Company and SAWS shall have any obligation prior to or after SAWS taking delivery of any Product Water made available by the Operating Service Provider to conduct tests to determine whether such Product Water meets the Product Water Quality Guarantee or is Off-Specification Product Water or Unacceptable Product Water. The Operating Service Provider acknowledges and agrees that each of CTRWSC, the Project Company and SAWS may, however, conduct tests to make such a determination, either by testing Product Water in the Project pursuant to Section 3.08(b) (SAWS, CTRWSC and Project Company Testing Rights) or by testing Product Water in the SAWS Distribution System.

(e) Remedies for Breach of Product Water Quality Guarantee; Off-Specification Product Water. In the event SAWS takes delivery of any Product Water that constitutes Off-Specification Product Water: (i) each Unit of such Off Specification Water shall be deemed to constitute a Monthly Delivered Water Unit; (ii) CTRWSC shall have the right, in its discretion, to impose a Deduction in the amounts specified in Table 8.2 of Appendix 4 (Performance Guarantee Requirements); (iii) the Operating Service Provider acknowledges that SAWS may, in its discretion, cease taking delivery of Product Water and CTRWSC may, in its discretion, instruct the Operating Service Provider to cease making available Product Water, in each case until appropriate measures have been taken so that Product Water that is taken delivery of by SAWS upon the resumption of deliveries will not constitute Off-Specification Product Water; and (iv) each of CTRWSC and the Project Company shall further have its respective additional remedies set forth in Section 6.07 (Remediation Obligations). Any Unit of Product Water made available
by the Operating Service Provider, but not taken delivery of by SAWS pursuant to this Section shall not constitute a Monthly Delivered Water Unit.

(f) Remedies for Breach of Product Water Quality Guarantee; Unacceptable Product Water. In the event SAWS takes delivery of any Product Water that constitutes Unacceptable Product Water: (i) each Unit of Unacceptable Product Water shall be deemed not to constitute a Monthly Delivered Water Unit; (ii) CTRWSC shall have no obligation to compensate the Operating Service Provider for such Unit of Unacceptable Product Water; (iii) the Operating Service Provider acknowledges that SAWS may, in its discretion, cease taking delivery of Product Water and CTRWSC may, in its discretion, instruct the Operating Service Provider to cease making available Product Water, in each case until appropriate measures have been taken so that (A) Product Water that is taken delivery of by SAWS upon resumption of deliveries will not constitute Unacceptable Product Water, and (B) SAWS has concluded any investigation of any adverse effect of such deliveries on the SAWS Distribution System and taken any corrective action in accordance with the WTPA; (iv) each of CTRWSC and the Project Company shall have the right to bring an action for damages; and (v) each of CTRWSC and the Project Company shall further have its respective additional remedies set forth in Section 6.07 (Remediation Obligations). Any damages payable by the Operating Service Provider for the account of CTRWSC or the Project Company, as the case may be, as a result of any such judgment or settlement shall be paid to CTRWSC as a Direct Payment.

(g) Boil Water and Do Not Drink Notices. In the event the TCEQ requires the issuance of a “boil water” or “do not drink” notice on the basis of the quality of Product Water of which SAWS has taken delivery: (i) an Operating Service Provider Event of Default shall be deemed to have occurred and CTRWSC may terminate the Agreement in accordance with Section 16.01 (Termination by CTRWSC) and (ii) each of CTRWSC and the Project Company shall have its respective further remedies specified herein, including those specified in Section 6.07 (Remediation Obligations).

(h) Reporting Of-Specification Product Water and Unacceptable Product Water. The Operating Service Provider shall report to CTRWSC, the Project Company and SAWS the making available to SAWS of any Off-Specification Product Water and Unacceptable Product Water immediately upon having actual knowledge of any such circumstance.

(i) Indemnity for Loss-and-Expense from Non-Complying Product Water. In the event that SAWS takes delivery of any Product Water that fails to comply with the Product Water Quality Guarantee, the Operating Service Provider shall indemnify, defend and hold harmless CTRWSC, the Project Company and SAWS and their respective indemnitees in accordance with Section 17.02 (Indemnification by the Operating Service Provider) from any Loss-and-Expense resulting from the supply of such non-complying Product Water to third parties. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any party from exposure to or as a result of using or consuming such non-complying Product Water based on any theory of recovery, including theories of product liability toxic tort or environmental impairment. The Loss-and-Expense relating to such liabilities to third parties to which the indemnity provided in this Section extends to and shall include any special, incidental, consequential, punitive and other similar damage awarded to such third parties, notwithstanding waivers contained with respect to such damages in Section 18.01 (No Consequential Losses).

(j) No Uncontrollable Circumstances Relief. In no event shall an Uncontrollable Circumstance excuse the Operating Service Provider from its obligation to comply with the Product Water Quality Guarantee. No Unacceptable Product Water taken delivery of by SAWS shall constitute Daily Delivered Water Units, irrespective of the occurrence of an Uncontrollable Circumstance.
Section 6.02  Product Water Supply Following Commercial Operation

(a)  **Definitions.** As used in this Agreement:

(i)  “Advance Operating Service Provider Make-Up Units” has the meaning set forth in Section 6.02(e) *(Supply of Make-Up Units)*.

(ii) “Baseline Annual Volume” means 50,000 Acre Feet.

(iii) “Baseline Daily Volume” means 137.0 Units.

(iv) “Daily Delivered Water Units” means, for any day, the number of Units actually made available by the Operating Service Provider and taken delivery of by SAWS at the Product Water Delivery Point.

(v)  “Daily Maximum Volume” means (A) 137 Units of Product Water on any day in the months of November, December, January and February, and (B) 149.2 Units on any day in all other months (all subject to the Baseline Annual Volume).

(vi) “Delivery Tank” means, at any time, the Project Company Storage Tank or the SAWS Storage Tank, as Product Water is directed to such tank at such time by SAWS as operator of both tanks pursuant to the WTPA.

(vii) “Demand Shortfall Units” means the number of Units, if any, by which the number of Daily Delivered Water Units is less than the number of Units that the Operating Service Provider has made available on such day as determined under Section 6.02(d) *(Determination of Water Made Available)*, up to the Daily Maximum Volume. Demand Shortfall Units shall not, however, include any Tank Structural Failure Units. In no event shall Demand Shortfall Units be deemed to have been created on any day during which the Product Water level in the Delivery Tank was lower than the Flow Shutdown Tank Level throughout the entire day, unless and only to the extent that CTRWSC has directed the Operating Service Provider in writing to curtail or shut down Product Water flow into the Delivery Tank.

(viii) “Excess Product Water” means, for any Contract Year, the number of Daily Delivered Water Units for such Contract Year that is in excess of fifty thousand (50,000) Units.

(ix)  “Excused Supply Shortfall Units” means the sum of (a) the number of Supply Shortfall Units which the Operating Service Provider did not make available due to an Uncontrollable Circumstance, and (b) the number of Tank Structural Failure Units. The Operating Service Provider shall be allowed seven (7) days for scheduled maintenance of the Project Improvements in each Contract Year, and accordingly on each day on which the Project Improvements are shut down for any such scheduled maintenance, the Operating Service Provider shall be credited with one hundred thirty-seven point zero (137.0) Excused Supply Shortfall Units. A Tank Structural Failure Unit is an Excused Supply Shortfall Unit.

(x)  “Flow Curtailment Tank Level” means 1070 MSL or such other amount agreed by the Project Company (in consultation with the Operating Service Provider) with SAWS pursuant to the Section 10.3(B) *(Flow Curtailment Tank Level)* of the WTPA and notified by the Project Company to the Operating Service Provider in writing.

(xi) “Flow Shutdown Tank Level” means 1079 MSL or such other amounts agreed by the Project Company (in consultation with the Operating Service Provider) with SAWS pursuant to the Section 10.3(C) *(Flow Shutdown Tank Level)* of the WTPA and notified by the Project Company to the Operating Service Provider in writing.
(xii) “Make-Up Units” means the number of Units made available by the Operating Service Provider at the Product Water Delivery Point that exceeds one hundred thirty-seven point zero (137.0) Units on any day.

(xiii) “Supply Shortfall Units” means the number of Units by which the volume of Product Water made available by the Operating Service Provider at the Product Water Delivery Point is less than the Baseline Daily Volume.

(xiv) “Tank Structural Failure Units” means for any day the number of Units that SAWS, after satisfying its mitigation obligations under the WTPA, did not take delivery of on account of a structural failure of the Project Company Storage Tank.

(xv) “Unexcused Supply Shortfall Units” means the number of Supply Shortfall Units which the Operating Service Provider did not make available that was not due to an Uncontrollable Circumstance.

(b) Records and Tracking Accounts. The Operating Service Provider shall record the Daily Delivered Water Units, the Excused Supply Shortfall Units, the Unexcused Supply Shortfall Units, the Demand Shortfall Units, the Make-Up Units and the Advance Make-Up Units on a daily basis (rounding the number of Units in each to the nearest one-tenth of one Acre Foot), and keep tracking accounts for all such Units by Category.

(c) Supply Following Commercial Operation Date. The Operating Service Provider shall, commencing on the Commercial Operation Date and through the Term, make available a maximum of fifty thousand (50,000) Acre Feet of Product Water each Contract Year at the Product Water Delivery Point (except as provided in Section 6.02(e)(ii) (Supply of Make-Up Units) with respect to the delivery of Advance Operating Service Provider Make-Up Units). Product Water shall be supplied and made available in accordance with the following terms and conditions:

(i) In the first and second months of March and the first and second months of April following the Commercial Operation Date, the Operating Service Provider shall not supply more than one hundred thirty-seven point zero (137.0) Units on any day;

(ii) The Operating Service Provider shall not supply Product Water on any day in excess of the Daily Maximum Volume applicable to such day;

(iii) In the event of an extended Project shutdown, the Operating Service Provider shall not supply Product Water except in accordance with the requirements of Section 2.6.2 (Extended Shutdowns) of Appendix 2 (Operating and Maintenance Standards);

(iv) Whenever the Product Water level in the Delivery Tank reaches the Flow Curtailment Tank Level, the Operating Service Provider shall curtail the Flow Rate to a rate not in excess of thirty-one thousand (31,000) GPM; and

(v) Whenever the Product Water level in the Delivery Tank reaches the Flow Shutdown Tank Level, the Operating Service Provider shall shut down the flow of Product Water to the Delivery Tank.

(d) Determination of Water Made Available. Product Water shall be deemed to have been made available on any day:

(i) In the first thirty (30) days after the Commercial Operation Date, in a volume equal to the average daily volume of Product Water successfully supplied to SAWS during the Performance Test, up to the Baseline Daily Volume applicable in such thirty (30) day period; and
Thereafter, in a volume equal to the average daily number of Daily Delivered Water Units in the thirty (30) day period immediately preceding such day, subject to the following:

(A) If on any day in such thirty (30) day period Product Water has not been taken delivery of by SAWS for any reason (including due to a curtailment or shutdown under Section 6.02(c)(iv) and Section 6.02(c)(v) above), such average daily volume shall be calculated by using only the days within such thirty (30) day period on which SAWS has taken delivery of all Product Water made available by the Operating Service Provider. For example, if during such a thirty (30) day period, SAWS did not take delivery of any Product Water in whole or in part on three (3) days, the daily average shall be calculated over the twenty seven (27) days on which SAWS did take delivery of all Product Water made available by the Operating Service Provider; and

(B) If on any day in such thirty (30) day period the Operating Service Provider is not capable of delivering Product Water in volumes up to the Baseline Daily Volume, whether due to physical operating capacity constraints or due to limitations under Governmental Approvals or other Applicable Law (including regulatory reductions in permitted production or transportation volumes), then Product Water shall be deemed to have been made available only in a volume up to the volume that the Operating Service Provider was operationally capable of delivering under Applicable Law on that day. In the event the average daily volume calculated under Section 6.02(d)(ii) above is less than the volume that the Operating Service Provider was operationally capable of delivering under Applicable Law on such day, such lesser average daily volume shall be deemed to be the volume of Product Water made available.

(e) Supply of Make-Up Units. Subject to the Daily Maximum Volume:

(i) On any day when there are Excused Supply Shortfall Units standing to the account of the Operating Service Provider or Demand Shortfall Units standing to the account of SAWS, the Operating Service Provider shall make available Product Water constituting Make-Up Units so long as the volume of Product Water made available on any day does not exceed the Daily Maximum Volume; and

(ii) On any day when there are no Excused Supply Shortfall Units standing to the account of the Operating Service Provider or Demand Shortfall Units standing to the account of SAWS, the Operating Service Provider shall make available Product Water constituting Make-Up Units (“Advance Operating Service Provider Make-Up Units”) up to a maximum of three thousand (3,000) Advance Operating Service Provider Make-Up Units at any time outstanding, which Advance Operating Service Provider Make-Up Units shall be available for application whenever Excused Supply Shortfall Units subsequently occur.

Make-Up Units supplied pursuant to this subsection (e) shall be so identified and recorded as such on a daily basis in the appropriate tracking account, and used as appropriate for monthly and annual tracking and reconciliation purposes.

(f) Effect of Opportunities. In the event SAWS exercises its rights under Section 26.5 (Opportunities) of the WTPA, the Parties shall negotiate and reflect in a Contract Administration Memorandum an appropriate adjustment to the Product Water Delivery Point and to the terms and conditions of this Section in order to give effect to SAWS’ exercise of such rights in a manner that does not adversely affect any of the Operating Service Provider’s obligations hereunder.

(g) SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date. The Operating Service Provider acknowledges and agrees that following the
Commercial Operation Date, SAWS is required under the WTPA to take delivery of and purchase all Product Water made available by the Operating Service Provider, subject to and in accordance with the limits set forth in clause (c) above and the terms and conditions of the WTPA.

(h) **CTRWSC Obligation to Pay for Demand Shortfall Units Following the Commercial Operation Date.** To the extent that in any Billing Period following the Commercial Operation Date there are any Demand Shortfall Units that have not been made up by SAWS Make-Up Units, CTRWSC shall pay the Variable Compensable Costs Unit Price for such Demand Shortfall Units even though SAWS has not taken delivery of the Product Water made available by the Operating Service Provider that would have constituted Daily Delivered Water Units. The failure of SAWS to take delivery of any Product Water to any degree or for any reason shall not constitute a breach of this Agreement or the basis for a CTRWSC Event of Default.

(i) **Off-Specification Product Water and Unacceptable Product Water.** The Operating Service Provider acknowledges and agrees that CTRWSC’s instruction to suspend deliveries of Product Water as described in Section 6.01(e) (Remedies for Breach of Product Water Quality Guarantee; Off-Specification Product Water) and Section 6.01(f) (Remedies for Breach of Product Water Quality Guarantee Unacceptable Product Water) shall not constitute a breach of Section 6.02(g) (SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date), and any Product Water not taken delivery of on account of such suspensions shall not constitute Demand Shortfall Units.

(j) **Measurement.** The volume of Product Water of which SAWS has taken delivery shall be measured by the Project Flow Meter.

(k) **Excess Product Water.** It is the intention of the Parties that the Operating Service Provider shall not make available, Excess Product Water (except as provided in Section 6.02(e) (Supply of Make-Up Units)). In the event that SAWS nonetheless takes delivery of Excess Product Water (except as provided in Section 6.02(e) (Supply of Make-Up Units)), CTRWSC shall have no obligation to pay the Variable Compensable Costs Unit Price to the Operating Service Provider on account thereof.

Section 6.03 **Make-up Units.**

(a) **Operating Service Provider Make-Up Units.** Any Make-Up Units on any day shall first be applied to the credit of the Operating Service Provider to make up any Excused Supply Shortfall Units in the Excused Supply Shortfall Units tracking account (“Operating Service Provider Make-Up Units”). The Operating Service Provider acknowledges that Operating Service Provider Make-Up Units are required to be purchased by SAWS under the WTPA as provided in Section 6.02(g) (SAWS Obligation to Take Delivery and Purchase Product Water Following the Commercial Operation Date). The Operating Service Provider shall not have any opportunity to make up Unexcused Supply Shortfall Units.

(b) **SAWS Make-Up Units.** Any Make-Up Units on any day that are not credited to the Operating Service Provider as Operating Service Provider Make-Up Units under Section 6.03(a) (Operating Service Provider Make-Up Units) shall constitute “SAWS Make-Up Units.” Because CTRWSC shall have already paid the Variable Compensable Costs Unit Price for Demand Shortfall Units, SAWS Make-Up Units shall be made available by the Operating Service Provider without any additional compensation.

(c) **Delivery of Make-Up Water.** To the extent that at any time there are Demand Shortfall Units that have not been made up by SAWS Make-Up Units, the Operating Service Provider (subject to the Daily Maximum Volume unless otherwise agreed by CTRWSC and the Operating Service Provider), shall use all reasonable efforts to deliver Product Water so as to create SAWS Make-Up Units.
as soon as practicable with the objective of minimizing the volume of Product Water to be delivered at the end of the Term.

Section 6.04 Projected Annual Delivery Schedules.

(a) Projected Annual Supply Schedules. The Operating Service Provider and CTRWSC shall negotiate and establish a proposed Product Water production plan (the “Projected Annual Supply Schedule”) for each Contract Year (commencing with the Contract Year in which the Commercial Operation Date occurs) during the Term setting forth the daily and monthly volumes of Product Water (expressed in number of Units per day) that the Operating Service Provider proposes to produce and make available to SAWS during each Billing Period of such Contract Year. The Projected Annual Supply Schedule shall be prepared on an estimated basis not later than three hundred ninety five (395) days prior to the commencement of each such Contract Year, and on a definitive basis not later than ninety (90) days prior to the commencement of each such Contract Year (or, for the first such Contract Year, not later than sixty (60) days prior to the Commercial Operation Date). The Operating Service Provider acknowledges that the Projected Annual Supply Schedule will be incorporated into SAWS’ annual Distribution System operating plan. The Projected Annual Supply Schedules will be prepared for planning purposes only and will not be binding on the Parties. The Projected Annual Supply Schedule established for a particular Contract Year shall be applicable to the subsequent Contract Year unless and until a Projected Annual Supply Schedule is negotiated and established for the subsequent Contract Year.

(b) Delivery Schedule Factors. The Projected Annual Supply Schedule shall take into account and reflect the following:

(i) Planned shutdowns or partial outages of any part of the Project in order to perform scheduled maintenance, repair and replacement, which shall be limited to the months of November, December, January and February to the extent reasonably practicable. Specific hours designated by the Operating Service Provider in the Projected Annual Delivery Schedule for scheduled maintenance are “Scheduled Company Shutdown Hours”;

(ii) Planned shutdowns or partial outages of any part of SAWS Distribution System in order to perform scheduled maintenance, repair and replacement, which may limit SAWS ability to receive Product Water for the duration of SAWS shutdown. Specific hours designated by SAWS in the Projected Annual Delivery Schedule for scheduled SAWS Distribution System maintenance are “Scheduled SAWS Shutdown Hours”;

(iii) Planned shutdowns or partial outages of any Utility or other facilities supplying electricity necessary for Project operations in order to perform scheduled maintenance, repair and replacement. Specific hours designated by the Operating Service Provider for scheduled Utility maintenance are “Scheduled Utility Shutdown Hours”;

(iv) The timing of any Capital Modification work to be performed during the Contract Year; and

(v) Other considerations material to Project and SAWS Distribution System operations.

The designation of any Scheduled Project Company Shutdown Hours, Scheduled SAWS Shutdown Hours, and Scheduled Utility Shutdown Hours shall not serve to lessen the Baseline Annual Volume. CTRWSC and the Operating Service Provider may at any time, by mutual agreement, modify the Projected Annual Supply Schedule.

(c) Projected Monthly Supply. “Projected Monthly Supply” means the number of Units that CTRWSC and the Operating Service Provider, pursuant to clause (a) above, negotiate and agree
upon that are intended to be made available by the Operating Service Provider for each Billing Period in a Contract Year. The Projected Monthly Supply for each Billing Period shall be established such that the sum of the Projected Monthly Supply Units for the Contract Year equals the Baseline Annual Volume.

Section 6.05 SAWS Directed Curtailments and Shut Downs. The Operating Service Provider acknowledges that operating conditions in SAWS Distribution System as a whole may require SAWS to immediately curtail receipt of Product Water, and that such conditions may therefore necessitate the issuance by CTRWSC of a written directive requiring the immediate curtailment or cessation of ordinary operations at the Project and placement of the Project in Shutdown Mode. Such conditions may occur as a result of mechanical or structural failure within the SAWS Distribution System, emergency conditions originating in the SAWS Distribution System or other unexpected factors. The issuance of any such directive shall constitute an Uncontrollable Circumstance. In responding to any curtailment or shutdown directive issued by CTRWSC under this Section, the Operating Service Provider shall use reasonable efforts to meet the curtailed water delivery level and all of the other Performance Guarantees; provided, however, that the Operating Service Provider shall be under no obligation to do so unless such requirements can be met while operating the Project in accordance with Applicable Law, Good Management Practice, and within its design limits. The Operating Service Provider shall resume full operations of the Project within 20 hours of receipt by the Operating Service Provider of a written resumption directive issued by CTRWSC.

Section 6.06 Extension of Term.  
(a) Shortfall Units. The Term shall be extended as and to the extent required:

(i) To allow for any Excused Supply Shortfall Units that have accrued and have not been made up through Make-Up Units, to be made available by the Operating Service Provider and taken delivery of by SAWS; and

(ii) To allow for any Demand Shortfall Units that have accrued and have not been made up through Make-Up Units, to be made available by the Operating Service Provider and taken delivery of by SAWS without further compensation.

The Operating Service Provider shall provide written notice to CTRWSC, at least one hundred (100) days prior to the Expiration Date, as to whether and to what extent the Expiration Date will need to be extended as of the date thereof to account for the matters described in this Section 6.06(a) (Shortfall Units), together with the basis therefor. On or before the Expiration Date, the Parties shall execute a Contract Administration Memorandum confirming the extended Expiration Date; provided, however, that such extended date Expiration Date shall match the extended expiration date of the WTPA determined pursuant to Section 10.9(A) (Extension of Term) thereof. Throughout the extended Term, the Operating Service Provider shall provide quarterly updates as to such matters, as well as additional information related to events that occur during the extended Term that may require additional extensions.

(b) WTPA Extension. In the event that that term of the WTPA is extended pursuant to Section 10.9(B) thereof, this Agreement will be extended by the same amount of time.

(c) Maximum Term Extension. The maximum Term extension resulting from any or all of the extensions provided for in Sections 6.06(a) (Shortfalls Units) and 6.06(b) (WTPA Extension) shall be twenty (20) years following the original Expiration Date.

Section 6.07 Remediation Obligations. Remedies for Non-Compliance with Performance Guarantees.

(a) If the Operating Service Provider fails to comply with any Performance Guarantee and is not excused from performance as a result of an Uncontrollable Circumstance, the
Operating Service Provider shall, without relief under any other Performance Guarantee, and in addition to the payment of Deductions and any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body:

(i) Notify CTRWSC and SAWS promptly (and in any event not later than twelve (12) hours) of the Operating Service Provider’s having knowledge of any such non-compliance;

(ii) Provide CTRWSC promptly (and in any event not later than twelve (12) hours) with copies of any notices sent to or received from the EPA, the TCEQ, the POSGCD or any other Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law;

(iii) Pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom;

(iv) Take any commercially reasonable action necessary in order to comply with such Performance Guarantee, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of noncompliance with such Performance Guarantee; and

(v) Assist SAWS, the Project Company and CTRWSC with all public relations matters necessary to adequately address any public concern caused by such non-compliance, including, but not limited to, preparation of press releases, attendance at press conferences, and participation in public information sessions and meetings.

The Operating Service Provider shall consult with CTRWSC and the Project Company in a timely manner regarding the appropriate remedy.

(b) In the event that the Operating Service Provider fails to meet the Performance Guarantees for four consecutive Billing Periods, CTRWSC may require a performance test of the Project to be conducted by the Operating Service Provider, at the Operating Service Provider’s cost and expense, to determine the cause of such failure; provided, however, that such test shall not materially and adversely affect the Operating Service Provider’s performance of (or cost of the performance of) the Operating Work. The Operating Service Provider shall use reasonable efforts to make all necessary repairs and replacements, including major repairs and replacements, or capital investments, improvements or modifications.

ARTICLE VII

EMERGENCIES

Section 7.01 Emergency Plan. Within one hundred (100) days prior to the Commercial Operation Longstop Date, the Operating Service Provider shall provide CTRWSC with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety, power outage, and other potential emergency conditions. The plan shall: (i) provide for appropriate notifications to CTRWSC, the Project Company and SAWS and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by CTRWSC, the Project Company and SAWS and all such other appropriate Governmental Bodies; (ii) specifically include spill prevention and response measures; (iii) assure the timely availability of all personnel required to respond to any emergency (no later than one hour during nights, weekends or holidays); and (iv) comply with all Occupational Safety and Health Administration standards. The emergency plan shall be reviewed by CTRWSC and the Operating Service Provider annually as part of the review of the annual operations report, and updated when necessary, in accordance with the Operating Protocol.
Section 7.02 Emergency Actions. Notwithstanding any requirement of this Agreement requiring CTRWSC’s approval or consent to reports or submittals, if at any time the Operating Service Provider determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Project, or to mitigate the immediate consequences of an emergency event, then the Operating Service Provider shall take all such action it deems in good faith to be reasonable and appropriate under the circumstances. As promptly thereafter as is reasonable, the Operating Service Provider shall notify CTRWSC and SAWS of the event at an emergency phone number supplied by CTRWSC, and the Operating Service Provider’s response thereto.

ARTICLE VIII
ENVIRONMENTAL COMPLIANCE AND LABOR PRACTICES

Section 8.01 Hazardous Substance Management. CTRWSC shall provide the Operating Service Provider with the Hazardous Substance Management Program and the Response Plan in the form prepared by the Design Build Contractor prior to the Commercial Operation Date. The Operating Service Provider shall be responsible for, and shall bear the risk and cost, of managing and disposing of Hazardous Substances (including Hazardous Substances in Unacceptable Product Water) as may exist at or as may arise from the operation of the Project during the Operating Period. The Operating Service Provider shall update as reasonably necessary the Hazardous Substance Management Program and the Response Plan.

Section 8.02 Releases, Leaks and Spills.
(a) Unauthorized Releases. The Operating Service Provider shall operate the Project in such a manner that Raw Groundwater, Product Water, Project By-Products or chemicals will not contaminate, or be released, leaked or spilled on or into, or discharged to the environment, to the extent prohibited by Applicable Law other than as permitted by the most stringent of any of the Contract Standards.

(b) Notification and Reporting. The Operating Service Provider shall be responsible for fulfilling all notification and reporting requirements established by Applicable Law related to any unauthorized release of Raw Groundwater, Product Water, Project By-Products or chemicals into the environment from or in connection with its operation and management of the Project. The Operating Service Provider shall provide to CTRWSC copies of documents provided to the relevant Governmental Body regarding the release.

(c) Project Site Assessment Upon Termination or Expiration. The Operating Service Provider acknowledges and agrees that SAWS may at its own cost and expense conduct an assessment of the Project Sites upon any assignment and conveyance of the Project Assets, or any election to purchase the Project Assets pursuant to the WTPA to determine whether any Raw Groundwater, Product Water, Project By-Products or chemicals have been released, leaked or spilled on or into, or discharged into the environment in violation of Applicable Law. The Operating Service Provider shall be responsible for the remediation of any such release caused by the Operating Service Provider and discovered by SAWS through any such assessment of the Project Sites in the manner and to the extent provided in clause (d) below.

(d) Cleanup and Costs. The Operating Service Provider shall remediate any unauthorized material release of chemicals by the Operating Service Provider but only to the extent required by the least stringent standard provided for under such Applicable Law making use of any restrictions or other use limitations consistent with the then current use of the relevant property.
Section 8.03 Disposal of Residuals

(a) Residuals Management. The Operating Service Provider shall locate an Acceptable Disposal Site and shall make all necessary arrangements with the owner or operator thereof for the disposal of all Residuals during the Term in accordance with Applicable Law. The Operating Service Provider shall transport all Residuals to an Acceptable Disposal Site in accordance with Applicable Law.

(b) Acceptable Disposal Site. An “Acceptable Disposal Site” means any waste disposal, treatment or recycling facility permitted or allowed under Applicable Law to accept the Residuals.

(c) Transportation Operations. In the event of a release, spill, leak or loss of Residuals during transfer or transit within the Operating Service Provider’s control or responsibility or under its supervision, the Operating Service Provider shall take all remedial or response measures required under Applicable Law.

(d) Acceptable Disposal Site Information. The Operating Service Provider shall keep and maintain such logs, records, manifests, bills of lading or other documents as are required to be kept or maintained under Applicable Law pertaining to the Residuals and shall make available for review and copying by CTRWSC, upon request, copies of all weights and measures data and information relating to Residuals quantities generated and disposed of hereunder.

(e) Indemnity. The Operating Service Provider shall indemnify, defend and hold harmless CTRWSC, the Project Company, SAWS and their respective indemnitees in accordance with Section 17.02 (Indemnification by the Operating Service Provider) from all Loss-and-Expense resulting from the generation, processing, transportation or disposal of Residuals by the Operating Service Provider.

Section 8.04 Disposal of Waste Water

The Operating Service Provider shall manage all Wastewater produced at the Project and the Project Sites during the Term in accordance with Applicable Law. Neither CTRWSC nor the Project Company shall have any obligation to receive, treat or dispose of any Wastewater, and the Operating Service Provider shall not discharge or dispose of any Wastewater on any SAWS property.

Section 8.05 Labor Relations and Disputes

(a) Labor Relations. The Operating Service Provider shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Operating Service Provider and its Subcontractors. Neither CTRWSC nor the Project Company shall have any responsibility whatsoever for any such disputes or issues and the Operating Service Provider shall indemnify, defend and hold harmless CTRWSC, the Project Company, SAWS and their respective indemnitees in accordance with Section 17.02 (Indemnification by the Operating Service Provider) from any and all Loss-and-Expense resulting from any such labor dispute.

(b) Labor Disputes. If the Operating Service Provider has knowledge of an actual or potential labor dispute that would reasonably be expected to materially and adversely affect any of the Operating Work, the Operating Service Provider shall promptly:

(i) Give notice thereof to CTRWSC, including all relevant information related to the dispute of which the Operating Service Provider has knowledge; and

(ii) Take all reasonable steps to ensure that such labor dispute does not materially and adversely affect the performance of any of the Operating Work including, if necessary, by applying for relief to appropriate agencies or courts.
ARTICLE IX

PROJECT ASSETS TRANSFER

Section 9.01 Final Evaluation of the Project.

(a) If CTRWSC notifies the Operating Service Provider that SAWS has delivered its notice pursuant to Section 23.3(B) (Notice of Intent Required for Certain Purchase Options) of the WTPA of its intent to exercise its Project Assets Purchase Option during the Term, or its notice pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option) of the WTPA, or no later than three months prior to the Expiration Date, the Independent Evaluator shall conduct a final evaluation of the Project in accordance with the protocol established in Appendix 6 (End of Term Project Condition Requirements) and shall utilize standard utility property evaluation methods. In connection with the final asset evaluation, the Operating Service Provider shall furnish CTRWSC with the Asset Registry and record documentation prepared pursuant to Appendix 6 (End of Term Project Condition Requirements) and all database information developed in connection with the implementation of the CMMS.

(b) The final determination by the Independent Evaluator as to any matter arising under this Section involving amounts less than $250,000 (Index Linked) which is in dispute between CTRWSC and the Operating Service Provider shall be final and binding upon the Parties. For disputes involving amounts greater than $250,000 (Index Linked), the Independent Evaluator’s determination shall be advisory only, and such dispute shall be handled as provided in Article XX (Governing Law; Dispute Resolution).

Section 9.02 End of Term Performance Evaluation Requirements.

(a) Applicability of End of Term Performance Evaluation Requirements. The provisions of this Section shall apply only (i) in connection with the assignment and conveyance of the Project Assets to SAWS on the Expiration Date as provided in Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date) of the WTPA, and (ii) in the event SAWS exercises its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA, and not otherwise.

(b) Project Assets Purchase and Convenience Termination Option During the Term. In the event that CTRWSC notifies the Operating Service Provider that SAWS has not issued a notice of exercise pursuant to Section 23.3(A) (Notice of Exercise of Project Assets Purchase Option) of the WTPA, then all evaluations, tests and other activities being conducted pursuant to this Section shall cease and this Section shall thereafter only apply if CTRWSC subsequently notifies the Operating Service Provider that SAWS has exercised its option to purchase the Project Assets in accordance with Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA.

(c) Compliance with End of Term Performance Evaluation Requirements. If, during the applicable End of Term Performance Evaluation Period, the Operating Service Provider complies with the End of Term Performance Evaluation Requirements, the Operating Service Provider shall have no obligation to perform the Exit Performance Test.

(d) Non-Compliance with End of Term Performance Evaluation Requirements. If, during the applicable End of Term Performance Evaluation Period, the Operating Service Provider has not complied with the End of Term Performance Evaluation Requirements, the Operating Service Provider shall, at its cost and expense, conduct an Exit Performance Test of the Project (the “Exit Performance Test”). The Exit Performance Test shall be conducted in accordance with Appendix 6 (End of Term Project Condition Requirements) and in the same manner as required for the Performance Test that established Acceptance. In the event the Exit Performance Test does not demonstrate that the Minimum Performance
Criteria were achieved, the Operating Service Provider at its own cost and expense shall make all repairs and replacements necessary so that the Project is capable of achieving the Minimum Performance Criteria. Upon completion of the repair and replacement work, the Exit Performance Test shall again be conducted. This procedure shall be repeated until an Exit Performance Test demonstrates that the Minimum Performance Criteria have been achieved.

(e) **Applicable End of Term Performance Evaluation Period.** The applicable “End of Term Performance Evaluation Period” under this Section shall be a period of six (6) full consecutive Billing Periods, designated by the Operating Service Provider by written notice to CTRWSC, commencing no later than (i) sixty (60) days after SAWS has delivered its notice pursuant to Section 23.3(B) *(Notice of Intent Required for Certain Purchase Options)* of the WTPA of its intent to exercise its Project Assets purchase option (as notified by CTRWSC to the Operating Service Provider in writing); and (ii) six (6) months prior to the Expiration Date.

(f) **Condition of Project Structures and Project Equipment.** In addition to either complying with the End of Term Performance Evaluation Requirements or the Exit Performance Test, the Operating Service Provider shall meet the Transfer Condition Requirements.

**Section 9.03 Project Assets; Transfer Conditions.**

(a) **SAWS Exercise of End-of-Term Purchase Option.** The provisions of this Section 9.03 *(Project Assets; Transfer Conditions)* shall apply only (i) in connection with the assignment and conveyance of the Project Assets on the Expiration Date as provided in Section 3.2 *(Assignment and Conveyance of the Project Assets Effective on the Expiration Date)* of the WTPA, and (ii) in the event SAWS exercises its option to purchase the Project Assets in accordance with Section 23.1 *(Project Assets Purchase and Convenience Termination Option During the Term)* of the WTPA, and not otherwise. In the event that SAWS issues a notice of intent under Section 23.3(B) *(Notice of Intent Required for Certain Purchase Options)* of the WTPA but does not subsequently issue the corresponding notice of exercise pursuant to Section 23.3(A) *(Notice of Exercise of Project Assets Purchase Option)* of the WTPA then all evaluations, tests and other activities being conducted pursuant to this Section 9.03 *(Project Assets; Transfer Conditions)* shall cease and this Section 9.03 *(Project Assets; Transfer Conditions)* shall thereafter only apply if CTRWSC subsequently notifies the Operating Service Provider that SAWS subsequently exercises its option to purchase the Project Assets in accordance with Section 23.1 *(Project Assets Purchase and Convenience Termination Option During the Term)* of the WTPA.

(b) **Required Project Condition.** On the Termination Date, the Operating Service Provider shall ensure that Project shall be in a condition:

(i) Which, with respect to buildings, structures and pipelines that as of June 10, 2016 were expected to have a useful life of more than 20 years and other Project Structures (as set forth in Appendix 6 *(End of Term Project Condition Requirements)*), have functional or structural ratings of at least “4” (as defined in Appendix 6 *(End of Term Project Condition Requirements)*); and

(ii) Which, with respect to Project Equipment’s maintenance, repair and replacement status, meets the standards set forth in Section 6.7 *(Project Transfer Condition Requirements)* of Appendix 6 *(End of Term Project Condition Requirements)*.

The requirements of this Section 9.03 *(Project Assets; Transfer Conditions)* constitute the “Transfer Condition Requirements”.

(c) **Transfer Condition Survey and Work Plan.** Within fifteen (15) days after SAWS has delivered its notice pursuant to Section 23.3(B) *(Notice of Intent Required for Certain Purchase Options)* of the WTPA of its intent to exercise its Project Assets Purchase Option during the Term (as
notified by CTRWSC to the Operating Service Provider in writing), or no later than eighteen (18) months prior to the Expiration Date, the Operating Service Provider and CTRWSC shall jointly cause the Independent Evaluator to conduct an inspection and survey of the Project over a forty five (45) day period for the purpose of determining if the Project has been maintained in accordance with the Transfer Condition Requirements (the “Joint Inspection and Survey”). This Joint Inspection and Survey shall be separate from and in addition to all other inspections provided for in this Agreement. If these surveys indicate that any element of the Project, on the Termination Date, is not reasonably expected to be in a condition consistent with the Transfer Condition Requirements upon the Operating Service Provider implementing the plans and programs required under Appendix 2 (Operating and Maintenance Standards) over the remainder of the Term, within forty five (45) days of completion of the survey the Operating Service Provider shall deliver to CTRWSC and the Project Company the Operating Service Provider’s plan to perform the additional work necessary to meet the Transfer Condition Requirements, together with a cost estimate for the work as part of the Transfer Condition Plan.

(d) **Determination of Transfer Condition Retainage.** Within thirty (30) days of receipt of the Transfer Condition Plan from the Operating Service Provider, CTRWSC shall provide the Operating Service Provider written notice which: (i) assesses the adequacy of the Transfer Condition Plan; and (ii) establishes the amount of the Transfer Condition Retainage. If CTRWSC has determined that the Transfer Condition Plan is inadequate, in its written notice, CTRWSC shall direct the Operating Service Provider to amend the Transfer Condition Plan to add the corrective work and cost of that work CTRWSC has reasonably determined is necessary to comply with the Transfer Condition Requirements, in accordance with the costs provided in the Final Project Structure Evaluation Report and the Joint Inspection and Survey Report (both as defined in Appendix 6 (End of Term Project Condition Requirements)). CTRWSC shall, after giving due consideration to the Operating Service Provider’s cost estimate and the Independent Evaluator’s assessment conducted pursuant to Section 9.01 (Final Evaluation of the Project) of this Agreement and Section 11.8 (Transfer Condition Joint Inspection and Survey) of Appendix 6 (End of Term Project Condition Requirements), determine in good faith the amount CTRWSC reasonably believes is necessary to complete the additional work required to meet the Transfer Condition Requirements (the “Transfer Condition Retainage”). Notwithstanding the foregoing, the Operating Service Provider acknowledges and agrees that SAWS has the right to determine the amount of the Transfer Condition Retainage pursuant to Section 11.7(D) (Determination of Transfer Condition Retainage) of the WTPA.

(e) **Establishment and Use of Transfer Condition Retainage Account.** CTRWSC shall hold back and retain from each Monthly Operating Service Payment (starting with the monthly payment for the first month after CTRWSC determines the amount of Transfer Condition Retainage pursuant to Section 9.03(d) (Determination of Transfer Condition Retainage) an amount equal to: (i) the Transfer Condition Retainage, divided by (ii) the number of months between the first monthly payment for which Transfer Condition Retainage is withheld and the Termination Date, and shall deposit such amount in an interest bearing account held by a Qualified Commercial Bank. The account shall be the property of SAWS, subject to the Operating Service Provider’s withdrawal rights under this Section; provided, however, that any Transfer Condition Retainage remaining in the Transfer Condition Retainage Account shall be reimbursed to the Operating Service Provider when the Transfer Condition Requirements have been met. The Operating Service Provider shall have the right, upon the submittal of certified requisitions to CTRWSC with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the additional work necessary to meet the Transfer Condition Requirements. Notwithstanding the foregoing, the Operating Service Provider shall be entitled to post a letter of credit with CTRWSC in an amount equal to the Transfer Condition Retainage in lieu of such holdback from the Monthly Operating Service Payments.

(f) **Performance of the Transfer Condition Work and Further Inspection.** The Operating Service Provider shall implement the Transfer Condition Plan and take all other steps necessary to assure compliance with the Transfer Condition Requirements, notwithstanding CTRWSC’s, the Project
Company’s or SAWS’ participation in the transfer condition survey or review of the Operating Service Provider’s work plan or the fact that the actual cost of compliance may be higher than the amount of the Transfer Condition Retainage. At least one hundred twenty (120) days prior to the Termination Date or a date that is mutually agreed upon, the Operating Service Provider and CTRWSC shall conduct a further joint inspection and survey of the condition of the Project and the progress of the Transfer Condition Plan work, and such Parties acknowledge and agree that SAWS has the right to participate in such inspection pursuant to Section 11.7(F) (Performance of the Transfer Condition Work and Further Inspection) of the WTPA. If, ninety (90) days prior to the Termination Date, the Project (i) has failed to demonstrate that it has the capacity to meet the End of Term Performance Evaluation Requirements or, if applicable, the Exit Performance Test; or (ii) is not being operated or maintained in compliance with the Contract Standards, then CTRWSC may, acting reasonably, increase the amount of the Transfer Condition Retainage to make the repairs and modifications to the Project that would be necessary to allow the Project to meet the requirements of the Exit Performance Test. If the Project subsequently meets the requirements of the Exit Performance Test prior to the Termination Date, the Transfer Condition Retainage shall be reduced by an appropriate amount, as reasonably determined by CTRWSC; provided that the Operating Service Provider acknowledges and agrees that, notwithstanding the foregoing, SAWS has the right to determine whether the Transfer Condition Retainage shall be increased or reduced pursuant to Section 11.7(F) (Performance of the Transfer Condition Work and Further Inspection) of the WTPA.

(g) **Final CTRWSC Condition Assessment.** By the date that is the earlier of five (5) Business Days after the joint inspection set forth in in clause (f) above or the Termination Date, CTRWSC shall either:

(i) Issue to the Operating Service Provider a certificate confirming compliance with the Transfer Condition Requirements (the “Transfer Condition Plan Completion Certificate”) and return any remaining Transfer Condition Retainage to the Operating Service Provider; or

(ii) Notify the Operating Service Provider of its decision not to issue the Transfer Condition Plan Completion Certificate, setting out each respect in which the Project does not comply with the Transfer Condition Requirements and stating CTRWSC’s estimate of the cost of completing all remaining work required for the Project to comply with the Transfer Condition Requirements. Notwithstanding the foregoing, the Operating Service Provider acknowledges and agrees that SAWS has the right to determine whether to issue the Transfer Condition Plan Completion Certificate pursuant to Section 11.7(G)(2) (Final SAWS Condition Assessment) of the WTPA.

(h) **Final Operating Service Provider Condition Assessment.** The Operating Service Provider may, within twenty (20) days after receipt of the notice given in accordance with clause (g)(ii) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Operating Service Provider’s proposals in respect of such matters.

(i) **Final Compliance.** If CTRWSC delivers to the Operating Service Provider a Transfer Condition Plan Completion Certificate, CTRWSC shall transfer any remaining portion of the Transfer Condition Retainage to the Operating Service Provider. If the Project did not, at the Termination Date, comply in all respects with the Transfer Condition Requirements, the CTRWSC will promptly either: (i) use any remaining proceeds of the Transfer Condition Retainage to complete any work necessary to cause such compliance; or (ii) if a letter of credit is provided in lieu of the Transfer Condition Retainage pursuant to clause (e) above, draw upon such letter of credit in an amount equal to the estimated value of completing such work, and use such amount to complete such work; provided, however, that any such proceeds of the Transfer Condition Retainage or any amounts drawn upon the letter of credit which are not spent on such work shall be paid to the Operating Service Provider upon the completion of such work.
ARTICLE X
OPERA TING AND MAINTENANCE COSTS

Section 10.01 Monthly Operating Service Payments Following the Commercial Operation Date. From and after the Commercial Operation Date and through the Termination Date, CTRWSC shall pay the Operating Service Provider Monthly Operating Service Payments in accordance with the terms hereof.

Section 10.02 Limitation on Payments. Other than the payments expressly provided for in this Agreement, the Operating Service Provider shall have no right to any further compensation from CTRWSC or the Project Company in connection with the delivery of Product Water, the performance of the Operating Work, or otherwise in connection with the Project.

Section 10.03 General Principles. It is the intent of the Parties that (i) the Operating Service Provider be compensated for the reasonable and necessary costs of operating, maintaining, repairing and replacing the Project Improvements, except as far as such costs result from any Operating Service Provider failure to properly operate, maintain, repair and replace the Project Improvements, and (ii) that a standing panel determine on a definitive basis the proper level of compensation for such work. Compensable operating, maintenance, repair and replacement costs (“Compensable Costs”) are described in Section 10.1 of Appendix 10 (Compensable Costs and O&M Budget Panel Administration). The composition and functioning of the standing panel (the “O&M Budget Panel”) are described in Section 10.9 of Appendix 10 (Compensable Costs and O&M Budget Panel Administration). Compensable Costs shall be subject to Cost Substantiation. The Operating Service Provider acknowledges that to the extent that any costs incurred under this Agreement are not Compensable Costs, such costs shall not be the responsibility of SAWS, CTRWSC or the Project Company and CTRWSC and the Project Company shall have no obligation to compensate the Operating Service Provider for costs that are not Compensable Costs payable by SAWS, except as expressly required pursuant to the terms of this Agreement. The Parties agree that CTRWSC’s budget shall contain appropriate provisions for the payment of costs that are not Compensable Costs.

Section 10.04 Determination of Compensable Costs. The O&M Budget Panel shall determine for each Contract Year throughout the Term following the Commercial Operation Date the amount of Compensable Costs properly payable to the Operating Service Provider for operating, maintaining, repairing and replacing the Project Improvements in that Contract Year. Compensable Costs shall be characterized by the O&M Budget Panel as fixed or variable. Fixed Compensable Costs (“Fixed Compensable Costs”) shall be Compensable Costs that must be paid irrespective of the volume of Product Water made available to SAWS. Variable Compensable Costs (“Variable Compensable Costs”) are Compensable Costs that vary with the volume of Product Water made available to SAWS. Compensable Costs for major repairs and replacements (“Major Repair and Replacement Compensable Costs”) shall be determined by the O&M Budget Panel separately from other Compensable Costs.

Section 10.05 Budgeted Annual Compensable Costs. Not later than May 1 in each Contract Year (beginning with the Contract Year prior to the Contract Year in which the Commercial Operation Date is projected to occur), the Operating Service Provider shall submit to CTRWSC and the Project Company for their review and comment a detailed estimate and explanation of estimated Compensable Costs for the upcoming Contract Year substantially in the form of Appendix 11 (Form of Operating Budget). The Operating Service Provider shall meet and confer with CTRWSC and the Project Company, implement any comments from CTRWSC or the Project Company, as applicable, in relation to any Compensable Costs that it may be entitled to claim for itself and submit its revised estimate and explanation to CTRWSC and the Project Company not later than May 25. The Operating Service Provider acknowledges that the Project Company is required under the WTPA to submit a detailed estimate and
explanation of estimated Compensable Costs for the upcoming Contract Year to the O&M Budget Panel and to SAWS not later than June 1 and the O&M Budget Panel, not later than July 1, shall make its determination as to estimated Compensable Costs for the upcoming Contract Year (“Budgeted Compensable Costs”) taking into account such estimate and the Five Year Capital Plan and annual updates thereto. During this period, the Operating Service Provider shall be available for discussions and provide additional information as requested by the O&M Budget Panel. The determination of the O&M Budget Panel as to Budgeted Compensable Costs shall be final and non-appealable.

Section 10.06 Payment of Budgeted Fixed Compensable Costs. Budgeted Fixed Compensable Costs shall be payable to the Operating Service Provider as part of the Monthly Operating Service Payments as provided in Section 11.01(a) (Monthly Operating Service Payments).

Section 10.07 Budgeted Variable Compensable Costs Unit Price. Budgeted Variable Compensable Costs shall be used in determining the Variable Compensable Cost Unit Price. The “Variable Compensable Costs Unit Price” for each Contract Year shall be an amount equal to (i) Budgeted Variable Compensable Costs for such Contract Year, divided by (ii) 50,000 Acre Feet.

Section 10.08 Payment of Major Repair and Replacement Compensable Costs. The Operating Service Provider shall be compensated for Major Repair and Replacement Compensable Costs as a Direct Payment to be made in the Billing Period following the Billing Period in which the major repair or replacement is actually made. No accruals shall be included in Compensable Costs for any such costs, regardless of their amount. CTRWSC may reserve for such costs in its discretion.

Section 10.09 Actual Compensable Costs. The O&M Budget Panel shall determine the Compensable Costs to which the Operating Service Provider was entitled to receive in the preceding Contract Year (the “Actual Compensable Costs”). In connection therewith the Operating Service Provider shall provide Cost Substantiation for Compensable Costs to the O&M Budget Panel. The determination by the O&M Budget Panel as to Actual Compensable Costs shall be final and non-appealable to any forum. In the event that Actual Compensable Costs exceed the Budgeted Compensable Costs for a Contract Year, CTRWSC shall pay the difference to the Operating Service Provider as a Direct Payment. In the event that Budgeted Compensable Costs exceed the Actual Compensable Costs for a Contract Year, the Operating Service Provider shall pay the difference to CTRWSC as a Direct Payment. Payment by the obligated Party of such Direct Payment shall be made by April 1 (if the Operating Service Provider is the obligated Party) or June 1 (if CTRWSC is the obligated Party) following the end of the Contract Year with respect to which payment is due.

ARTICLE XI

COMPENSATION AND PAYMENT

Section 11.01 Payments to the Operating Service Provider.

(a) Monthly Operating Service Payments. CTRWSC shall pay the Operating Service Provider a Monthly Operating Service Payment for each Billing Period during the Term equal to:

(i) The number of Daily Delivered Water Units delivered during such Billing Period (less any SAWS Make-Up Units, which have been previously paid for as Demand Shortfall Units), multiplied by the Variable Compensable Costs Unit Price; plus

(ii) The number of Demand Shortfall Units occurring during such Billing Period that have not been made up during such Billing Period by SAWS Make-Up Units, multiplied by the Variable Compensable Costs Unit Price; plus
(iii) One-twelfth (1/12) of the Budgeted Fixed Compensable Costs for the applicable Contract Year; plus or minus
(iv) Direct Payments,
all subject to the adjustments provided for in this Article.

(b) **Deductions Credit.** The “Deductions Credit” component of the Direct Payments shall be the sum of all Deductions (including any Deductions imposed pursuant to Appendix 5 *(Guaranteed Maximum Electricity Utilization and Demand)* imposed with respect to the applicable Billing Period.

c) **Direct Payments.** The Direct Payments component of the Monthly Operating Service Payments, which may be a charge or a credit, shall be equal to the net amount of the Direct Payments with respect to the applicable Billing Period; provided that the calculation of such net amount in respect of the netting of any Direct Payments required to be paid among the Project Company, CTRWSC and the Operating Service Provider where there is no corresponding Direct Payment payable under the WTPA shall be conducted separately and without reference to any Direct Payments required to be paid by or to SAWS under the WTPA.

### Section 11.02 Compensation Adjustments

(a) **Adjustments to the Variable Compensable Costs Unit Price.** Compensation to the Operating Service Provider shall be payable as an adjustment to the appropriate component of the Variable Compensable Costs Unit Price, and other adjustments to the appropriate component of the applicable Variable Compensable Costs Unit Price shall be made in accordance with and subject to the terms and conditions of this Agreement, upon the occurrence of the events described in the following Sections:

(i) Section 3.02 *(Good Management Practice and Good Engineering and Construction Practice)*; and

(ii) Section 15.03 *(Operating Service Provider Relief Due to SAWS Fault)*.

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

(b) **Direct Payments by the Parties.** CTRWSC shall pay the Operating Service Provider as a direct payment (and not as part of an adjustment to the Variable Compensable Costs Unit Price under Section 11.02(a) *(Adjustments to the Variable Compensable Costs Unit Price)*), and the Operating Service Provider shall pay CTRWSC (for its own account or for the account of the Project Company, as the case may be) as a direct payment, any amounts due under or referred to in the following Sections. The net amount calculated in accordance with Section 11.01(c) shall constitute the “Direct Payment” and, except to the extent payable following any termination of this Agreement, applied as a credit or debit in calculating the Monthly Operating Service Payment:
Section 3.06(b) (SAWS Payment of Project Electricity Costs During the Operating Period);

(ii) Section 6.01(e) (Remedies for Breach of Product Water Quality Guarantee; Off-Specification Product Water);

(iii) Section 6.01(f) (Remedies for Breach of Product Water Quality Guarantee; Unacceptable Product Water);

(iv) Section 10.08 (Payment of Major Repair and Replacement Compensable Costs);

(v) Section 11.01(b) (Deductions Credit);

(vi) Section 11.11 (Administrative Obligations);

(vii) Section 13.03(c) (Failure to Provide Insurance Coverage);

(viii) Section 16.10 (Remedies of the Parties);

(ix) Section 16.09(d) (Operating Service Provider to Cooperate);

(x) Section 17.02 (Indemnification by the Operating Service Provider), and any other term or condition hereof, under which indemnification payments are owed by the Operating Service Provider (provided that the Operating Service Provider shall promptly pay CTRWSC (for its own account or for the account of the Project Company, as the case may be) any such payment which is owed prior to the Commercial Operation Date or which exceeds the amount of the Monthly Operating Service Payment);

(xi) Appendix 3 (Insurance Requirements) (Section 3.1.10), with respect to any additional insurance coverage requested by CTRWSC;

(xii) Any term or condition hereof, under which non-compliance results in actual or liquidated damages payable by any Party; and

(xiii) Any other term or condition hereof, under which payment is owed by CTRWSC to the Operating Service Provider or by the Operating Service Provider to CTRWSC (for its own account or for the account of the Project Company, as the case may be) that has not been accounted for by an adjustment to the Variable Compensable Costs Unit Price under Section 11.02(a) (Adjustments to the Variable Compensable Costs Unit Price).

Section 11.03 Billing and Payment.

(a) Invoicing and Due Date. The Operating Service Provider shall provide CTRWSC with an invoice for each Billing Period by the fifth (5th) Business Day following the end of such Billing Period. The invoice shall set forth the amount of the Monthly Operating Service Payment due with respect to such Billing Period and, in addition, shall state the accumulated payments to the date of such invoice and such other documentation or information as CTRWSC may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Agreement. CTRWSC shall pay all invoices relating to Billing Periods falling in the same calendar quarter within forty five (45) days of the end of such calendar quarter, except as provided in Section 11.08 (Right of Set Off) and Section 11.09 (Billing Statement Disputes).
(b) **Electricity-Related Payments Made Annually.** Any amount due to CTRWSC on account of exceedances of the Guaranteed Maximum Annual Electricity Costs shall be paid as part of the Annual Settlement Statement pursuant to Section 11.05 (Annual Settlement).

(c) **Late Annual Monthly Operating Service Payments.** In the event CTRWSC fails to make a Monthly Operating Service Payment when due under Section 11.03(a) (Invoicing and Monthly Operating Service Payment Due Date), interest shall accrue and be payable thereon, as and to the extent provided in Section 11.10 (Interest on Overdue Amounts).

### Section 11.04 Estimates and Adjustments

(a) **First and Last Billing Periods.** If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(b) **Budgeting.** For CTRWSC budgeting purposes, (i) no later than seventy five (75) days prior to the Commercial Operation Date, and (ii) no later than one hundred (100) days preceding each Contract Year, the Operating Service Provider shall provide to CTRWSC a written statement setting forth for such Contract Year its reasonable estimate of the Monthly Operating Service Payments, each component thereof, the Inflation Index, and the adjustments provided for in Appendix 5 (Guaranteed Maximum Electricity Utilization and Demand). The estimate shall not be binding on the Operating Service Provider but, in the event that any component of the Monthly Operating Service Payments for a Billing Period cannot be determined when the invoice for such Billing Period is being submitted, then such estimate shall be used, subject to an appropriate adjustment in a subsequent invoice when the actual value of such component becomes available.

### Section 11.05 Annual Settlement

(a) **Annual Settlement Statement.** Within forty five (45) days after the end of each Contract Year, the Operating Service Provider shall provide to CTRWSC an annual settlement statement (the “Annual Settlement Statement”) setting forth the actual aggregate Monthly Operating Service Payments payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by CTRWSC with respect to such Contract Year. CTRWSC or the Operating Service Provider, as appropriate, shall pay all known and undisputed amounts within thirty (30) days after receipt or delivery of the Annual Settlement Statement (if the Operating Service Provider is the Party obligated to pay) or within the end of the quarter following the quarter in which the Annual Settlement Statement was received or delivered (if CTRWSC is the Party obligated to pay). If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Operating Service Provider of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Operating Service Provider shall file with CTRWSC an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

(b) **Annual Settlement of Electricity Costs.** The Operating Service Provider acknowledges and agrees that SAWS shall calculate the Actual Annual Electricity Costs and the Guaranteed Maximum Annual Electricity Costs in accordance with the requirements of the WTPA. If the Actual Annual Electricity Costs are greater than the Guaranteed Maximum Annual Electricity Costs, the Operating Service Provider shall reimburse CTRWSC in an amount equal to such excess costs.
Section 11.06 Taxes.

(a)  **CTRWSC Tax Exempt Certification.** CTRWSC shall provide upon request the Operating Service Provider with copies of any and all tax-exempt certifications filed by and granted to CTRWSC by the State or any county within the State.

(b) **General.** The Operating Service Provider shall pay, without reimbursement from CTRWSC or the Project Company, all Taxes imposed with respect to the Operating Work, including:

(i) All income and other Taxes imposed on the Operating Service Provider;

(ii) Any sales or use Tax imposed on building materials incorporated in the Project; and

(iii) Any sales or use Tax imposed on operating or maintenance supplies and services (except to the extent any such Tax constitutes a Compensable Cost), whether any such Tax exists on the Effective Date or is imposed at any time during the Term. The Operating Service Provider acknowledges that all such Taxes have been taken into account in establishing the Monthly Operating Service Payments.

(c)  **Risk of Adverse Tax or Accounting Treatment.** There shall be no adjustment of the Monthly Operating Service Payments or any other amount payable to, and no relief from any obligation of, the Operating Service Provider hereunder on account of:

(i) Any change in any provision of Income Tax law pertaining to the transactions contemplated hereby which affects the Operating Service Provider or any other person (including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Monthly Operating Service Payments or any other payment between any of the Parties), notwithstanding any assumptions made by the Operating Service Provider in entering into this Agreement as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Operating Service Provider or such other person;

(ii) An administrative or judicial determination which is adverse to the Operating Service Provider or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the exclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income;

(iii) Any inability of the Operating Service Provider or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby; or

(iv) Any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application thereof which may have been assumed by the Operating Service Provider or any other person in connection with such transactions.

Section 11.07 Cost Substantiation.

(a) **General.** The Operating Service Provider shall substantiate all costs for which it claims compensation hereunder other than costs that are part of the Variable Compensable Costs Unit Price, including compensation (i) on account of Compensable Costs or (ii) for costs related to a SAWS-
Requested Capital Modification or a SAWS Fault ("Cost Substantiation"), whether compensation is to be paid as part of adjustment to the Variable Compensable Costs Unit Price or as a lump sum, as provided in Section 11.02 (Compensation Adjustments). Cost Substantiation shall be provided in advance of incurring or paying the cost, except when emergencies or other immediate needs make advance cost substantiation impracticable.

(b) **Competition Practices.** In incurring costs for additional work required due to SAWS-Requested Capital Modifications which are or may be subject to Cost Substantiation, the Operating Service Provider shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of US$500,000 (Index Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and CTRWSC’s potential obligation to pay for it. If the Operating Service Provider is not required to utilize competitive practices, it shall instead demonstrate to CTRWSC that the additional costs in response to a SAWS-Requested Capital Modification hereunder are commercially reasonable.

(c) **Cost Substantiation Certificate.** Any certificate delivered hereunder to substantiate expected or incurred cost shall state the amount of such cost and the provisions of this Agreement under which compensation is payable by CTRWSC, shall describe the competitive or other process utilized by the Operating Service Provider to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required and reasonably paid or incurred pursuant to this Agreement. Any such Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to demonstrate the reasonableness of the cost. Such documentation shall be in a format reasonably acceptable to CTRWSC and shall include reasonably detailed information concerning all Subcontracts and self-perform work.

(d) **Evidence of Costs Incurred.** To the extent reasonably necessary to confirm actual incurred costs that are subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to CTRWSC, with the request for reimbursement of such costs.

Section 11.08 **Right of Set Off.** Once CTRWSC determines that any credits, payments, reimbursements or liquidated damages are owed to CTRWSC or the Project Company in accordance with the terms and conditions of this Agreement and have not been reflected in any previously submitted Billing Statement, CTRWSC shall notify the Operating Service Provider and the Operating Service Provider shall include such amounts as an extraordinary item in the next Billing Period invoice provided to CTRWSC under this Article. In the event the Operating Service Provider does not include such amounts in the next Billing Period invoice provided to CTRWSC in accordance with this Section, CTRWSC shall have the right to offset the Monthly Operating Service Payment otherwise payable for such Billing Period invoice by the amount of such credits, payments, reimbursements or liquidated damages. Notwithstanding the foregoing, CTRWSC shall have the right to offset the Monthly Operating Service Payment otherwise payable to the Operating Service Provider for the final three (3) Billing Period invoices during the Term by the amount of any credits, payments, reimbursements or liquidated damages due to CTRWSC or the Project Company under this Agreement.

Section 11.09 **Billing Statement Disputes.** If CTRWSC disputes in good faith any amount billed by the Operating Service Provider, CTRWSC shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Operating Service Provider with a written objection indicating the amount being disputed and the reasons then known to CTRWSC for the dispute. In the event that the Operating Service Provider disputes any amounts offset by CTRWSC, it shall provide CTRWSC with a written objection indicating the amount being disputed and the reasons then known to the Operating Service Provider. When any billing dispute is finally resolved, if payment by
CTRWSC to the Operating Service Provider of amounts withheld is required, such payment shall be made within sixty (60) days of the date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in Section 11.10 (Interest on Overdue Amounts).

Section 11.10 Interest on Overdue Amounts. If payment of any amount payable under this Agreement is not made when due, simple interest will be payable on such amount at the Overdue Rate and shall be calculated on the basis of a three hundred sixty five (365) day year from the date such payment is due (or was determined to have been due, in the case of amounts being disputed by CTRWSC) under this Agreement until paid. The Party to whom payment is owed and overdue shall notify the Party required to make such payment at least quarterly of the overdue amount.

Section 11.11 Administrative Obligations. Except to the extent excused by Uncontrollable Circumstances, CTRWSC shall have the right to require the Operating Service Provider to make a Direct Payment to CTRWSC in the amount provided in this Section for failure to perform the following administrative obligations:

(a) Report any material violation of any Governmental Approval or Applicable Law as required by Section 3.14(c) (Operating Governmental Approvals);

(b) Respond to a written request for information related to this Agreement made by CTRWSC or the Project Company and designated as a “priority request” within two (2) Business Days;

(c) Respond to complaints and communications received by the Operating Service Provider, CTRWSC, the Project Company or SAWS as required by Section 3.17(c) (Complaints and Communications);

(d) Report complaints or communications to CTRWSC, the Project Company or SAWS as required by Section 3.17(c) (Complaints and Communications);

(e) Attend CTRWSC meetings, as reasonably requested, with advance notice from CTRWSC;

(f) Provide CTRWSC, the Project Company or SAWS with any report, record, logs or other document required hereunder on time;

(g) Respond to alarms at the Project as required hereunder;

(h) Provide any plan, proposal, report or other deliverable required hereunder with respect to an Uncontrollable Circumstance or any regulatory deadline;

(i) Properly sample, test or report the results thereof as required by Applicable Law or by this Agreement; and

(j) Respond to or mitigate noise complaints as required by Section 3.17(c) (Complaints and Communications).

The amount of such Direct Payment shall be $1,000 (Index Linked) per occurrence for the Operating Service Provider’s failure to comply with the administrative obligations set forth above (an occurrence being deemed to have taken place where, in any Contract Year, there are three instances of non-compliance for the same obligation or three instances of non-compliance for different obligations). The Operating Service Provider shall have the right to discuss with CTRWSC any such occurrence prior to being obligated to make any such Direct Payment.
ARTICLE XII

PERFORMANCE GUARANTEES; INCENTIVE PAYMENTS; LIQUIDATED DAMAGES

Section 12.01 Performance Bond.

(a) The Operating Service Provider shall, from the Effective Date and throughout the Term, provide to CTRWSC and maintain a performance bond in substantially the form attached hereto as Appendix 7 (Form of Performance Bond) for the due performance of the obligations of the Operating Service Provider under this Agreement for an amount equal to 25% of the annual fees projected to be received by the Operating Service Provider under this Agreement in the applicable Contract Year (the “Performance Bond”). The Performance Bond shall be provided on an annual basis and the liability to the surety for each period shall not be cumulative.

(b) Any Performance Bond provided pursuant to this Section 12.01 (Performance Bond) shall be for the benefit of CTRWSC and the Project Company only and shall be provided by a surety company that (i) has a minimum credit rating of “A-” by AM Best, (ii) is in the United States Treasury Department’s annual listing of surety companies in the United States Federal Registry and (iii) is properly registered and licensed to conduct business in the State.

(c) The Operating Service Provider shall be responsible for monitoring the financial condition of any surety company issuing Performance Bonds and for making inquiries no less frequent than semiannually to confirm that such surety company maintains at least the minimum rating level specified in Section 12.01(b). In the event the rating of any surety company falls below such minimum level, the Operating Service Provider shall promptly notify CTRWSC and the Project Company of such event and furnish a substitute Performance Bond of a surety company that satisfies all of the requirements set forth in Section 12.01(b).

(d) If any Performance Bond ceases to be in full force and effect for any reason, the Operating Service Provider shall promptly replace such Performance Bond with a Performance Bond of a surety company that satisfies all of the requirements set forth in Section 12.01(b).

Section 12.02 Parent Company Guarantee; Reporting.

(a) The Operating Service Provider has, on or before the Effective Date, caused to be delivered to CTRWSC, for the benefit of CTRWSC and the Project Company, an approved parent company guarantee from the Operating Service Provider Parent Guarantor in the form set out in Appendix 9 (Form of Parent Guarantee) (the “Parent Company Guarantee”).

(b) The Operating Service Provider shall, within forty-five (45) days from the end of each calendar quarter and at any time upon CTRWSC’s request, financial statements and such other information relating to the financial condition, business, prospects or corporate affairs of the Operating Service Provider and the Operating Service Provider Parent Guarantor as CTRWSC may reasonably request.

Section 12.03 Incentive Payments. If, for any Contract Year following the Commercial Operation Date, the Operating Service Provider has made available to SAWS Product Water (other than (a) Advance Operating Service Provider Make-Up Units that have not been applied towards Excused Supply Shortfall Units pursuant to Section 6.02(e)(ii) (Supply of Make-Up Units) and (b) Product Water that constitutes Unacceptable Product Water and is deemed not to constitute a Monthly Delivered Water Unit pursuant to Section 6.01(f) (Remedies for Breach of Product Water Quality Guarantee Unacceptable Product Water)) in accordance with Section 6.02(c) (Supply Following the Commercial Operation Date) in an aggregate amount at least equal to fifty thousand (50,000) Acre Feet, then CTRWSC
shall pay to the Operating Service Provider a Water Availability Incentive Payment in the amount of $100,000.

Section 12.04 Liquidated Damages. For any Contract Year following the Commercial Operation Date, the Operating Service Provider shall pay to CTRWSC (for the account of the Project Company) Water Shortfall Liquidated Damages in the amount of $1,606 per Acre Foot for each Acre Foot of Product Water in an aggregate amount less than fifty thousand (50,000) Acre Feet that the Operating Service Provider has failed to make available to SAWS during such Contract Year due to (a) the improper or negligent storage, installation, operation or maintenance by or on behalf of the Operating Service Provider of the Project or any part, component or system forming part of the Project; or (b) the operation and maintenance of the Project or any part, component or system forming part of the Project in a manner inconsistent with the specifications set out in the Electronic Operation and Maintenance Manual, the Operating Protocol or otherwise in breach of the Operating Service Provider’s obligations under this Agreement.

Section 12.05 Exclusive Remedy. Without prejudice to CTRWSC’s rights under Section 16.01 (Termination by CTRWSC; Operating Service Provider Events of Default) and CTRWSC’s and the Project Company’s rights Section 17.02 (Indemnification by the Operating Service Provider), the payment of liquidated damages under Section 12.04 (Liquidated Damages) shall be the Project Company’s sole and exclusive remedy for the Operating Service Provider’s failure to make available the required volume of Product Water to SAWS in accordance with Section 6.02(c).

Section 12.06 Nature of Liquidated Damages. The Parties intend the payments under Section 12.04 (Liquidated Damages) to constitute compensation and not a penalty, and acknowledge and agree that the harm caused by a breach of Section 6.02(c) (Supply Following the Commercial Operation Date) would be impossible or very difficult to accurately estimate as of the Effective Date and the payments under Section 12.04 (Liquidated Damages) are a reasonable estimate of the anticipated or actual harm that might arise from such breach.

Section 12.07 Payment of Incentive Payments and Liquidated Damages. The Operating Service Provider shall pay the Water Availability Incentive Payment and CTRWSC (for the account of the Project Company) shall be paid the Water Shortfall Liquidated Damages, as the case may be, for any Contract Year as a Direct Payment to be made on the Billing Period following the Billing Period in which all final amounts payable by CTRWSC or the Operating Service Provider, as appropriate, in respect of the Annual Settlement Statement or amended Annual Statement, as applicable, for such Contract Year have been paid in full.

ARTICLE XIII

INSURANCE, DAMAGE AND DESTRUCTION

Section 13.01 Operating Service Provider’s Insurance. At all times during the Term, the Operating Service Provider shall obtain, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable.

Section 13.02 Subcontractors’ Insurance. The Operating Service Provider shall ensure that all Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.
Section 13.03 Insurance Requirements

(a) Compliance with Insurer Requirements. The Operating Service Provider shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Operating Service Provider 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.

(b) Proof of Insurance Coverage. Annually, the Operating Service Provider shall furnish CTRWSC, the Project Company and SAWS with (i) any endorsements to the policies for such insurance obtained for the Project, and (ii) certificates of insurance from each insurance carrier showing that the insurance required under this Agreement is in force, the amount of the carrier’s liability thereunder, and further providing that the insurance will not be canceled, changed or not renewed until the expiration of at least sixty (60) days (or ten (10) days in the case of cancellation due to non-payment of premiums) after written notice (by certified mail, return receipt requested) of such cancellation, change or non-renewal has been received by CTRWSC, the Project Company and SAWS. Each policy of insurance (or renewal policy of insurance) furnished hereunder shall: (x) evidence the existence and coverage amounts of the Required Insurance; and (y) show SAWS, the Project Company and CTRWSC as an “additional insured” or “named insured”, as required by Appendix 3 Insurance Requirements for the particular policy of Required Insurance.

(c) Failure to Provide Insurance Coverage. If the Operating Service Provider fails to pay or cause to be paid any premium for Required Insurance or if any insurer cancels any Required Insurance policy and the Operating Service Provider fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, CTRWSC may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by CTRWSC the amount thereof shall be immediately reimbursable as a Direct Payment to CTRWSC by the Operating Service Provider. The failure of the Operating Service Provider to obtain and maintain any Required Insurance shall not relieve the Operating Service Provider of its liability for any losses, be a satisfaction of any Operating Service Provider liability under this Agreement or in any way limit, modify or satisfy the Operating Service Provider’s indemnity obligations hereunder.

(d) Use of Property Insurance Proceeds. The Operating Service Provider shall apply all property Insurance Proceeds first to the repair or reconstruction of the Project, with any proceeds in excess of those required for such purpose applied to any other purpose as specified by CTRWSC.

(e) Protection. The Operating Service Provider shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Operating Service Provider shall report to CTRWSC; the Project Company; SAWS and the applicable insurers providing the Required Insurance, immediately upon obtaining knowledge thereof, any material damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to CTRWSC, the Project Company and SAWS. Upon any such occurrence the Operating Service Provider also shall comply with the reporting requirements of any insurer providing Required Insurance. The Operating Service Provider shall submit to CTRWSC, the Project Company and SAWS within three (3) Business Days of receipt copies of all accident and other reports filed with, or given to the Operating Service Provider by, any insurer, adjuster or Governmental Body.

(f) Repair of Property. The Operating Service Provider shall promptly repair or replace all property owned by SAWS that is damaged by the Operating Service Provider or any Operating Service Provider Person in connection with the performance of, or the failure to perform, the Operating Work. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to at least its character and condition existing immediately prior to the damage.
(g) Agreement not Affected by Damage or Destruction. Except as otherwise expressly provided herein, the partial destruction or damage or complete destruction of the Project by fire or other casualty shall not permit the Operating Service Provider or CTRWSC to terminate this Agreement or permit the Operating Service Provider to demand any increase in amounts payable to the Operating Service Provider under this Agreement.

(h) Control of Claims. The Operating Service Provider shall be responsible for making claims and managing the claims process under the Required Insurance. The Operating Service Provider shall immediately notify CTRWSC and the Project Company of the occurrence of any loss and shall assist and co-operate with CTRWSC, the Project Company, CTRWSC’s representatives, the Project Company’s representatives, the insurer and the insurer’s representatives, and not prejudice any rights of CTRWSC or the Project Company, with respect to any claim under the Required Insurance. The Operating Service Provider shall provide all information and documentation reasonably requested by CTRWSC or insurers in relation to any claim.

ARTICLE XIV

INTELLECTUAL PROPERTY

Section 14.01 Ownership and License of CTRWSC’s and the Project Company’s Intellectual Property. All software, designs, drawings, specifications, instructions, manuals and other documents created, produced, provided or commissioned by or on behalf of CTRWSC or the Project Company and relating to the Project and copyright therein and all Intellectual Property owned by CTRWSC or the Project Company relating thereto (“Owner Intellectual Property”) are, shall be, and shall remain the property of CTRWSC and the Project Company, as the case may be. Each of CTRWSC and the Project Company hereby grants to the Operating Service Provider a revocable, non-exclusive, royalty-free license to use Owner Intellectual Property in connection with the operation and maintenance of the Project only. Such license shall not be capable of being transferred or sublicensed and shall terminate on the Termination Date.

Section 14.02 Ownership of Operating Service Provider’s Intellectual Property. All software, designs, drawings, specifications, instructions, manuals and other documents created, produced, provided or commissioned by the Operating Service Provider and relating to the Project and copyright therein and all Intellectual Property owned by the Operating Service Provider relating thereto (“Operating Service Provider Intellectual Property”) are, shall be, and shall remain the property of the Operating Service Provider. The Operating Service Provider hereby grants to each of CTRWSC and the Project Company an irrevocable, non-exclusive, perpetual, royalty-free license to use Operating Service Provider Intellectual Property in connection with the Project only. Such license shall be transferrable or sub-licensable to any of CTRWSC’s and the Project Company’s successors and shall survive any termination of this Agreement.

Section 14.03 Third Party Intellectual Property. Prior to concluding any contract with any third parties relating to the supply of software, designs, drawings, specifications, instructions, manuals and other documents specifically created by third parties for the purposes of the Project, the Operating Service Provider shall use all reasonable efforts to procure that such third party shall grant irrevocable, non-exclusive, perpetual, royalty-free licenses to each of the Operating Service Provider, CTRWSC and the Project Company to use all Intellectual Property pertaining to such contract with the right for CTRWSC and the Project Company to transfer such license to, or grant a sub-license to, any of CTRWSC’s and the Project Company’s successors.

Section 14.04 Indemnity. The Operating Service Provider shall indemnify, defend and hold harmless the Project Indemnitees in the manner provided in Section 17.02 (Indemnification
by the Operating Service Provider) from and against any and all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to the Operating Work. At its option, the Operating Service Provider shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe.

ARTICLE XV

UNCONTROLLABLE CIRCUMSTANCES; FORCE MAJEURE; EQUIVALENT PROJECT RELIEF

Section 15.01 Uncontrollable Circumstances Generally.

(a) General. If an Uncontrollable Circumstance affects the Operating Service Provider’s performance obligations hereunder, the Operating Service Provider shall be entitled to relief upon the occurrence of such Uncontrollable Circumstance as and to the extent provided in Section 6.06(a)(i) (Extension of Term) Section 15.04(a) (Performance Relief), and Article X (Operating and Maintenance Costs). Without limiting the Operating Service Provider’s rights under Section 6.06 (Extension of Term), no Uncontrollable Circumstance shall entitle the Operating Service Provider to any compensation relief, except to the extent Compensable Costs payable under Appendix 10 (Compensable Costs and O&M Budget Panel) may include compensation for costs resulting from Uncontrollable Circumstances.

(b) Extent of Relief Available to the Operating Service Provider. If an Uncontrollable Circumstance occurs, the Operating Service Provider may be entitled to relief from its performance obligations and extensions of time, but only as and to the extent provided in this Article. Except as provided in Article X (Operating and Maintenance Costs) and without limiting the Operating Service Provider’s rights under Section 6.06 (Extension of Term), the Operating Service Provider may not claim compensation relief on an account of an Uncontrollable Circumstance.

(c) Mitigation Given Effect. Any relief to which the Operating Service Provider 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 Operating Service Provider in compliance with its duty to mitigate under Section 15.09 (Duty to Mitigate).

(d) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Operating Service Provider of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Agreement in compliance with Applicable Law.

Section 15.02 Procedures upon the Occurrence of an Uncontrollable Circumstance.

(a) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Operating Service Provider shall give notice of the occurrence of the Uncontrollable Circumstance to CTRWSC as soon as practicable, and in any event within five (5) Business Days of the date the Operating Service Provider has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Agreement. The Operating Service Provider’s notice shall include a written report:

(i) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;

(ii) Stating the date on which the Uncontrollable Circumstance began and its estimated duration, to the extent known;
(iii) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Operating Service Provider’s obligations under this Agreement; and

(iv) Indicating the nature and scope of the Operating Service Provider’s potential entitlement to relief.

(b) Updates. The Operating Service Provider shall provide CTRWSC 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 clause (a) above. In particular, the Operating Service Provider shall notify CTRWSC 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 Operating Service Provider shall submit to CTRWSC a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within twenty (20) days after the notice referred to in clause (a) above. If the specific relief cannot reasonably be ascertained within such twenty (20) day period, the Operating Service Provider shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(d) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Operating Service Provider to CTRWSC after the dates required under this Section, then the Operating Service Provider shall be entitled to relief provided due to the occurrence of an Uncontrollable Circumstance except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(e) Multiple and Overlapping Circumstances. The Operating Service Provider may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(f) Burden of Proof and Mitigation. The Operating Service Provider 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 Operating Service Provider complied with its mitigation obligations under Section 15.09 (Duty to Mitigate).

(g) Resumption of Performance. Promptly following the occurrence of an Uncontrollable Circumstance, the Operating Service Provider shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Agreement.

(h) Operating Service Provider Information. CTRWSC shall provide the Operating Service Provider information reasonably requested in order for the Operating Service Provider to reasonably assert an Uncontrollable Circumstance.

(i) CTRWSC Response. Within forty (40) days after receipt of a relief request by the Operating Service Provider pursuant to clause (c) above, CTRWSC (without waiving any claims) shall issue a written determination as to the extent, if any, to which it concurs with the Operating Service Provider’s request, and the reasons therefor.

(j) Agreement or Dispute. The agreement of CTRWSC and the Operating Service Provider as to the specific relief to be given the Operating Service Provider on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum or an amendment to this Agreement, as applicable. Either CTRWSC or the Operating Service Provider may refer any dispute for resolution pursuant to Section 20.02 (Dispute Resolution).
Section 15.03  Operating Service Provider Relief Due to SAWS Fault

(a) **Performance Relief.** The Operating Service Provider shall be relieved from its obligation to perform the Operating Work to the extent that any failure to perform results from a SAWS Fault. Such relief shall be available irrespective of whether an obligation under this Agreement expressly states that it is excused by a SAWS Fault. Except as provided in Section 6.06 (Extension of Term), the occurrence of a SAWS Fault shall not operate to extend the Expiration Date, and accordingly shall not extend the period of time during which the Operating Service Provider is obligated to perform the Operating Work or CTRWSC is obligated to pay for such services.

(b) **Compensation Relief.** If a SAWS Fault occurs on or after the Commercial Operation Date (or occurs prior to the Commercial Operation Date and the Project subsequently achieves the Commercial Operation Date), the Variable Compensable Costs Unit Price shall be:

(i) Reduced by an amount equal to Avoidable Costs; and

(ii) Increased by an amount necessary to compensate the Operating Service Provider for any increase in the cost to the Operating Service Provider of performing the Operating Work in compliance with Applicable Law, to the extent resulting from the SAWS Fault.

Section 15.04 Operating Service Provider Relief Due to Uncontrollable Circumstances

(a) **Performance Relief.** Except with respect to the Product Water Quality Guarantee, the Operating Service Provider shall be relieved from its obligation to perform the Operating Work, to the extent that any such failure results from an Uncontrollable Circumstance. Such relief shall be available irrespective of whether an obligation under this Agreement expressly states that it is excused by an Uncontrollable Circumstance. In addition:

(i) The Operating Service Provider shall deliver Operating Service Provider Make-Up Units to replace the Excused Supply Shortfall Units caused by the Uncontrollable Circumstance, as and to the extent provided in Section 6.03(a) (Operating Service Provider Make-Up Units); and

(ii) The Expiration Date shall be extended, as and to the extent provided in Section 6.06 (Extension of Term).

(b) **Compensation Relief.** If an Uncontrollable Circumstance occurs,

(i) The Variable Compensable Costs Unit Price shall not be increased; and

(ii) CTRWSC shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee.

Section 15.05  Force Majeure Events Generally

(a) **Operating Service Provider Reinstatement.** If all or any part of the Project is damaged or destroyed on account of a Force Majeure Event, the Operating Service Provider shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction in compliance with Applicable Law and in accordance with Section 15.06 (Operating Service Provider’s Obligations upon Material Damage or Destruction).

(b) **Performance.** A Force Majeure Event is an Uncontrollable Circumstance, and the Operating Service Provider shall be entitled to performance relief on account thereof as and to the extent provided herein.
(c) No Compensation Relief. If a Force Majeure Event occurs,

(i) The Variable Compensable Costs Unit Price shall not be increased, nor (except for operation and maintenance expenses) shall any other compensation be payable, on account of the occurrence of the Force Majeure Event; and

(ii) CTRWSC shall continue to have the right to impose Deductions for any failure to meet the Product Water Quality Guarantee in accordance with Section 6.01(c) (Remedies for Breach of Product Water Quality Guarantee; Off-Specification Product Water).

(d) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. Upon the occurrence of a Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be applied to such repair, replacement or restoration purposes in accordance with the terms of this Agreement.

(e) CTRWSC’s and Project Company’s Remedies and CTRWSC’s Termination Right. The failure of the Operating Service Provider to comply with its obligations under Section 15.05(a) (Operating Service Provider Reinstatement) shall constitute an Operating Service Provider Remediable Breach which, if not remedied by the Operating Service Provider, shall entitle each of CTRWSC and the Project Company to exercise all of their respective remedies, including, in the case of CTRWSC, the right, by notice to the Operating Service Provider, to terminate this Agreement in accordance with Section 16.01(a) (CTRWSC Termination Rights).

Section 15.06 Operating Service Provider’s Obligations upon Material Damage or Destruction.

(a) Draft Reinstatement Plan. If the Project suffers damage or destruction that is likely to cost more than $5,000,000, Index Linked, to repair, replace and restore, the Operating Service Provider shall, as soon as practicable and in any event within fifteen (15) days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued operations of other parts of the Project, provide CTRWSC and the Project Company with a draft plan (the “Draft Reinstatement Plan”) for the carrying out of the works necessary (the “Reinstatement Works”) to repair, replace and restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under Section 15.06(d) below.

(b) Comment on Draft Reinstatement Plan. As soon as reasonably practicable and in any event within twenty (20) Business Days after the delivery of the Draft Reinstatement Plan, CTRWSC shall provide the Operating Service Provider with any comments it or the Project Company may have on the Draft Reinstatement Plan.

(c) Reinstatement Plan. As soon as reasonably practicable and in any event within ten (10) Business Days after receipt of the CTRWSC’s or the Project Company’s comments, the Operating Service Provider shall deliver to CTRWSC and the Project Company a revised plan (the “Reinstatement Plan”) to reasonably take into account the comments received from CTRWSC and the Project Company and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works.

(d) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

(i) The identity of the person, or (if the Operating Service Provider is conducting a competitive process) persons, intended to effect the Reinstatement Works;
(ii) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the Operating Work to be fully performed);

(iii) The impact that implementation of the Reinstatement Plan will have on the revenues of the Project Company under the WTPA and on the payment obligations of the Project Company under the Project Contracts; and

(iv) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works.

(e) Repair. After CTRWSC’s written approval of the Reinstatement Plan, the Operating Service Provider shall repair, replace or restore the Project, subject to Applicable Law.

Section 15.07 Standards of Replacement, Repair or Reconstruction. Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Section 15.05 (Force Majeure Events Generally) shall be made or done in compliance with the Design Requirements and the requirements set forth in Appendix 3 (Technical Specifications) of the WTPA, subject to any agreement made between CTRWSC and the Operating Service Provider to revise the Design Requirements or the requirements set forth in Appendix 3 (Technical Specifications) of the WTPA as they pertain to the replacement, repair or reconstruction work.

Section 15.08 Limitation on Obligation to Restore. Notwithstanding anything in this Agreement to the contrary, the Operating Service Provider’s obligation to repair, replace or restore any part of the Project that is damaged or destroyed on account of a Force Majeure Event shall be limited to the amount of property Insurance Proceeds available (or that would have been available absent any breach by the Operating Service Provider to comply with its obligations hereunder) for such repair, replacement or restoration of the Project.

Section 15.09 Duty to Mitigate. In all cases where the Operating Service Provider is entitled to receive any relief hereunder 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 Operating Service Provider shall use all reasonable efforts to mitigate such amount required to be paid by CTRWSC to the Operating Service Provider under this Agreement, or the length of the extension of time. Upon request from CTRWSC, the Operating Service Provider shall promptly submit a detailed description, supported by all such documentation as CTRWSC may reasonably require, of the measures and steps taken by the Operating Service Provider to mitigate and meet its obligations under this Section.

Section 15.10 No Uncontrollable Circumstance Relief. In no event shall an Uncontrollable Circumstance excuse the Operating Service Provider from its obligation to comply with the Product Water Quality Guarantee. No Unacceptable Product Water taken delivery of by SAWS shall constitute Daily Delivered Water Units, irrespective of the occurrence of an Uncontrollable Circumstance.

Section 15.11 Failure to Perform Under the WTPA.

(a) In the event that CTRWSC fails to satisfy any of its payment obligations hereunder as a direct result of the SAWS’ failure to satisfy its payment obligations under the WTPA, such failure by CTRWSC shall not constitute a breach under this Agreement, and CTRWSC shall have no liability to the Operating Service Provider in connection therewith (including any liability in respect of interest on overdue amounts pursuant to Section 11.10 (Interest on Overdue Amounts)), provided that the
Operating Service Provider shall retain the right to terminate this Agreement due to the occurrence of a CTRWSC Event of Default in accordance with Section 16.02(b)(ii) (CTRWSC Events of Default).

(b) In the event that CTRWSC fails to satisfy any of its obligations hereunder (other than its payment obligations) as a direct result of the SAWS’ failure to satisfy its obligations under the WTPA, such failure by CTRWSC shall not constitute a breach under this Agreement, and CTRWSC shall have no liability to the Operating Service Provider, except to the extent the Operating Service Provider shall be entitled to Equivalent Project Relief pursuant to Section 15.12 (Equivalent Project Remedies).

Section 15.12 Equivalent Project Remedies.

(a) The Operating Service Provider shall only be entitled to relief for Uncontrollable Circumstances (including SAWS Fault and Force Majeure Events) and extensions of the Term pursuant to Section 6.06 (Extension of Term) to the same extent as allowed to the Project Company under the WTPA and otherwise in accordance with this Section 15.12 (Equivalent Project Remedies).

(b) To the extent that the Project Company has a right, entitlement, remedy or defense under the WTPA which relates to the Operating Work (including the right to recover payment from SAWS) or the rights or obligations of the Operating Service Provider under this Agreement, including in respect of (i) any contribution, indemnification, compensation, damages or other additional compensation or payment of any kind, (ii) any other relief from the performance of the Project Company’s obligations under, or from termination of, the WTPA, (iii) any extension of the term of the WTPA or (iv) any certificate, consent or approval provided for under this Agreement, the WTPA or any other agreement, statute, bylaw or regulation in regard to any matter relating to the Operating Work, including any entitlement of the Project Company to request or apply for such certificate, consent or approval from the O&M Budget Panel, SAWS or any other person (the “Project Company Rights”), the Operating Service Provider shall be entitled to receive the benefit of such Project Company Rights in accordance with and subject to the provisions of this Section 15.12 (Equivalent Project Remedies). Project Company Rights under the WTPA when and to the extent such Project Company Rights are exercised for the Operating Service Provider’s benefit in connection with the Operating Work are referred to in this Agreement as “Equivalent Project Relief”.

(c) The Operating Service Provider shall be entitled to the benefit of any Equivalent Project Relief to the extent that the Project Company and CTRWSC are or become entitled to such Equivalent Project Relief under the WTPA and the Water Transportation Agreement, respectively, but in any event to no greater extent than the Project Company Rights under the WTPA, and shall not be entitled to receive any entitlement, benefit, payment or relief in respect of any Equivalent Project Relief under this Section 15.12 (Equivalent Project Remedies) unless and until the Project Company and CTRWSC have received such entitlement, benefit, payment or relief under the WTPA and the Water Transportation Agreement, respectively.

(d) The Operating Service Provider shall assist and cooperate with CTRWSC and the Project Company, including in the case of disputes with the O&M Budget Panel, SAWS or any other person, in exercising any Project Company Rights, including obtaining relief under the Water Transportation Agreement and the WTPA for such events that constitute Uncontrollable Circumstances (as defined in the WTPA), including SAWS Fault, under the WTPA and obtaining extensions of the term of the Water Transportation Agreement and the WTPA in accordance with the terms thereof.

(e) Pending the determination, agreement or resolution of the Operating Service Provider’s entitlement to Equivalent Project Relief, each Party shall continue to perform its obligations under this Agreement and shall take no steps to enforce any right under this Agreement whether by set-off against sums otherwise payable to any of the other Parties, by commencing proceedings of any kind, by counterclaiming in any proceedings or otherwise howsoever, to the extent that, pursuant to the terms of
this Agreement, such right depends upon or is related to the relevant agreement or determination of Equivalent Project Relief. Upon final determination, agreement or resolution of the Operating Service Provider’s entitlement to the benefit of any Equivalent Project Relief, the Operating Service Provider shall be conclusively deemed to have waived any rights under or in connection with such Equivalent Project Relief in excess of those arising from such determination, agreement or resolution.

ARTICLE XVI

TERMINATION; REMEDIES OF THE PARTIES

Section 16.01 Termination by CTRWSC; Operating Service Provider

Events of Default

(a) CTRWSC Termination Rights. This Agreement may be terminated by CTRWSC prior to the Expiration Date in accordance with Section 16.01(e) below:

(i) In connection with an Operating Service Provider Event of Default;

(ii) Upon the exercise by SAWS of any of its options to purchase the Project Assets pursuant to Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) or Section 23.2 (Project Assets Purchase Option Upon a Project Company Event of Default) of the WTPA; or

(iii) Upon the delivery of the notice by the Project Company to exercise its right to require SAWS to purchase the Project Assets pursuant to Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets) of the WTPA or the termination of the WTPA or the Water Transportation Agreement for any reason.

(b) Operating Service Provider Events of Default.

(i) For the purposes of this Agreement, “Operating Service Provider Event of Default” means any of the following events or circumstances:

(A) The occurrence of an Operating Service Provider Remediable Breach that is not remedied in accordance with clause (d) below, unless the occurrence of the Operating Service Provider Remediable Breach is due to the occurrence of an Uncontrollable Circumstance.

(B) The occurrence of an Operating Service Provider Bankruptcy-Related Event.

(C) The Operating Service Provider abandons the Project.

(D) The Operating Service Provider breaches Section 21.01 (Limitations on Assignment).

(E) The issuance by SAWS at the direction of TCEQ or another authorized Governmental Body of a “boil water” or “do not drink” notice with respect to Product Water, as provided in Section 6.01(g) (Boil Water and Do Not Drink Notices).

(F) A failure by the Operating Service Provider to pay any amount due and owing to CTRWSC or the Project Company under this Agreement on the due date (which amount is not being disputed in good faith) and the Operating Service Provider has not remedied such failure to pay within twenty (20) Business Days following notice from
CTRWSC or the Project Company, as applicable, provided that interest on any such overdue amount shall be paid as provided in Section 11.10 (Interest on Overdue Amounts).

(G) A failure by the Operating Service Provider to maintain the policies of insurance required to be maintained by the Operating Service Provider under this Agreement and to comply with its obligation under Appendix 3 (Insurance Requirements) to name the required additional insureds.

(H) The Operating Service Provider Parent Guarantor ceases to control the Operating Service Provider or is not directly or indirectly the legal and beneficial owner of a majority of the voting and economic ownership interests in the Operating Service Provider.

(I) The Parent Company Guarantee ceases to be legal, valid and binding and enforceable in accordance with its terms or the Parent Company Guarantee has not been assigned by the Operating Service Provider Parent Company Guarantor, and the Operating Service Provider does not procure the provision of a replacement guarantee on substantially the same terms and conditions by a company reasonably acceptable to CTRWSC within five (5) days of first demand by CTRWSC;

(J) The Operating Service Provider fails to maintain the Performance Bond in accordance with Section 12.01 (Performance Bond) of this Agreement;

(K) The Operating Service Provider has incurred total aggregate liabilities in an amount equal to the aggregate cap set forth in Section 18.02(a) or Section 18.02(b) (Limitation on the Operating Service Provider’s Liability);

(L) The Operating Service Provider amalgamates, merges or consolidates with any other person without the prior consent of CTRWSC (such consent not to be unreasonably withheld or delayed) and such amalgamation, merger or consolidation materially and adversely affects the interests of CTRWSC or the Project Company; and

(M) Upon giving thirty (30) days’ written notice, if a Force Majeure Event as notified in accordance with this Agreement affecting the Operating Service Provider continues for more than one hundred eighty (180) days within a continuous period of three hundred sixty-five (365) days.

(ii) For purposes of this Agreement, “Operating Service Provider Remediable Breach” means any of the following breaches, unless the breach is due to the occurrence of an Uncontrollable Circumstance:

(A) The Operating Service Provider fails to immediately take all appropriate action in the event that CTRWSC notifies the Operating Service Provider that a public health or safety emergency exists or is threatened due to the Operating Service Provider’s failure to comply with the Contract Standards;

(B) Except as provided for in Section 16.01(b)(ii)(A) above, a breach, or series of breaches, by the Operating Service Provider of any agreement, covenant or undertaking made to CTRWSC or the Project Company (other than a breach for which CTRWSC may impose Deductions) or any representation or warranty made by the Operating Service Provider to CTRWSC or the Project Company in this Agreement (or
any ancillary certificate, statement or notice issued hereto) being incorrect when made or at any time during the Term, the consequence of which is:

(1) a material risk to the health or safety of the public;

(2) a risk of material liability of CTRWSC or the Project Company to third persons;

(3) an adverse effect on the performance of the Operating Work to the extent that CTRWSC or the Project Company is reasonably likely to be materially deprived of the benefit of this Agreement; or

(4) any material provision of this Agreement being unenforceable against the Operating Service Provider;

(C) A breach in any rolling period of thirty-six (36) consecutive Billing Periods, the sum in any eighteen (18) or more of such Billing Periods of (i) all Daily Delivered Units in such Billing Periods, and (ii) all Demand Shortfall Units in such Billing Periods, is less than 75,000 Acre Feet;

(D) With respect to Product Water quality, the exceedance of the same primary drinking water MCL in two (2) consecutive months, three (3) times in any consecutive twelve (12) month period;

(E) A breach, other than a breach described in clause (i) above or in items (A) through (D) of this clause (ii) which, due to the fact that such breach, demonstrates either a persistent inability or a persistent unwillingness, to comply with its obligations under this Agreement;

(F) Any other fact or circumstance designated as an “Operating Service Provider Remediable Breach” under this Agreement.

(iii) For purposes of this Agreement, “Operating Service Provider Bankruptcy-Related Event” means any of the following events:

(A) A receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Operating Service Provider or the Operating Service Provider Parent Guarantor; or

(B) Any proceedings with respect to the Operating Service Provider or the Operating Service Provider Parent Guarantor being commenced under the Bankruptcy Law and if such proceedings are commenced against the Operating Service Provider or the Operating Service Provider Parent Guarantor and are disputed by such party, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within ninety (90) days of such proceedings being instituted; or

(C) The Operating Service Provider or the Operating Service Provider Parent Guarantor making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Operating Service Provider or the Operating Service Provider Parent Guarantor under the Bankruptcy Law or otherwise and, if proceedings are
commenced against the Operating Service Provider or the Operating Service Provider Parent Guarantor and are disputed by such party, such proceedings are not stayed, dismissed or otherwise remedied within ninety (90) days of such proceedings being instituted; or

(D) The Operating Service Provider or the Operating Parent Service Provider Guarantor ceasing to carry on business.

(c) Notice by the Operating Service Provider. The Operating Service Provider shall notify CTRWSC and the Project Company of the occurrence, and details, of any Operating Service Provider Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to an Operating Service Provider Event of Default, in either case promptly on the Operating Service Provider becoming aware of its occurrence.

(d) Operating Service Provider Remediable Breach Cure and Remedial Program.

(i) After the occurrence of an Operating Service Provider Remediable Breach and while it is continuing, CTRWSC may serve a notice on the Operating Service Provider specifying in reasonable detail the type and nature of the Operating Service Provider Remediable Breach and:

(A) The Operating Service Provider shall remedy such Operating Service Provider Remediable Breach referred to in such notice (if it is continuing) within fifty (50) days after such notice or within such longer period as is reasonably required for the Operating Service Provider to rectify or remedy such Operating Service Provider Remediable Breach as long as the Operating Service Provider is diligently pursuing such rectification or remedy, but in no event exceeding one hundred eighty (180) days after such notice; or

(B) If either CTRWSC (as set forth in its notice) or the Operating Service Provider reasonably considers that an Operating Service Provider Remediable Breach cannot reasonably be remedied within fifty (50) days of such notice, the Operating Service Provider shall deliver to CTRWSC within eight (8) Business Days of such notice a reasonable program (set forth, if appropriate, in stages) for remedying the Operating Service Provider Remediable Breach. The program will specify in reasonable detail the manner in and the latest date by which the Operating Service Provider Remediable Breach is proposed to be remedied (which date shall be no longer than the maximum cure period provided under clause (A) above.

(ii) The Operating Service Provider Remediable Breach and remedial program provisions of this Section shall apply only to an Operating Service Provider Remediable Breach, and not to any other event or circumstance constituting an Operating Service Provider Event of Default.

(e) Termination Right.

(i) If an Operating Service Provider Event of Default occurs, then CTRWSC may (if the Operating Service Provider Event of Default continues unwaived by CTRWSC and unremedied by the Operating Service Provider), subject to Section 16.04 (Continuing Work), terminate this Agreement by notice to the Operating Service Provider and the Project Company. The right of CTRWSC to terminate this Agreement under this Section is in addition, and without prejudice, to any other right which CTRWSC may have in connection with the Operating Service Provider’s non-compliance with this Agreement, including those rights set forth in Section 16.10 (Remedies of the Parties).
(ii) If any of the events described in Section 16.01(a)(ii) (Termination by CTRWSC) occurs, then CTRWSC may terminate this Agreement by giving no less than thirty (30) days’ notice to the Operating Service Provider and the Project Company.

(iii) If any of the events described in Section 16.01(a)(iii) (Termination by CTRWSC) occurs, then CTRWSC may terminate this Agreement by notice to the Operating Service Provider and the Project Company.

Section 16.02 Termination by the Operating Service Provider; CTRWSC

Events of Default.

(a) Operating Service Provider Termination Rights. This Agreement may be terminated by the Operating Service Provider prior to the Expiration Date in connection with a CTRWSC Event of Default.

(b) CTRWSC Events of Default. For the purposes of this Agreement, “CTRWSC Event of Default” means any of the following events or circumstances:

(i) Except as provided in clause (ii) below, a failure by CTRWSC to pay any amount due and owing to the Operating Service Provider under this Agreement within ninety (90) days of the due date for such amount;

(ii) A failure by CTRWSC to pay any amount due and owing to the Operating Service Provider under this Agreement for a period of one hundred eighty (180) days as a direct result of SAWS’ failure to pay any amounts due under the WTPA;

(iii) Except as provided in clauses (i) and (ii) above and subject to Section 15.11 (Failure to Perform Under the WTPA), a breach or series of breaches, by CTRWSC of any term, covenant or undertaking to the Operating Service Provider or any representation or warranty made by CTRWSC to the Operating Service Provider in this Agreement being incorrect when made, the consequence of which is:

(A) a material and adverse effect on the performance of the Operating Work; or

(B) any material provision of this Agreement being unenforceable against CTRWSC to the extent that the Operating Service Provider is reasonably likely to be materially deprived of the benefit of this Agreement; or

(iv) The authorized filing by CTRWSC of a petition seeking relief under the Bankruptcy Law, as applicable to water supply corporations which are insolvent or unable to meet their obligations as they mature; provided that the appointment of a financial control or oversight receiver or board by the State for CTRWSC shall not in and of itself constitute a CTRWSC Event of Default hereunder.

(c) Notice. After the occurrence of a CTRWSC Event of Default and while a CTRWSC Event of Default is continuing, the Operating Service Provider may, at its option, serve notice on CTRWSC and the Project Company of the occurrence and specifying the details of such a CTRWSC Event of Default.

(d) Remediable CTRWSC Event of Default. If the relevant matter or circumstance has not been rectified or remedied by CTRWSC:

(i) In the case of a CTRWSC Event of Default under clause (b)(i), within thirty (30) days of such notice; or
In the case of a CTRWSC Event of Default under clause (b)(iii), within one hundred twenty (120) days after the notice provided by the Operating Service Provider pursuant to clause (c) or within such longer period as is reasonably required for CTRWSC to rectify or remedy such CTRWSC Event of Default as long as CTRWSC is diligently pursuing such rectification or remedy, the Operating Service Provider may serve a further notice on CTRWSC and the Project Company, terminating this Agreement with immediate effect.

(c) **Non-Remediable CTRWSC Events of Default.** In the case of a CTRWSC Event of Default under clause (b)(ii) or (b)(iv), concurrently with, or at any time after, the delivery of notice under clause (c), the Operating Service Provider may serve a further notice on CTRWSC and the Project Company terminating this Agreement with immediate effect.

(f) **Operating Service Provider Substitution Agreement.** The Operating Service Provider acknowledges and agrees that, simultaneously with the execution of this Agreement, it has executed and delivered an Operating Service Provider Substitution Agreement in the form set forth as Transaction Form C of the WTPA and that its termination rights hereunder are subject to the terms of such agreement.

### Section 16.03 Effect of Termination

(a) **Project Assets Purchase Price.** If (i) SAWS exercises its Project Assets purchase option under Section 23.1 (Project Assets Purchase and Convenience Termination Option During the Term) of the WTPA and CTRWSC terminates this Agreement pursuant to Section 16.01(e)(ii) (Termination Right) or (ii) the Project Company exercises its right to require SAWS to purchase the Project Assets pursuant to Section 21.3 (Project Company Right to Require SAWS to Purchase the Project Assets) of the WTPA and CTRWSC terminates this Agreement pursuant to Section 16.01(e)(iii) (Termination Right), CTRWSC shall pay to the Operating Service Provider on the Project Assets Purchase Date a Project Assets Purchase Price equal to the Project Assets Purchase Termination Costs.

(b) **Adequacy of Project Assets Purchase Termination Costs.** The Operating Service Provider agrees that any applicable Project Assets Purchase Termination Costs provided for in this Section shall constitute the only compensation from CTRWSC to the Operating Service Provider for all costs, foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs attributable to the termination of the Operating Service Provider’s right to perform this Agreement.

(c) **Full Settlement; Antecedent and Post-Termination Liabilities.** Any and all amounts paid by CTRWSC to the Operating Service Provider upon a termination of this Agreement will be the full and final settlement of the rights and claims of the Operating Service Provider against CTRWSC and/or the Project Company, and vice versa, in connection with such termination, whether under contract, tort, restitution or otherwise, but without prejudice to:

(i) Any antecedent liability of the Operating Service Provider to CTRWSC and/or the Project Company, and vice versa, that arose prior to the date of termination of this Agreement (but not from the termination itself); and

(ii) Any liability of the Operating Service Provider to CTRWSC and/or the Project Company, and vice versa, that may arise after the Termination Date of this Agreement (but not from the termination itself), including liabilities arising under the provisions of this Agreement which are intended by Section 21.13 (Survival) to survive termination.
(d) **Termination.** Upon payment of any applicable Project Assets Purchase Termination Costs promptly following the Project Assets Purchase Date pursuant to this Section, the Termination Date shall be deemed to have occurred and this Agreement shall terminate.

(e) **Termination Services.** On or prior to the Termination Date of this Agreement pursuant to Section 16.01 (Termination by CTRWSC) or Section 16.02 (Termination by Operating Service Provider), the Operating Service Provider shall, at CTRWSC’s request:

(i) Cease all further performance of Operating Work, except such Operating Work as CTRWSC may specify in the termination notice for the sole purpose of protecting and securing the Project against any deterioration, loss or damage;

(ii) Assist CTRWSC in preparing an inventory of all Project Equipment and supplies in use or in storage at the Project;

(iii) Terminate all Subcontracts, except those to be assigned to CTRWSC pursuant to clause (iv) below;

(iv) Assign to CTRWSC, or to any person designated by CTRWSC, without any right to compensation, title to all Project Equipment and supplies not already owned by CTRWSC or the Project Company, together with all Subcontracts and other contractual agreements (including warranties) as may be designated by CTRWSC, to the extent such Subcontracts or other agreements may be so assigned, and assign to CTRWSC or to any person designated by CTRWSC, to the extent assignable, all issued Governmental Approvals and all other issued permits, licenses, authorizations, approvals, patents and other Intellectual Property, if any, then held by the Operating Service Provider pertaining to the Project or the Operating Work and shall assign to CTRWSC any proprietary components needed for the operation, maintenance or repair of the Project;

(v) Remove from the Project all such Project Equipment and supplies and rubbish as CTRWSC may request;

(vi) Deliver to CTRWSC all design and other information as may be reasonably requested by CTRWSC for the operation, maintenance or repair of the Project, including all information prepared hereunder as of the Termination Date;

(vii) At CTRWSC’s request, either terminate the employment by the Operating Service Provider of all O&M Personnel or, where applicable, transfer the contracts of employment of such O&M Personnel to the CTRWSC or a replacement operator designated by CTRWSC and cooperate to effect such transfer as reasonably required; and

(viii) Deliver or cause to be delivered to CTRWSC or, at the request of CTRWSC, the replacement operator: (A) all personnel files of all O&M Personnel employed by the Operating Service Provider; (B) updated schedules of end of service benefits due to expatriate O&M Personnel employed by the Operating Service Provider accrued prior to such Termination Date, (C) updated schedules of vacation leave due to O&M Personnel employed by the Operating Service Provider accrued prior to such Termination Date, and (D) records of ongoing benefits expenditures made by the Operating Service Provider on behalf of O&M Personnel employed by the Operating Service Provider.

**Section 16.04 Continuing Work.** The Parties shall continue to perform their obligations under this Agreement (including CTRWSC continuing to pay the Monthly Operating Service Payments) until the Termination Date, notwithstanding the giving of any notice of default or termination. If on termination of this Agreement, CTRWSC has not appointed another person to provide substantially the same services as the Operating Work, the Operating Service Provider and its Subcontractors shall, at the request of CTRWSC, continue to provide those portions of the Operating Work required to enable the
Project Company to fulfill its immediate obligations under the WTPA subject to the terms and conditions of this Agreement, until the expiry of a further period of ninety (90) days and subject to payment for the Operating Work during such period in accordance with the terms of this Agreement; provided that, any Operating Work performed by the Operating Service Provider during such ninety (90) Day period shall be performed on a cost pass through basis with all costs and expenses of the Operating Work being borne by CTRWSC (with the Operating Service Provider requiring CTRWSC’s consent before committing CTRWSC to any item of expenditure in excess of ten thousand Dollars (US$10,000)) and the Operating Service Provider being entitled to a mark-up on all related costs and expenses of six percent (6%).

Section 16.05 Cooperation with Replacement Operating Service Provider
The Operating Service Provider shall fully cooperate with CTRWSC and the Project Company in the transfer of performance of the Operating Work to a replacement operating service provider and shall provide access to the Project for the representatives of any potential replacement operator. The Operating Service Provider shall (to the extent not already assigned to CTRWSC) assign to the replacement operating service provider at CTRWSC’s request all contracts and Subcontracts which it has entered into with third parties in connection with the Operating Work which provide for assignment or where the other party thereto consents to such assignment. The obligations on the Operating Service Provider set out in this Section shall apply during the thirty (30) day notice period of termination (if any) with effect from the date of receipt of notice to terminate from CTRWSC and otherwise during any extended period of work in accordance with Section 16.04 (Continuing Work).

Section 16.06 Cessation of Occupation
On the Termination Date (or such later date of termination of the Operating Service Provider’s appointment hereunder in accordance with Section 16.04 (Continuing Work) and Section 16.05 (Cooperation with Replacement Operating Service Provider), the Operating Service Provider shall (i) cease forthwith to occupy the Project, (ii) deliver up the Project in good and substantial repair and all stocks of equipment and supplies in as good a condition as may reasonably be expected, subject in each case to such fair wear and tear as reflects the actual level of operation of the Project (on the assumption that the Operating Service Provider has fully complied with its obligations under this Agreement with respect to the provision of the Operating Work), and (iii) deliver to CTRWSC (or its designee) all other property in the possession of the Operating Service Provider including: (x) all documents, books, records and accounts of CTRWSC or the Project Company; (y) all tools, equipment, computer software, data storage and other facilities, other than such software which is owned by or has been developed by the Operating Service Provider, in relation to which the Operating Service Provider hereby agrees to grant a license to each of CTRWSC and the Project Company to permit continued use of such software in accordance with Article XIV (Intellectual Property); and (z) all moneys held by the Operating Service Provider as agent for or to the order of or otherwise on behalf of CTRWSC or the Project Company. In addition, any of CTRWSC’s Intellectual Property granted to the Operating Service Provider by CTRWSC for the performance of the Operating Work in accordance with Article XIV (Intellectual Property) shall automatically terminate.

Section 16.07 Retention of Personnel
Upon termination of this Agreement, the Operating Service Provider shall use all reasonable efforts to comply with such reasonable requests as to the retention of O&M Personnel and Subcontractor personnel as CTRWSC may make for the purposes of ensuring to the fullest extent possible in the circumstances continuity of personnel in the provision of the Operating Work by such replacement operating service provider as CTRWSC may appoint.

Section 16.08 Assignment of Warranties
Upon the termination of this Agreement, the Operating Service Provider shall assign all equipment and spare parts warranties to CTRWSC (or its designee).
Section 16.09  Additional Obligations Upon SAWS’ Purchase of the Project Assets

(a)  Transfer Responsibilities. If SAWS exercises its right to purchase the Project Assets under the WTPA, then on or promptly after the Termination Date:

(i)  The Operating Service Provider shall offer to sell to SAWS at fair market value, free from any security interest, all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Operating Service Provider and reasonably required by SAWS in connection with the operation of the Project or the provision of the Operating Work;

(ii)  The Operating Service Provider shall deliver to SAWS (to the extent not already delivered to SAWS):

(A)  relevant information pertaining to any Legal Proceedings against the Operating Service Provider, any Subcontractor or other third parties relating to the termination of the Operating Work (or any Subcontract); and

(B)  to the extent reasonably available to the Operating Service Provider, copies of all Subcontracts (with confidential or commercially sensitive information redacted), together with a statement of:

(1)  the item ordered and not yet delivered pursuant to each agreement;

(2)  the expected delivery date of all such items;

(3)  the total cost of each agreement and the terms of payment; and

(4)  the estimated cost of canceling each agreement;

(C)  The Operating Service Provider shall give written notice of termination, effective as of the Expiration Date, promptly under each policy of Required Insurance (with a copy of each such notice to SAWS), but permit SAWS to continue such policies thereafter at its own expense, if possible; and

(D)  The Operating Service Provider shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters.

(b)  No Additional Compensation. The Operating Service Provider shall ensure that provision is made in all applicable contracts to ensure that the Operating Service Provider shall be in a position to comply with its obligations under this Section without additional payment or compensation to any person.

(c)  Transitional Arrangements. If SAWS exercises its right to purchase the Project Assets under the WTPA, the Operating Service Provider shall, in connection with the expiration or termination of this Agreement:

(i)  Stop performance of the Operating Work on the Termination Date;
(ii) On the Termination Date deliver to SAWS:

(A) all keys, access codes or other devices required to operate the Project; and

(B) any Intellectual Property required to be delivered by the Operating Service Provider pursuant to clause (a);

(iii) As soon as practicable after the Termination Date vacate, and cause the Operating Service Provider Persons to vacate, the Project Sites, and leave the Project in a safe, clean and orderly condition;

(iv) On request by SAWS and on payment of the Operating Service Provider’s reasonable costs by SAWS, for a period not to exceed ninety (90) days after the Termination Date, co-operate fully with SAWS and any successor providing to SAWS services in the nature of any of the Operating Work or any part of the Operating Work, in order to achieve a smooth transfer of the manner in which SAWS obtains services in the nature of the Operating Work;

(v) As soon as practicable following the Termination Date, remove from the Project Sites all property of the Operating Service Provider or any Operating Service Provider Person that does not constitute Project Assets or does not belong to SAWS and if it has not done so within sixty (60) days after any notice from SAWS requiring it to do so, the Operating Service Provider acknowledges and agrees that SAWS may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Operating Service Provider; and

(vi) Comply with all requirements of Section 9.03 (Project Assets; Transfer Conditions).

(d) Operating Service Provider to Cooperate. If SAWS exercises its right to purchase the Project Assets under the WTPA and wishes to conduct a competition prior to the Termination Date with a view to entering into an agreement for the provision of the Operating Work (which may or may not be the same as, or similar to, the Operating Work following the Termination Date), the Operating Service Provider shall prior to the Termination Date co-operate with SAWS fully in such competition process, including by:

(i) Providing any information in the Operating Service Provider’s control or possession which SAWS may reasonably require to conduct such competition, except that information which is commercially sensitive to the Operating Service Provider or an Operating Service Provider Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Operating Service Provider or an Operating Service Provider Person give that competitor a material competitive advantage over the Operating Service Provider or the Operating Service Provider Person and thereby prejudice the business of the Operating Service Provider or the Operating Service Provider Person); and

(ii) Assisting SAWS by providing any participants in such competition process with reasonable access to the Project Sites, provided such access does not affect the Operating Work in a way that results in any reduction in Monthly Operating Service Payments or materially interferes with the activities of the Operating Service Provider.

Section 16.10 Remedies of the Parties.

(a) Remedies Generally. Except as set forth in Section 12.05 (Exclusive Remedy), the Parties agree that in the event that any Party breaches this Agreement, the Operating Service Provider (in
the case of a breach by CTRWSC or the Project Company) and each of CTRWSC and the Project Company
(in the case of a breach by the Operating Service Provider) may exercise any legal rights it may have under
this Agreement and under Applicable Law to recover damages or to secure specific performance, and that
such rights to recover damages and to secure specific performance shall ordinarily constitute adequate
remedies for any such breach. Neither Party shall have the right to terminate this Agreement except as
provided or referred to in this Article XVI (Termination; Remedies of the Parties). Any such damage
payment shall be a Direct Payment.

(b) Continuing Obligations. The exercise by CTRWSC or the Project Company of
any of its respective rights under this Section shall not reduce or affect in any way the Operating Service
Provider’s responsibility hereunder to perform the Operating Work.

(c) Exercise of Remedies. Except as set forth in Section 12.05 (Exclusive Remedy):

(i) The rights and remedies of the Parties under this Agreement are
cumulative and are in addition to and not in substitution for any other rights and remedies available at law
or in equity or otherwise;

(ii) A Party will not be prevented from enforcing a right or remedy on the basis
that another right or remedy hereunder deals with the same or similar subject matter and

(iii) No single or partial exercise by a Party of any right or remedy precludes
or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

(d) No Duplicative Recovery or Claim Outside Contract. Every right to claim
compensation, indemnification or reimbursement under this Agreement shall be construed so that recovery
is without duplication to any other amount recoverable under this Agreement. Neither CTRWSC nor the
Project Company shall be entitled to make any claim against the Operating Service Provider, and the
Operating Service Provider shall not be entitled to make any claim against either CTRWSC or the Project
Company, in each case for compensation, indemnification or reimbursement other than as provided under
this Agreement.

ARTICLE XVII
INDEMNIFICATION

Section 17.01 Indemnification by CTRWSC and the Project Company. Each
of CTRWSC and the Project Company shall, severally (and not severally and jointly) indemnify and keep
the Operating Service Provider and its members, appointed officers, directors, employees, representatives,
agents, attorneys, financial advisors, and contractors (each an “Operating Service Provider Indemnitee”)
indemnified at all times from and against all Loss-and-Expense that any Operating Service Provider
Indemnitee may sustain in connection with any claim made by one or more third parties (including claims
for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal
injury, disease or illness of any person), arising by reason of any:

(a) Breach of any representation or warranty by such Party under this Agreement;

(b) Negligent act or omission of such Party;

(c) Willful misconduct of such Party; and

(d) Non-compliance by such Party with any of the provisions of this Agreement or
any document, instrument or agreement delivered to the Operating Service Provider as required under this
Agreement applicable to it, except to the extent caused by the Operating Service Provider’s negligence, willful misconduct or breach of this Agreement.

Section 17.02 Indemnification by the Operating Service Provider

(a) Indemnities Generally. The Operating Service Provider shall indemnify and keep the City, SAWS, the Project Company, CTRWSC and their respective elected officials, trustees, members, appointed officers, directors, employees, representatives, agents, attorneys, financial advisors, and contractors (each a “Project Indemnitee”) indemnified at all times from and against all Loss-and-Expense that any Project Indemnitee may sustain in connection with any claim made by one or more third parties (including claims for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal injury, disease or illness of any person), arising by reason of any:

(i) Breach of any representation or warranty by the Operating Service Provider under this Agreement;

(ii) Negligent act or omission of the Operating Service Provider or any Operating Service Provider Person;

(iii) Willful misconduct of the Operating Service Provider or any Operating Service Provider Person;

(iv) Non-compliance by the Operating Service Provider or any Operating Service Provider Person with any of the provisions of this Agreement or any Subcontract or any document, instrument or agreement delivered to CTRWSC or the Project Company as required under this Agreement, except to the extent excused by a SAWS Fault;

(v) Release of Hazardous Substances by the Operating Service Provider or any Operating Service Provider Person, except to the extent excused by a SAWS Fault;

(vi) Breach by an Operating Service Provider or any Operating Service Provider Person of, or non-compliance by the Operating Service Provider or any Operating Service Provider Person with, any Governmental Approval or Applicable Law, or the failure of the Operating Service Provider or any Operating Service Provider Person to obtain all necessary Governmental Approvals in accordance with this Agreement, except to the extent excused by a SAWS Fault; or

(vii) Any other act, event or circumstance as to which the Operating Service Provider is obligated to provide an indemnity hereunder, except to the extent excused by a SAWS Fault.

The Operating Service Provider’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 Operating Service Provider which is intended to respond to such events. Notwithstanding the foregoing, Project Indemnitees’ right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by the Project Indemnitees. This Section may be relied upon by the Project Indemnitees and may be enforced directly by any of them against the Operating Service Provider in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Operating Service Provider.

(b) Indemnity for Non-Complying Product Water. In the event that SAWS takes delivery of any Product Water that fails to comply with the Product Water Quality Guarantee, the Operating Service Provider shall indemnify, defend and hold harmless the Project Indemnitees in accordance with this Section from any Loss-and-Expense resulting from the supply of such non-complying Product Water to third parties. This indemnity shall extend to any liability resulting from property loss or damage or death or personal injury suffered or alleged to be suffered by any person or entity from exposure...
to or as a result of using or consuming such non-complying Product Water based on any theory of recovery, including theories of product liability, toxic tort or environmental impairment. The Loss-and-Expense relating to such liabilities to third parties to which the indemnity provided in this Section extends to and shall include any special, incidental, consequential, punitive and other similar damages awarded to such third parties, notwithstanding waivers contained with respect to such damages in Section 18.01 (No Consequential Losses).

Section 17.03 Indemnification Procedure

(a) Notice. If a Project Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the Project Indemnitee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the Project Indemnitee shall give notice in writing to the Operating Service Provider.

(b) Consolidation of Claims. If a notice of claim is given pursuant to clause (a) by more than one Project Indemnitee relating to the same facts or circumstances, the Operating Service Provider may, in its discretion, require the consolidated administration and coordination of all such noticed claims by common counsel.

(c) Operating Service Provider Right to Dispute Claim. If notice is given as provided in clause (a), the Operating Service Provider shall be entitled to dispute the claim in the name of the Project Indemnitee at the Operating Service Provider’s own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Project Indemnitee will give the Operating Service Provider all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(d) Conflicts of Interest. In defending the claim as described in clause (c) in which there is a conflict of interest between the Operating Service Provider and Project Indemnitee, Project Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the Project Indemnitee is entitled to indemnification or compensation from the Operating Service Provider, all reasonable costs and expenses incurred by the Project Indemnitee in so doing will be included in the indemnity or compensation from the Operating Service Provider.

(e) Rights and Duties of the Parties. With respect to any claim conducted by the Operating Service Provider pursuant to clause (c):

   (i) The Operating Service Provider shall keep the Project Indemnitee fully informed and consult with it about material elements of the conduct of such defense;

   (ii) The Operating Service Provider shall demonstrate to the Project Indemnitee, at the reasonable request of the Project Indemnitee, that the Operating Service Provider has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

   (iii) The Operating Service Provider 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 CTRWSC, the Project Company or SAWS, or otherwise having a direct effect upon CTRWSC’s, the Project Company’s or SAWS’ continuing operations, as the case may be, shall (A) contain a full release of CTRWSC, the Project Company or SAWS, as applicable, and (B) be subject to the consent of CTRWSC, the Project Company or SAWS, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Operating Service Provider, CTRWSC and the Project Company shall, at the sole cost and expense of the Operating Service Provider, cooperate with the Operating Service Provider and its counsel in contesting any claim which the Operating Service Provider elects to contest.
(f) Conduct of Claim. A Project Indemnitee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(i) The Operating Service Provider is not entitled to take conduct of the claim in accordance with Section 17.03(c) (Operating Service Provider Right to Dispute Claim); or

(ii) The Operating Service Provider fails to notify the Project Indemnitee of its intention to take conduct of the relevant claim within eight (8) Business Days of the notice from the Project Indemnitee under Section 17.03(c) (Operating Service Provider Right to Dispute Claim) or notifies the Project Indemnitee that it does not intend to take conduct of the claim; or

(iii) The Operating Service Provider fails to comply in any material respect with Section 17.03(e) (Rights and Duties of the Parties).

(g) Transfer of Conduct of Claim to Project Indemnitee. A Project Indemnitee may at any time, without limiting the Operating Service Provider’s obligation to indemnify under this Article (including the obligation to pay fees and costs in connection with such indemnity), give notice to the Operating Service Provider that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which Section 17.03(c) (Operating Service Provider Right to Dispute Claim) applies. On receipt of such notice the Operating Service Provider will promptly take all steps necessary to transfer the conduct of such claim to the Project Indemnitee, and will provide to the Project Indemnitee all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(h) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Operating Service Provider may replace such infringing or allegedly infringing item provided that:

(i) The replacement is performed without additional cost to CTRWSC or the Project Company; and

(ii) The replacement has at least equal quality performance capabilities when used in conjunction with the Project.

ARTICLE XVIII
LIMITATION OF LIABILITY

Section 18.01 No Consequential Losses. IN NO EVENT SHALL THE OPERATING SERVICE PROVIDER BE LIABLE TO CTRWSC OR THE PROJECT COMPANY OR OBLIGATED IN ANY MANNER TO PAY TO CTRWSC OR THE PROJECT COMPANY, AND IN NO EVENT SHALL CTRWSC OR THE PROJECT COMPANY BE LIABLE TO THE OPERATING SERVICE PROVIDER OR OBLIGATED IN ANY MANNER TO THE OPERATING SERVICE PROVIDER TO PAY, ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR LOSSES OR DAMAGES BASED UPON CLAIMS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS OR OTHERWISE UNDER THIS AGREEMENT, OR ANY REPRESENTATION MADE IN THIS AGREEMENT BEING MATERIALLY INCORRECT, WHETHER SUCH CLAIMS ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL THEORY. THIS SECTION SHALL NOT LIMIT THE RECOVERY OF ANY SUCH LOSSES OR DAMAGES UNDER ARTICLE XVII (INDEMNIFICATION) IN RESPECT OF CLAIMS BY THIRD PARTIES OR SECTION 12.04 (LIQUIDATED DAMAGES).
Section 18.02 Limitation of the Operating Service Provider’s Liability.

(a) Subject to clause (b) below, the aggregate liability of the Operating Service Provider to pay damages to CTRWSC or the Project Company (whether based on negligence, breach of contract or otherwise) arising out of or in connection with the performance by the Operating Service Provider of its obligations under this Agreement (including, without limitation, payment of liquidated damages for the account of the Project Company pursuant to Article XII (Performance Guarantees; Incentive Payments; Liquidated Damages) shall not exceed US$1,500,000 during any one Contract Year and shall be limited to an aggregate total amount of US$5,000,000 during the Term of this Agreement; provided that, to the extent that the Operating Service Provider recovers any amounts from its Subcontractors in excess of the above aggregate liability amounts, such amounts shall be promptly paid to CTRWSC or the Project Company, as the case may be.

(b) The limitations of liability set out in clause (a) above shall not apply to the indemnity obligations of the Operating Service Provider pursuant to Article XVII (Indemnification) or any liability of the Operating Service Provider to pay damages to CTRWSC or the Project Company arising out of or in connection with any willful misconduct of the Operating Service Provider, its officers, directors, employees, agents or Subcontractors or the O&M Personnel.

ARTICLE XIX

REPRESENTATIONS AND WARRANTIES

Section 19.01 Representations and Warranties of the Operating Service Provider. The Operating Service Provider hereby represents and warrants to each of CTRWSC and the Project Company as of the Effective Date as follows:

(a) Power and Authority. The Operating Service Provider is a corporation, duly organized, validly existing and in good standing under the laws of Arizona and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) Validity and Enforceability. This Agreement has been duly authorized, executed and delivered by all necessary action of the Operating Service Provider and constitutes a legal, valid and binding obligation of the Operating Service Provider, enforceable against the Operating Service Provider 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. Neither the execution nor delivery by the Operating Service Provider of this Agreement nor the performance by the Operating Service Provider of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Operating Service Provider of the terms or conditions hereof:

(i) Conflicts with, violates or results in a breach of any Applicable Law, by-laws or certificates of incorporation applicable to the Operating Service Provider; or

(ii) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Operating Service Provider or any of its Affiliates is a party or by which the Operating Service Provider or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(d) Required Approvals. 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 Agreement by the Operating Service Provider and the performance by the Operating Service Provider of its obligations hereunder except as such have been duly obtained or made.

(e) No Default. The Operating Service Provider is not in default under any mortgage, loan agreement, deed of trust, indenture or other agreement evidencing indebtedness to which it is a party or by which it or its property is bound or affected.

(f) Litigation.

(i) There is no pending or, to the best of the Operating Service Provider’s knowledge threatened, action, suit, investigation, arbitration or other proceeding that could impair the ability of the Operating Service Provider to perform its obligations under this Agreement.

(ii) There are no writs, judgments, injunctions, decrees or similar orders of any Governmental Body outstanding against Operating Service Provider which could materially and adversely affect its occupancy, use, operation or maintenance of the Project.

(g) No Agents. No agent, broker or finder has been engaged by the Operating Service Provider or any of its Affiliates in connection with the transactions contemplated by this Agreement. If any claim for any agent's, broker's or finder's fees or commissions is asserted in connection with the negotiation, execution or consummation of this Agreement or of any of the transactions contemplated hereby through Operating Service Provider, then the Operating Service Provider shall protect, indemnify, hold harmless and defend the Project Indemnitees from and against such claim.

(h) Ownership. Each person listed in Appendix 8 (Ownership Interests) is the registered, legal and beneficial owner, directly or indirectly, of the interest in the Operating Service Provider set forth opposite its name, respectively, free and clear of all liens, encumbrances, charges, options, security interests, pledges or claims of any kind whatsoever (including all rights for first refusal of any other partners of the Operating Service Provider).

(i) Review, Examination and Understanding.

(i) The Operating Service Provider has reviewed or examined and has the requisite knowledge and understanding with respect to (i) the Project, (ii) the requirements of the WTPA (including its appendices and schedules), the Design Build Contract (including its appendices and schedules) and the other Project Contracts (including their appendices and exhibits), and (iii) all other factors and conditions affecting the performance of the Operating Service Provider’s obligations under this Agreement (including local labor conditions) and accepts the same and agrees that all such matters are satisfactory and will not prevent performance by the Operating Service Provider of its obligations under this Agreement, and accepts that it shall not be entitled to raise any defense or make any claim under or in relation to this Agreement as a consequence of (A) any mistake, gap or insufficiency in or in relation to its knowledge or understanding of the above matters, or (B) the state, condition or content of any such matters, and waives any right it may have to raise any such defense or make any such claim.

(ii) The Operating Service Provider is fully experienced and properly licensed, equipped and in all ways competent and qualified to perform all aspects of the Operating Work in accordance with the provisions of this Agreement.

(iii) The Operating Service Provider has familiarized itself with all Project Contracts and will be capable of performing, on behalf of CTRWSC and the Project Company, all operation and maintenance tasks and other obligations contemplated thereunder in accordance with the terms thereof.
(j) **Experience.** The Operating Service Provider has substantial experience in the operation and maintenance of facilities comparable to the Project, and the Operating Service Provider is fully qualified and capable of performing the Operating Work in accordance with this Agreement.

(k) **No Security Interests.** All equipment and materials incorporated into the Project by the Operating Service Provider as part of the Operating Work shall be free from all security interests (other than those created by CTRWSC or the Project Company, as applicable).

(l) **Compliance with Applicable Law Generally.** The Operating Service Provider is in compliance in all material respects with Applicable Law pertaining to the Operating Service Provider’s business and services.

(m) **Practicability of Performance.** Subject to, and in accordance with, the terms of this Agreement, the Operating Service Provider assumes the risk of the practicability and possibility of performance of the Project and the Operating Work on the scale, within the time for completion, and in the manner required hereunder, and agrees that sufficient consideration for the assumption of such risk is included in the Monthly Operating Service Payments.

(n) **No Restricted Persons.** The Operating Service Provider nor any of its Affiliates is a Restricted Person.

(o) **No Events of Default.** No Operating Service Provider Event of Default exists under this Agreement nor has any event occurred which, with the giving of notice or passage of time, would constitute an Operating Service Provider Event of Default under this Agreement.

**Section 19.02 Representations and Warranties of CTRWSC and the Project Company.** Each of CTRWSC and the Project Company hereby represents and warrants to the Operating Service Provider as of the Effective Date as follows:

(a) **Power and Authority.** Such Party is duly incorporated and existing under the laws of its jurisdiction of incorporation.

(b) **Validity and Enforceability.** This Agreement has been duly authorized, executed and delivered by all necessary action of such Party and constitutes a legal, valid and binding obligation of such Party, enforceable against such Party 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.** Neither the execution nor delivery by such Party of this Agreement nor the performance by such Party of its obligations in connection with the transactions contemplated hereby or the fulfillment by such Party of the terms or conditions hereof:

(i) Conflicts with, violates or results in a breach of any Applicable Law, by-laws or certificates of incorporation applicable to such Party; or

(ii) Conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which such Party or any of its Affiliates is a party or by which such Party or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(d) **Required Approvals.** 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 Agreement by such Party and the performance by such Party of its obligations hereunder except as such have been duly obtained or made.
(c) **Litigation.**

(i) There is no pending or, to the best of the CTRWSC’s knowledge threatened, action, suit, investigation, arbitration or other proceeding that could impair the ability of such Party to perform its obligations under this Agreement.

(ii) There are no writs, judgments, injunctions, decrees or similar orders of any Governmental Body outstanding against such Party which could materially and adversely affect its occupancy, use, operation or maintenance of the Project.

**ARTICLE XX**

**GOVERNING LAW; DISPUTE RESOLUTION**

**Section 20.01 Governing Law.** This Agreement shall be governed by and construed in accordance with the applicable laws of the State.

**Section 20.02 Dispute Resolution.**

(a) **Court Jurisdiction.** It is the express intention of the Parties that all Legal Proceedings related to this Agreement or to the Project or to any rights or any relationship between the Parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas. Each Party irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

(b) **Waiver of Jury Trial.** EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

**Section 20.03 Non-Binding Mediation.**

(a) **Rights to Request and Decline.** Any Party may request Non-Binding Mediation of any dispute arising under this Agreement. The non-requesting Parties may decline the request in their discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between the Parties involved in the mediation.

(b) **Procedure.** The Mediator shall be a professional firm or individual mutually acceptable to the Parties involved in the mediation who has no current or on-going relationship to any Party. The Mediator shall have full discretion as to the conduct of the mediation. Each Party involved in the mediation 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 such Party determines in its discretion that its interests are not being served by the mediation.

(c) **Non-Binding Effect.** Mediation is intended to assist the Parties in resolving disputes over the correct interpretation of this Agreement. No Mediator shall be empowered to render a binding decision.

(d) **Relation to Judicial Legal Proceedings.** Nothing in this Section shall operate to limit, interfere with or delay the right of CTRWSC or the Project Company under this Article to commence judicial Legal Proceedings upon a breach of this Agreement by the Operating Service Provider and vice versa, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation. Further, nothing in this Section shall operate to limit or interfere with judicially imposed mediation.
Section 20.04  Related Disputes. Notwithstanding any other provision in this Agreement to the contrary, if (a) a dispute under the WTPA or the Water Transportation Agreement (the “Main Dispute”) arises or is pending at the time a dispute under this Agreement (the “OSA Dispute”) arises or is pending, (b) there are questions of law or fact common to both the Main Dispute and the OSA Dispute and (c) the independent resolution of the Main Dispute and the OSA Dispute could result in conflicting resolutions or judgments, then the Parties shall take all steps necessary to ensure that the OSA Dispute is consolidated with the Main Dispute so that both disputes are joint and held in a single proceeding. The mediator, court or tribunal in respect of the Main Dispute shall be the mediator, court or tribunal, as the case may be, in respect of the OSA Dispute. The Parties shall meet with SAWS to coordinate such consolidation. If for any reason such consolidation does not occur, then any ongoing proceeding regarding the OSA Dispute hereunder shall be stayed pending final resolution of the Main Dispute, which resolution shall be binding on the Parties for all purposes of this Agreement. At the request of CTRWSC or the Project Company, as applicable, the Operating Service Provider shall, and shall ensure that Subcontractors shall, provide such information and cooperate as requested in connection with any dispute resolution procedure under the WTPA or the Water Transportation Agreement, including meeting with SAWS and any other relevant parties to such disputes.

ARTICLE XXI
MISCELLANEOUS

Section 21.01  Limitation on Assignment.

(a)  Generally. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereof and their successors and permitted assigns.

(b)  Limitations. No Party shall assign, transfer or otherwise dispose of any of its rights or obligations under this Agreement except with the prior written consent of the other Parties; provided that each of CTRWSC and the Project Company may assign this Agreement and the Parent Company Guarantee to their respective creditors in connection with the Project or to SAWS without the Operating Service Provider’s consent (but, in the case of CTRWSC, with the Project Company’s consent). Any purported assignment of this Agreement in violation of this Section shall be null and void ab initio.

(c)  In connection with any collateral assignment by CTRWSC or the Project Company of this Agreement to financing parties, the Operating Service Provider agrees to execute and deliver a direct agreement on terms customary for limited recourse financings in favor of such financing parties (including, for the avoidance of doubt, a consent to assignment substantially in the form of exhibit N to the Credit Agreement dated as of November 2, 2016, among CTRWSC, the Project Company and Sumitomo Mitsui Banking Corporation, as administrative agent, among others). The Operating Service Provider further agrees to furnish such financing parties with such other documents as may reasonably be requested by such financing parties, including an opinion of counsel to the Operating Service Provider, certificates of good standing, organizational certificates and resolutions of the Operating Service Provider’s board of directors authorizing the execution and delivery of this Agreement.

Section 21.02  Confidentiality.

(a)  Confidential Information. The Operating Service Provider shall treat as confidential and proprietary to CTRWSC, the Project Company and SAWS, as the case may be, all information obtained from CTRWSC, the Project Company or SAWS, as the case may be, in connection with the Operating Work (“Confidential Information”). The Operating Service Provider shall not (i) use Confidential Information for any purpose other than the performance of the Operating Work, or (ii) disclose any Confidential Information to any person other than its own employees, agents, Subcontractors
who have a need for such information in the performance of their work relating to the Project, unless such disclosure is specifically authorized in writing by CTRWSC.

(b) Security Plan. If requested by CTRWSC, the Operating Service Provider shall prepare a security plan to assure that Confidential Information is not used for any unauthorized purpose or disclosed to unauthorized persons by the Operating Service Provider or any of its Subcontractors. The Operating Service Provider shall advise CTRWSC of any request for disclosure of such information or of any actual or potential disclosure of such information, whether or not a security plan has been prepared by the Operating Service Provider.

(c) SAWS Confidentiality. The Operating Service Provider acknowledges that (i) SAWS is governed by and must comply with the Texas Public Information Act, as set forth in Chapter 552 of the Texas Government Code, as the same may be amended from time-to-time and (ii) any information received by SAWS from the Project Company, CTRWSC or the Operating Service Provider may be subject to disclosure and made public by SAWS pursuant to the Public Information Act.

(d) CTRWSC Confidentiality. CTRWSC is not currently subject to the Texas Public Information Act. The Parties agree that at such time as CTRWSC shall become subject to the Texas Public Information Act, the following shall apply: If a request is received by CTRWSC for Confidential Information of the Operating Service Provider, CTRWSC shall request an opinion from the Texas Attorney General. The Operating Service Provider, with notice pursuant to Texas Government Code Section 552.305, may present its legal position regarding the confidentiality of its information to the Texas Attorney General. The Operating Service Provider will have the full responsibility for asserting its claim of the confidential nature of the information to the Texas Attorney General at its own expense. CTRWSC will abide by the determination of the Texas Attorney General; except that if a decision of the Texas Attorney General is received indicating that the requested information is required by law to be released, CTRWSC will refrain from releasing the information for seven (7) calendar days to afford the Operating Service Provider the opportunity to file suit pursuant to Section 552.325 of the Texas Government Code. CTRWSC will not release the requested information during the pendency of such litigation; provided, however, that CTRWSC, by this Agreement, will not be precluded from complying with any order of a court of competent jurisdiction.

Section 21.03 Contract Administration.

(a) Authority of CTRWSC Representative. Unless notified otherwise by CTRWSC and the Project Company in writing the Operating Service Provider shall be entitled to rely on the written directions of the CTRWSC Representative. The CTRWSC Representative shall have the right at any time to issue the Operating Service Provider a written request for information relating to a possible breach of this Agreement. Any such written request with respect to a material breach designated as a “priority request” shall be responded to by the Operating Service Provider within two (2) Business Days.

(b) Operating Notices. Operating Notices hereunder shall be given by fax or e-mail, and may be given personally or by telephone promptly followed by fax or e-mail confirmation. Operating Notices to the Operating Service Provider shall be given by the CTRWSC Representative and Operating Notices to CTRWSC shall be given by the Operating Service Provider Representative.

(c) Administrative Communications. The Parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected in the common records of the Parties so as to permit the orderly and effective administration of this Agreement.
(d) **Contract Administration Memoranda.** The principal formal tool for the administration of routine matters arising under this Agreement among the Parties which do not require an 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 CTRWSC and/or the Project Company, as applicable, and the Operating Service Provider as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

(i) Issues as to the meaning, interpretation or application of this Agreement in particular circumstances or conditions;

(ii) Calculations required to be made;

(iii) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents, variances and approvals given hereunder; and

(iv) Other similar routine contract administration matters.

(e) **Contract Administration Memoranda Procedure.** Any 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 CTRWSC or the Project Company, as the case may be, reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the CTRWSC Representative, the Project Company and the Operating Service Provider Representative. CTRWSC and the Operating Service Provider each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from amendments and all other documents relating to the administration and performance of this Agreement.

(f) **Effect of Contract Administration Memoranda.** Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Agreement.

## Section 21.04 Notices

(a) **Notice Procedure.** All notices, consents, approvals or written communications given pursuant to the terms of this Agreement (other than Operating Notices), shall be in writing and will be considered to have been sufficiently given if delivered in person; delivered by certified mail, return receipt requested, postage prepaid; or overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each other Party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any Party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(i) If delivered in person during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(ii) If delivered by certified mail or overnight courier during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(iii) If sent by facsimile transmission during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, during business hours, upon the
commencement of business hours on the next Business Day following confirmation of the transmission; and

(iv) If delivered by electronic mail during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(b) **CTRWSC Notice Address.** Notices (other than Operating Notices) required to be given to CTRWSC shall be addressed as follows:

Central Texas Regional Water Supply Corporation  
P.O. Box 15851  
San Antonio, TX 78212  
Attn: Weir Labatt III, President  
Phone: 210-324-6684  
Email: twlabatt@gmail.com

with a copy to:

Bickerstaff Heath Delgado Acosta, LLP  
3711 Mo-Pac Expressway  
Building One, Suite 300  
Austin, TX 79746  
Attn: Emily Rogers; Manuel O. Méndez  
Phone: 512-472-1911  
Email: erogers@bickerstaff.com, mmendez@bickerstaff.com  
Fax: 512-320-5622

and with a copy to the Project Company.

(c) **Project Company Notice Address.** Notices required to be given to the Project Company shall be addressed as follows:

Vista Ridge LLC  
1333 NW Vivion Road  
Kansas City, MO 64118  
Attn: Scott A. Parrish  
Phone: 816-746-7224  
Email: sparrish@garney.com  
Fax: 816-741-4488

(d) **Operating Service Provider Notice Address.** Notices required to be given to the Operating Service Provider shall be addressed as follows:

EPCOR Services Inc.  
2355 W Pinnacle Peak Road; Ste. 300  
Phoenix, AZ 85027  
Attn: President  
Phone: 623-780-3778  
Email: EPCORContractNotice@epcor.com  
Fax: 623-587-1044
Section 21.05 Amendments.

(a) Amendments Generally. Notwithstanding the provisions of Section 21.03 (Contract Administration), no material change, alteration, revision or modification of the terms and conditions of this Agreement shall be made except through a written amendment to this Agreement duly authorized by all Parties. Amendments shall be dated and signed by the CTRWSC Representative, the Project Company and the Operating Service Provider Representative.

(b) Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Agreement, when an amendment or other agreement with respect to this Agreement is entered into and executed by the Parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging the amendment or other agreement, but need not be executed by the Parties.

Section 21.06 Waivers. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision. No waiver by CTRWSC or the Project Company of any breach of any provision of this Agreement by the Operating Service Provider and vice versa shall be valid except as specifically provided in a Contract Administration Memorandum.

Section 21.07 Approvals and Consents. When this Agreement requires any approval or consent by CTRWSC or the Project Company to an Operating Service Provider submittal, request or report, the approval or consent shall be given by the CTRWSC Representative or the Project Company, respectively, in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by CTRWSC or the Project Company, as applicable, with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Agreement, and except for requests, reports and submittals made by the Operating Service Provider that do not, by their terms or the terms of this Agreement, require a response or action, CTRWSC or the Project Company, as applicable, does not find a request, report or submittal acceptable, it shall provide written response to the Operating Service Provider describing its objections and the reasons therefor within forty (40) days of its receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless CTRWSC’s or the Project Company’s, as applicable, approval or consent may not be unreasonably delayed by the express terms hereof, and the Operating Service Provider may resubmit the same, with or without modification.

Section 21.08 Entire Agreement. This Agreement, including any schedules or exhibits hereto and all amendments hereto, contains the complete agreement among the Parties with respect to the matters contained herein, and supersedes all other agreements, whether written or oral, with respect to the matters contained therein.

Section 21.09 Project Company as CTRWSC’s Sole Representative. Until such time as the Operating Service Provider receives a joint written notice from CTRWSC and the Project Company stating that the Project Company has ceased to act as CTRWSC’s sole representative for all purposes of this Agreement, the Operating Service Provider shall be entitled to conclusively rely upon, without independent verification or investigation, all communications, notices, and directives made by the Project Company in connection with this Agreement in the name and on behalf of CTRWSC and shall not accept any communications, notices or directives from any other representative of CTRWSC for any purpose under this Agreement.

Section 21.10 Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provision in any other jurisdiction. Where terms of any Applicable Law resulting in such prohibition
or unenforceability may be waived, they are waived by the parties hereto to the full extent permitted by law so that this Agreement may be deemed valid, binding and enforceable in accordance with its terms.

Section 21.11 Counterparts. This Agreement may be executed in several counterparts, each of which is an original, and all of which together shall constitute one and the same agreement. Delivery of an executed counterpart to this Agreement by facsimile transmission or “.pdf” electronic format shall be as effective as delivery of a manually signed original.

Section 21.12 Relationship of the Parties.

(a) The Operating Service Provider is an independent contractor of CTRWSC and the Project Company under this Agreement, and the relationship between CTRWSC and the Project Company, on the one hand, and the Operating Service Provider on the other hand hereunder shall be limited to performance of this Agreement in accordance with its terms. No Party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by any of the other Parties. Nothing in this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any Party’s agent or employee as a result of this Agreement or the performance thereof.

(b) The obligations and liabilities of each of CTRWSC and the Project Company under this Agreement shall be several and not joint and several.

Section 21.13 Survival. Notwithstanding any other provision of this Agreement, this Section and the following provisions hereof will survive the expiration or any earlier termination of this Agreement:

(a) Section 5.05 (Financial Books and Records);
(b) Article IX (Project Asset Transfer);
(c) Article XIV (Intellectual Property);
(d) Article XVI (Termination; Remedies of the Parties), as applicable to the obligations of the Parties following the Termination Date;
(e) Article XIX (Indemnification), including all of the indemnities referred to therein;
(f) Article XX (Governing Law; Dispute Resolution);
(g) Section 21.02 (Confidentiality);
(h) Section 21.15 (SAWS Personal Information);
(i) All provisions of this Agreement with respect to payment obligations of the Operating Service Provider or CTRWSC accrued prior to the Termination Date; and
(j) Any other provision of this Agreement providing for survival by its express terms; together with any provisions necessary to give effect to the above provisions.

Section 21.14 Disclosed Data. It is the Operating Service Provider’s responsibility to have conducted its own analysis and review of the Project and, before the execution of this Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of
any Disclosed Data upon which it places reliance and to assess all risks related to the Project. The Operating Service Provider shall not be entitled to and will not make (and will ensure that no Subcontractor makes) any claim against any Project Indemnitee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Agreement on the grounds:

(a) Of any misunderstanding or misapprehension in respect of the Disclosed Data;
(b) That the Disclosed Data was incorrect or insufficient; or
(c) That incorrect or insufficient information relating to the Disclosed Data was given to it by any person,

nor will the Operating Service Provider be relieved from any obligation imposed on or undertaken by it under this Agreement on any such ground.

Section 21.15 SAWS Personal Information. The Operating Service Provider shall, and will require the Subcontractors to, only collect, hold, process, use, store and disclose Personal Information of employees or agents of SAWS:

(a) With the prior consent of SAWS;
(b) To the extent necessary to perform the Operating Service Provider’s obligations under this Agreement; and
(c) In accordance with Applicable Law, including the Public Information Act as if the provisions of such Applicable Law applied directly to the Operating Service Provider and its Subcontractors.

The Operating Service Provider shall allow SAWS on reasonable notice to inspect the measures of the Operating Service Provider and its Subcontractors to protect Personal Information.

Section 21.16 Compliance with Material Agreements. The Operating Service Provider shall comply with its obligations under all agreements of the Operating Service Provider which are material to the performance of its obligations under this Agreement.

Section 21.17 Further Assurances. Each Party will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as any of the other Parties may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Agreement.

[Signature Pages Follow]
IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute and deliver this Agreement as of date first written above.

CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION

By: ___________________________________
Name: ________________________________
Title: _________________________________

VISTA RIDGE LLC

By: ___________________________________
Name: ________________________________
Title: _________________________________

EPCOR SERVICES INC

By: ___________________________________
Name: ________________________________
Title: _________________________________
APPENDIX 1
GOVERNMENTAL APPROVALS
APPENDIX 1

GOVERNMENTAL APPROVALS

1.1. PURPOSE

The purpose of this Appendix is to provide an outline of the Governmental Approvals that are expected to be required for the operation of the Project and the performance of the Operating Work. As required by this Agreement, the Operating Service Provider shall obtain and maintain all required Governmental Approvals necessary to operate the Project and perform the Operating Work, irrespective of whether such Governmental Approval is identified in this Appendix.

1.2. GOVERNMENTAL APPROVALS

The following tables set forth the Governmental Approvals that are expected to be required for the operation of the Project and the performance of the Operating Work. The Operating Service Provider will be responsible for complying with the terms and conditions contained in the applicable Operating Governmental Approvals, in accordance with this Appendix and Section 3.14(c) (Operating Service Provider Obligations regarding Operating Governmental Approvals) of this Agreement.

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>Permitting Agency</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Endangered or Threatened Species (Section 7 or 10 Review)</td>
<td>U.S. Fish and Wildlife Service (USFWS)</td>
<td>Section 7- provides interagency cooperation to ensure a federal action does not jeopardize the existence of any listed species. Section 10 obtained when non-federal activities cause harm to animals designated as endangered or threatened by the USFWS.</td>
</tr>
<tr>
<td>Section 404 Permit</td>
<td>United States Army Corps of Engineers</td>
<td>Regulates the discharge of dredged or fill material into waters of the United States, including wetlands</td>
</tr>
<tr>
<td>Section 10 Permit</td>
<td>United States Army Corps of Engineers</td>
<td>Regulates the placement of any structure below, within, or over navigable waters of the United States, or would involve excavation/dredging or deposition of material or any obstruction or alteration in navigable waters of the United States</td>
</tr>
<tr>
<td>Creek Crossing Permits/ River Crossing Permit</td>
<td>Lower Colorado River Authority</td>
<td>Regulates design and construction of pipeline infrastructure projects with minimal disruption to the bed and banks of the stream, the public and the environment during construction as well as the long term operation</td>
</tr>
<tr>
<td>Creek Crossing Permits/ River Crossing Permit</td>
<td>Guadalupe Blanco River Authority</td>
<td>Regulates design and construction of pipeline infrastructure projects with minimal disruption to the bed and banks of the stream, the public and the environment during construction as well as the long term operation</td>
</tr>
<tr>
<td>Drilling and Operating Permit/ Transportation Permit</td>
<td>Post Oak Savannah Groundwater Conservation District</td>
<td>Regulates the rights to produce and transport permit groundwater out of the boundaries of the District</td>
</tr>
<tr>
<td>Utility Crossing Approval</td>
<td>Bluebonnet Electrical Cooperative</td>
<td>Provides for notification of the crossing and/or encroachment onto the electric easement and</td>
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<tr>
<td>Permit Type</td>
<td>Permitting Agency</td>
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<tr>
<td>Utility Crossing Approval</td>
<td>CPS Energy</td>
<td>Provides for notification of the crossing and/or encroachment onto the electric easement and requirements for safe construction and maintenance</td>
</tr>
<tr>
<td>Utility Crossing Approval</td>
<td>Lower Colorado River Authority</td>
<td>Provides for notification of the crossing and/or encroachment onto the electric easement and requirements for safe construction and maintenance</td>
</tr>
<tr>
<td>Public Water System Plans Review</td>
<td>TCEQ</td>
<td>Provides for the determination that the proposed public water system is financially stable and technically sound and can supply adequate quantities of safe drinking water</td>
</tr>
<tr>
<td>Texas Pollutant Discharge Elimination Permit Storm Water Permits</td>
<td>TCEQ</td>
<td>Regulates discharge of pollutants to surface waters of the State of Texas</td>
</tr>
<tr>
<td>Texas Antiquities Permit</td>
<td>Texas Historical Commission</td>
<td>Must be obtained by a registered archeologist for studies at archeological sites and historic buildings on public land</td>
</tr>
<tr>
<td>Right of Way and Utility Permits</td>
<td>Texas Department of Transportation</td>
<td>Provides for the placement of utilities within the right-of-way of State roads and provides for the longer term use</td>
</tr>
<tr>
<td>Development Application Permit</td>
<td>Bastrop County</td>
<td>Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain</td>
</tr>
<tr>
<td>Road Crossing - County Approval</td>
<td>Bastrop County</td>
<td>Provides for the monitoring and approval of utilization of County right-of-way</td>
</tr>
<tr>
<td>Floodplain Development Permit</td>
<td>Bexar County</td>
<td>Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain</td>
</tr>
<tr>
<td>Stormwater Quality Site Development Permit</td>
<td>Bexar County</td>
<td>Regulates discharges of storm water associated with construction activities over 1 acre</td>
</tr>
<tr>
<td>Utilities Permit</td>
<td>Bexar County</td>
<td>Regulates all construction activities in County-maintained rights-of-way, including driveways that access County roads</td>
</tr>
<tr>
<td>Roadway Permit</td>
<td>Bexar County Public Works</td>
<td>Controls all construction activities in County maintained rights-of-way; including driveways to access County roads</td>
</tr>
<tr>
<td>Floodplain Development Permit</td>
<td>Burleson County</td>
<td>Verifies that development does not have a negative impact on the 100 - Year Flood Plain</td>
</tr>
<tr>
<td>Commissioners Court Approval</td>
<td>Burleson County</td>
<td>Regulates proposed development, inclusive of areas located on a site within the regulatory 100 year FEMA Flood Plain</td>
</tr>
<tr>
<td>Road Crossing -</td>
<td>Burleson County</td>
<td>Provides for the monitoring and approval of</td>
</tr>
<tr>
<td>Permit Type</td>
<td>Permitting Agency</td>
<td>Description</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>County Approval</td>
<td></td>
<td>utilization of County right-of-way</td>
</tr>
<tr>
<td>Work in the Public Right-of-Way Permit</td>
<td>Caldwell County-Unit Road Administrator</td>
<td>Regulates all construction or activity of any kind within the County’s right-of-way, including installation of overhead or underground utilities</td>
</tr>
<tr>
<td>Floodplain Permit Application</td>
<td>Comal County</td>
<td>Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain</td>
</tr>
<tr>
<td>Private improvements in the Public Right-of-Way permit</td>
<td>Comal County Engineer’s Office</td>
<td>Regulates all construction or activity of any kind within the County’s right-of-way, including installation of overhead or underground utilities</td>
</tr>
<tr>
<td>Floodplain Development Permit</td>
<td>Guadalupe County Environmental Health</td>
<td>Regulates for all development in the 100- year floodplain, as part of the National Flood Insurance Program</td>
</tr>
<tr>
<td>Culvert/Access Permit</td>
<td>Guadalupe County Road and Bridge Department</td>
<td>Regulates construction or activity within the County’s right-of-way, including installation of overhead or underground utilities at culverts and provides for access requirements</td>
</tr>
<tr>
<td>Roadway/Excavation Permit</td>
<td>Guadalupe County Road and Bridge Department</td>
<td>Regulates construction or activity within the County’s right-of-way, including installation of overhead or underground utilities</td>
</tr>
<tr>
<td>Road Crossing - County</td>
<td>Lee County</td>
<td>Provides for the monitoring and approval of utilization of County right-of-way</td>
</tr>
<tr>
<td>Development Application</td>
<td>Lee County</td>
<td>Administers all the business of the County, including the building and maintenance of county roads and bridges and floodplains</td>
</tr>
<tr>
<td>Floodplain Permit</td>
<td>Lee County</td>
<td>Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain</td>
</tr>
<tr>
<td>Tree Permit(s)</td>
<td>City of San Antonio</td>
<td>Maintain, to the greatest extent possible, existing trees within the city and the extraterritorial jurisdiction (ETJ), and to add to the tree population within the city and the ETJ to promote a high tree canopy goal</td>
</tr>
<tr>
<td>Building Permit</td>
<td>City of San Antonio</td>
<td>Ensures that all construction activities associated with potentially occupied structures are well coordinated and protect the health, safety, and quality of life of the citizens of San Antonio</td>
</tr>
<tr>
<td>Site Plan Permit</td>
<td>City of San Antonio</td>
<td>Ensures understanding and compliance with the City’s development codes associated with commercial site work, utility work, drainage structures, sidewalks, driveways and grading</td>
</tr>
<tr>
<td>Stormwater Permit</td>
<td>City of San Antonio</td>
<td>Ensures future construction projects do not adversely impact current drainage system</td>
</tr>
<tr>
<td>Floodplain Development Permit</td>
<td>City of San Antonio</td>
<td>Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain</td>
</tr>
<tr>
<td>Permit Type</td>
<td>Permitting Agency</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Roadway Permit</td>
<td>City of San Antonio Public Works Right-of-Way Management</td>
<td>Ensures that all construction activities are well coordinated and impacts are mitigated to reduce public inconvenience, guarantee proper street repair and ensure all regulations are enforced appropriately</td>
</tr>
<tr>
<td>Roadway Crossing- Public Works Permit</td>
<td>City of Schertz</td>
<td>Regulates construction of improvements within City street rights-of-way</td>
</tr>
<tr>
<td>Floodplain Permit</td>
<td>City of Schertz</td>
<td>Regulates proposed development located on a site within the regulatory 100 year FEMA Flood Plain</td>
</tr>
<tr>
<td>Tree Preservation/Removal Permit</td>
<td>City of Schertz</td>
<td>Maintain, to the greatest extent possible, existing trees within the city and the extraterritorial jurisdiction (ETJ)</td>
</tr>
<tr>
<td>Permit for New Pipeline Crossings</td>
<td>Union Pacific</td>
<td>Regulates the crossing of Union Pacific railway lines with utility pipelines</td>
</tr>
</tbody>
</table>
APPENDIX 2
OPERATING AND MAINTENANCE STANDARDS
APPENDIX 2

OPERATING AND MAINTENANCE STANDARDS

2.1. OPERATING AND MAINTENANCE STANDARDS

2.1.1 Purpose. The purpose of this Appendix is to supplement the requirements for the Operating Work set forth in Articles II (Appointment of Operating Service Provider and Term), III (Standard of Performance; Operating Service Provider’s Obligations), V (Plants, Reports, Records, Access and Audits), VI (Quality and Quantity of Water), VIII (Environmental Compliance and Labor Practices) and IX (Project Assets Transfer) of this Agreement.

2.2. OPERATIONS REQUIREMENTS

2.2.1 Objectives. The Operating Service Provider shall operate and maintain the Project in accordance with this Agreement and the Contract Standards. Operational decision-making shall always be based on the following operating objectives:

(a) Protection of the health, safety, and welfare of the public and operating staff;
(b) Compliance with the Performance Guarantees;
(c) Protection of the environment;
(d) Protection and preservation of the Project;
(e) Protection of the SAWS Distribution System; and
(f) Producing a reliable supply of Project Water consistent with this Agreement.

2.2.2 Operations Generally. The Operating Service Provider shall operate the Project under all conditions in accordance with the Contract Standards and as described below in this Appendix.

2.2.3 Wastewater Facilities and Disposal. The Operating Service Provider shall operate and maintain wastewater facilities to service the sanitary wastewater produced at the Project and the Project Sites. The Operating Service Provider shall arrange for servicing of holding tanks on a regular basis. The Operating Service Provider shall manage and operate the wastewater facilities such that no leaks or overflows occur.

2.2.4 Electric Service Equipment. The Operating Service Provider shall operate and maintain all electric service equipment owned by the Project Company or CTRWSC in accordance with the requirements of the electric service provider. The Operating Service Provider shall provide the electric service provider with access to all electric service equipment owned by the electric service provider.

2.2.5 Operations During Power Outage. Following a primary electrical power outage from any cause, the Operating Service Provider shall assure that the flush pumps and any other components required for equipment protection during such a loss of power event remain functional upon loss of power to the Project.

2.2.6 Minimum Staffing. The Operating Service Provider shall staff the Project consistent with the Operating Protocol and Applicable Law; provided, however, that (1) in no event shall the Project be staffed less than eight hours per day, and (2) the Project shall be monitored by an operator 24 hours per day. All individuals who are proposed to operate or supervise the operation and maintenance of the Project must possess valid operator certifications that meet the requirements of Applicable Law. The Chief Operator shall have the overall responsibility for the day-to-day, hands-on operation of the Project.
During off hours (including vacation and sick leave), an operator or shift operator (with a minimum certification meeting the requirements of Applicable Law), in either case with a demonstrated familiarity with the Project, shall be accessible to the on-site staff, CTRWSC, the Project Company, and SAWS by phone within one hour notice.

2.2.7 Environmental Compliance. The Operating Service Provider shall assure compliance with Applicable Law and Governmental Approvals. The Operating Service Provider shall provide on-going training and environmental education of staff and operators for long-term environmental sensitivity, awareness, and compliance. Annually, the Operating Service Provider shall perform an environmental review of the Project Sites that will include confirming compliance with Applicable Law and Governmental Approvals. The review shall also include all reports (e.g., quarterly and annual) and monitoring data, as necessary to demonstrate compliance therewith. Any non-compliance and reporting issues shall be reported to the Chief Operator, CTWSC, the Project Company, and SAWS immediately.

2.2.8 Regulated Substances Management. The Operating Service Provider shall maintain and comply with a current Regulated Substances management program and emergency/spill response plan meeting the requirements of Applicable Law and this Agreement. All water treatment chemicals and corrosion inhibitors used at the Project Sites shall comply with the American Water Works Association standards and shall be approved by the National Science Foundation for potable water treatment. Chemicals that could be discharged into the environment shall be stored and used in compliance with Applicable Law. Each chemical load shall be certified by the manufacturer and shall be randomly tested for product quality at least once per month in accordance with the Operating Service Provider’s standard operating procedures. Records of such test results shall, at all times, be maintained and available for CTRWSC’s, the Project Company’s, and SAWS’s review.

2.2.9 Buildings and Grounds. The Operating Service Provider shall at a minimum perform the following activities relevant to the buildings and grounds:

(a) Maintain the buildings, grounds, and landscaping in an aesthetically attractive and clean condition.

(b) Repair all roof leaks promptly upon discovery.

(c) Implement regularly scheduled pest control measures.

(d) Apply paint as necessary to all painted surfaces, as appropriate. All painted surfaces shall be painted to maintain a clean aspect, except for such surfaces that have maintained their original condition and would be adversely affected by frequent painting. The Transmission Pipeline is excluded from this obligation.

(e) Repair cracks, erosions, depressions, and potholes, and slab shifts on paved areas, sidewalls, and other areas, as necessary.

(f) Periodically resurface paved areas, if and as necessary.

(g) Mow all Transmission Pipeline Easements at least once every three years, or more frequently if necessary, to provide for ease of inspection of the Transmission Pipeline System.

2.2.10 Pipeline Maintenance Requirements. All Project pipelines shall be maintained by the Operating Service Provider in accordance with the Contract Standards. If any such pipelines develop a leak or otherwise fail, the Operating Service Provider shall repair and restore the affected pipeline as soon as possible. Prior to placing the pipeline back into service, the Operating Service Provider shall perform proper blow-off and as pertinent, sanitation procedures shall be followed in accordance with Applicable
Law. If a leak or rupture occurs, barricades shall be placed around the problem area and at all times the safety of the public shall be paramount. The Operating Service Provider shall follow all requirements of Applicable Law such as proper backfill and compaction, erosion and sediment control and traffic control. Utility locations, traffic control plans, and other information required by applicable Governmental Bodies prior to digging shall be provided before any such work begins. The Operating Service Provider shall comply with all applicable local requirements for construction at all times. After repair of any pipelines, sod or pavement shall be replaced and the area shall be restored to at least its original condition. Where metallic piping is used, the Operating Service Provider shall incorporate appropriate measures into the corrosion protection plan to protect the integrity of the pipelines and monitor the rate of corrosion. If requested by CTRWSC, the Operating Service Provider shall utilize a closed-circuit televising or other survey equipment approved in writing by CTRWSC to determine the condition of all pipelines operated by the Operating Service Provider every ten (10) years, or earlier if necessary, during the Term and prior to the expiration of the Term.

2.2.11 Project Flow Meter and Well Field Meters.

(a) On a monthly basis, the Operating Service Provider shall provide routine servicing and maintenance of the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted instruments. Routine maintenance activities generally include, but are not limited to: (i) inspection and cleaning of all ports; (ii) visual inspection to detect leaks, and (iii) confirming properly functioning differential pressure transducers. Twice yearly, the Operating Service Provider shall calibrate and service, as required, the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted instruments at the Project Sites. The Operating Service Provider shall provide CTRWSC, the Project Company, and SAWS with copies of its maintenance reports and also enter such reports in the CMMS.

(b) At any time other than during the twice yearly calibration by the Operating Service Provider, CTRWSC and the Project Company can request, at its own expense, to have the Project Flow Meter and Well Field Meters, and their respective appurtenant field mounted instruments calibrated, provided that such calibration shall be performed by the Operating Service Provider at the Project Sites within five (5) Business Days of the Operating Service Provider’s receipt of written notification of such request.

(c) In the event any such calibration test discloses an error exceeding two percent (2%), an adjustment shall be made in charges incurred during the known or estimated period of such error, but in no event exceeding six (6) months prior.

2.2.12 Ordinary and Preventive Maintenance Generally. The Operating Service Provider’s preventive maintenance plan within the Maintenance, Repair and Replacement Plan (as defined below) shall reflect procedures and standards consistent with Good Management Practice. The preventive maintenance plan shall reflect that in no event shall maintenance be less frequent and less comprehensive than that specified in manufacturers’ warranties and manuals, unless otherwise approved in writing by CTRWSC. The preventive maintenance plan shall also address the inspection, leak testing, maintenance, and repair procedures for all water-bearing structures in accordance with Good Management Practice.

2.2.13 Preventive Maintenance Activities. All equipment preventive maintenance activities shall, at a minimum, meet the maintenance requirements of the Project Equipment suppliers. As such, all equipment usage shall be logged through the SCADA system or otherwise entered into the CMMS to provide the necessary input to the CMMS. The CMMS shall generate work orders that are specific to the item of equipment. These work orders shall outline the required preventive maintenance, describing the work to be undertaken. These work orders shall be undertaken and completed promptly. The resultant
preventive maintenance work shall be logged as to when the work order was issued, when completed, by whom, duration of work, and listing of consumables and spare parts used in providing the required work. This information shall be continuously maintained for all equipment and summarized on an annual basis to CTRWSC and the Project Company, as part of the annual operations report required by Section 5.03 (Periodic Reports) of this Agreement, to confirm the work is being undertaken as required so as to protect the investment in the infrastructure. CTRWSC, however, may request to review records more frequently. The Operating Service Provider, in addition, shall:

(a) Maintain and replace the Project Equipment in accordance with manufacturer’s recommended maintenance procedures and Good Management Practice;

(b) Maintain accurate records and all other data required for the proper supervision and administration of the maintenance of the Project Equipment;

(c) Provide continuous inspection of Project Equipment to detect any significant variance from the manufacturer’s recommended operating tolerances and specifications of the Project when new. Corrective action shall be taken to prevent damage to the equipment, as well as protect warranties on new equipment;

(d) Conduct all maintenance, repair, and replacements in a manner that does not endanger the safety of O&M Personnel or CTRWSC, Project Company, or SAWS staff and visitors and residents in the vicinity of the Project Sites;

(e) Maintain and replace any cathodic protection systems at the Project, if installed, at the optimum operating condition at all times to ensure effective corrosion prevention of all underground piping and other Project components installed in corrosive environments;

(f) Provide the services of factory-trained technicians, tools, and equipment to field-calibrate, test, inspect and adjust all instruments to their specified performance requirements in accordance with the manufacturer’s specifications and instructions;

(g) Maintain and implement a regular gate and valve exercising program. The Operating Service Provider shall maintain a log of its gate and valve exercising activities in its CMMS;

(h) Perform predictive maintenance on all pumps and motors having over two hundred fifty (250) horsepower at least two (2) times per Contract Year. Such predictive maintenance shall include, at a minimum, thermal evaluations and diagnostics of the electrical systems and vibration analysis of the mechanical systems.

2.2.14 CMMS. The Operating Service Provider shall maintain and update the CMMS. If the Operating Service Provider changes or upgrades its CMMS, it shall provide eighty (80) days prior notice to CTRWSC, the Project Company and SAWS about the changes or upgrades to its CMMS.

(a) Asset Registry. The CMMS program shall be configured to produce an Asset Registry which shall include a complete listing of all assets having an installed cost, defined as the estimated cost to install that asset, that exceeds $25,000 (Index Linked) that constitute the Project, with Project Equipment grouped separately from Project Structures, including for each such asset:

(i) a unique CMMS asset identifier (with each system separately identified, e.g., pump, motor, meter, motor control center, etc.);

(ii) an asset descriptor;
(iii) the asset’s manufacturer and model number;
(iv) photographs and video (to the extent reasonably accessible);
(v) the asset’s service life;
(vi) the asset’s estimated installed cost, including material, equipment and labor costs;
(vii) date of installation; and
(viii) service status (i.e., in service or removed from service).

The CMMS program shall be able to prepare an Asset Registry report (hardcopy and exportable in digital spreadsheet or database form) and shall be provided by the Design Build Contractor in both hardcopy and digital formats within six (6) months following the Commercial Operation Date.

(b) Updates. The CMMS shall be updated as necessary to reflect all newly added assets, including populating fields with the information identified in clause (a) of this subsection. Assets that are removed from the Project shall be deleted from the CMMS, and assets that are removed from service but left in place shall remain in the CMMS, but be flagged to indicate service status as removed from service. Any asset removed from service but left in place with no defined schedule for returning the asset to service shall be deemed to be abandoned in place. The Operating Service Provider shall provide an updated Asset Registry report annually to CTRWSC, the Project Company, and SAWS in digital format.

At the end of every fifth (5th) year, the Operating Service Provider shall update the CMMS to reflect the condition, functionality, structural integrity, and accompanying condition status of the existing assets. The Operating Service Provider shall consider the updated asset condition information in its evaluation of subsequent updates of the Maintenance, Repair and Replacement Schedule (as defined below).

2.2.15 Maintenance, Repair and Replacement Plan. Within thirty (30) days after the Commercial Operation Date, the Operating Service Provider shall prepare and submit for CTRWSC’s review a Maintenance, Repair and Replacement Plan (as defined below). After addressing CTRWSC’s comments, the Operating Service Provider shall submit a final Maintenance, Repair and Replacement Plan to CTRWSC, the Project Company, and SAWS. This plan shall be periodically updated when equipment is replaced, and submitted to CTRWSC, the Project Company, and SAWS annually with a summary of new equipment in place. If any component identified in the Asset Registry fails prior to its anticipated replacement date, the updated plan shall include a detailed report outlining the cause for the failure and the corrective action undertaken by the Operating Service Provider to allow the replacement component to meet the replacement date specified in the plan. Any such component that fails during the warranty period shall be replaced at no cost to CTRWSC or the Project Company. The Operating Service Provider shall comply with the Maintenance, Repair and Replacement Plan throughout the Operating Period except where it can demonstrate to CTRWSC that changes are in accordance with Good Management Practice.

2.2.16 Minimum Plan Requirements. The Maintenance, Repair and Replacement Plan shall define how the Operating Service Provider will achieve the Contract Standards objective of quality performance, including but not limited to the following components of quality performance: (1) availability of spare parts for critical operating systems; (2) energy efficiency; (3) ongoing maintenance and repair; (4) appropriate and timely renewal and replacement of equipment; (5) cost-effective upgrades of obsolete equipment and systems; (6) the minimum standards for performance of its ongoing
maintenance, repair and replacement obligations; and (7) an equipment inventory, schedule for shift and preventive maintenance, and related operator training (the “Maintenance, Repair and Replacement Plan”). The Maintenance, Repair and Replacement Plan shall also address how the Operating Service Provider shall: (i) maintain and repair the Project, including without limitation, repair or replacement of components, including all maintenance, repair and component replacement which may be characterized as “major” or “capital” in nature; (ii) maintain the Project Equipment substantially in accordance with applicable manufacturer’s instructions, the applicable operation and maintenance manuals, and Good Management Practice and using the CMMS; (iii) perform all maintenance, repairs and replacements reasonably necessary to the continued operation of the Project at all times; (iv) maintain the Project Structures in accordance with Good Management Practice; and (v) keep accurate records and all other data required for the purposes of proper administration and review of the maintenance of the Project Equipment and Project Structures. The Maintenance, Repair and Replacement Schedule shall be provided as part of the Maintenance, Repair and Replacement Plan. The Maintenance, Repair and Replacement Plan shall comply with the requirements set forth in Section 5.08 (Maintenance, Repair and Replacement Plan) of this Agreement.

2.2.17 Maintenance, Repair and Replacement Schedule. For individual items of equipment with an installed repair or replacement value exceeding $25,000 (Index Linked) (which includes the estimated total cost to repair or replace such equipment, but excludes any on-site labor), the Operating Service Provider shall prepare and deliver to CTRWSC, the Project Company and SAWS a maintenance, repair and replacement schedule which identifies the projected timing and costs of such major repairs and replacements in defined intervals over the Term (the “Maintenance, Repair and Replacement Schedule”). The Operating Service Provider shall not be required to repair or replace a particular piece of equipment in a particular year solely because the projected Maintenance, Repair and Replacement Schedule indicates that timing is the appropriate repair or replacement interval.

2.2.18 One-Year Maintenance, Repair and Replacement Schedule Update. Annually, concurrently with the budgeting performed in accordance with Article X (Operating and Maintenance Costs) of this Agreement, the Operating Service Provider shall have prepared an update of the projected Maintenance, Repair and Replacement Schedule for the next Contract Year for individual items of equipment with an installed repair or replacement value exceeding $25,000 (Index Linked) (a “One-Year Maintenance, Repair and Replacement Schedule Update”). The One-Year Maintenance, Repair and Replacement Schedule Update shall include the proposed schedule for each such major repairs and replacements projected for the Contract Year by the Operating Service Provider. The Operating Service Provider and CTRWSC, the Project Company and SAWS shall hold a meeting to review each annual One-Year Maintenance, Repair and Replacement Schedule Update. The initial Maintenance, Repair and Replacement Schedule and each One-Year Maintenance, Repair and Replacement Schedule Update thereof shall detail the proposed schedule of major repairs and replacements for the immediately following Contract Year (year one (1) of the update), an updated schedule for the next Contract Year (year two (2) of the update), and updated schedule for each of the following three Contract Years (years three (3) through five (5) of the update).

2.2.19 Changes Proposed by One-Year Maintenance, Repair and Replacement Schedule Update. For all changes to the Maintenance, Repair and Replacement Schedule proposed in a One-Year Maintenance, Repair and Replacement Schedule Update, the Operating Service Provider shall indicate to CTRWSC the reason for the change and provide supporting information including at a minimum the following:

(a) Operating or test results used by the Operating Service Provider to determine the differing repair or replacement need, demonstrating the actual performance of the asset in comparison to that which would be expected by the same asset performing as was anticipated by the current Maintenance, Repair and Replacement Schedule.
(b) Complete detailed history of the assets in question from the CMMS, indicating actual scheduled and unscheduled maintenance events.

(c) In the case of Project Equipment or manufactured Project Structures, manufacturer’s data indicating recommended maintenance schedules.

In the interest of maintaining the expected reliability level of operation of the Project, (i) CTRWSC will review the recommended One-Year Maintenance, Repair and Replacement Schedule Updates and supporting information, (ii) for Maintenance, Repair and Replacement Schedule changes that would delay previously anticipated repairs or replacements, should CTRWSC determine (acting reasonably) that the delay could adversely impact the public health and safety, CTRWSC shall have the right to reject the delay and require that the repair or replacement be performed as previously scheduled and (iii) in making such a determination, CTRWSC will consider whether or not the asset’s condition and performance was continuously monitored as required by this Appendix, and whether or not the Operating Service Provider performed appropriate levels of ordinary and preventive maintenance on the asset.

2.2.20 Five-Year Capital Plan. Prior to the commencement of the third (3rd) Contract Year following the Commercial Operation Date, the Operating Service Provider shall prepare and provide to CTRWSC, the Project Company and SAWS a report that recommends the anticipated major equipment repair and replacement projects at the Project over the course of the next five (5) Contract Years (the “Five-Year Capital Plan”). The Five-Year Capital Plan shall be used as a planning tool by CTRWSC and the Operating Service Provider to consider future proposed major equipment repair and replacement projects at the Project and other long-term work, and to make certain that the Project facilities are being adequately maintained and will be available. The Five-Year Capital Plan shall set forth a description of each project, the rationale for performing each project, the impact or effect of each project on the Project, a preliminary cost estimate or cost allowance for each project, the approximate period of time when each project would be performed and the proposed method or procedure for delivery of each project. The Five-Year Capital Plan shall be updated on an annual basis by the anniversary of each Contract Year concurrent with the budgeting performed in accordance with Article X (Operating and Maintenance Costs) of this Agreement. Each year, the Five-Year Capital Plan shall be updated by the Operating Service Provider and a copy shall be delivered to CTRWSC, the Project Company and SAWS. CTRWSC, the Project Company, SAWS and the Operating Service Provider shall meet and confer regarding each update to the Five-Year Capital Plan and its implementation.

2.2.21 Operating Service Provider Obligation to Repair and Replace Not Limited. Notwithstanding the Operating Service Provider’s performance of its obligations pursuant to Sections 2.2.15 (Maintenance, Repair, and Replacement Plan), 2.2.17 (Maintenance, Repair and Replacement Schedule), 2.2.18 (One-Year Maintenance, Repair and Replacement Schedule Update), and 2.2.20 (Five-Year Capital Plan) of this Appendix, the Operating Service Provider shall repair and replace equipment and structures as needed over the Term, and such obligation shall not be limited in any way.

2.3. GENERAL OPERATING PERIOD REQUIREMENTS

2.3.1 Monthly Operations Reports. No later than ninety (90) days prior to the Design Build Contractor initiating the Performance Test (as notified by CTRWSC to the Operating Service Provider), the Operating Service Provider shall submit to CTRWSC and SAWS for review and for CTRWSC’s approval, the proposed format of the monthly operations report required to be submitted by the Operating Service Provider pursuant to Section 5.03 (Periodic Reports) of this Agreement. In addition to the information and data required to be included pursuant to Section 5.03 (Periodic Reports) of this Agreement, the monthly operations report shall include all other data or information required to be furnished under the Operating Protocol.

2.3.2 Identification Badges. The Operating Service Provider shall provide standardized
identification badges to all O&M Personnel and all on-site personnel of CTRWSC, the Project Company and Subcontractors throughout the Operating Period. Such employees shall wear these badges at all times when on the Project Sites. Identification badges shall also be issued to all visitors at the time of arrival with records retained of the name and affiliation of the visitor, purpose of the visit, time of arrival and time of departure. The identification badge shall be surrendered at each time of departure.

2.3.3 **SAWS Office Space.** The Operating Service Provider shall designate and reserve an office at or adjacent to the permanent Operating Service Provider offices if located outside of Bexar County (and related reasonable ingress and egress rights) for SAWS’ exclusive use, as provided in Section 3.10(b) (**SAWS Administrative Space**) of this Agreement. The Operating Service Provider shall not (and shall cause its Subcontractors not to) enter or inhabit such SAWS-designated office without SAWS’ prior approval. At a minimum, the office reserved for SAWS shall have the following features:

(a) one hundred seventy (170) square feet (similar in character to that provided for the Operating Service Provider’s management personnel).

(b) Three (3) electric duplex receptacle wall outlets.

(c) Broad band high-speed internet access.

(d) Three (3) telephone lines and one speakerphone. One of the telephone lines shall be dedicated to a facsimile machine (to be provided by SAWS). If the Operating Service Provider provides wireless internet services for its own use, such service shall also be provided to SAWS.

(e) Secure, lockable, and uniquely keyed.

The Parties will coordinate so that SAWS has reasonable access to these facilities.

2.3.4 **SAWS Interface Cabinet.** The Operating Service Provider acknowledges and agrees that SAWS has provided and installed the SAWS Interface Cabinet and that SAWS shall own and be responsible for the maintenance, repair and replacement of the SAWS Interface Cabinet and its contents after the Performance Test. The Operating Service Provider shall provide a power supply to operate the SAWS Interface Cabinet’s equipment consistent with its design. Further, the Operating Service Provider shall be responsible to continuously provide the signals from the Project in a format that is compatible with SAWS’ SCADA system. The Operating Service Provider acknowledges and agrees that SAWS will be responsible to provide the PLC programming and human machine interface (“HMI”) integration for these signals into its control system. The Operating Service Provider shall provide adequate means of ingress and egress to SAWS for the operations, maintenance, repair and replacement of the SAWS Interface Cabinet.

2.3.5 **Risk Management and Safety.** To the extent required by Applicable Law, the Operating Service Provider shall prepare and maintain a risk management prevention program and a process safety and management plan.

2.3.6 **SAWS Communication with Subcontractors.** The Operating Service Provider shall provide SAWS with access to the Subcontractors pursuant to Section 3.09 (**Communications with CTRWSC, the Project Company and SAWS**) of this Agreement.

2.4. **SAWS REVIEW.**

2.4.1 **General.** The Operating Service Provider acknowledges and agrees that SAWS will review the Operating Service Provider’s operation, maintenance, repair and replacement of the Project throughout the Term. SAWS may assign one or more persons to observe the operation and maintenance
of the Project, to review repair and replacement records, and to provide coordination assistance to the Operating Service Provider to assure that the operation of the Project is fully integrated into the operation of the SAWS Distribution System.

2.4.2 Monthly Coordination Meetings. As required by Section 3.17(b) (Communications and Meetings) of this Agreement, monthly coordination meetings between Operating Service Provider, the Project Company and SAWS shall be held at the Transmission Pipeline Terminus Site or other location designated by CTRWSC. The Chief Operator (or other senior representative of the Operating Service Provider acceptable to SAWS) and, if requested by CTRWSC, a senior management representative of the Operating Service Provider who is at a management level above the Chief Operator shall attend these meetings. The purpose of these meetings is to review management, operational, performance, and planning matters for the Project, maintenance issues, the monthly operations reports, condition of the Project, safety, housekeeping of the Project Sites, compliance with Applicable Law, Governmental Approvals and the Performance Guarantees, staffing issues, invoicing issues, public relations, and other relevant issues. The Operating Service Provider shall be responsible for producing meeting minutes. The Operating Service Provider shall distribute copies of documentation of these meetings to all attendees and shall maintain a chronological file of such documentation, which upon request, will be made available to CTRWSC, the Project Company and SAWS.

2.4.3 Governmental Body Submittals. The Operating Service Provider shall submit draft copies of all Governmental Approvals and other regulatory submittals required for the Operating Work to CTRWSC and the Project Company for review and comment at least twenty-one (21) days prior to submittal to any Governmental Body. The Operating Service Provider shall address CTRWSC’s and the Project Company’s comments prior to submitting the documents to the Governmental Body and shall strictly comply with CTRWSC’s and the Project Company’s comments identifying areas where a statement made in a submittal would be contrary to SAWS policies or would otherwise impose an unreasonable cost or burden on CTRWSC, the Project Company or SAWS.

2.4.4 Periodic Maintenance Inspections and Testing. CTRWSC, the Project Company, and SAWS may perform annual maintenance inspections of the Project as provided in Section 5.11 (Periodic Maintenance Inspections) of this Agreement and Section 11.4 (Periodic Maintenance Inspections) of the WTPA.

2.4.5 Review at End of Term. Requirements for the review of the Project related to the Expiration Date are provided in Sections 9.02 (End of Term Performance Evaluation Requirements) and 9.03 (Project Assets; Transfer Condition) of this Agreement and Appendix 6 (End of Term Project Condition Requirements).

2.5 SECURITY PLAN

2.5.1 Security Plan. The Design Build Contractor will submit a final Security Plan to CTRWSC prior to the initiation of the Operating Period. The Security Plan shall be periodically updated by the Operating Service Provider to address changing threat conditions and when security equipment or systems are added or modified. If the Security Plan is changed in any Contract Year, then the updated Security Plan shall be submitted to CTRWSC with a summary of the new or modified equipment or systems within forty (40) days of the end of that Contract Year. The Operating Service Provider shall comply with the Security Plan throughout the Operating Period. CTRWSC intends, except as may be required by Applicable Law, to keep confidential all information and materials relating to security at the Project Sites, including the Security Plan, irrespective of whether the Operating Service Provider has requested CTRWSC to keep any such information and materials confidential.

2.5.2 Minimum Requirements for the Security Plan. The Operating Service Provider’s Security Plan shall include at a minimum, the following information:
(a) A general description of the Operating Service Provider’s security threats including (i) security measures and procedures for prevention, detection, and response to terrorism, (ii) vandalism, (iii) sabotage, (iv) natural disasters, (v) theft, (vi) accident, (vii) assault on employees, and (viii) cross-connection contamination.

(b) A risk analysis of critical areas on the Project Sites and measures to secure them. Critical areas include, but are not limited to, chemical storage and feed facilities, control room and systems, electrical systems (including transformers), clearwells, laboratory, pump stations, and flow control systems.

(c) A description of the Operating Service Provider’s zoning or subzoning of the Project Sites into multiple levels of security.

(d) A description of the intrusion detection and surveillance systems.

(e) A description of all security alarms and how and where they will be monitored to ensure a rapid and effective response.

(f) A description of means to track O&M Personnel, vendors, visitors, CTRWSC, Project Company or SAWS staff, and all other persons on the Project Sites.

(g) A vulnerability assessment of the Project which shall include, but not be limited to, a review of pipes and constructed conveyances, operationally critical long lead time equipment or spare parts, physical barriers, water collection, pretreatment, treatment, storage and distribution facilities, electronic, computer or other automated systems which are utilized by the SAWS Distribution System, the use, storage, or handling of various chemicals and the operation and maintenance of such system, as consistent with all Applicable Law.

(h) An emergency response plan for the Project which shall also include actions, procedures, and identification of equipment which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals, as consistent with Applicable Law.

(i) A description of the Operating Service Provider’s plan for notifying nearby residents of emergencies at the Project Sites.

(j) Coordination with CTRWSC, the Project Company and SAWS during periods of elevated risk.

(k) Immediate notification procedures to CTRWSC, the Project Company and SAWS of security intrusions and events at the Project, including requirements for a monthly report to be provided to CTRWSC, the Project Company and SAWS addressing all security-related events during the preceding month and proposed mitigation strategies.

2.6. OPERATING PROTOCOL

2.6.1 Minimum Requirements for the Operating Protocol. CTRWSC shall use all reasonable efforts to provide the Operating Service Provider with a copy of the Operating Protocol at least ninety (90) days prior to the Commercial Operation Date. The Operating Protocol shall include at a minimum, the following information:

(a) A general description of how the Project will be operated in conjunction with the SAWS
(b) A description of the Operating Service Provider’s QA/QC procedures during the Operating Period;

(c) A description of any operational procedures to be implemented in order to comply with the Performance Guarantees;

(d) Procedures to be verified before routine start-up or shut-down of flow of Product Water from the Project;

(e) Procedures for emergency start-up or shut-down of flow of Product Water from the Project;

(f) Procedures for the Operating Service Provider to communicate weekly forecast of Product Water production for consideration in SAWS’ weekly operating plan development meeting;

(g) Operations and maintenance communications procedures and requirements;

(h) Operational procedures including Product Water pump operations to avoid creating material hydraulic transients in accordance with the final hydraulic transient analysis compliant with Appendix 3 (Technical Specifications) of the WTPA;

(i) Procedures for the Operating Service Provider’s scheduling of planned maintenance outages to provide adequate schedule for warranty inspections and any requisite warranty repairs of the Project and the SAWS Interconnection Improvements after the Commercial Operation Date;

(j) A list and description of the chemicals to be used at the Project Sites, methods of delivery, on-site storage volume, and procedures for safe storage and use of the chemicals;

(k) A description of the intended method of Residuals handling and disposal (identifying the approximate amount and type of Residuals that will be generated); and

(l) Alternative operations procedures reflecting all reasonable SAWS Distribution System operating scenarios.

As required by Section 5.01 (Operating Protocol) of this Agreement, the Operating Service Provider shall update at least eighty (80) days prior to the commencement of each Contract Year following the Commercial Operation Date, the Operating Protocol for the forthcoming Contract Year. In addition, the Operating Service Provider shall update the Operating Protocol as directed by CTRWSC from time to time in order for the document to remain current.

2.6.2 Extended Shutdown. To initiate delivery of Product Water following an extended shutdown of the Project, the Operating Service Provider shall limit pumping ramp-up to allow SAWS sufficient time to manage reversal of flow within the SAWS Distribution System, except for initiation of pumping up to the Midrange Partial Flow (as defined in Appendix 5 (Performance Test Procedures and Standards) of the WTPA) during which the ramp-up may occur as quickly as the Operating Service Provider may choose. Increasing delivery of Product Water above the Midrange Partial Flow may only occur after the Operating Service Provider first notifies CTRWSC, the Project Company and SAWS that the Midrange Partial Flow has been reached, and a minimum of 3 hours of subsequent operation at the Midrange Partial Flow has been sustained. The duration of minimum sustained operation prior to
ramp-up above the Midrange Partial Flow may be lessened as SAWS may approve. Any Project shutdown exceeding one hundred (120) minutes will constitute an extended shutdown and automatically trigger a minimum 24-hour suspension of delivery and availability of Product Water. The Operating Service Provider shall provide a minimum 6-hour advance notice to CTRWSC, the Project Company and SAWS prior to resuming pumping following an extended shutdown.
APPENDIX 3

INSURANCE REQUIREMENTS
APPENDIX 3

INSURANCE REQUIREMENTS

3.1. INSURANCE DURING THE OPERATING PERIOD

The Operating Service Provider shall obtain, maintain, and keep in force throughout the Operating Period the following insurance coverage related to the Operating Service Provider, Project Company, and/or CTRWSC:

3.1.1 Property. An all risk property insurance policy (excluding earthquake) on a stated amount basis for the Full Insurable Value insuring all buildings, improvements and equipment that are built or placed on the Project Sites, and including coverage for business interruption, extra expense and expediting expense, subject to a $20 million aggregate sublimit for flood coverage ($20 million flood sublimit excluded from Boiler and Machinery coverage as set forth in subsection 3.1.2 (Boiler and Machinery) of this Appendix). Said policy will include coverage for law and ordinance, including demolition and increased cost of construction, extra and expediting expenses, debris removal and professional fees.

Name Insureds: Project Company, CTRWSC, Operating Service Provider, and SAWS

First Loss Payee: the creditors of the Project Company or CTRWSC, as their interests may appear

3.1.2 Boiler and Machinery. A boiler and machinery insurance policy with limits of liability of not less than $100 million per loss, insuring those objects as defined in the comprehensive object definition that are in use or connected and ready for use and are located on the Project Sites, and including coverage for business interruption, extra expense and expediting expense.

Named Insureds: Project Company, CTRWSC, Operating Service Provider, and SAWS

First Loss Payee: the creditors of the Project Company or CTRWSC, as their interests may appear

3.1.3 Business Interruption. The business interruption insurance policies required by subsections 3.1.1 (Property) and 3.1.2 (Boiler and Machinery) of this Appendix shall be provided with limits of liability in such amounts as are necessary to compensate the Operating Service Provider for direct loss of income and earnings resulting from or attributable to any of the perils required to be insured against under the policies referred to in subsections 3.1.1 (Property) and 3.1.2 (Boiler and Machinery) of this Appendix, including losses resulting from interference with or prevention of access to the Project Sites or the Project, in each case in whole or in part, as a result of such perils or for any other reason. Said policy will include civil authority and prevention of ingress / egress.

Named Insured: Project Company, CTRWSC and Operating Service Provider

First Loss Payee: the creditors of the Project Company or CTRWSC, as their interests may appear

3.1.4 Commercial General Liability. A commercial general liability insurance policy insuring against liability of the Project Company, CTRWSC and the Operating Service Provider with respect to the Project or arising out of the Operating Work, written on an occurrence basis and covering liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising liability, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The insurance shall (a) apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability and (b) have coverage for any one occurrence or claim of not less than $25 million, which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a
“follow form” basis. Said policy will include cross liability and severability of interests clause.

Named Insured: Project Company, CTRWSC and Operating Service Provider

Additional Insureds: SAWS and the creditors of the Project Company or CTRWSC

3.1.5 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than $2 million per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” basis. The insurance must cover liability arising from any motor vehicle, including owned, hired or non-owned vehicles, assigned to or used in connection with the operation and maintenance of the Project. If transporting Hazardous Substances, the commercial automobile liability insurance shall either be endorsed to provide coverage under the CA 99 48 10 13 endorsement, or the Operating Service Provider’s pollution liability insurance policy shall be endorsed to provide transportation coverage beyond the boundaries of the Project Sites.

Named Insured: The vehicle owner

Additional Insureds: Project Company, CTRWSC, SAWS, the creditors of the Project Company or CTRWSC and Operating Service Provider

3.1.6 Worker’s Compensation and Employer’s Liability. A worker’s compensation insurance policy as required by Applicable Law, and employer’s liability insurance having coverage limits of $1 million for each accident, $1 million for disease (each employee), and $1 million for disease (policy limit).

3.1.7 Pollution Legal Liability. A pollution legal liability insurance policy having coverage for any one occurrence or claim of not less than $5 million and a $5 million project aggregate limit, covering third party bodily injury and property damage, remediation costs for known and unknown pollution conditions, and first party property damage.

Named Insured: Project Company, CTRWSC, SAWS, and Operating Service Provider

3.1.8 Operating Service Provider Pollution Liability. During the Operating Period, the Operating Service Provider shall maintain in full force and effect an accidental pollution liability insurance policy written on an occurrence form with limits of not less than $5 million and a $5 million project aggregate limit. The policy shall provide either a “claims made” or an “occurrence based” coverage for all claims, liabilities, damages, costs, fees, and expenses of any kind or character arising out of any pollution condition that is in any way related to the Operating Service Provider’s operations, actions or inactions, and completed operations associated with any work performed by the Operating Service Provider, its Subcontractors, or any of their respective employees, agents, representatives, or officers under this Agreement.

Named Insured: Operating Service Provider, SAWS

Additional Insured: Project Company and CTRWSC

3.1.9 Earthquake and Earth Movement. An earthquake and earth movement insurance policy, including land movement, landslide, settlement, subsidence, lateral support, and mudslide, having coverage for any one occurrence or claim of not less than $20 million and a $20 million project aggregate limit.

Named Insureds: Project Company, CTRWSC and Operating Service Provider

3.1.10 Other. Any other form of insurance and with such limits; in such form, in amounts and
for risks as CTRWSC, acting reasonably, may require from time to time. The Monthly Operating Service Payment shall be adjusted (through a Direct Payment) to reflect the cost of any such additionally required insurance.

3.2. FULL INSURABLE VALUE

3.2.1 Determining Full Insurable Value. For the purposes of this Appendix, “Full Insurable Value” of any building, improvement, equipment or other property shall be determined by the Operating Service Provider, acting reasonably, at the time the insurance is initially taken out and thereafter at least once every 12 months, and the Operating Service Provider shall promptly notify CTRWSC, the Project Company and SAWS in writing of each such determination, provided that CTRWSC may at any time (but not more frequently than once in any 12 month period), by written notice to the Operating Service Provider, require the Full Insurable Value of any building, improvement, equipment or other property to be redetermined by an independent qualified appraiser designated by the Operating Service Provider’s insurance agent/broker and approved by the property insurance company. The Operating Service Provider shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to CTRWSC, the Project Company and SAWS.

3.2.2 Adequacy of Contemplated Insurance. In addition to the determination of Full Insurable Value, as part of the periodic review contemplated in subsection 3.2.1 (Determining Full Insurable Value) of this Appendix, the Operating Service Provider shall determine whether the policies set out in Section 3.1 (Insurance During the Operating Period) of this Appendix and the limits of such policies are adequate for the Project, and the Operating Service Provider shall promptly notify CTRWSC, the Project Company and SAWS in writing of each such determination, provided that CTRWSC may at any time (but not more frequently than once in any 12 month period), by written notice to the Operating Service Provider, require the policies or the limits of such policies be redetermined, in the manner described in the preceding paragraph. The Operating Service Provider shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to CTRWSC, the Project Company and SAWS. The Monthly Operating Service Payment shall be adjusted to reflect any reduced or increased cost of any CTRWSC-directed insurance redetermination.

3.3. WAIVER OF SUBROGATION RIGHTS, AND OTHER POLICY REQUIREMENTS

3.3.1 Operating Service Provider Waiver of Subrogation. The Operating Service Provider and its insurers providing the insurance required under Section 3.1 (Insurance During the Operating Period) of this Appendix, except for professional liability insurance, shall waive any right of subrogation they may have against CTRWSC, the Project Company, the City, SAWS, Project Indemnities and those for whom CTRWSC, the Project Company or SAWS is in law responsible, whether or not the damage is caused by its act, omission or negligence.

3.3.2 Non-Recourse to CTRWSC, the Project Company or SAWS. All insurance policies shall provide that the insurers shall have no recourse against CTRWSC, the Project Company or SAWS for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to this Agreement shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Operating Service Provider, its respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and within the coverages of any liability insurance or self-insurance program maintained by, CTRWSC, the Project Company or SAWS.

3.4. POLICY REQUIREMENTS

Each policy of insurance required under this Appendix shall:
(a) be written on a project or location specific basis with project or site specific dedicated limits, except for commercial automobile and worker’s compensation coverage;

(b) be issued by a Qualified Insurer;

(c) be in a form approved by CTRWSC, such approval not to be unreasonably withheld;

(d) be non-contributing with and shall apply only as primary insurance and not excess to any other insurance, self-insurance, or other risk financing program available to SAWS, CTRWSC or the Project Company;

(e) contain an undertaking by the insurers to notify CTRWSC, the Project Company, SAWS and the creditors of the Project Company or CTRWSC, as applicable, in writing not less than sixty (60) days before any material change, cancellation or termination, except for non-payment of premium whereby ten (10) days will apply;

(f) where CTRWSC, the Project Company or SAWS is an additional insured, insure Project Indemnitees; and

(g) where SAWS is an additional insured, use Insurance Services Office (ISO) endorsement CG 20 10 and CG 20 37 or equivalent substitutions.

3.5. EVIDENCE OF INSURANCE

Upon the issue of a policy of insurance, and otherwise upon request by CTRWSC, the Operating Service Provider shall deliver to CTRWSC, the Project Company (to the extent of coverage under which it is an additional insured) and SAWS a copy of policy endorsements and certificates. The Operating Service Provider, acting reasonably, may redact proprietary information from the copy of the policies so delivered. Upon request by CTRWSC, the Operating Service Provider shall deliver proof of payment of premiums for insurance required to be effected pursuant to this Appendix. No review or approval of any insurance certificate or insurance policy by CTRWSC shall derogate from or diminish CTRWSC’s or the Project Company’s rights under this Agreement.

3.6. DEDUCTIBLES

3.6.1 Deductibles During the Operating Period. Except as provided in subsection 3.6.2 (Earthquake Insurance Deductibles) of this Appendix, any of the policies of insurance required under Section 3.1 (Insurance During the Operating Period) of this Appendix during the Operating Period may provide that the amount payable in the event of any loss shall be reduced by a deductible amount designated by the Operating Service Provider and approved by CTRWSC, such approval not to be unreasonably withheld. The Operating Service Provider shall pay the amount deducted from the insurance moneys payable in the event of any loss.

3.6.2 Earthquake Insurance Deductibles. The policy of insurance required under subsection 3.1.9 (Earthquake and Earth Movement) of this Appendix may, with respect to loss arising from earthquakes and earth movement, provide that the amount payable in the event of such loss shall be reduced by a deductible amount of five percent of the loss or $250,000, whichever is less, of the $20 million sublimit insurance requirement.

3.7. SUBCONTRACTORS

The Operating Service Provider shall be responsible for ensuring that all Subcontractors performing the Operating Work secure and maintain all insurance coverages (including workers’ compensation insurance) and other financial sureties required by the laws of the State in connection with
their presence at the Project Sites and the performance of their duties pursuant to their respective Subcontracts.
APPENDIX 4
PERFORMANCE GUARANTEE REQUIREMENTS
APPENDIX 4

PERFORMANCE GUARANTEE REQUIREMENTS

4.1. PURPOSE

This Appendix sets forth the requirements for certain Performance Guarantees in this Agreement and the noncompliant Product Water deductions for failure of the Operating Service Provider to meet such Performance Guarantees throughout the Operating Period.

The Product Water Quality Sampling Location for Product Water quality compliance monitoring shall be a designated sample tap at a point proximate to the Product Water Delivery Point or at another location approved by SAWS and the Project Company under the WTPA, as such location has been notified by CTRWSC to the Operating Service Provider. All sampling methodology, holding times and analytical methods used shall be compliant with the latest edition of Standard Methods for the Examination of Water and Wastewater unless otherwise approved in advance by CTRWSC.

4.2. PERFORMANCE GUARANTEES

4.2.1 Product Water Quality Guarantee.

The Product Water that the Operating Service Provider delivers to SAWS at the Product Water Delivery Point shall be treated water suitable for immediate distribution as public water supply and shall meet:

(1) the quality criteria prescribed by the TCEQ Drinking Water Standards Governing Drinking Water Quality and Reporting Requirement for Public Water System, 30 Texas Administrative Code, Chapter 290, subchapter F;

(2) all federal drinking water regulations (e.g. primary and secondary maximum contaminant levels) promulgated by the EPA and enforceable in Texas; and

(3) the Additional Product Water Quality Standards specified in Table 4-1 of this Appendix.

The Operating Service Provider shall be responsible for compliance with all then-current drinking water quality regulatory requirements in items (1) or (2) above throughout the Operating Period.

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Table 4-1. Additional Product Water Quality Standards

<table>
<thead>
<tr>
<th>Product Water Quality Parameter</th>
<th>Unit</th>
<th>Concentration at Product Water Delivery Point</th>
<th>Minimum Sampling Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Iron</td>
<td>mg/L</td>
<td>≤0.3</td>
<td>Weekly</td>
</tr>
<tr>
<td>pH</td>
<td>Standard units</td>
<td>7.0 - 9.0</td>
<td>Continuous</td>
</tr>
<tr>
<td>Temperature</td>
<td>°F</td>
<td>≤83</td>
<td>Continuous</td>
</tr>
<tr>
<td>Langeliers Saturation Index1</td>
<td>Standard units</td>
<td>&gt; 0.1 but ≤0.3</td>
<td>Weekly</td>
</tr>
<tr>
<td>Free Chlorine</td>
<td>mg/L</td>
<td>≥0.2 but ≤3.0</td>
<td>Continuous</td>
</tr>
<tr>
<td>Turbidity</td>
<td>NTU</td>
<td>≤2</td>
<td>Continuous</td>
</tr>
</tbody>
</table>

1 LSI calculation as specified in Faust, Samuel D. and Aly, Osman M., Chemistry of Water Treatment, 2nd ed. (1998), page 459.

4.2.2 Changes in Applicable Law.

The Operating Service Provider, as provided in Section 6.01 (Product Water Quality Guarantee) of this Agreement, shall comply with Applicable Law with regard to Product Water quality as it may be in effect from time to time throughout the Term. SAWS, CTRWSC, the Project Company and the Operating Service Provider will coordinate in the development of any new treatment processes and methodologies necessary to meet future regulatory requirements.

4.2.3 Product Water Quality Sampling.

Sampling and monitoring will be performed following TCEQ regulation requirements or as directed by CTRWSC.

Continuous monitoring shall be conducted by on-line meters, located at a Product Water Quality Sampling Location that is capable of transmitting real-time information to SAWS’ SCADA system. Any parameter not requiring continuous monitoring shall be collected at the minimum frequency specified by the TCEQ and EPA by a grab sample at a Product Water Quality Sampling Location.

If it is determined that delivered water does not comply with one or more of the Additional Product Water Quality Standards listed in Table 4-1, or with items (1) and (2) in subsection 4.2.1 (Product Water Quality Guarantee) of this Appendix, the Product Water shall be considered Off-Specification Product Water or Unacceptable Product Water as listed in Table 4-2.

Demonstrated noncompliance of any Product Water Quality Guarantee at the Product Water Delivery Point shall give CTRWSC the right to instruct the Operating Service Provider to sample at any point(s) from the Well Field Facilities to the Product Water Delivery Point. The results of all such sampling shall be provided to CTRWSC, the Project Company and SAWS within one (1) Business Day following receipt by the Operating Service Provider.

All water quality analytical methods used to demonstrate compliance with the Product Water Quality Guarantee shall be performed according to methods approved by TCEQ or EPA, or otherwise approved in advance by CTRWSC. For routine process control analysis or routine Product Water analysis, CTRWSC may require the Operating Service Provider to use the SAWS Analytical Laboratory...
to perform the water quality testing. An independent third-party laboratory should be used if the Operating Service Provider reasonably believes that water quality may become noncompliant with any Product Water Quality Guarantee or for any reanalysis of Product Water. Any external laboratory analyzing Product Water samples must be a certified, independent, third-party laboratory preapproved in writing for use by CTRWSC. Approvals of laboratories for Product Water quality analysis shall not be unreasonably delayed by CTRWSC.

4.2.4 Raw Groundwater Sampling from Wells.

The Operating Service Provider shall sample all Wells during each Contract Year at least once for total coliforms. Each Well that returns a positive detection of coliforms shall require a resampling for coliforms from that Well within one month. If any of the Wells show coliforms on the resampling results, the following minimum safety protocol will be undertaken by the Operating Service Provider:

1. If coliforms are deemed migrating from the Well, the Well will be temporarily put out of service or the Raw Groundwater coming out of it shall be treated in a manner to protect from transfer downstream.

2. The Operating Service Provider will investigate the possible causes, define the need and the type of mitigation, and conduct the mitigation work.

3. If the resampling results show coliforms presence after mitigation is complete, a plan will be developed by the Operating Service Provider in coordination with the prior investigation results in order to define the most cost-effective solution to such issue. Proper resolution steps to be taken may include but are not limited to, flushing the Well three or more times, chemical treatment of the Well, shutting down the Well and drilling new Wells, and installing a water treatment system guaranteeing coliform-free water downstream. If repeated failure of the mitigation efforts will require the Operating Service Provider to develop a new plan to progressively move toward more significant or costly efforts to eliminate the presence of coliforms coming from a Well. Any such plan to move towards more costly mitigation efforts shall be submitted to CTRWSC, the Project Company, and SAWS for review and comment prior to implementation.

4. Once the coliform presence in the Raw Groundwater has been mitigated, the Project will return to normal operation ending the current mitigation efforts and returning to annual Raw Groundwater sampling efforts.

4.2.5 Off-Specification Product Water Deductions.

Pursuant to Section 6.01 (Product Water Quality Guarantee) of this Agreement, CTRWSC shall have the right to impose Deductions in the amounts specified in Table 4-2 of this Appendix in the event SAWS takes delivery of any Off-Specification Product Water. Such Deduction amounts shall be Index Linked.

This Appendix provides for Deductions, which are intended as liquidated damages for the relevant circumstances herein described. The Parties agree that actual damages in each such circumstance would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance are intended to place the damaged Party in the same economic position as it would have been in had the circumstance not occurred. Such Deductions shall constitute the only damages payable by the obligated Party in such circumstances of non-performance, breach or default, regardless of legal theory. This limitation, however, is not intended to and shall not limit any Party’s right to exercise its remedies herein provided, including remedies associated with an Operating Service Provider Event of Default or a CTRWSC Event of Default under Section 16.01 (Termination by
CTRWSC; Operating Service Provider Events of Default) and Section 16.02 (Termination by the Operating Service Provider; CTRWSC Events of Default) of this Agreement, respectively. The Parties acknowledge and agree that the additional remedies specifically provided for in this Agreement are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. In addition, the Parties agree as follows:

1. that the Deductions are not a penalty, and are fair and reasonable and such Deductions represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the specific circumstances of non-performance or breach; and

2. that, in recognition of the acknowledgments above, the Operating Service Provider is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty and that they are not enforceable.

Any parameters requiring continuous measurement shall be noncompliant for a minimum of four (4) hours before any Off-Specification Product Water Deductions are to be assessed by CTRWSC at CTRWSC’s sole discretion, or the water is determined to be Unacceptable Product Water. If the Operating Service Provider can demonstrate to CTRWSC’s satisfaction that the period of noncompliance was the result of a faulty meter or detector, or any other cause the CTRWSC believes adequately demonstrates that the reported value was not indicative of the actual Product Water quality delivered, then CTRWSC shall have the right to waive any Off-Specification Product Water Deductions.

Water that remains in an off-specification condition will be assessed a Deduction for each 24-hour period that the off-specification condition exists.

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Off-Specification Product Water</th>
<th>Unacceptable Product Water</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Iron</td>
<td>≤0.3 mg/L</td>
<td>&gt;0.3 mg/L</td>
</tr>
<tr>
<td>pH</td>
<td>≤7.0 - 9.0 units</td>
<td>≤7.0 or &gt;9.0 units</td>
</tr>
<tr>
<td>Temperature</td>
<td>≤83 °F</td>
<td>≥84 but ≤89 °F</td>
</tr>
<tr>
<td>Langeliers Saturation Index</td>
<td>≥0.1 but ≤0.3 units</td>
<td>&lt;0.2 or &gt;3.0 mg/L</td>
</tr>
<tr>
<td>Free Chlorine</td>
<td>≥0.2 but ≤3.0 mg/L</td>
<td>&lt;0.2 or &gt;3.0 mg/L</td>
</tr>
<tr>
<td>Turbidity</td>
<td>≤2 NTU</td>
<td>&gt;2 but &lt;4 NTU</td>
</tr>
</tbody>
</table>

1. Index Linked

Table 4-2. Deductions for Product Water that is Not Compliant with Additional Product Water Quality Standards
APPENDIX 5
GUARANTEED MAXIMUM ELECTRICITY UTILIZATION AND DEMAND
APPENDIX 5

GUARANTEED MAXIMUM ELECTRICITY UTILIZATION AND DEMAND

5.1 INTRODUCTION

This Appendix is being included in this Agreement to outline the current understanding of the electrical requirements of the Project and the performance requirements for operational power consumption that will be required of the Operating Service Provider.

5.2 PURPOSE

The purpose of this Appendix is to define the electric power needs of the Project to be fulfilled by the electricity service providers based on the power service contracts to be secured by SAWS, to establish the Guaranteed Maximum Electricity Utilization (“GMEU”) and Guaranteed Maximum Electricity Demand (“GMED”) in the first Contract Year of the Operating Period of the Project, and to define an approach for establishing a revised, efficient GMEU and GMED through the involvement of the O&M Budget Panel (defined in Appendix 10 (Compensable Costs and O&M Budget Panel)) for subsequent Contract Years. A methodology using measured performance data in a flow-based calculation is presented as a suggested option for determination of the GMEU and GMED for the subsequent Contract Years of operation.

Following the end of each Contract Year of the Operating Period, the O&M Budget Panel will evaluate the operation of the Project, meet with SAWS and the Project Company, and (1) determine any electrical costs resulting in a Monthly Operating Service Payment Deduction for that completed Contract Year; and (2) establish the GMEU and GMED values for the subsequent Contract Year based on historical periods of efficient operation and anticipated aquifer levels. Any electrical power consumption that exceeds the established GMEU or GMED in a given Contract Year will be a Monthly Operating Service Payment Deduction constituting a portion of the Deductions Credit at the average of the current electrical rates by the electrical providers at the time.

The Parties agree to cooperate with the O&M Budget Panel in the annual refinement of the calculation methodology and to obtain the necessary and accurate input parameters to establish a precise GMEU and GMED. It is a goal of the O&M Budget panel to establish the GMEU and GMED values that ensure highly efficient operation of the Project overall.

5.3 POWER SUPPLY

SAWS will establish service agreements with the electricity service providers to provide the electrical supply to the Project as needed. The electricity service providers will bill SAWS directly for all electrical costs.

The Operating Service Provider will be responsible to work directly with the electrical service providers and to supply all technical information necessary to establish the specific power delivery requirements and the interconnection points between the service providers and the Project. SAWS will be responsible for ensuring that electrical service is constructed and adequate to meet the Commercial Operation Date.

The Operating Service Provider will be responsible to operate the Project in the most efficient manner possible which minimizes electrical demand, minimizes the total electrical consumption and minimizes the total electrical costs to operate the Project. This Appendix assumes that electrical service will be provided by power utilities or direct generators at a wholesale rate. This Appendix also assumes that the Operating Service Provider will not provide back-up generators as alternate power supplies for the Well Field Facilities and pump stations after the Commercial Operation Date. In the event that back-up generators are included, the period of use of the generators will be excluded from the calculation of the guarantees.
SAWS will be responsible for ensuring that electrical service is constructed and adequate to allow the Performance Tests to be performed in accordance with the Performance Test Protocol (as defined in the WTPA).

In the event that SAWS develops other customers on the Transmission Pipeline, this Appendix will be updated in accordance with the electrical demand and use of those other projects.

5.4 POWER NEEDS

The Project will require power supply from the grid at several locations. Power supply availability and stability must be at any time sufficient so as to not limit the Project normal operations (start-up, base load production and transportation, peaking production, transportation, operation and maintenance and others required for the Operating Service Provider to be able to supply Product Water under the terms of this Agreement).

Power supply quality will be determined through the final engineering design process and established through negotiations with the power service providers.

The anticipated power supply quality requirements are as follows:

Power supply will not produce power shortages. SAWS will work with the Project Company and the electricity service providers to provide a high quality service with the minimum number of micro interruptions. The Project anticipates using a single power source with no double ended switchgear or dual service drops intended.

All power quality and quantity information is draft in this version of this Appendix.

<table>
<thead>
<tr>
<th></th>
<th>Separate Acceptable Deviations</th>
<th>Combined Acceptable Deviations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phases</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Frequency (Hz)</td>
<td>60Hz ±2%</td>
<td>±2%</td>
</tr>
<tr>
<td>Voltage (V)</td>
<td>4160 ±5%</td>
<td>±3%</td>
</tr>
</tbody>
</table>

Separate deviations means that only one of the parameters is deviating and combined means that two or more parameters are deviating from the requirement.

If required, the Operating Service Provider will assist SAWS on its power supply negotiations providing the most accurate power needs and power quality data available.

At each of the electric meters where the electricity service providers determine the power factor for Project electrical loads, the Operating Service Provider agrees to meet the electricity service providers’ minimum allowable power factor that is not subject to penalty or surcharge.

Connection points will be required at every location as follows:

Well Field Facilities Site

At each wellhead site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider. Table 1 includes the electrical requirements for each of the nine wellhead sites. Each wellhead site will have two pumps, one 350 hp pump and one 1,250 hp pump. Both pumps will be on variable frequency drives for startup and operation.

Power supply provided at those connectors based on the initial operation must be as follows:
### Table 1

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power (KW)</td>
<td>1,345</td>
</tr>
</tbody>
</table>

**Pump Stations**

At each pump station site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider.

Power supply provided at those connectors based on the initial operation must be as follows:

### Table 2

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power (KW)</td>
<td>7,700</td>
</tr>
</tbody>
</table>

### Table 3

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power (KW)</td>
<td>5,425</td>
</tr>
</tbody>
</table>

### Table 4

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power (KW)</td>
<td>8,210</td>
</tr>
</tbody>
</table>

**Product Water Delivery Point**

At the Product Water Delivery Point site, one connection point will be located at the service connection terminals inside the electric cabinet and after a power meter provided by the electrical service provider. The power requirements shown in Table 5 only account for Project Company delivery infrastructure. Power required for SAWS pumping and distribution will be additional to the power listed.

Power supply provided at those connectors based on the initial operation must be as follows:

### Table 5

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Required Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phases</td>
<td>3</td>
</tr>
<tr>
<td>Frequency (Hz)</td>
<td>60Hz</td>
</tr>
<tr>
<td>Voltage (V)</td>
<td>208/120</td>
</tr>
<tr>
<td>Power (KW)</td>
<td>75</td>
</tr>
</tbody>
</table>

### 5.5 Guaranteed Power Usage in the First Contract Year of Commercial Operation

This section establishes the GMEU and GMED in the first Contract Year of the Operating Period based on an assumption of maximum Product Water delivery (subject to the daily volume limits in Section 6.02(c) *(Supply Following Commercial Operation Date)* of this Agreement) and peak production electricity demand in every month. Attachment 5A dated March 17, 2017 to this Appendix outlines the
anticipated power consumption calculated for the first Contract Year of the Operating Period estimating 177,558,107 kWh as the GMEU and 22,918 kW as the GMED. The Parties agree that Attachment 5A will be updated prior to the Commercial Operation Date based on current aquifer levels, information obtained through the Performance Test period, and agreed operating procedures.

The annual GMEU and GMED presented therein will be pro-rated for the number of days of actual production in the first Contract Year of the Operating Period ending December 31.

5.6 SUGGESTED METHODOLOGY FOR GUARANTEED POWER USAGE IN CONTRACT YEARS SUBSEQUENT TO THE FIRST CONTRACT YEAR OF COMMERCIAL OPERATION

This section describes a suggested calculation methodology that the O&M Budget Panel may consider for determination of the Guaranteed Maximum Electricity Demand and Guaranteed Maximum Electricity Utilization in Contract Years following the first Contract Year of the Operating Period. Major components for this methodology cannot be established until historical data has been collected at efficient modes of operation during Performance Testing and subsequent Contract Years of the Operating Period. Therefore, this methodology will remain as a conceptual outline until further developed and finalized by the O&M Budget Panel as part of the annual budget review process. The information included at this time is intended to outline a suggested GMEU and GMED calculation methodology and reasonable estimates for input parameters.

It is understood that delivery of Product Water will typically vary by season and by year depending on Supply/Demand Shortfalls or Make-Up Units delivery. To account for these variations and reasonably motivate efficient operation, the calculation of GMEU and GMED will be established as a function of the delivered flow (i.e. volume of Product Water delivered per unit of time). Accordingly, it is anticipated that the O&M Budget Panel will establish a set of GMEU and GMED values as a function of delivered flow rate, adjusting the values each year based on aquifer levels or other parameters that are expected to change over time and that impact the following year’s power consumption. These GMEU and GMED values may be presented in tabular or a graphical format (i.e. GMEU and GMED plotted against delivered flow).

Calculation of theoretical utilization and demand for each load in the system based on design and manufacturer data would involve assumptions of various parameters including pump efficiencies, motor efficiencies, tank levels, pipe roughness, aquifer levels, and pipeline water leakage. To avoid the uncertainties associated with theoretical estimates, the calculation of GMEU and GMED for subsequent Contract Years of operation will be based on actual measurements obtained at several operating points under standard, efficient operating conditions including the Performance Testing prescribed in Appendix 5 (Performance Test Procedures and Standards) of the WTPA. To establish the GMEU and GMED as a function of delivered flow, a series of tables or plotted curves, each patterned after Table 6 (for GMEU) and Table 7 (for GMED), will be developed based on measured data for each of the operating points defined across the expected pumping range of Project operation. It is anticipated that the O&M Budget Panel will define approximately 7 operating points and establish standard, efficient operating conditions as part of the Performance Test Protocol and as annual operational experience dictates.

Since power consumption varies due to total volumes delivered, aquifer level fluctuations, deterioration of pump efficiencies, increasing pipe roughness, and changes in water leakage throughout the Transmission Pipeline, re-measurement of actual utilization and demand will be made at the various operating points under standard, efficient operating conditions during subsequent commercial operation of the Project conducted at frequencies mutually agreed by CTRWSC, the Operating Service Provider and SAWS and at times convenient for the Operating Service Provider (e.g. during startup from a planned shutdown).
Water losses will be measured at the various operating points defining the GMEU and GMED and will be assumed constant throughout a Contract Year. Water losses of two percent (2%) for evaporation and four percent (4%) for leakage are contemplated as maximums for the purposes of hydraulic design, but the trends of change in water losses over time will be monitored by the O&M Budget Panel and adjusted in keeping with efficient operating practice. Water losses in excess of the maximums established will result in discounting the GMEU and GMED in a manner consistent with the Hazen-Williams equation relating pressure and flow.

5.7 CALCULATION OF WATER PAYMENT DEDUCTIONS

A power consumption balance performed at the end of every Contract Year during the Operating Period will ascertain the balance between the GMEU and GMED and the actual electricity utilization and demand at the delivered flow.

Three types of parameters will be used in the power consumption balance:

- Guaranteed Parameters (in kWh/task and in kWh/acre-ft)
- Measurable Parameters (volumes of Product Water delivered or delivered flow, aquifer levels, metered usage, metered Product Water delivery, and water losses calculated as the difference between meter readings)
- Operating Tolerances (a margin accounting for reasonable operational deviations from most efficient operation)

The payment deduction, if any, for actual power consumption that exceeds the GMEU and GMED will be computed as described below for each Contract Year. The methodology for payment deductions may be modified by the O&M Budget Panel if agreed to by SAWS and the Project Company.

**Payment Deduction = Net GMEU & GMED Deduction + ESP Penalties**

Where:

\[
\text{Net GMEU & GMED Deduction} = \begin{cases} 
\text{absolute value of (Utilization Deduction + Demand Deduction)} & \text{if that value is negative, or 0 if positive} \\
0 & \text{if the value is positive}
\end{cases}
\]

\[
\text{Utilization Deduction} = \text{Utilization Balance (kWh)} \times \text{Operating Tolerance Factor} \times \text{Average Utilization Cost ($/kWh)}
\]

\[
\text{Utilization Balance} = \text{GMEU (kWh)} - \text{Total Actual Utilization (as defined in the WTPA) (kWh)}
\]

**GMEU** is the calculated value in kWh representing the guaranteed power consumption at the actual volume of delivered flow. It is computed as the GMED determined for the delivered flow rate multiplied by the number of operating hours. Since delivered flow will not necessarily fall on the 7 measured operating points, a linear interpolation or graphical reading of a GMED curve would be used.

**Average Utilization Cost** is the cost in US dollars paid by SAWS for the electricity utilization (i.e. for kWh) supplied to the Project divided by Total Actual Utilization.

**Operating Tolerance Factor** is a number representing a reasonable accounting for a reasonable margin of error for an efficiently operated Project. For the first Contract Year of the Operating Period the factor will be equal to 1.000; for subsequent years, a suggested value of 1.015 is suggested, but may be adjusted as the O&M Budget Panel determines.
**Demand Deduction** = Demand Balance (kW) x Operating Tolerance Factor x Average Demand Cost ($/kW)

**Demand Balance** = GMED (kW) - Total Actual Demand (as defined in the WTPA) (kW)

**GMED** is the calculated value in kW representing the guaranteed power demand at the actual volume of delivered flow. Since delivered flow will not necessarily fall on the 7 measured operating points, a linear interpolation or graphical reading of a GMED curve will be used.

**Average Demand Cost** is the total power demand cost in US dollars paid by SAWS for the electricity demand (i.e. for kW) supplied to the Project divided by Total Actual Demand.

**ESP Penalties** is the sum of all penalties and surcharges billed to SAWS by the electricity service providers for operation that does not meet minimum power factor requirements.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
### Table 6 - GMEU Calculation Matrix

<table>
<thead>
<tr>
<th>Power users in the system</th>
<th>Power Utilization (Guaranteed kWh/acre-ft)</th>
<th>Delivered Flow (acre-ft)</th>
<th>Guaranteed Utilization (kWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wellfield</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 1</td>
<td>Y1</td>
<td>P1</td>
<td>SI = Y1*P1</td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 2</td>
<td>Y2</td>
<td>P2</td>
<td>...</td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other users</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HSPS Meter</td>
<td>Yj</td>
<td>Pj</td>
<td>Sj = Yj*Pj</td>
</tr>
<tr>
<td>IPS# 1 Meter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IPS# 2 Meter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Terminus Meter</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cathodic Protection</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rectifier Meter 1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rectifier Meter 2...</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
<td>The sum of this column is the GMEU</td>
</tr>
</tbody>
</table>

### Table 7 - GMED Calculation Matrix

<table>
<thead>
<tr>
<th>Power users in the system</th>
<th>Guaranteed Demand at the Delivered Flow (kW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wellfield</td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 1</td>
<td>Y1</td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 2</td>
<td>Y2</td>
</tr>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 8</td>
<td>...</td>
</tr>
<tr>
<td>Simsboro/Carrizo Meter 9</td>
<td></td>
</tr>
<tr>
<td>Other users</td>
<td></td>
</tr>
<tr>
<td>HSPS Meter</td>
<td>Yj</td>
</tr>
<tr>
<td>IPS# 1 Meter</td>
<td></td>
</tr>
<tr>
<td>IPS# 2 Meter</td>
<td></td>
</tr>
<tr>
<td>Terminus Meter</td>
<td></td>
</tr>
<tr>
<td>Cathodic Protection</td>
<td></td>
</tr>
<tr>
<td>Rectifier Meter 1</td>
<td>Rectifier Meter 2...</td>
</tr>
<tr>
<td>-------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The sum of this column is the **GMED**
ATTACHMENT 5A

MARCH 17, 2017 LETTER REGARDING AN ANTICIPATED POWER CONSUMPTION CALCULATED FOR THE FIRST CONTRACT YEAR OF THE OPERATING PERIOD
March 17, 2017

Mr. Steve Clouse

San Antonio Water System
2800 U.S. Highway 281 North
San Antonio, Texas 78212

RE: VRRSP
Appendix 9- Updated Spreadsheet

Dear Mr. Clouse:

We have modified the spreadsheet as follows:

- The delivered flow is 50,000 ac-ft/year (as opposed to a peak year flow of 53,000 ac-ft/year).
- The wellfield represents current estimated aquifer levels.
- The spreadsheet divides the well calculation into a separate tab.
- A summary sheet has been added.
- A tab showing the headloss through a butterfly valve in the system has been added.
- The footnotes have been disaggregated to allow for easier understanding of each equation and to allow the application of “what-if” scenarios.

Based on the current First Year scenarios, at a delivered flow of 50,000 ac-ft/year, the electric usage is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Yearly equipment guaranteed usage (KWh)</th>
<th>Percent of total</th>
<th>Demand (kW)</th>
<th>Percent of total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wells</td>
<td>61,517,937</td>
<td>35%</td>
<td>7,750</td>
<td>34%</td>
</tr>
<tr>
<td>System</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>HSPS Pumps</td>
<td>31,308,906</td>
<td>18%</td>
<td>4,279</td>
<td>19%</td>
</tr>
<tr>
<td>Remaining HSPS usage</td>
<td>11,989,639</td>
<td>7%</td>
<td>1,369</td>
<td>6%</td>
</tr>
<tr>
<td>IPS 1 Pumps</td>
<td>24,930,453</td>
<td>14%</td>
<td>3,274</td>
<td>14%</td>
</tr>
<tr>
<td>Remaining IPS 1 usage</td>
<td>1,914,060</td>
<td>1%</td>
<td>218.5</td>
<td>1%</td>
</tr>
<tr>
<td>IPS 2 Pumps</td>
<td>42,027,382</td>
<td>24%</td>
<td>5,587</td>
<td>24%</td>
</tr>
<tr>
<td>Remaining IPS 2 usage</td>
<td>2,330,160</td>
<td>1%</td>
<td>266</td>
<td>1%</td>
</tr>
<tr>
<td>Terminus Site</td>
<td>374,490</td>
<td>0%</td>
<td>43</td>
<td>0%</td>
</tr>
<tr>
<td>Remaining Usage</td>
<td>1,165,080</td>
<td>1%</td>
<td>133</td>
<td>1%</td>
</tr>
<tr>
<td>Subtotal</td>
<td>116,040,170</td>
<td>65%</td>
<td>15,168</td>
<td>66%</td>
</tr>
<tr>
<td>Total</td>
<td>177,558,107</td>
<td></td>
<td>22,918</td>
<td></td>
</tr>
</tbody>
</table>

There was a concern that an operator may try to operate the system against a partially closed valve. Although final pump selection has not been made, we do have the estimated shut-off heads for the pumps currently being proposed. (These are provided on the Valve Equation tab.) In the case of the HSPS and...
IPS2, any butterfly valve closed beyond 60-degrees will trigger a head condition that shuts down the pumps. (IPS1 has a higher shut off head, so this is not the case.)

There are certain assumptions that need to be taken into consideration when using this spreadsheet:

- Final pumps have not been selected. They will have a minor effect on the overall numbers.
- The VFDs will have a beneficial effect on the base flow condition once selected.
- The aquifer levels are estimates, and will change once each well is drilled and actual data is available.

We believe these findings support our position that establishing the maximum electricity utilization and demand should be included as part of the operation and maintenance panel. Please feel free to contact Kim Keefer should you have questions or comments on the spreadsheet or data contained therein.

Sincerely,
VRRSP Consultants, LLC

Kim S. Keefer, PE
Administrative Program Manager

Attachments (if applicable)
Cc: M. Vergara (CP&Y)

P:\77\74\03\WTPA_Requirements\Appendix_9\170317_LTR_Clouse_Dawson_Appendix 9 spreadsheet revised.docx
APPENDIX 6

END OF TERM PROJECT CONDITION REQUIREMENTS

6.1. PURPOSE

The purpose of this Appendix, along with Sections 9.01 (Final Evaluation of the Project), 9.02 (End of Term Performance Evaluation Requirements) and 9.03 (Project Assets; Transfer Conditions) of this Agreement, is to detail the protocol and procedures to be followed (1) upon the assignment and conveyance of the Project Assets on the Expiration Date pursuant to Section 3.2 (Assignment and Conveyance of the Project Assets Effective on the Expiration Date) of the WTPA, or (2) if SAWS exercises its right to purchase the Project Assets pursuant to Article 23 (SAWS Project Assets Purchase Options) of the WTPA.

The Operating Service Provider and CTRWSC shall jointly retain the services of the Independent Evaluator to perform the assessments set forth in this Appendix to determine whether (i) the Project operationally meets the Minimum Performance Criteria, and (ii) the Project has been maintained in accordance with the terms and conditions of this Agreement. The Independent Evaluator will assess the Project’s performance and condition in accordance with Sections 9.01 (Final Evaluation of the Project), 9.02 (End of Term Performance Evaluation Requirements) and 9.03 (Project Assets; Transfer Conditions) of this Agreement.

All costs and expenses with respect to the tests, reports, audits and any other testing or assessment services, including the services of the Independent Evaluator, performed pursuant to this Appendix shall be borne equally by CTRWSC and the Operating Service Provider. The Operating Service Provider shall remain responsible for the costs and expenses for all repairs and replacements necessary for the Project to achieve the Minimum Performance Criteria, in the event the Exit Performance Test does not demonstrate that the Minimum Performance Criteria were achieved, in accordance with Section 9.02(d) (Non-Compliance with End of Term Performance Evaluation Requirements) of this Agreement. CTRWSC shall have the right to hold back and retain the Transfer Condition Retainage as set forth in Section 9.03 (Project Assets; Transfer Conditions) of this Agreement.

6.2. INDEPENDENT EVALUATOR RESPONSIBILITIES

The Independent Evaluator shall have the following responsibilities in connection with the final evaluation of the Project in accordance with Sections 9.01 (Final Evaluation of the Project) and 9.02 (End of Term Performance Evaluation Requirements) of this Agreement:

(a) Conduct the final evaluation of the Project using the listing of Project Structures maintained by the Operating Service Provider in the Asset Registry.

(b) Perform the functional evaluation of the Project Structures and include in the Final Project Structure Evaluation Report (as defined in Section 6.4 (Project Structure Evaluation Report) of this Appendix).

(c) Perform the structural integrity evaluation of the Project Structures and include in the Final Project Structure Evaluation Report.

(d) Perform an evaluation of whether the Project met the End of Term Performance Evaluation Requirements (as defined below) during the End of Term Performance Evaluation Period.

(e) Conduct a Joint Inspection and Survey (as defined below).
6.3. FINAL EVALUATION OF THE PROJECT STRUCTURES

Project Structures are required to be transferred to SAWS in the condition and state of repair in accordance with this Appendix. The Independent Evaluator shall conduct the final evaluation of the Project Structures using the listing maintained by the Operating Service Provider in the Asset Registry in accordance with this Appendix and Section 9.01 (Final Evaluation of the Project) of this Agreement.

6.3.1 Functionality Evaluation. As part of the final evaluation of the Project at the end of the Term, the Independent Evaluator shall determine the functionality of the Project Structures. The functionality evaluation shall determine if the Project Structures operate properly and perform the function for which they were intended. The Project Structures to be evaluated as part of the functionality evaluation are the following (excluding Project Structures that have been abandoned in place, as determined pursuant to Section 2.2.14(b) (Updates) of Appendix 2 (Operating and Maintenance Standards)):

(a) All buildings (including HVAC ducts and louvers, and architectural features), and concrete tanks.

(b) All piping with an original service life greater than 20 years, both underground and exposed, including the Transmission Pipeline system.

(c) All valves, gates and weirs with an original service life greater than 20 years together with hydraulic systems.

Pipes must pass the Performance Test pursuant to Appendix 5 (Performance Test Procedures and Standards) of the WTPA during the Independent Evaluator’s evaluation.

As part of the functionality evaluation of the Project Structures, the Independent Evaluator will assign a functionality rating of Level 1 to 5. The rating shall utilize the following criteria:

(i) 5 - Excellent Overall Condition. Asset or structure fully functional as designed with no visible defects or wear.

(ii) 4 - Good Overall Condition. Asset or structure functions as needed for current operating conditions, visible signs of minor defects and wear are less than expected.

(iii) 3 - Fair Overall Condition. Asset or structure functions as needed for current operating conditions, visible sign of moderate defects and expected wear.

(iv) 2 - Poor Overall Condition. Asset or structure operable, but does not function as needed for current operating conditions. Visible signs of major defects and wear are more than expected. There may be personnel safety issues.

(v) 1- Inoperable. Asset or structure is non-functional, requires major repair or replacement to restore operation.

The Independent Evaluator shall review the CMMS to ensure that the reports are functioning and the historical records are in place and accessible to CTRWSC, the Project Company and SAWS.

The Independent Evaluator shall note its field observations on CTRWSC-approved functional evaluation data collection forms. The findings of the functionality evaluation shall be tabulated on a spreadsheet such as in the Asset Registry. An example tabulation is presented in Table 6-1 of this Appendix.
For purposes of this Agreement, Level 3 (Fair Overall Condition) of a Project Structure shall be characterized by normal wear and tear related to the damage that naturally and inevitably occurs as a result of normal use or aging. This is a form of wear that occurs when a Project Structure is used according to manufacturer’s instructions and is properly maintained. Examples of Level 3 (Fair Overall Condition), Level 2 (Poor Overall Condition), and Level 1 (Inoperable) (each also referred to as an “Unacceptable Condition”) are characterized in the following table:

<table>
<thead>
<tr>
<th>Project Element</th>
<th>Level 3</th>
<th>Level 1 or 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fair Overall Condition</td>
<td>Poor Overall Condition or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Inoperable</td>
</tr>
<tr>
<td>Concrete</td>
<td>Abrasion, minor hairline cracks,</td>
<td>Exposed rebar; spoiling; water</td>
</tr>
<tr>
<td></td>
<td>small chips, and isolated small</td>
<td>leakage; compromised structural</td>
</tr>
<tr>
<td></td>
<td>stains</td>
<td>integrity; chipping and peeling</td>
</tr>
<tr>
<td></td>
<td></td>
<td>of coatings or paint on coated</td>
</tr>
<tr>
<td></td>
<td></td>
<td>or painted concrete</td>
</tr>
<tr>
<td>Steel</td>
<td>Faded paint, discoloration, minor</td>
<td>Compromised structural</td>
</tr>
<tr>
<td></td>
<td>nicks</td>
<td>integrity; visible bending;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>corrosion that adversely affects</td>
</tr>
<tr>
<td></td>
<td></td>
<td>function; chipping and peeling</td>
</tr>
<tr>
<td></td>
<td></td>
<td>of coatings or paint on coated</td>
</tr>
<tr>
<td></td>
<td></td>
<td>or painted concrete; rust</td>
</tr>
<tr>
<td>Architectural</td>
<td>Faded paint or discoloration on</td>
<td>Cracked windows; chipping and</td>
</tr>
<tr>
<td></td>
<td>surfaces</td>
<td>peeling of coatings or paint on</td>
</tr>
<tr>
<td></td>
<td></td>
<td>coated or painted surfaces;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>broken or missing tiles</td>
</tr>
<tr>
<td>HVAC ducts and louvers</td>
<td>Minor bending or nicking on ducts</td>
<td>Corroded or cut ducts,</td>
</tr>
<tr>
<td></td>
<td>and louvers</td>
<td>non-connected duct sections;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>clogged or non-functional</td>
</tr>
<tr>
<td></td>
<td></td>
<td>louvers; missing pieces of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>insulation on insulated ducts</td>
</tr>
</tbody>
</table>

6.3.2 Structural Integrity Evaluation. As part of the final evaluation of the Project, the Independent Evaluator shall determine the structural integrity of the Project Structures. The structural integrity evaluation shall include visual inspection with photographic and video recording of all Project Structures, including, but not limited to:

(a) Buildings and concrete structures, both above and below ground, including doors, hatches, stairways, and windows;

(b) All piping with an original service life greater than 20 years, both underground and exposed, including the Transmission Pipeline System; and

(c) All valves, gates and weirs with an original service life greater than 20 years together with hydraulic systems.

(d) Walkways, roads and other paved areas;
(e) Fencing and screens;
(f) Finish system - paint, sealants and other liquid applied finishes; and
(g) Floor, ceiling, roofs and wall system - tiles, carpeting, raised floors and drop ceilings.

Structures and paved areas shall be checked for structural defects and damage, such as cracks and concrete deterioration that could reduce their remaining life. Finished systems shall be visually inspected to assure that they provide adequate coverage and afford the desired protection. Occurrence of flaking, corrosion, rot and inadequate coverage should be noted. Floor, ceiling, roofs and wall systems shall be visually inspected for excess wear and damages.

As part of the structural integrity evaluation of each Project Structure, the Independent Evaluator will assign a structural integrity rating of Level 1 to 5. The rating shall utilize the following criteria:

(a) 5 - Excellent Overall Condition. No visible defects, cracking or wear.
(b) 4 - Good Overall Condition. Visible signs of minor defects and wear are less than expected.
(c) 3 - Fair Overall Condition. Visible signs of moderate defects and expected wear.
(d) 2 - Poor Overall Condition. Visible signs of major defects and wear are more than expected.
(e) 1 - Imminent Failure. Extremely poor overall condition; may be significant structural concerns.

The Independent Evaluator shall note its field observations on CTRWSC-approved structural integrity evaluation data collection forms. The Independent Evaluator’s findings of the structural integrity evaluation shall be tabulated on a spreadsheet derived from the Asset Registry. An example tabulation is presented in Table 6-2 of this Appendix. Digital photographs and videotape records made of the condition of assets, whether or not structural or other physical defects are revealed, shall be included as part of the final evaluation. The location on the digital photograph or videotape corresponding to any listed defect shall be entered in the spreadsheet with each listing. The spreadsheet shall include a repair or replacement estimate for each asset that is assigned a structural integrity rating of Level 1, 2 or 3 to return the asset to a structural integrity rating of Level 4 or 5.

<table>
<thead>
<tr>
<th>Asset Number*</th>
<th>Asset Name (&amp; Manufacturer)</th>
<th>Structural Integrity Defects</th>
<th>Structural Integrity Rating**</th>
<th>Video Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>S4</td>
<td>Building A</td>
<td>Cracked and leaking foundation</td>
<td>1</td>
<td>B-RO tape, index 310</td>
</tr>
<tr>
<td>S5</td>
<td>Building B</td>
<td>Broken concrete steps</td>
<td>2</td>
<td>B-J tape 1, index 130</td>
</tr>
<tr>
<td>S6</td>
<td>Building B</td>
<td>Collapsed building wall</td>
<td>1</td>
<td>B-J tape 2, index</td>
</tr>
</tbody>
</table>

Table 6-2
STRUCTURAL INTEGRITY EVALUATION (Hypothetical Example for Final Evaluation)
### UNDERGROUND STRUCTURES

<table>
<thead>
<tr>
<th>Asset Number</th>
<th>Asset Name</th>
<th>Structural Integrity Defect(s)</th>
<th>Structural Integrity Rating**</th>
<th>Video Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>S17</td>
<td>Building A</td>
<td>Foundation wall (east) cracked</td>
<td>2</td>
<td>B-OP tape, index 1340</td>
</tr>
<tr>
<td>S13</td>
<td>Pump Station</td>
<td>Concrete dry well in pumping station is cracked and seeping</td>
<td>2</td>
<td>RPS tape, index 560</td>
</tr>
</tbody>
</table>

### WALKWAYS, ROADWAYS, FENCING AND OTHER PAVED STRUCTURES

<table>
<thead>
<tr>
<th>Asset Number</th>
<th>Asset Name</th>
<th>Structural Integrity Defect(s)</th>
<th>Structural Integrity Rating**</th>
<th>Video Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>S14</td>
<td>Fencing</td>
<td>Numerous holes and broken gate.</td>
<td>2</td>
<td>RWPS tape, index 25</td>
</tr>
<tr>
<td>S15</td>
<td>Driveway</td>
<td>Numerous cracks and heaving</td>
<td>2</td>
<td>D1 tape, index 1300</td>
</tr>
<tr>
<td>S17</td>
<td>Concrete sidewalk</td>
<td>Numerous cracks, heaving and broken curbing</td>
<td>2</td>
<td>RWPS tape, index 670</td>
</tr>
</tbody>
</table>

### FINISH SYSTEMS (INCLUDING PAINTS AND COATING)

<table>
<thead>
<tr>
<th>Asset Number</th>
<th>Asset Name</th>
<th>Structural Integrity Defect(s)</th>
<th>Structural Integrity Rating**</th>
<th>Video Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>S17</td>
<td>Building A</td>
<td>Interior structures need paint</td>
<td>3</td>
<td>RES tape, index</td>
</tr>
</tbody>
</table>

Table 2

**STRUCTURAL INTEGRITY EVALUATION**
(Hypothetical Example for Final Evaluation)

<table>
<thead>
<tr>
<th>Asset Number</th>
<th>Asset Name</th>
<th>Structural Integrity Defect(s)</th>
<th>Structural Integrity Rating**</th>
<th>Video Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>S18</td>
<td>Building B</td>
<td>Inadequate coating of walkways</td>
<td>2</td>
<td>OP tape, index 1100</td>
</tr>
<tr>
<td>S19</td>
<td>Building B</td>
<td>Exterior paint flaking</td>
<td>2</td>
<td>B-B tape, index 1400</td>
</tr>
</tbody>
</table>

### WALL, ROOFS AND FLOORING SYSTEMS

<table>
<thead>
<tr>
<th>Asset Number</th>
<th>Asset Name</th>
<th>Structural Integrity Defect(s)</th>
<th>Structural Integrity Rating**</th>
<th>Video Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>S20</td>
<td>Building C ceiling</td>
<td>Flaking ceiling in building C</td>
<td>3</td>
<td>B-C tape, index 250</td>
</tr>
<tr>
<td>S21</td>
<td>Building A office floor</td>
<td>Tile severely cracked in numerous locations. Significant overall wear.</td>
<td>2</td>
<td>B-A tape 2, index 450</td>
</tr>
<tr>
<td>S22</td>
<td>Building B</td>
<td>Plywood walls buckling and cracking</td>
<td>1</td>
<td>B-C tape, index 190</td>
</tr>
</tbody>
</table>

*Asset numbers shall be assigned in accordance with the Operating Service Provider’s CMMS identification system and CTRWSC’s and SAWS’ standards.
6.4. PROJECT STRUCTURE EVALUATION REPORT

The procedures followed to perform the evaluation set forth in Section 6.3 (Final Evaluation of the Project Structures) of this Appendix, together with the findings and results of the formal Project Structure evaluation process, shall be presented in a final evaluation report (the “Final Project Structure Evaluation Report”). Text, spreadsheets and databases shall all be prepared using a computer software program mutually agreed to by CTRWSC and the Operating Service Provider. The Independent Evaluator shall provide the Operating Service Provider, CTRWSC and SAWS with preliminary drafts of all evaluation documents for review and comment.

CTRWSC and the Operating Service Provider shall sign final documents on each page for authentication and shall receive an authenticated copy of all final reports, databases, spreadsheets, video documentation and handwritten notes.

The Final Project Structure Evaluation Report shall consist of at least the following clearly delineated sections:

(a) Functionality and structural integrity of the Project Structures; and

(b) Supplemental information as may be determined by the Independent Evaluator.

6.4.1 Functionality Evaluation and Structural Integrity Evaluation. The Final Project Structure Evaluation Report shall provide the results of the functionality evaluation and the structural integrity evaluation of the Project Structures as set forth in Section 6.3 (Final Evaluation of the Project Structures) of this Appendix. Those assets that do not exhibit physical or structural defects, and are therefore rated Level 4 or above, shall be noted as such in the Final Project Structure Evaluation Report with a statement regarding the overall condition. The findings of the functionality evaluation shall be tabulated on a spreadsheet. The Independent Evaluator shall, for structures with a functionality or structural integrity rating of Level 1, 2 or 3, indicate in each instance what repairs would be needed to bring both functionality and structural integrity ratings to a minimum Level of 4, or as may be required pursuant to applicable Transfer Condition Requirements.

6.4.2 Supplemental Information. This section of the Final Project Structure Evaluation Report shall include all supplemental information used by the Independent Evaluator, including, but not limited to, results of diagnostic testing, Inflation Index values used, equipment supplier information, and notes and calculations to support findings and conclusions. This supplemental information may be included as appendices or attachments to the Final Project Structure Evaluation Report.

6.5. END OF TERM PROJECT PERFORMANCE EVALUATION

The Independent Evaluator shall conduct an evaluation of the Project’s performance to verify whether the End of Term Performance Evaluation Requirements (as defined below) have been met pursuant to this Appendix and Section 9.02 (End of Term Performance Evaluation Requirements) of this Agreement.

6.5.1 Evaluation of Six Months of Project Performance. During the End of Term Performance Evaluation Period, the Operating Service Provider shall deliver to the Independent Evaluator relevant Project performance information on a monthly basis or as otherwise requested by CTRWSC or the Independent Evaluator. This performance information will include sufficient information regarding Product Water delivery capacity, Product Water quality production capability, energy consumption, and chemical usage. Using such data, the Independent Evaluator will assist in determining whether the Project met the End of Term Performance Evaluation Requirements. The Independent Evaluator shall validate the adequacy of the Project performance information provided by the Operating Service Provider. If at any point during the End of Term Performance Evaluation Period the Operating Service Provider or
the Independent Evaluator determines that the Project will not be able to meet the End of Term Performance Evaluation Requirements, the Operating Service Provider shall promptly notify CTRWSC, the Project Company and SAWS and promptly begin conducting the Exit Performance Test.

6.5.2 **End of Term Performance Evaluation Requirements.** The following shall constitute the requirements the Project must meet during the End of Term Performance Evaluation Period (the “End of Term Performance Evaluation Requirements”):

(a) No monthly Unexcused Supply Shortfall Units were recorded.

(b) The Project’s total energy demand and utilization did not exceed one hundred ten (110%), as determined pursuant to Appendix 5 (Guaranteed Maximum Electricity Utilization and Demand).

(c) The Product Water Quality Guarantee was never violated, except upon the occurrence of an Uncontrollable Circumstance.

(d) Each pump and motor combination shall function within eighty-five (85%) of their original performance capacity and shall pass a electrical and mechanical predictive maintenance evaluation in accordance with Section 6.8.2 (Predictive Testing) of this Appendix.

(e) Each Well will have a minimum 2-hour pump test demonstrating at least seventy-five (75%) of the rated capacity of the Well established on the Commercial Operation Date.

(f) The Project met the requirements set forth in items (a) through (d) of this Section without needing extraordinary operational or maintenance requirements.

6.6. **FAILURE TO MEET THE END OF TERM PERFORMANCE EVALUATION REQUIREMENTS**

If the Project fails to meet each of the End of Term Performance Evaluation Requirements, the Operating Service Provider shall be required to promptly correct any Project deficiencies and demonstrate, by conducting a Performance Test in accordance with Appendix 5 (Performance Test Procedures and Standards) of the WTPA and taking into account the actual aquifer drawdown, that the corrections are adequate to restore the Project capability to meet the Minimum Performance Criteria (the “Exit Performance Test”). The Exit Performance Test shall be conducted over a duration agreed upon by CTRWSC and the Operating Service Provider and in accordance with all other applicable terms and conditions of this Agreement and Appendix 5 (Performance Test Procedures and Standards) of the WTPA and taking into account the actual aquifer drawdown. Any amounts of Product Water produced by the Project in excess of that established by the firm daily demand orders during the Exit Performance Test (i) shall be the responsibility of the Operating Service Provider, (ii) shall not be delivered to SAWS without SAWS prior agreement, and (iii) if not delivered, shall not be included in the calculation of Monthly Operating Service Payments. The Parties acknowledge and agree, at SAWS option, if during the Exit Performance Test, the Product Water produced in excess of the maximum allowable volume for delivery in place at that time meets all quality requirements, can be integrated into the SAWS system and is delivered, then SAWS may accept and pay for the excess water delivered, in which case CTRWSC shall pay the Operating Service Provider for such Product Water accepted and paid for by SAWS. If the Project fails to meet the requirements of the Exit Performance Test, the Operating Service Provider shall be required to repeat the test as many times as needed until the Termination Date. CTRWSC may retain from Monthly Operating Service Payments the Transfer Condition Retainage as set forth in Sections 9.03(d) (Determination of Transfer Condition Retainage) and 9.03(e) (Establishment and Use of Transfer Condition Retainage Account) of this Agreement for any uncompleted repair work.
6.7. PROJECT TRANSFER CONDITION REQUIREMENTS

6.7.1 General. The Project is required to be transferred to SAWS in the condition and state of repair that would be in accordance with the performance of the Operating Services if the Project was customarily maintained by an operator for similar equipment, and operated under an operation, maintenance, repair and replacement contract with similar operations, maintenance, repair, and replacement requirements as detailed below:

(a) To have maintained appropriate staff who have the training, experience and proficiency in the management, maintenance, repair and replacement of water treatment and conveyance systems which shall be sufficient to maintain the Project in accordance with the Contract Standards, and at appropriate staffing levels.

(b) To have operated, maintained and repaired the Project, including without limitation, repair or replacement of components, including all maintenance, repair and component replacement which may be characterized as “major” or “capital” in nature.

(c) To have operated and maintained the Project in accordance with the Contract Standards, the manufacturer’s recommended maintenance procedures, the Electronic Operation and Maintenance Manual and the CMMS.

(d) To have arranged and paid for the procurement, delivery and storage of all materials, machinery, equipment, filters, any applicable manufacturer’s specialty tools, an adequate supply of spare parts, tools and other consumables and supplies associated with operating, maintaining and repairing the Project.

(e) Each pump and motor combination shall function within eighty-five (85%) of their original performance capacity and shall pass an electrical and mechanical predictive maintenance evaluation in accordance with Section 6.8.2 (Predictive Testing) of this Appendix.

6.7.2 Transfer Condition Requirements. The Independent Evaluator shall determine if the Operating Service Provider has maintained the Project in accordance with the operations, maintenance, repair, and replacement requirements established in this Agreement and that it meets the Transfer Condition Requirements. The Independent Evaluator shall also identify the costs necessary to complete any additional work required to meet the Transfer Condition Requirements to assist CTRWSC in determining the Transfer Condition Retainage pursuant to Section 9.03(d) (Determination of Transfer Condition Retainage) of this Agreement.

6.8. TRANSFER CONDITION JOINT INSPECTION AND SURVEY

6.8.1 General.

The Operating Service Provider and CTRWSC shall jointly cause the Independent Evaluator to conduct the Joint Inspection and Survey in accordance with Section 9.03(c) (Transfer Condition Survey and Work Plan) in this Agreement.

CTRWSC, the Project Company and SAWS shall have the right, but not the obligation, to attend or participate in any inspection and survey activities conducted by the Independent Evaluator or the Operating Service Provider and to receive any communications or attend any meetings between or among such persons held on the subject of the Joint Inspection and Survey. Further, CTRWSC, the Project Company and SAWS shall be provided access to and a copy, upon request, of all relevant information, data, material or reports prepared to document and support the Joint Inspection and Survey.
The Joint Inspection and Survey for any piece of Project Equipment shall be based upon its ability to perform its intended function, taking into consideration its performance history, renewals and replacements, time of utilization, physical condition, availability for service, service life, replacement costs and maintenance costs. The Operating Service Provider shall facilitate and allow the Independent Evaluator to conduct the following activities to establish the asset condition of the Project Equipment at the end of the Term:

(a) Visually inspect the Project Equipment while it is in operation for:
   (i) Appearance of Project Equipment components;
       (a) Appearance of Project Equipment surfaces;
       (b) Excessive wear of components;
       (c) Excessive corrosion;
       (d) Excessive temperature of the Project Equipment or its components;
       (e) Condition of coatings and paint;
       (f) Presence of leaking fluids.

(b) Inspect the Project Equipment while it is in operation for excessive vibration by computer analysis,

(c) Inspect the electrical system and motor control centers by thermal analysis and motor diagnostic evaluations;

(d) Have the original manufacturers evaluate the generators for performance and functional reliability;

(e) Document the condition of the Project Equipment with photographs;

(f) Observe the SCADA and other instrumentation for condition of the Project Equipment and its operating characteristics;

(g) Monitor related instrumentation to determine the assets’ physical condition and operation characteristics;

(h) Collect any measurements, amperage draw or other readings, or other pertinent information which the Independent Evaluator deems appropriate;

(i) Review CMMS records on applicable Project Equipment assets including, but not limited to the following:
       (i) Complete up-to-date spare parts and consumable maintenance equipment and materials inventory;
       (ii) Data available from any interface with energy management and control systems that provides condition based monitoring and component energy use profiles;
       (iii) Project Equipment repair tracking by Asset Registry and its components;
       (iv) Historical tracking of all work orders generated and sortable by equipment, date, and other equipment maintenance historic data;
(v) CMMS statistical data and query reports available.

(j) Review relevant Project Equipment repair, rebuild and replacement records, and consult with manufacturers’ maintenance manual and technical guidance documents;

(k) Determine the degree of repair, replacement and renewals each applicable piece of Project Equipment has received during the Term;

(l) Determine the utilization of the equipment (i.e. did the equipment operate for twenty four (24) hours per day or six (6) hours per day); and

(m) Inspect all readily accessible parts and surfaces for any material fit and alignment problems; excessive vibration, noise or temperature; the condition of coatings; signs of wear or excessive corrosion; and excessive leakage of any fluids.

The Joint Inspection and Survey shall also take into consideration the following:

(a) The appropriate level of spare parts and maintenance consumables for continued reliable operation.

(b) Obsolete and unused assets.

(c) Normal wear and tear given the age of the Project Equipment and expected useful life.

The Independent Evaluator shall review the Operating Service Provider’s Project Equipment maintenance, repair and replacement performance and compare that performance with the then-current Good Management Practices ensuring a Level 4 or 5 condition for the maintenance, repair and replacement of comparable water treatment and conveyance Project Equipment.

6.8.2 Predictive Testing

The Independent Evaluator shall perform predictive testing to better assess the compliance with the Transfer Condition Requirements of all items in the Asset Registry. Such diagnostic testing could include, but is not limited to, vibration analysis, thermography, oil sampling, power systems assessments, and motor circuit analysis. The diagnostic testing shall be conducted by manufacturer-approved personnel or other appropriate qualified service technicians. The Independent Evaluator shall independently test each well pump and motor combination, each high service pump and motor combination, and all major electrical switchgear to ensure end of Term performance. Each pump and motor combination shall function within eighty-five (85%) of their original performance capacity and shall pass an electrical and mechanical predictive maintenance evaluation. The Operating Service Provider and Independent Evaluator shall, to the maximum extent possible, test equipment in a manner that does not impact the Operating Service Provider’s ability to deliver water at the maximum allowable quantities in effect at that time or affect Project operations.

6.9. INDEPENDENT EVALUATOR’S JOINT INSPECTION AND SURVEY REPORT

The Independent Evaluator shall produce and deliver to the Operating Service Provider, CTRWSC, the Project Company and SAWS within forty-five (45) days after the completion of the Joint Inspection and Survey a report of its findings and conclusions regarding the Project Equipment conditions in a Joint Inspection and Survey report, which shall contain: (i) an opinion as to whether the condition of any component of Project Equipment has not been maintained in accordance with the Transfer Condition Requirements; (ii) a detailed description of the basis upon which any component of Project Equipment has been determined not to have been maintained in accordance with the Transfer Condition Requirements; and (iii) an estimate of the cost for the work required, for any component of Project
Equipment determined not to have been maintained in accordance with the Transfer Condition Requirements, to meet the Transfer Condition Requirements (the "Joint Inspection and Survey Report").

6.10. PROJECT EQUIPMENT TRANSFER CONDITION PLAN

If the Joint Inspection and Survey Report indicates that the Project will not be in a condition in accordance with the Transfer Condition Requirements or the Final Project Structure Evaluation Report indicates deficiencies that need to be corrected by the Termination Date, then within forty five (45) days of completion of the Joint Inspection and Survey Report, the Operating Service Provider shall deliver to CTRWSC the plan that details the work the Independent Evaluator has determined is necessary to meet the Transfer Condition Requirements, and that details the work to correct any deficiencies identified in the Final Project Structure Evaluation Report, together with a cost estimate and schedule for performing the proposed work (the “Transfer Condition Plan”). CTRWSC shall have the opportunity to review, comment on and amend the Transfer Condition Plan in accordance with Section 9.03(d) (Determination of Transfer Condition Retainage) of this Agreement. The Operating Service Provider shall cause the implementation of the Transfer Condition Plan in accordance with Section 9.03(f) (Performance of the Transfer Condition Work and Further Inspection) of this Agreement.
APPENDIX 7
FORM OF PERFORMANCE BOND
APPENDIX 7
FORM OF PERFORMANCE BOND

[Attached]
Performance Bond

CONTRACTOR:
(Name, legal status and address)
EPCOR Services Inc.
2355 W Pinnacle Peak road; Ste. 300
Phoenix, AZ 85027

OWNER:
(Name, legal status and address)
Central Texas Regional Water Supply Corporation
P.O. Box 15851
San Antonio, Texas 78212

CONSTRUCTION CONTRACT
Date: Operating Service Agreement, Dated as of __________, 2018, among the Contractor, the Owner, and Vista Ridge LLC
Amount: () (insert annual revenue amount)
Description:
(Name and location)
Operating services for the Vista Ridge Regional Supply Project in Texas

BOND
Date: (Not earlier than Construction Contract Date)
Amount: (insert 25% of annual revenue amount)

CONTRACTOR AS PRINCIPAL
Company: EPCOR Services Inc.
Signature: ____________________________
Name, and Title: ____________________________

SURETY
Company: Fidelity and Deposit Company of Maryland
Signature: ____________________________
Name, Attorney-in-Fact and Title: ____________________________

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

FOR INFORMATION ONLY — Name, address and telephone
AGENT or BROKER: ____________________________

OWNER’S REPRESENTATIVE:
(Architect, Engineer or other party:)

________________________________________

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety’s obligation under this Bond shall arise after:
   
   .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor’s performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner’s notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety’s receipt of the Owner’s notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner’s right, if any, subsequently to declare a Contractor Default;
   
   .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety;
   
   .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety’s obligation to release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety’s expense, take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiate proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default;

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

   .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
   
   .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for
1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
2 additional legal, design professional and delay costs resulting from the Contractor’s Default, and resulting from the actions or failure to act of the Surety under Section 5; and
3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety’s liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitations applicable to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished, in compliance with any statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions concerning to such statutory or other legal requirement shall be deemed incorporated herein. Where so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions
§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in payment of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
§ 16 Modifications to this bond are as follows:

1. Definitions Amendments:
Replace the term "Construction Contract" throughout this Bond with "Operating Service Agreement".

2. Amendments to Section 1:
Insert "subject to the attached and concurrently executed Multiple Obligee Rider," after the words "to the Owner".

3. The following terms and conditions are added to Section 1:

1.1 Whereas, the Owner has agreed to accept a renewable bond, this Bond shall be effective starting -------- and expire --------, and may be renewed for additional one (1) year periods from the expiration date hereof, or any future expiration date, by the issuance of a Bond Renewal Certificate, unless the Surety provides to the Owner not less than thirty (30) days advance written notice of its intent not to renew this Bond.

1.2 Neither nonrenewal by the Surety, nor the failure or inability of the Contractor to file a replacement bond in the event the Surety exercises its right to not renew this Bond, shall itself constitute a loss to the Owner recoverable under this Bond or any renewals thereof.

1.3 If this Bond is renewed by way of any Bond Renewal Certificate, the liability of the Surety shall not be cumulative and shall in no event exceed the Bond amount for the period specified therein.

4. Amendments to Section 9:
Delete "its heirs, executors, administrators, successors and assigns" and replace with "any other Additional Obligee under the Multiple Obligee Rider, or their heirs, executors, administrators, successors and assigns".

5. Amendments to Section 12:
delete ".....the address shown on the page on which their signature appears." and replace with ".....their respective addresses set forth on the front page of this bond.

6. Governing Law:
This Bond shall be governed by and construed in accordance with the applicable laws of the State of Texas.

7. Multiple Obligee Rider:
This Bond is subject to the attached and concurrently executed Multiple Obligee Rider.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:
Signature: ____________________________
Name and Title: ______________________
Address: _____________________________

SURETY
Company: ____________________________
(Signature: ____________________________
Name and Title: ______________________
Address: _____________________________

MULTIPLE OBLIGEE RIDER
TO CONTRACT PERFORMANCE BOND

WHEREAS, on or about the [Day] day of [Month], [Year] EPCOR Services Inc., as Contractor, entered into a written agreement with Central Texas Regional Water Supply Corporation, as Obligee, for the operating services for the Vista Ridge Regional Supply Project, Texas, herein referred to as the Contract; and

WHEREAS, the Contractor, as Principal, and the Fidelity and Deposit Company of Maryland, as Surety, made, executed and delivered to said Contractor their joint and several Performance Bond in respect of the Contract; and

WHEREAS, the Obligee has requested the Contractor and Surety to join with the Obligee in the execution and delivery of this Rider, and the Contractor and Surety have agreed so to do upon the conditions herein stated.

NOW, THEREFORE, in consideration of One Dollar and other good and valuable considerations, receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

The Performance Bond aforesaid shall be and it is hereby amended as follows:

1. The names of:
   a. Sumitomo Mitsui Banking Corporation located at 277 Park Avenue, 45h Floor New York, NY 10172, as Collateral Agent, and
   b. Vista Ridge LLC located at 1333 NW Vivion Road, Kansas City, MO 64118,

2. There shall be no liability on the part of the Principal or Surety under this bond to the Obligees, or any of them, unless the Obligees, or any of them, shall make payments to the Principal, or to the Surety in case it arranges for completion of the Contract upon default of the Principal, strictly in accordance with the terms of said Contract as to payments, and shall perform all the other obligations required to be performed by the Obligees, or any of them, under said Contract at the time and in the manner therein set forth.

3. It is further understood and agreed, that except as herein modified, the said Performance Bond shall be and remain in full force and effect; and nothing herein contained shall be held to change, alter or vary the term of the above described bond, including the aggregate liability of the Surety.

Remainder of this page intentionally left blank
SIGNED, sealed and dated on or about this ______________ day of ______________, 20____.

Central Texas Regional Water Supply Corporation  
(as Obligee)

OBLIGEE SIGNATURE

Name: ________________________________
Title: ________________________________
I have the authority to bind the Corporation

EPCOR Services Inc.  
(as Principal)

PRINCIPAL SIGNATURE (Seal)

Name: ________________________________
Title: ________________________________
I have the authority to bind the Corporation

Vista Ridge LLC  
(as Additional Obligee)

ADDITIONAL OBLIGEE SIGNATURE

Name: ________________________________
Title: ________________________________
I have the authority to bind the Corporation

Fidelity and Deposit Company of Maryland  
(as Surety)

(Seal)  
ATTORNEY-IN-FACT

Name: ________________________________
Title: ________________________________

Sumitomo Mitsui Banking Corporation,  
as Collateral Agent  
(as Additional Obligee)

ADDITIONAL OBLIGEE SIGNATURE

Name: ________________________________
Title: ________________________________
I have the authority to bond the Corporation
BOND RENEWAL CERTIFICATE

To be attached and form part of:

Bond Number:  --------------- (the Bond)

issued by the:  Fidelity and Deposit Company of Maryland (Surety)

on behalf of:  EPCOR Services Inc. (Principal)

and in favor of:  Central Texas Regional Water Supply Corporation (Obligee), and
Vista Ridge LLC (Additional Obligee), and
Sumitomo Mitsui Banking Corporation, as Collateral Agent (Additional Obligee)

Principal and Surety do hereby continue said Bond for the further term of one (1) year beginning on the
day of      ,       and ending on the       day of      ,      .

It is also hereby understood and agreed that the amount of this Bond is amended to read       ($      )
effective as of the       day of      ,       .

PROVIDED, however, that said Bond, as continued hereby, shall be subject to all its terms and conditions,
except as herein modified, and that the liability of the Surety under said Bond, and any and all Bond Renewal
Certificates, shall in no event be cumulative and exceed the amount of the Bond for the period specified therein
and that this certificate shall not be valid unless signed by said Principal.

Signed, sealed and dated on or about this       day of       ,      .

EPCOR Services Inc.

____________________________________ (Seal)
Signature

Name: ________________________________

Title: ________________________________

Fidelity and Deposit Company of Maryland

____________________________________, Attorney-in-Fact
## APPENDIX 8
### OWNERSHIP INTERESTS

<table>
<thead>
<tr>
<th>Entity</th>
<th>Ownership Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. EPCOR USA Inc.</td>
<td>100% direct owner of the Operating Service Provider</td>
</tr>
<tr>
<td>2. EPCOR Water Development (West) Inc.</td>
<td>100% direct owner of EPCOR USA Inc. (indirect owner of the Operating Service Provider)</td>
</tr>
<tr>
<td>3. EPCOR Water Services Inc.</td>
<td>100% direct owner of EPCOR Water Development (West) Inc. (indirect owner of the Operating Service Provider)</td>
</tr>
<tr>
<td>4. EPCOR Utilities Inc.</td>
<td>100% direct owner of EPCOR Water Services Inc. (indirect owner of the Operating Service Provider)</td>
</tr>
<tr>
<td>5. City of Edmonton</td>
<td>100% direct owner of EPCOR Utilities Inc. (indirect owner of the Operating Service Provider)</td>
</tr>
</tbody>
</table>
APPENDIX 9

FORM OF PARENT GUARANTEE
APPENDIX 9

FORM OF PARENT GUARANTEE

This GUARANTEE (this “Guarantee”), dated as of [●], 20[●], is made and entered into by [EPCOR USA Inc.], a [corporation] formed under the laws of [Delaware] (together with its successors and permitted assigns, the “Guarantor”), in favor of Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of the Texas Water Code and Chapter 22 of the Texas Business Organizations Code (together with its successors and permitted assigns, “CTRWSC”) and Vista Ridge LLC, a limited liability company organized under the laws of the State of Delaware (together with its successors and permitted assigns, the “Project Company”).

WITNESSETH:

WHEREAS, Project Company and the City of San Antonio (the “City”), acting by and through the San Antonio Water System Board of Trustees established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”), have entered into that certain Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement dated as of November 4, 2014, as amended pursuant to a Consent to the Garney Change of Control and Conforming Amendments to the Water Transmission and Purchase Agreement, dated as of June 10, 2016, as further amended by that certain Second Amendment to the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November 2, 2016, as further amended by that certain Third Amendment to the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of April 5, 2017 (as further amended or otherwise modified from time to time, the “WTPA”);

WHEREAS, CTRWSC has been formed in furtherance of the Project for the purpose of acquiring easements, rights of way and other interests necessary to construct and own a transmission line for the transportation of potable water to SAWS for the public use of the citizens of the City and regional communities;

WHEREAS, the Project Company and CTRWSC entered into that certain Amended and Restated Water Transportation Agreement, dated as of November 2, 2016 (as amended or otherwise modified from time to time, the “Water Transportation Agreement”), where CTRWSC agreed to transport groundwater produced by the Project Company to SAWS in accordance with the terms of the WTPA;

WHEREAS, CTRWSC, the Project Company and EPCOR Services Inc., an Arizona corporation (the “Operating Service Provider”) have entered into the Operating Service Agreement, dated as of [●], 2018 (the “Operating Service Agreement”) to operate and maintain the Project;

WHEREAS, the Guarantor is the direct owner of 100% of the equity interests in the Operating Service Provider; and

WHEREAS, CTRWSC and the Project Company have entered into the Operating Service Agreement on the condition that the Guarantor shall execute and deliver this Guarantee in favor of CTRWSC and the Project Company on or before the Effective Date.

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter contained, it is agreed as follows:

1 DEFINITIONS.

Capitalized terms used herein shall have the meanings assigned to them in the Operating Service Agreement, unless otherwise defined herein, and the rules of interpretation and construction set forth in...
the Operating Service Agreement shall apply, mutatis mutandis, to the interpretation and construction of this Guarantee.

2 THE GUARANTEE.

2.1 Guarantee of the Obligations of the Operating Service Provider.

(a) The Guarantor hereby absolutely, irrevocably and unconditionally guarantees to each of CTRWSC, the Project Company and their respective successors and permitted assigns (i) the full, due, punctual, faithful and complete observance and performance by the Operating Service Provider of each and all of the obligations, covenants, warranties, duties and undertakings of the Operating Service Provider under and pursuant to the Operating Service Agreement when due (taking into account any period for performance of such obligations, covenants, warranties, duties and undertakings expressly provided for in the Operating Service Agreement, including any extension to such period pursuant to the provisions of the Operating Service Agreement) and (ii) full, due, punctual, faithful and complete payment of any and all liabilities and payment obligations of the Operating Service Provider which are or may become from time to time due, owing or payable, or which remain due, owing or unpaid for the benefit of each of CTRWSC and the Project Company, as the case may be, under the Operating Service Agreement (taking into account any period for payment of such liabilities and payment obligations expressly provided for in the Operating Service Agreement) (collectively referred to as the “Guaranteed Obligations”). This is a continuing guarantee of payment and performance of the Guaranteed Obligations and, subject to Section 2.7, the obligations of the Guarantor shall remain in full force and effect until all Guaranteed Obligations have been paid, performed and completed in full, at which time the obligations of Guarantor shall terminate.

(b) Notwithstanding the foregoing or anything else in this Guarantee, the Guarantor, subject to the terms of this Guarantee, shall have all rights, remedies and defenses available to the Operating Service Provider under the Operating Service Agreement, including without limitation waiver, surrender, compromise, settlement, release or termination voluntarily made by CTRWSC, and other rights, remedies and defenses available to the Operating Service Provider arising in equity, law or under the Operating Service Agreement (including, without limitation, those arising under Section 18.02 (Limitation of the Operating Service Provider’s Liability) of the Operating Service Agreement), except those expressly waived in this Guarantee and those defenses arising because of any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshaling of assets and liabilities or similar events or proceedings (collectively, an “Insolvency Event”) with respect to the Operating Service Provider (collectively, “Defenses”). In determining the extent to which the Guarantor must pay or perform the obligations of the Operating Service Provider pursuant to this Guarantee, (i) in no event shall the Guarantor be permitted to assert any Defense greater than those available to the Operating Service Provider, in its capacity as the Operating Service Provider, under the Operating Service Agreement, and (ii) to the extent that it is determined pursuant to a final, binding decision or determination in the dispute resolution process provided for herein that any Defense is unavailable to the Operating Service Provider, has been waived by the Operating Service Provider or is limited in its scope or nature, the Guarantor shall be prohibited from raising such Defense to the extent the same is so determined to be
The Guarantor agrees that, subject to the foregoing and to any qualifications, limitations and conditions specified herein, its obligations under this Guarantee shall be absolute and unconditional. This Guarantee is a primary obligation of the Guarantor and not merely a contract of surety.

(c) The Guarantor will indemnify each of CTRWSC, the Project Company and their respective successors and permitted assigns for any direct loss suffered by it to the extent any of the Guaranteed Obligations is or becomes unenforceable, for any reason, event or circumstance, provided always that the Guarantor’s liability shall be no greater than the Operating Service Provider’s liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal and provided further that the Guarantor shall not be obligated to perform any obligation to the extent that it would be illegal for it to do so.

2.2 Guarantor Obligations Limited to Obligations of the Operating Service Provider. The obligations, responsibilities and liabilities, as well as the rights and limitations of liability of the Guarantor hereunder, in respect of the Guaranteed Obligations shall not exceed those of the Operating Service Provider under the Operating Service Agreement other than to the extent that an Insolvency Event would reduce the Operating Service Provider’s liability, and shall be subject to the same limitations (including the limitations of liability under Section 18.02 (Limitation of the Operating Service Provider’s Liability) of the Operating Service Agreement), but not limitations imposed by an Insolvency Event. In determining the Guarantor’s liability under Section 2.1(c), such liability shall, subject to Section 3.1, be determined as if the Guarantor had the benefit of all (but no greater) rights, remedies, defenses and limitations that the Operating Service Provider would be entitled to assert under the Operating Service Agreement if the obligation that is unenforceable, invalid or illegal were enforceable, valid or legal.

2.3 Limitation of Liability of the Guarantor. Notwithstanding any other provision of this Guarantee, in no event shall the aggregate liability of the Guarantor under this Guarantee exceed the maximum aggregate liability of the Operating Service Provider set out in Section 18.02 (Limitation of the Operating Service Provider’s Liability) of the Operating Service Agreement, but this limitation of liability:

(a) shall be subject to the same exceptions as applicable to the limitation of liability of the Operating Service Provider under the Operating Service Agreement;

(b) shall not apply to interest and successful enforcement costs or costs under Section 2.1(c) payable under this Guarantee; and

(c) shall not apply to liabilities that arise out of the willful misconduct, negligence or fraud of the Guarantor.

Notwithstanding anything in this Guarantee to the contrary, where an obligation of the Operating Service Provider has become unenforceable due to the expiration of applicable statute of limitation, the Guarantor shall be entitled to assert any such expiration of applicable limitation periods as a Defense to the Guaranteed Obligations for which it is otherwise liable hereunder.

2.4 Performance on Demand. Upon a failure of the Operating Service Provider to perform any of the Guaranteed Obligations, the Guarantor shall (a) in the case of payment obligations, within five (5) Business Days of receipt of written demand to that effect from CTRWSC or the Project Company, as the case may be, pay all amounts due (provided that if such written
demand is prohibited by law or court order, the Guarantor shall be immediately obligated to pay any amounts due to CTRWSC or the Project Company, as the case may be, upon any failure to pay by the Operating Service Provider, and (b) in the case of all other obligations, within five (5) Business Days of receipt of written demand to that effect (except that demand need not be made to the extent the same is precluded by bankruptcy or other similar law affecting the Guarantor) by CTRWSC or the Project Company, as the case may be, commence the performance or procure the performance of such Guaranteed Obligations and undertake all action necessary to cure and remedy the applicable breach or failure to perform of the Operating Service Provider, or such other actions that may be agreed upon between CTRWSC and the Guarantor, in each case subject to the limitations set forth in Section 2.1. Any payment of the Guaranteed Obligations by the Guarantor shall be made in immediately available funds to the account designated by CTRWSC or the Project Company, as the case may be. Each payment to be made by the Guarantor under this Guarantee shall be payable in the currency or currencies in which such Guaranteed Obligations are denominated and shall be made without set-off or counterclaim. Any demand to the Guarantor under this Section 2.4 shall describe the Guaranteed Obligations which the Operating Service Provider has failed to perform and the nature of such failure.

2.5 No Obligation to Take Action against the Operating Service Provider. The Guarantor agrees that this is a guaranty of performance and payment and not a guaranty of collection. The liability of the Guarantor under this Guarantee shall not be conditional or contingent upon the pursuit of any remedy against the Operating Service Provider (although each of CTRWSC, the Project Company and their respective successors and permitted assigns is entitled to pursue such remedies, if it so chooses) or any other Person or any collateral securing the Guaranteed Obligations or the exercise of any rights to insurance payments under the Operating Service Agreement before seeking satisfaction from the Guarantor of the Guaranteed Obligations that the Operating Service Provider has failed to pay or perform. The obligations of the Guarantor hereunder are independent of the Guaranteed Obligations and a separate action or actions may be brought and prosecuted against the Guarantor to enforce this Guarantee, irrespective of whether any action is brought against the Operating Service Provider or any successor or guarantor of the Operating Service Provider or any other Person or whether the Operating Service Provider or any other Person is joined in any such action or actions. Notwithstanding anything else contained in this Guarantee, neither CTRWSC nor the Project Company shall make a claim pursuant to this Guarantee unless the Operating Service Provider has failed to perform a Guaranteed Obligation.

2.6 Benefit of Guarantee. The provisions of this Guarantee are for the benefit of each of CTRWSC, the Project Company and their respective successors and permitted assigns, and nothing herein contained shall impair, as between the Operating Service Provider, on the one hand, and CTRWSC and the Project Company, on the other hand, the obligations of the Operating Service Provider under the Operating Service Agreement. In the event all or any part of the Guaranteed Obligations are transferred, endorsed or assigned by CTRWSC or the Project Company in accordance with the Operating Service Agreement to any Person or Persons, any reference to “CTRWSC” or “Project Company”, as the case may be, herein shall be deemed to refer equally to such Person or Persons.

2.7 Termination. Subject to Sections 2.8 and 2.9, this Guarantee shall terminate upon the earlier of (a) the irrevocable and indefeasible due payment and performance in full of all of the Guaranteed Obligations under the Operating Service Agreement, (b) the expiration of the Term (the “Sunset Date”), and (c) the Guaranteed Obligations have been irrevocably and indefeasibly paid and performed in full, as permitted and required under the Operating Service Agreement.
2.8 **Reinstatement.** The obligations of the Guarantor hereunder shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment or performance, or any part thereof, of any of the Guaranteed Obligations which would otherwise have reduced the obligations of the Guarantor hereunder (whether such payment or performance shall have been by or on behalf of the Operating Service Provider) is rescinded or reclaimed upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of CTRWSC, the Project Company, the Operating Service Provider, or the Guarantor or otherwise, or any part of such payment is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by CTRWSC or the Project Company, whether as a “voidable preference”, “fraudulent conveyance”, or as a result of the appointment of a receiver, intervenor or conservator, trustee or similar officer for the Operating Service Provider or the Guarantor, or any substantial part of their property or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Guaranteed Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

2.9 **Limitations on CTRWSC’s and the Project Company’s Rights to Make Claim on Guarantor.** Notwithstanding any other provision of this Guarantee to the contrary, (a) neither CTRWSC nor the Project Company is entitled to make a claim on this Guarantee after the Sunset Date (as defined in Section 2.7), and the Guarantor’s liability under this Guarantee shall cease on the Sunset Date, except in relation (i) to Guaranteed Obligations for which a claim or claims have been made on the Guarantor under and in accordance with this Guarantee on or prior to the Sunset Date, and (ii) Guaranteed Obligations that arise under the Operating Service Agreement on or prior to the Sunset Date, on which have not been paid or performed in full as of the Sunset Date, as to which in each case this Guarantee shall continue after the Sunset Date until such Guaranteed Obligations are paid and performed in full; (b) the liability of the Guarantor to CTRWSC and the Project Company under or in connection with this Guarantee (whether that liability arises under a specific provision of this Guarantee, for breach of contract, negligence or otherwise) shall in all events be limited as set forth in Section 2.3; and (c) neither CTRWSC nor the Project Company shall be entitled to recover or make a claim pursuant to any provisions of this Guarantee in respect of any loss that it has suffered (or any failure of the Operating Service Provider or the Guarantor to perform), or in respect of any interest or enforcement costs incurred, to the extent that it has already been fully and completely compensated in respect of such loss, failure, interest, or cost (including through insurance or from a third party).

3 **OBLIGATIONS NOT AFFECTED.**

3.1 **Obligations Not Affected.** Without prejudice to any other rights of the Guarantor expressly set forth herein, the obligations of the Guarantor hereunder shall not be affected or impaired by any act, omission, matter or thing whatsoever, occurring before, upon or after any demand for payment or performance hereunder (and whether or not known to the Guarantor, CTRWSC or the Project Company) which, but for this provision, might constitute a whole or partial defense to a claim against the Guarantor hereunder or might operate to release or otherwise exonerate the Guarantor from any of its obligations hereunder or otherwise affect such obligations. Without limiting the generality of the foregoing, the Guarantor hereby irrevocably waives and agrees not to assert or take advantage of any defense based in whole or in part upon:

(a) any limitation of status or power, disability, incapacity or other circumstance relating to the Operating Service Provider, including any insolvency, bankruptcy, liquidation,
reorganization, readjustment, composition, dissolution, winding-up or other proceeding involving or affecting the Operating Service Provider;

(b) any invalidity of the Operating Service Agreement due to lack of proper authorization of or a defect in execution thereof by or on behalf of the Operating Service Provider;

(c) any failure of the Operating Service Provider, whether or not without fault on its part, to perform or comply with any of the provisions of the Operating Service Agreement or to give notice thereof to the Guarantor;

(d) the taking or enforcing or exercising or the refusal or neglect to take or enforce or exercise any right or remedy against the Operating Service Provider or any other Person or their respective assets, or the release or discharge of any such right or remedies;

(e) the granting of time, renewals, extensions, compromises, concessions, waivers, releases, discharges and other indulgences to the Operating Service Provider or any other Person except to the extent such items are granted in accordance with the terms of the Operating Service Agreement; or (ii) formally agreed upon in writing between CTRWSC and the Operating Service Provider, without reservation by CTRWSC or the Operating Service Provider;

(f) any amendment, variation, modification, supplement, termination or replacement of the Operating Service Agreement, but the same shall not diminish Guarantor’s Defenses available under the Operating Service Agreement as so amended, varied, modified, supplemented, terminated or replaced;

(g) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Guarantor, the Operating Service Provider or any other Person (other than pursuant to Section 2.7(c));

(h) any merger, amalgamation or consolidation of the Guarantor or the Operating Service Provider with any Person or Persons;

(i) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any governmental body or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Guaranteed Obligations or the obligations of the Guarantor under this Guarantee, except to the extent such change makes the enforcement of this Guarantee illegal;

(j) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Operating Service Provider or any other Person (other than CTRWSC to the extent arising under the Operating Service Agreement), whether in connection with the Operating Service Agreement or otherwise;

(k) an Insolvency Event with respect to the Operating Service Provider; and

(l) subject to any right to raise a defense that is expressly set out in this Guarantee, any defense that could be raised by a surety or a guarantor to avoid or limit liability.

3.2 No Duty of CTRWSC or the Project Company. The Guarantor assumes all responsibility for keeping itself informed of the Operating Service Provider’s financial condition and all other
factors affecting the risks and liability assumed by the Guarantor hereunder, and neither CTRWSC nor the Project Company shall have any duty to advise the Guarantor of information known to it regarding such risks.

3.3 Dealing with the Operating Service Provider and Others. The Guarantor hereby acknowledges and agrees that the manner in which CTRWSC or the Project Company may now or subsequently deal with the Operating Service Provider or any collateral for the Guaranteed Obligations or any other guarantee in respect of the Guaranteed Obligations shall have no effect on the Guarantor’s continuing liability under this Guarantee (but without prejudice to Sections 2.1(b) or 2.2), and CTRWSC and the Project Company may at any time or from time to time, with or without the consent of, or notice to, the Guarantor:

(a) grant time, renewals, extensions, compromises, concessions, waivers, releases, discharges and other indulgences to the Operating Service Provider or any other Person;

(b) amend, vary, modify, supplement, replace or terminate the Operating Service Agreement or any other related document or instrument in accordance with its terms;

(c) take or abstain from taking security or collateral from the Operating Service Provider, or from perfecting security or collateral of the Operating Service Provider;

(d) release, discharge, settle, compromise, realize, enforce or otherwise deal with or do any act or thing in respect of (with or without consideration) any and all collateral, mortgages or other security given by any other party to CTRWSC or the Project Company, as applicable;

(e) accept compromises or arrangements from the Operating Service Provider;

(f) apply all money at any time received from the Operating Service Provider, or from collateral or other guarantees in respect of the any part of the Guaranteed Obligations, as it may see fit or change any such application in whole or in part from time to time, or in any other manner as it may see fit; and

(g) otherwise deal with, or waive or modify its right to deal with the Operating Service Provider and all other Persons and property as it may see fit.

3.4 Waiver of Rights of Subrogation, Reimbursement, Etc. Notwithstanding any payment or performance made by the Guarantor hereunder or any set-off or application of funds of the Guarantor by CTRWSC or the Project Company, as applicable, the Guarantor hereby irrevocably waives, until such time as all Guaranteed Obligations have been irrevocably and indefeasibly paid and performed in full, any claim or other rights that it may now or hereafter acquire against the Operating Service Provider, that arise from the existence, payment, performance or enforcement by the Guarantor of the Guaranteed Obligations in any manner whatsoever, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of CTRWSC or the Project Company, as applicable, against the Operating Service Provider, or any collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from the Operating Service Provider, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right. If any amount shall be paid to the Guarantor on account of such rights of the Guarantor at any time when all of the Guaranteed Obligations shall not have been paid or performed in
full, such amount shall be held by the Guarantor in trust for CTRWSC or the Project Company, as applicable, segregated from other funds of the Guarantor, and shall, forthwith upon receipt by the Guarantor, be turned over to CTRWSC or the Project Company, as applicable in the exact form received by the Guarantor (duly indorsed by the Guarantor to CTRWSC or the Project Company, as applicable, if required).

3.5 **Amendments.** The Guarantor hereby authorizes (without the need for further Guarantor consent but (without prejudice to Section 3.1(f)) with the need for prompt notice to the Guarantor) CTRWSC, the Project Company and the Operating Service Provider to make any amendment, addendum or variation to the Operating Service Agreement, the due and punctual performance of which amendment, addendum or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee. Except to the extent required to reflect such amendment, addendum or variation, the obligations of the Guarantor hereunder shall in no way be affected by any amendment, variation or addendum to the Operating Service Agreement.

4 **REPRESENTATIONS AND WARRANTIES.**

4.1 **Guarantor.** The Guarantor represents and warrants to each of CTRWSC and the Project Company as follows:

(a) the Guarantor is a [__________] duly organized, validly existing, and authorized to do business under the laws of [__________] and that the Operating Service Provider is a wholly owned subsidiary of the Guarantor;

(b) the Guarantor has the requisite power and authority to own its property and assets, transact the business in which it is engaged and to execute and deliver this Guarantee and perform its obligations hereunder;

(c) the execution, delivery, and performance of this Guarantee have been duly and validly authorized and no other corporate proceedings on the part of the Guarantor or its affiliates are necessary to authorize this Guarantee or the transactions contemplated hereby;

(d) no consent, authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body or third party that has not been obtained is required for the due execution, delivery and performance by the Guarantor of this Guarantee and its signatory is a duly authorized representative and has the power to bind it by signing this Guarantee;

(e) the Guarantor has duly executed and delivered this Guarantee;

(f) this Guarantee constitutes a valid and binding agreement of the Guarantor and is enforceable against the Guarantor in accordance with the terms of this Guarantee, except as may be limited by bankruptcy or insolvency or by other laws affecting the rights of creditors generally and except as may be limited by the availability of equitable remedies;

(g) as of the date hereof, the execution, delivery, and performance of this Guarantee does not and will not (i) result in a default, breach or violation of the charter or other organizational documents of the Guarantor, as applicable, or (ii) violate any order, writ, injunction decree, arbitration award, statute, rule or regulation applicable to the Guarantor or any of its properties or assets; and
(h) it is familiar with the terms of the Operating Service Agreement.

5 COVENANTS.

5.1 General. The Guarantor agrees, at its expense and upon the written request of CTRWSC or the Project Company, as applicable, to do all such things reasonably necessary to cause this Guarantee to be, become or remain valid and effective in accordance with its terms.

5.2 Operating Service Agreement Direct Lender Agreement. In connection with any assignment by CTRWSC or the Project Company, as applicable, of the Operating Service Agreement to their respective creditors, the Guarantor shall execute an instrument of acknowledgment and agreement (the “Acknowledgement”) for the benefit of such creditors on terms customary for limited recourse financings.

5.3 Cooperation in Financing. The Guarantor shall reasonably cooperate in providing such information and taking such reasonable actions as CTRWSC or the Project Company may require in connection with any financing for the Project, including, without limitation, (a) providing customary legal opinions (including, without limitation, customary corporate opinions and no conflict opinions, as well as enforceability opinions in respect of the Acknowledgement and this Guarantee including, without limitation, regarding enforcement of judgments in respect of the Acknowledgement and this Guarantee in the jurisdiction of formation of Guarantor) which may be provided from in-house legal counsel (with the consent of the financing parties) or external legal counsel to the Guarantor, (b) providing a certificate of an authorized officer of the Guarantor that covers, without limitation, incumbency of the signatories of the Acknowledgement and this Guarantee and attaches accurate and complete copies of the organizational documents of the Guarantor and certifies resolutions or board meeting minutes authorizing the execution of and performance under the Acknowledgement and this Guarantee by the Guarantor, and (c) providing a certificate of the Guarantor regarding the accuracy of disclosures pertaining to such party in any offering memorandum or other securities offering document in respect of indebtedness of or for the benefit of CTRWSC or the Project Company in respect of the Project.

6 PAYMENTS FREE AND CLEAR OF TAXES. All payments required to be made by the Guarantor hereunder shall be made free and clear of, and except as provided in the following sentence without deduction or withholding for, any and all present and future Taxes. If the Guarantor shall be required by law in any jurisdiction from or through which the Guarantor elects to make payment hereunder to deduct any Taxes from or in respect of any sum payable hereunder, (a) except in respect of Excluded Taxes, the sum payable shall be increased as much as shall be necessary so that after making all required withholdings and deductions (including withholdings and deductions applicable to additional sums payable under this Section 6) CTRWSC or the Project Company, as applicable, receives an amount equal to the sum it would have received had no such withholdings or deductions been made, (b) the Guarantor shall make such withholdings and deductions and (c) the Guarantor shall pay the full amount withheld or deducted to the relevant taxing or other authority in accordance with applicable law.

For the purposes hereof, “Excluded Taxes” means any taxes based on the net taxable income or revenue of CTRWSC or the Project Company, as applicable, (including franchise taxes imposed in lieu of net income taxes) imposed by (x) the United States federal government, (y) the jurisdiction where CTRWSC or the Project Company, as applicable, is organized or has its principal office or (z) the states and political subdivisions where the Project is located.

7 RIGHTS OF CTRWSC AND THE PROJECT COMPANY. The rights of each CTRWSC and the Project Company hereunder are cumulative and shall not be exhausted by any one or more exercises
of said rights against the Guarantor or by any number of successive actions or be reduced, waived,
released or adversely affected by the acts or omissions of the other party until and unless all
Guaranteed Obligations have been irrevocably and indefeasibly paid and performed in full.

8 OTHER TERMS.

8.1 Entire Agreement. This Guarantee constitutes the entire agreement among the parties hereto
with respect to the subject matter hereof and supersedes all prior agreements relating to a
guarantee of the Guaranteed Obligations.

8.2 Headings. The headings in this Guarantee are for convenience of reference only and are not
part of the substance of this Guarantee.

8.3 Severability. Whenever possible, each provision of this Guarantee shall be interpreted in
such a manner to be effective and valid under applicable law, but if any provision of this
Guarantee shall be prohibited by or invalid under applicable law, such provision shall be
ineffective only to the extent of such prohibition or invalidity, without invalidating the
remainder of such provision or the remaining provisions of this Guarantee and the parties
shall negotiate in good faith an equitable adjustment of the provisions of this Guarantee with
a view toward effecting the purpose of this Guarantee.

8.4 Notices. Except as otherwise provided herein, whenever it is provided herein that any notice,
demand, request, consent, approval, declaration or other communication shall or may be
given to or served upon any of the parties by any other party, or whenever any of the parties
desires to give or serve upon any other a communication with respect to this Guarantee, each
such notice, demand, request, consent, approval, declaration or other communication shall be
in writing and sent:

If to CTRWSC, at:

[__________]
Attention: [__________]
Telephone: [__________]
Facsimile: [__________]

with copy to the Project Company.

If to the Project Company, at:

[__________]
Attention: [__________]
Telephone: [__________]
Facsimile: [__________]

If to the Guarantor, at:

[__________]
Attention: [__________]
Telephone: [__________]
Facsimile: [__________]

All notices or other communications required or permitted to be given hereunder shall be in
writing and shall be considered as properly given (a) if delivered in person, (b) if sent by
overnight delivery service, or (c) in the event overnight delivery services are not readily
available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested. Notice so given shall be effective upon receipt by the addressee; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice on at least five (5) Business Days’ written notice to the other parties in the manner set forth herein above.

8.5 Successors and Assigns. All obligations of the Guarantor hereunder shall be binding upon the successors and assigns of the Guarantor (including a debtor-in-possession on behalf of the Guarantor) and shall, together with the rights and remedies of each of CTRWSC and the Project Company, as applicable, inure to the benefit of and be enforceable by each of CTRWSC, the Project Company and their respective successors and permitted assigns, and nothing in this Guarantee shall entitle any other Person to any claim, cause or action, remedy or right of any kind against the Guarantor. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Guaranteed Obligations or any portion thereof or interest therein shall in any manner affect the rights of CTRWSC or the Project Company hereunder. The Guarantor may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Guarantee without the prior written consent of each of CTRWSC and the Project Company, which may be granted or withheld in their absolute discretion. For the avoidance of doubt, the parties acknowledge that each of CTRWSC and the Project Company may only assign this Guarantee together with an assignment of the Operating Service Agreement to any assignee to which such party is permitted to assign the Operating Service Agreement as provided therein, including their respective creditors.

8.6 No Waiver; Cumulative Remedies; Amendments. Without limiting in any way the agreements, waivers and acknowledgments of the Guarantor set forth herein, none of CTRWSC, the Project Company or the Guarantor shall by any act, delay, omission or otherwise after the date hereof be deemed to have waived any of their respective rights or remedies hereunder, and no such waiver shall be valid unless in writing, signed by the party granting such waiver, and then only to the extent therein set forth. Any such waiver of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which would otherwise have been available on any future occasion. No failure to exercise nor any delay in exercising on the part of any of CTRWSC, the Project Company or the Guarantor, or applicable, any right, power or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights, remedies, power and privileges hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights, remedies, powers and privileges provided by law. None of the terms or provisions of this Guarantee may be waived, altered, modified, supplemented or amended after the date hereof except by an instrument in writing, duly executed by CTRWSC, the Project Company and the Guarantor. Any amendment, waiver, alteration, modification, supplementation or amendment to this Guarantee made in violation of this Section 8.6 shall be null and void.

8.7 Disputes. Any actions or proceedings in respect of any claim arising out of or related to any of the Guaranteed Obligations or the Operating Service Agreement shall be resolved in accordance with the dispute resolution procedures pursuant to Article XX (Governing Law; Dispute Resolution) of the Operating Service Agreement, and any such resolution shall be final and binding on the Guarantor and CTRWSC or the Project Company, as applicable.

8.8 Governing Law. This Guarantee shall be governed by, and construed in accordance with the
laws of the State of Texas.

8.9 **Payments other than in US Dollars.** The payment obligations of the Guarantor under this Guarantee shall not be discharged by an amount paid in a currency other than US dollars, whether pursuant to a judgment or otherwise, to the extent that the amount so paid upon conversion to US dollars under normal banking procedures does not yield the amount of US dollars due hereunder. The obligation of the Guarantor in respect of any amount due from it hereunder shall, notwithstanding any judgment or order in any currency other than US dollars or otherwise, be discharged only to the extent that on the Business Day following receipt by CTRWSC of any payment in a currency other than US dollars, CTRWSC or the Project Company, as applicable, is able (in accordance with normal banking procedures) to purchase US dollars with such other currency. If the amount of US dollars that CTRWSC or the Project Company, as applicable, is able to purchase with such other currency is less than the amount due in US dollars, notwithstanding any judgment or order, the Guarantor shall indemnify CTRWSC or the Project Company, as applicable, for such shortfall.

8.10 **Counterparts.** This Guarantee may be executed in any number of counterparts, each of which shall collectively and separately constitute one and the same agreement.

8.11 **Further Assurances.** The Guarantor agrees to execute and deliver to each of CTRWSC and the Project Company such other and further instruments as may be reasonably necessary for such party to effectuate this Guarantee.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOW]
IN WITNESS WHEREOF, the Guarantor has executed and delivered this Guarantee as of the date first above written.

[__________]

By: _____________________________
Name: __________________________
Title: __________________________

Acknowledged and agreed:

CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION

By: ____________________________
Name: 
Title: 

VISTA RIDGE LLC

By: ____________________________
Name: 
Title: 
APPENDIX 10
COMPENSABLE COSTS AND O&M BUDGET PANEL
APPENDIX 10

COMPENSABLE COSTS AND O&M BUDGET PANEL

10.1. COMPENSABLE COSTS

10.1.1 General Principle. Compensable Costs consist of the reasonable and necessary costs that would be incurred by a qualified and experienced private sector operator to operate, maintain, repair and replace the Project Improvements in accordance with the Contract Standards. Compensable Costs do not include Non-Compensable Costs as specified below in Sections 10.5 (Non-Compensable Costs), 10.6 (Taxes) and 10.8 (Costs of New Facilities) of this Appendix.

10.1.2 Process. As provided in Article X (Operating and Maintenance Costs) of this Agreement, the O&M Budget Panel shall determine for each Contract Year: (1) Fixed Compensable Costs; (2) Variable Compensable Costs; (3) Major Repair and Replacement Compensable Costs; (4) Budgeted Compensable Costs; and (5) Actual Compensable Costs.

10.2. FIXED COMPENSABLE COSTS

Fixed Costs include the following, as paid by the Operating Service Provider:

1. Wages and salaries of O&M Personnel;
2. Costs 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, excluding bonuses;
3. Costs associated with telecommunication services, including telephone, internet and other information technology services;
4. The cost of leased office and workshop space in San Antonio, Texas;
5. Amounts paid to third parties for water analyses and laboratory tests;
6. Amounts paid to third parties for (a) subcontracted labor; and (b) fees and expenses related to professional services (including legal, accounting, tax, insurance and technical advisory services), except as specified in Sections 10.5(5) and 10.5(6) (Non-Compensable Costs) of this Appendix;
7. The purchase price (including transportation and handling costs) paid to third parties for materials, supplies and similar consumables, which may include fuel oil, diesel fuel, natural gas, lubricants, shop rags, water treatment chemicals, laboratory supplies and office supplies;
8. The purchase price (including transportation and handling costs) paid to third parties for replacement parts and equipment;
9. The purchase price or rental charges (including transportation and handling costs) paid to third parties for machinery and equipment, which may include field equipment and tools, safety devices, copy machines, fax machines, printers, scanners, paper shredders, computers and their associated software, networking infrastructure, telephones;
(10) The purchase price or rental charges, as well as associated maintenance costs, paid to third parties in connection with vehicles that are purchased or leased;

(11) Premiums for the Required Insurance; and

(12) A management fee equal to eleven point one (11.1%) of total Compensable Costs. The management fee shall not be applied for costs relating to maintaining insurance or for performance bonds, for each Billing Period.

10.3. VARIABLE COMPENSABLE COSTS

Variable Costs include:

(1) Chemicals including, but not limited to Hypochlorite, Sodium Hydroxide and Sodium Hexametaphosphate;

(2) Unscheduled maintenance; and

(3) Unscheduled pipeline repairs and Project leak repairs.

10.4. MAJOR REPAIR AND REPLACEMENT COMPENSABLE COSTS

Major Repair and Replacement Compensable Costs include the costs paid or incurred by the Operating Service Provider to make major repairs to and replacements of the Project Improvements. Major Repair and Replacement Compensable Costs do not include the costs of operations or the costs of ordinary maintenance and predictive and preventive maintenance, which shall be included in Fixed Compensable Costs and Variable Compensable Costs.

10.5. NON-COMPENSABLE COSTS

Non-Compensable Costs include the following:

(1) Costs that do not qualify as Compensable Costs under the standard set forth in Section 10.1.1 (General Principle) of this Appendix;

(2) Any costs paid by or incurred by any party other than the Operating Service Provider;

(3) Any legal fees related to litigation of any kind;

(4) Costs for travel;

(5) Costs covered by warranties or by Insurance Proceeds;

(6) Any Variable Compensable Costs reasonably attributable to the production and delivery of Excess Product Water, subject to Section 6.02 (Product Water Supply Following Commercial Operation Date) of this Agreement;

(7) Any Taxes, except as provided in Section 10.6 (Taxes) of this Appendix; and

(8) Any costs that are paid or incurred by any party due to:

   (a) Any failure to operate, maintain, repair or replace the Project Improvements in accordance with Good Management Practice, the Operating and Maintenance Standards, or this Agreement generally;

   (b) Any other failure by the Operating Service Provider to perform the
Contract Obligations in accordance with the Contract Standards; and

(c) Any breach of this Agreement by the Operating Service Provider, or the occurrence of an Operating Service Provider Event of Default.

10.6. TAXES

Non-Compensable Costs shall include Taxes, as provided in Section 11.06 (Taxes) of this Agreement, except that sales taxes on materials, supplies and chemicals used or consumed in the performance of the Operating Work shall constitute Compensable Costs if the Operating Service Provider is unable to secure an exemption thereon based on Applicable Law. No Taxes imposed by any taxing jurisdiction outside the United States are Compensable Costs.

10.7. MITIGATION

In order to mitigate Compensable Costs incurred in the operation of the Project, at the direction of CTRWSC and when applicable, the Operating Service Provider shall use materials, chemicals or services provided by or through SAWS. Examples of this type of arrangement include use of SAWS professional services contracts for surveying or analyzing water quality samples in the SAWS analytical laboratory, or utilizing SAWS purchasing arrangements for chemicals, parts or materials.

10.8. COSTS OF NEW FACILITIES

10.8.1 Capital Costs of New Facilities. The capital costs of making any Capital Modifications, or building any new facilities or new capital improvements of any kind for any reason (including changes in Applicable Law) are Non-Compensable Costs. The costs of operating, maintaining, repairing and replacing any Capital Modifications, new facilities or new capital improvements, however, are Compensable Costs.

10.8.2 Leasing Costs. If any additional treatment to meet the Performance Guarantee Requirements requires construction of new treatment processes, the Operating Service Provider will be responsible for the equipment and construction costs without reimbursement by CTRWSC or the Project Company. If the Operating Service Provider leases equipment to meet Performance Guarantee requirements on a temporary or permanent basis, the lease costs will also be the responsibility of the Operating Service Provider without reimbursement by CTRWSC or the Project Company.

10.9. O&M BUDGET PANEL ADMINISTRATION

10.9.1 Composition. The Parties acknowledge and agree that O&M Budget Panel shall consist of five panelists (the “O&M Budget Panelists”) selected as follows: (1) two panelists, one appointed by SAWS and one appointed by the Project Company in consultation with the Operating Service Provider; (2) third and fourth panelists, one selected by the panelist appointed by SAWS and one selected by the panelist appointed by the Project Company; and (3) a fifth panelist chosen by the two panelists selected pursuant to item (2) of this paragraph. The panelist selected pursuant to item (3) of this paragraph shall be the chair of the O&M Budget Panel, responsible for scheduling and directing its business.

10.9.2 Qualifications. Each panelist shall be a senior industry expert qualified and experienced in the field of municipal water system operations, maintenance, repair and replacement and in budgeting and cost matters relating thereto. The selected panelists shall not be a past or present employee of SAWS or Garney Holding Company or its Affiliates. No individual who has, within the three years preceding his or her appointment, been an agent of, or a consultant or counsel to, SAWS, the Project Company, a Project Contractor, any Subcontractor or any Affiliate thereof shall be eligible to serve on the Panel unless such restriction is waived by the relevant party.
10.9.3 **Duration.** The Parties acknowledge and agree that: (1) the O&M Budget Panel shall be formed and the panelists selected by the responsible parties not later than one hundred eighty (180) days prior to the estimated Commercial Operation Date, and shall continue in existence for the balance of the Term; (2) the panel members shall serve for annual terms at the pleasure of both SAWS and the Project Company; and (3) any resigning panelist shall be promptly replaced by the responsible party so as to permit the continuous performance of the O&M Budget Panel’s duties.

10.9.4 **Expenses.** The Parties acknowledge and agree that the cost of conducting the O&M Budget Panel’s business shall be paid by SAWS.
APPENDIX 13

FORM OF OPERATING BUDGET
## APPENDIX 13
### FORM OF OPERATING BUDGET

<table>
<thead>
<tr>
<th>O&amp;M Costs</th>
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<tbody>
<tr>
<td><strong>Personnel Expenses</strong></td>
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<tr>
<td>Fully Loaded Employee Costs</td>
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<tr>
<td>Other Costs</td>
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</tr>
<tr>
<td>Total</td>
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| **Chemicals**                                  |        |
| [Chemical 1]                                   | 0      |
| [Chemical 2]                                   | 0      |
| [Chemical 3]                                   | 0      |
| Total                                          | 0      |

| **Capital and Maintenance Expenses**           |        |
| Capital Expenditures (equipment rehabilitation and replacement) | 0      |
| Well Field and Cooling Towers                  | 0      |
| Pumping Stations                               | 0      |
| Pipeline                                       | 0      |
| Other                                          | 0      |
| Total                                          | 0      |

| **Miscellaneous Expenses**                     |        |
| Vehicles                                       | 0      |
| Vehicle fuel                                   | 0      |
| Technology                                     | 0      |
| Training                                       | 0      |
| Staff Related (uniforms, etc.)                | 0      |
| Laboratory Supplies / Testing                 | 0      |
| Office Related (supplies, janitorial, etc.)    | 0      |
| [Other Misc. Expense 1]                        | 0      |
| [Other Misc. Expense 2]                        | 0      |
| [Other Misc. Expense 3]                        | 0      |
| Total Miscellaneous Costs Eligible for Margin | 0      |
| Insurance                                      | 0      |
| Performance Bond                               | 0      |
| Total Miscellaneous Costs                      | 0      |

Total O&M Compensable Costs Eligible for Margin 0
11.1% Margin on O&M Compensable Costs Eligible for Margin 0
Total O&M Compensable Costs Not Eligible for Margin 0
Total O&M Costs Paid by SAWS 0
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<th>[Year]</th>
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<tr>
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<tr>
<td>Fully Loaded Employee Costs</td>
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<td>Other Costs</td>
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<td>Total Payment to Operator</td>
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<tr>
<td><strong>Miscellaneous Expenses</strong></td>
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<td>Staff Related (uniforms etc.)</td>
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<tr>
<td>Office Related (supplies, janitorial)</td>
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<tr>
<td>Professional Services (Legal; Accounting; Tax)</td>
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<td>[Other Misc. Expense 2]</td>
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<td>[Other Misc. Expense 3]</td>
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<td>Total Miscellaneous Costs Eligible for Margin</td>
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<tr>
<td>Insurance</td>
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<td>Total Project Company Compensable Costs Eligible for Margin</td>
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<td>11.1% Margin on Project Company Compensable Costs Eligible for Margin</td>
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<tr>
<td>Total Project Company Compensable Costs Not Eligible for Margin</td>
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<tr>
<td>Total Project Company Costs Paid by SAWS</td>
<td>0</td>
</tr>
</tbody>
</table>
ATTACHMENT 2

OPERATING SERVICE PROVIDER SUBSTITUTION AGREEMENT

See attached.
OPERATING SERVICE PROVIDER
SUBSTITUTION AGREEMENT

between

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

and

CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION

and

VISTA RIDGE LLC

and

EPCOR SERVICES INC.

relating to the

VISTA RIDGE REGIONAL SUPPLY PROJECT

Dated November __, 2018
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OPERATING SERVICE PROVIDER SUBSTITUTION AGREEMENT

THIS OPERATING SERVICE PROVIDER SUBSTITUTION AGREEMENT is made and entered into November __, 2018, between the City of San Antonio, Texas (the “City”) acting by and through the San Antonio Water System Board of Trustees, established pursuant to the provisions of City Ordinance Number 75686, Texas Local Government Code Sections 552.141 et seq. and Chapter 1502, as amended, Texas Government Code (“SAWS”), Central Texas Regional Water Supply Corporation, a not-for-profit water supply corporation organized under Chapter 67 of Texas Water Code (the “Water Supply Corporation”), Vista Ridge LLC, a limited liability company organized under the laws of the State of Delaware (the “Project Company”) and EPCOR Services Inc., a corporation organized and existing under the laws of the State of Arizona (the “Contractor”).

RECITALS

The City acting by and through SAWS and the Project Company (formerly known as Abengoa Vista Ridge, LLC) have entered into the Vista Ridge Regional Supply Project Water Transmission and Purchase Agreement, dated as of November __, 2014, as amended from time to time (the “Water Transmission and Purchase Agreement”), whereby the Project Company has agreed to produce, treat, make available and sell to SAWS potable water on a long term basis based on the acquisition of water rights and design, construct, finance, operate and maintain production wells, groundwater storage tanks, pumping stations and raw water collection and transmission pipelines and appurtenant facilities, all as more particularly described therein (the “Project”);

The Water Supply Corporation, the Project Company and the Contractor have entered into the Operating Service Agreement, dated as of November __, 2018 (the “Operating Service Agreement”), whereby the Water Supply Corporation and the Project Company have engaged the Contractor to carry out and complete that part of the Project Company’s obligations under the Water Transmission and Purchase Agreement consisting of the operation of the Project, all as more particularly described in the Operating Service Agreement; and

It is a condition of SAWS’ continuing obligations under the Water Transmission and Purchase Agreement that the Contractor enter into this Agreement with the Water Supply Corporation, the Project Company and the City acting by and through SAWS.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:
ARTICLE 1
DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement shall have the respective meaning given to such terms in the Water Transmission and Purchase Agreement.

SECTION 1.2. INTERPRETATION.

This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

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

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

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

(4) References Hereto. The terms “hereto,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

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

(6) References to 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.

(7) 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.

(8) 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, orders, codes of practice or instruments made under the relevant statute.

(9) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(10) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant
(11) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Water Supply Corporation, the Project Company or the Contractor, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(12) Entire Agreement. This Agreement contains the entire agreement between the City and the other parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements between the City and the other parties with respect to such transactions.

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

(14) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

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

(16) 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, consistently applied, in the United States.

(17) Consents. Any consent required to be given under this Agreement must be in writing.

SECTION 1.3. GOVERNING LAW. This Agreement will be deemed to be made pursuant to the laws of the State of Texas and will be governed by and construed in accordance with such laws.
ARTICLE 2

SUBSTITUTION PROVISIONS

SECTION 2.1. NOTICE TO SAWS OF INTENT TO TERMINATE. Except in the event of termination by the Water Supply Corporation pursuant to the terms of the Operating Service Agreement, the Contractor shall not terminate or treat as terminated its engagement under the Operating Service Agreement or discontinue its services with respect to the Project, without first giving to SAWS and the Senior Debt Creditors not less than 10 Business Days’ prior written notice of the Contractor’s intention to do so, specifying the grounds for so doing.

SECTION 2.2. SUSPENSION OF TERMINATION. If SAWS serves on the Contractor a Substitution Notice in accordance with Section 2.3, the Contractor shall not terminate or treat as terminated its engagement, or discontinue the performance of any of its obligations, under the Operating Service Agreement, but service of such notice shall not prejudice any other right or remedy the Contractor may have under or in connection with the Operating Service Agreement.

SECTION 2.3. SUBSTITUTION NOTICE. Unless the engagement of the Contractor under the Operating Service Agreement has been terminated previously (and whether or not the Contractor has served notice on SAWS pursuant to Section 2.1), and if the Water Transmission and Purchase Agreement has been properly terminated in accordance with its terms and SAWS is acquiring the Project, SAWS will be entitled at any time to serve upon the Contractor a notice (“Substitution Notice”) requiring the Contractor to thereafter accept the instructions of SAWS or its appointee to the exclusion of the Water Supply Corporation and the Project Company under and in connection with the Operating Service Agreement and the Contractor shall comply with such notice, all subject to and in accordance with the terms and conditions of Section 2.4.

SECTION 2.4. SUBSTITUTION OF SAWS. From and after the effective date indicated in the Substitution Notice served under and in compliance with Section 2.3, provided that the Contractor has received notice from any of SAWS, the Project Company or the Water Supply Corporation that the Water Transmission and Purchase Agreement has been terminated and SAWS has acquired the Project, the Water Supply Corporation and the Project Company shall be deemed to have assigned all their respective rights, and SAWS or its appointee shall be deemed to have accepted each such assignment and assumed and agreed to perform all of the payment and other obligations, of the Water Supply Corporation and the Project Company under the Operating Service Agreement outstanding as of the date of service of such notice by SAWS under Section 2.3, arising from or attributable to the period after the effective date indicated in the Substitution Notice, provided that this shall not affect or derogate from any right of action the Water Supply Corporation or the Project Company may have against the Contractor in respect of any breach by the Contractor of its obligations under the Operating Service Agreement occurring prior to the date of service of notice by SAWS under Section 2.3.

SECTION 2.5. REPLACEMENT OPERATING SERVICE AGREEMENT. If the engagement of the Contractor under the Operating Service Agreement is terminated as a result of a default by the Water Supply Corporation before service of any notice under Section 2.3, the Contractor shall, if required to do so by notice served by SAWS not later than 20 Business Days after the date the Contractor serves notice pursuant to Section 2.1, negotiate in good faith with SAWS with respect to entering into a new operating service agreement with SAWS or its appointee on the same terms as the Operating Service Agreement but with such revisions to terms and price as SAWS and the Contractor may reasonably and mutually agree to reflect altered circumstances. In the event the parties agree to enter into such a new operating service agreement, references in this Agreement to “Operating Service Agreement” shall be deemed to
include such new operating service agreement. The rights of SAWS under this Section will be applicable only after the Water Transmission and Purchase Agreement has been properly terminated in accordance with its terms and SAWS has acquired the Project.

SECTION 2.6. NOTICE TO PREVAIL. As against the Water Supply Corporation, the Project Company and SAWS, the Contractor shall be entitled and obligated to rely upon and to comply with any notice served by SAWS under Section 2.3 or Section 2.5, and shall not make, nor be required to make, any inquiry into the entitlement of SAWS as against the Water Supply Corporation or the Project Company to serve such notice.

SECTION 2.7. SENIOR DEBT CREDITORS’ RIGHTS PARAMOUNT. Notwithstanding the above, SAWS’ rights under this Agreement are subject and subordinate to the rights of the Senior Debt Creditors (as defined in the Water Transmission and Purchase Agreement) to exercise similar rights of substitution under the Creditors’ Remedies Agreement.

SECTION 2.8. WATER SUPPLY CORPORATION AND PROJECT COMPANY BOUND. The Water Supply Corporation and the Project Company shall be bound to the provisions of this Article.
ARTICLE 3

CONFIDENTIALITY

SECTION 3.1. CONFIDENTIAL INFORMATION. The Contractor represents and warrants that it has and shall hold in confidence any information marked by SAWS as “CONFIDENTIAL” (hereinafter referred to as “Confidential Information”), provided that the provisions of this Section shall not restrict the Contractor from passing such information to its professional advisors, affiliates and subcontractors, to the extent necessary, to enable the Contractor to perform (or cause to be performed) or to enforce its rights or obligations under the Operating Service Agreement or to such other persons as may be expressly required by the Operating Service Agreement.

SECTION 3.2. EXCEPTIONS. The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(A) which SAWS confirms in writing is not required to be treated as Confidential Information;

(B) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;

(C) to the extent the Contractor is required to disclose such Confidential Information by Applicable Law or any Governmental Body (but only to that extent); or

(D) to the extent consistent with any SAWS policy the details of which have been provided to the Contractor in writing prior to the disclosure.

SECTION 3.3. ANNOUNCEMENTS. Unless otherwise required by any Applicable Law, by any Governmental Body or by the rules, orders or regulations of any stock exchange (but only to that extent), the Contractor shall not make or permit to be made any public announcement or disclosure (whether for publication in the press, radio, television or any other medium) of any Confidential Information or the Contractor’s interest in the Project or any matters relating thereto, without the prior written consent of SAWS, which will not be unreasonably withheld or delayed.
ARTICLE 4

GENERAL

SECTION 4.1. ASSIGNMENT. Other than in conjunction with a permitted assignment of the Operating Service Agreement in accordance with its terms, the Contractor may assign this Agreement only with the prior written consent of SAWS, which consent may be given in SAWS’ sole discretion.

SECTION 4.2. INUREMENT. This Agreement inures to the benefit of and binds the parties and their respective successors and permitted assigns.

SECTION 4.3. NOTICE. Each notice to a party must be given in writing. A notice may be given by delivery in person; by certified mail, return receipt requested, postage prepaid; by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or by fax, and will be validly given if delivered on a Business Day to an individual at the following address, or, if transmitted on a Business Day by fax addressed to the following party:

if to SAWS:

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

With a copy to:

San Antonio Water System
2800 U.S. Highway 281 North
San Antonio, TX 78212
Attention: Vice President/General Counsel
Fax No.: (210) 233-4587

if to the Water Supply Corporation:

Central Texas Regional Water Supply Corporation
P.O. Box 15851
San Antonio, TX 78212
Attention: Weir Labatt III, President
Phone: (210) 324-6684
Email: twlabatt@gmail.com

with a copy to

Bickerstaff, Heath Delgado Acosta LLP
3711 S. Mo-Pac Expressway
Building One, Suite 300
Austin, TX 79746
Attention: Emily Rogers; Manuel O. Méndez
Email: erogers@bickerstaff.com; mmendez@bickerstaff.com
Fax No.: (512) 320-5638
if to the Project Company:

Vista Ridge LLC
1333 NW Vivion Road
Kansas City, MO 64118
Attention: Scott A. Parrish
Phone: (816) 746-7224
Email: sparrish@garney.com
Fax No.: (816) 741-4488

if to the Contractor:

EPCOR Services Inc.
2355 W. Pinnacle Peak Road; Ste. 300
Phoenix, AZ 85027
Attention: President
Phone: (623) 780-3778
Email: EPCORContractNotice@epcor.com
Fax No.: (623) 587-1044

or to such other address as any party may, from time to time, designate in the manner set forth above.

SECTION 4.4. WAIVERS. No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 4.5. NO PARTNERSHIP OR AGENCY. Nothing in this Agreement will be construed as creating a partnership or as constituting the Contractor as an agent of SAWS. The Contractor shall not hold itself out as having any power to bind SAWS in any way.

SECTION 4.6. CONFLICTING AGREEMENT. If there is any conflict or inconsistency between the provisions of this Agreement and the Water Transmission and Purchase Agreement, the provisions of the Water Transmission and Purchase Agreement will prevail.

SECTION 4.7. REMEDIES CUMULATIVE. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 4.8. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or any representation made in this Agreement.
being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory.

SECTION 4.9. COUNTERPARTS. This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

SECTION 4.10. CONSENT TO JURISDICTION. Each party hereto irrevocably: (1) agrees that any Legal Proceeding related to this Agreement or to any rights or relationship among the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in Bexar County, Texas, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.11. DELIVERY BY FAX. Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by delivery in person; 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 to the other parties an originally executed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first above written.

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

By: ______________________________________
Name: Robert R. Puente
Title: President/CEO
Date: ________________________________

CENTRAL TEXAS REGIONAL WATER SUPPLY CORPORATION

By: ______________________________________
Name: Weir Labatt III
Title: President
Date: ________________________________

VISTA RIDGE LLC

By: ______________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________

EPCOR SERVICES INC.

By: ______________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________
TO: San Antonio Water System Board of Trustees
FROM: Julie A. Valadez, Project Manager, AIA, PMP, and Andrea L.H. Beymer, P.E., Vice President, Engineering and Construction
THROUGH: Robert R. Puente, President/Chief Executive Officer
SUBJECT: APPROVAL OF ADDITIONAL FUNDS IN CONNECTION WITH PHASE 2 OF THE SERVICE CENTER PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:
The attached resolution amends Resolution No. 17-166 by authorizing additional funds to an existing design build contract with Teal Construction in an amount not to exceed $1,499,360.00 for construction services in connection with Phase 2 of the Service Center Project (the “Project).

- On June 29, 2017, by Resolution No. 17-166, the Board of Trustees approved a design build contract in the amount of $17,710,927.00 with Teal Construction Company in connection with Project.
- On May 30, 2018, the design services phase of the Project was completed.
- After several weeks of negotiations, Teal Construction submitted a Final Guaranteed Maximum Price of $19,250,000.00 on October 1, 2018.
- Additional funds are required to complete construction through May 2020, to include the completion of the Project construction and occupancy.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:
The Project Fund will finance this expenditure included in the 2016 Capital Improvements Program. The work is included in the Water Delivery Core Business and Wastewater Core. The contract amount will not exceed $19,250,000.00. The correlating job numbers are 16-7709 and 16-7710. The value of this action is an amount not to exceed $1,499,360.00.

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<tr>
<td>Additional Funds and Services</td>
<td>39,713.00</td>
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<tr>
<td>Proposed Additional Funds</td>
<td>1,499,360.00</td>
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<tr>
<td>Revised Contract Amount</td>
<td>$19,250,000.00</td>
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Approval of Additional Funds
Phase 2 Service Center Project

As a result of the additional funds, the new contract amount is $19,250,000.00. This represents a 8.4 percent increase in the System's original contract amount.

Julie A. Valadez, AIA, PMP
Project Manager
Engineering and Construction

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 ADDITIONAL FUNDS TO THE EXISTING DESIGN BUILD CONTRACT WITH TEAL CONSTRUCTION COMPANY IN AN AMOUNT NOT TO EXCEED $1,499,360.00 IN CONNECTION WITH PHASE 2 OF THE SERVICE CENTER PROJECT; APPROVING THE EXPENDITURE OF FUNDS AND MAKE AVAILABLE AN AMOUNT NOT TO EXCEED $1,499,360.00 FROM THE PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE AN AMENDMENT TO AN EXISTING DESIGN BUILD CONTRACT WITH TEAL CONSTRUCTION COMPANY, AND TO PAY TEAL CONSTRUCTION COMPANY AN AMOUNT NOT TO EXCEED $1,499,360.00 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING FOR A SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the San Antonio Water System’s (the “System”) Board of Trustees on June 29, 2017, by Resolution No. 17-166, approved a design build contract with Teal Construction Company in an amount not to exceed $17,710,927.00 for construction services in connection with Phase 2 of the Service Center Project (the “Project”); and

WHEREAS, Teal Construction Company has completed the design services phase of the Project; and

WHEREAS, the System funds are required and available in an amount not to exceed $1,499,360.00 for services through May 15, 2020; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to approve additional funds to the existing design build contract with Teal Construction Company in an amount not to exceed $1,499,360.00 in connection with Phase 2 of the Service Center Project, (ii) to approve the expenditure of funds and make available an amount not to exceed $1,499,360.00 from the Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute an amendment to the existing design build contract with Teal Construction Company, and to pay Teal Construction Company an amount not to exceed $1,499,360.00 for the project work; now, therefore:
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That Resolution No. 17-166 is hereby amended to provide additional construction services to the existing design build contract with Teal Construction Company in an amount not to exceed $1,499,360.00 in connection with Phase 2 of the Service Center Project.

2. That expenditure of funds in an amount not to exceed $1,499,360.00 is hereby approved and made available from the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute an amendment to the existing design build contract with Teal Construction Company in a form substantially similar to that of Attachment 1 to this Resolution, and to pay Teal Construction Company an amount not to exceed $1,499,360.00 for the project 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 7, Chapter 551, Government Code.

5. If any part, section, paragraph, sentence, phrase, or work of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

6. This resolution becomes effective immediately upon its passage.

PASSED AND APPROVED this 13th day of November, 2018.

___________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_________________________________
Patricia E. Merritt, Assistant Secretary
This AMENDMENT No. 1 (“Amendment”) to Design Build Services Agreement is made and entered into on this 13th day of November, 2018, by and between San Antonio Water System (the “Owner”), a public water utility created pursuant to the provisions of Ordinance No. 75686 of the City of San Antonio, Texas, and Texas Local Government Sections 402.141 et seq., in the State of Texas, and Teal Construction Company (the “Design-Build Firm”), a Texas corporation, having its principal place of business located at 1335 Brittmore Road, Houston, Texas 77043.

RECITALS

WHEREAS, the Owner and Design-Build Firm (“Parties”) entered into that one Design-Build Services Agreement for the San Antonio Water System, Phase 2, Service Center Project (“Project”) effective as of the 29th day of June, 2017, (the “Agreement” or “Contract”), wherein the Owner engaged the Design-Build Firm to provide design and construction services for the Project, the terms and conditions of which are all incorporated by reference herein; and

WHEREAS, the Design-Build Firm has presented to Owner and Owner finds to be acceptable the Design-Build Firm’s Final Guaranteed Maximum Price Proposal, including the Pre-Submittal Requirements identified in Attachment A to the Form of Final Guaranteed Maximum Price Proposal, Exhibit 7 to the Agreement; and

WHEREAS, both Parties agree that all capitalized terms herein shall have the same meaning as set forth in the Agreement;

NOW, THEREFORE, in consideration of the mutual promises, commitments and representations contained herein, and the continuing promises and agreements in the Agreement, as hereby amended, the Parties agree to amend the Agreement as follows:

I. Amendments.

[USE SECTION 1 BELOW ONLY IF CONTRACT AMENDMENT RELATES TO MODIFICATIONS TO LANGUAGE IN THE CONTRACT.]

1. **Section IX, is amended as follows:**

   The terms of Article IX, Design-Build Firm’s Compensation are hereby amended to now read as follows:

   “IX. Design-Build Firm’s Compensation
“A. Initial Guaranteed Maximum Price. The Initial Guaranteed Maximum Price for all Services and Work required under this Agreement, inclusive of the Design Services Fee and the Construction Services Fee, both as fixed below, is was originally established in the amount of Seventeen Million Seven Hundred and Ten Thousand Nine Hundred and Twenty-Seven and NO/100 Dollars ($17,710,927.00) and is increased to the amount of Nineteen Million Two Hundred and Fifty Thousand and NO/100 Dollars ($19,250,000).

“(1) Design Services Fee. Design Services Fee is a fee that is was originally fixed at the time of this Agreement, in the amount of Nine Hundred and Twenty-Two Thousand Two hundred and Ninety-Nine and NO/100 Dollars ($922,299.00) and is increased to the amount of One Million and One Thousand and Six Hundred Eighty-Nine and NO/100 ($1,001,689.00). The Design Services Fee covers all administrative, supervisory, and management personnel costs, and all direct overhead, and other on-site and off-site costs and expenses to be incurred by the Design-Build Firm in the performance of Design Services, as identified on the Pricing Schedule (Exhibit 3).

“(2) Construction Services Fee. Construction Services Fee is a fee that is was originally fixed at the time of this Agreement, in the amount of Two Million Three Hundred and Sixteen Thousand and Eighty-Five and NO/100 Dollars ($2,316,085.00) and is reduced to the amount of Two Million Two Hundred and Sixty Seven Thousand and Two Hundred and Thirty-Seven and NO/100 Dollars ($2,267,237.00).”

[USE SECTION 2 BELOW ONLY IF CONTRACT AMENDMENT RELATES TO THE GMP.]

2. Final Guaranteed Maximum Price Number.

A. In accordance with Article IX of the Agreement, and as further described in Exhibit 3 as hereby amended in accordance with Section 2(Q)(i) of this Amendment, the Parties agree to establish a Final Guaranteed Maximum Price (or “FGMP”) for the Project in the sum of Nineteen Million Two Hundred and Fifty Thousand and NO/100 Dollars ($19,250,000), for all Services and Work to be performed by the Design-Build Firm.

B. The Parties agree that Substantial Completion for the entire Project is 525 Days after the date of Owner’s Notice to Proceed with construction of the remaining Stages of the Project, as designated in the Project Schedule, as amended in accordance with Section 2(Q)(iii) of this Amendment.

C. The Parties agree that Final Completion for the entire Project is 555 Days after the date of Owner’s Notice to Proceed with construction of the
remaining Stages of the Project, and as designated in the Project Schedule, as amended in accordance with Section 2(Q)(iii) of this Amendment.

D. Notwithstanding the Substantial Completion and Final Completion dates stated above for the entire Project, Design-Build Firm agrees that it must achieve Substantial Completion and Final Completion by the milestone dates for each of the facilities as shown in the Project Schedule, Exhibit 6, as amended in accordance with Section 2(Q)(iii) of this Amendment, failing in which Design-Build Firm shall be liable for Liquidated Damages in accordance with Article VII of the Agreement for delay in achieving such milestone dates that is not excusable under the Agreement.

E. Within two (2) Business Days after Approval of this Amendment, Owner’s Notice to Proceed with construction of the remaining Stages of the Project will be issued to Design-Build Firm pursuant to III.B(2)(b) of the Agreement.

F. The Design-Build Firm’s Construction Services Fee in the original amount of $2,316,085.00 is hereby reduced by $48,848.00, resulting in a reduced Construction Services Fee in the amount of $2,267,237.00, as reflected in Exhibit 3, as amended in accordance with Section 2(Q)(i) of this Amendment. The $48,848.00 reduction in Design-Build Firm’s Construction Services Fee has been used to establish the FGMP. In addition, the Design-Build Firm represents and warrants that the line items for Design-Build Firm’s profit, in the total sum of $710,092.00, within the Construction Services Fee has been reduced by the sum of $542,040.00 to a total sum of $168,052.00 for Design-Build Firm’s profit, which reduction in Design-Build Firm’s profit has been used to establish the FGMP.

G. The Design-Build Firm’s Contingency previously established in the amounts of $606,077 for ESOC, and $147,687 for NWOC, in the combined amount of $753,764, is hereby reduced by $553,764, resulting in a reduced Design-Build Firm’s Contingency in the amount of $200,000, as reflected in Exhibit 3, as amended in accordance with Section 2(Q)(i) of this Amendment. The $553,764 reduction in the Design-Build Firm’s Contingency has been used to establish the FGMP. Upon Final Completion of the Project, any unused portion of funds remaining in Design-Build Firm’s Contingency shall be returned to Owner, and the FGMP shall be reduced by the amount of such unused funds, which shall be deducted from the Final Payment in accordance with Section XII.D(2) of the Agreement.

H. The FGMP established by this Amendment is based on and includes the following adjustments to Owner’s funds related to Owner’s Add Alternates ($699,001) and Owner’s Value Engineering Changes ($467,683):
i. **Owner’s Funds for Add Alternates.** The previously established Owner’s Add Alternate Allowance of $699,001 is reduced by the amount of $449,001, resulting in a reduced Owner’s Add Alternate Allowance in the amount of $250,000, as reflected in Exhibit 3, as amended in accordance with Section 2(Q)(i) of this Amendment. The $449,001 reduction in the above described Allowance has been used to establish the FGMP. Owner’s Add Alternate Allowance funds are part of the FGMP and remain available for Owner’s use in Owner’s sole discretion to pay for future Construction Change Directives that Owner may issue to Design-Build Firm during the Project. Upon Final Completion of the Project, any unused portion of the funds remaining in such Allowance shall be returned to Owner, and the FGMP shall be reduced by the amount of such unused funds, which shall be deducted from the Final Payment in accordance with Section XII.D(2) of the Agreement.

ii. **Owner’s Funds for Value Engineering Changes.** Owner agrees to forego the savings previously derived from the value engineering changes to reduce scope listed on the SAWS Phase II OC Log, dated April 10, 2018, and totaling $467,683.00, which savings have been used to establish the FGMP.

I. Pursuant to Construction Change Directive No. 1, dated December 21, 2017, the FGMP includes and covers the cost of all additional Services and Work for the relocation and/or demolition of certain trailers and the providing of the new emergency generator, as further described therein, for the fixed sum of $39,713.00, as reflected in Exhibit 3, as amended in accordance with Section 2(Q)(i) of this Amendment.

J. The FGMP includes and covers the cost of all Services and Work included in the Final Construction Set of the Construction Documents, dated July 13, 2018 and in the Design Criteria Package (“DCP”), Exhibit 1 to the Agreement and all of the following Owner’s Add Alternates for the ESOC in Appendix A - Accepted Add Alts previously included in the original IGMP at the time of execution of the Contract, having a combined value of $1,084,000:

   i. Install Site Utilities, and cap, only for an Ice and Water Station per Phase I design. Station to be located in the vicinity of the ESOC Meter Shop.

   ii. Paint Exterior wall panels of existing Fleet Bldg. and add continuous metal canopy to the east and west elevations. Add signage. Add Storefront and door section to both elevations. Entire section to be extended 24” from existing wall. Add red corner feature at east elevation only.
iii. Remodel interior Fleet Offices at old Tool Room and tie to new HVAC system in new Training Renovation area.

iv. Extend the warehouse space one bay to the north. Specifically, grid lines SD thru SB will increase one bay so that north exterior wall aligns with S1.1.

v. Install infrastructure for future Guard Shack, including concrete curb, site utilities, card readers, intercom, and pedestals at a location in front of the existing ESOC entrance gate. Widen pavement as necessary.

vi. Rework Drainage Swale in POV Lot to lesson amount of "dip" in drive but still provide positive drainage.

vii. Add new surface to an existing asphalt POV parking area - New surface to cover existing concrete & asphalt. Clean, tack coat, min. 1/2" thickness; includes expansion joints where deemed necessary.

viii. Install new landscape - islands with curbs. Includes landscaping to match design requirements in the DCP.

J. The Design-Build Firm represents and warrants that (a) Design-Build Firm’s DPOR has agreed to provide at no additional cost to Owner all necessary Services to revise the Construction Documents to implement the above listed additional Owner Add Alternates (i) through (viii) during construction but prior to commencement of any Work that may be affected by such revisions as reasonably necessary to avoid Subcontractor claims for any increased costs to perform the Work for such additional Owner Add Alternates; and (b) such additional Owner Add Alternates will not delay the Project or the progress of the Work. Design-Build Firm acknowledges Owner has agreed to establish the FGMP and accept the Project Schedule, as amended in accordance with Section 2.Q(iii) of this Amendment in reliance upon Design-Build Firm’s foregoing representations and warranties, which reliance Design-Build Firm agrees is material and reasonable.

K. The scope of the Work for the Project is adjusted to include, and the FGMP includes and covers the cost of all additional Services and Work related to, the Design-Build Firm’s plan to propose substitution of a Optiliner Banded liner system, Thermal, Metal building batt insulation system in lieu of a Continuous Insulation (CI) with Composite Framing Support (CFS) System as a Weather-Resistive Barrier (WRB) for some or all of the building
envelopes (the “Building Envelope Substitution”). Design-Build Firm proposal(s) for the Building Envelope Substitution shall be made in accordance with Section III.B(5)(g) of the Agreement and identify the savings to be realized thereby. Owner agrees to Approve the Design-Build Firm’s Building Envelope Substitution proposal(s) subject to the Design-Build Firm’s following representations and warranties to Owner, which shall be expressly stated therein in writing, and upon which Design-Build Firm agrees Owner shall be entitled to materially and reasonably rely:

i. The Design-Build Firm has agreed to provide at no additional cost to Owner, and at no increase to the FGMP, all necessary Design Services to revise the Construction Documents as necessary to implement the proposed Building Envelope Substitution, in the manner described in Design-Build Firm’s letter, dated November 1, 2018.

ii. The proposed Building Envelope Substitution will meet and comply with the most current adopted International Energy Conservation Code and all other applicable laws, rules, regulations and code.

iii. The Design-Build Firm has determined that the authority having jurisdiction for the issuance of the construction permit for the Work will accept the proposed Building Envelope Substitution without any material adverse effect to the construction permit for the Project.

iv. The proposed Building Envelope Substitution will not delay the Project or the progress of the Work.

v. The Owner and Design-Build Firm agree that the savings to result from the Owner’s Approval of the proposed Building Envelope Substitution shall be documented and reflected a revised Pricing Schedule and subsequent Schedule of Values to be submitted to Owner for Approval. The first $505,000 of such savings Owner agrees to forego. Any additional savings above $505,000 shall be added to and carried in Design-Build Firm’s Contingency.

vi. The proposed Building Envelope Substitution will not, directly or indirectly, result in the FGMP being exceeded.

L. Additional value engineering changes or substitutions have been or may be proposed by Design-Build Firm during performance of the Work. By way of example, Design-Build Firm may propose substitution of an “or equal”
lighting fixture package, subject to Section III.B(5)(g) of the Agreement. Owner in its sole discretion may elect whether to Approve any such changes or substitutions. If Owner elects to accept any future proposed changes or substitutions, the Design-Build Firm shall represent and warrant to Owner the amount of the resulting cost savings to be realized thereby, and all such savings shall be added to Owner’s Add Alternate Allowance for Owner’s use in its sole discretion to pay for any future changes Owner may elect to make to the scope of the Work, or to returned to Owner if unused, as provided in Section 2.H of this Amendment.

M. The FGMP includes and covers all Services and Work for the removal and remediation of existing fuel pumps and associated fuel supply lines, and the installation of new fuel pumps and associated fuel supply lines to connect the new fuel island location to Owner’s existing underground fuel tanks at the ESOC in accordance with all applicable laws, rules and regulations. Design-Build Firm shall remain responsible to take all reasonable precautions to investigate Site conditions and prevent foreseeable bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) that may result from such Work. If, despite its exercise of reasonable care, the Design-Build Firm discovers that the fuel tanks are in a condition that has caused or is likely to cause hydrocarbon contamination at the Site that has not been rendered harmless and is not due to the fault or negligence of the Design-Build Firm or the Design-Build Firm Personnel, Design-Build Firm shall be entitled to an equitable adjustment to Project schedule and to the Design-Build Firm’s compensation under the Agreement for the reasonable increased cost to complete such Work as a result of such condition or contamination, to the extent such costs are not covered and paid by, and Design-Build Firm has first exhausted all reasonable efforts to collect, the proceeds of the builders’ risk and pollution liability insurance available to the Design-Build Firm to pay for such increased cost.

N. Payment and Performance Bonds shall be delivered to Owner within ten (10) Days after Approval of this Amendment in accordance with Section XVI.B of the Agreement, each having a penal sum equal to the construction portion of the FGMP, which the Parties agree is $18,248,311. The FGMP includes the cost increase in bond premium in the amount of $98,188 for the FGMP amount of $19,250,000. Following Approval of this Amendment and contingent upon Design-Build Firm’s subsequent delivery of such Payment and Performance Bonds, the Design-Build Firm’s Security Bond shall be deemed to be released by Owner and returned to Teal and no longer in effect.

O. The Parties’ Agreement to Adopt Dispute Resolution Procedures, Exhibit 20, having provided for dispute resolution by mediation only, without a
Dispute Review Board, Section IX.K of the Agreement is hereby amended to read as follows:

“K. Dispute Resolution Costs of Owner. Design-Build Firm shall include in the Initial and Final GMP an Allowance of $25,000.00 to be available for Design-Build Firm to issue payment to the Dispute Review Board Members and/or Mediator for Owner's share of any reasonable and necessary dispute resolution costs upon Design-Build Firm’s receipt of Approval of the invoice of the Dispute Review Board Members and/or Mediator, as applicable. Design-Build Firm shall promptly issue payment of such invoices for Owner’s share of such dispute resolution costs to the Dispute Review Board Members and/or Mediator, as applicable, upon Approval. Payment of Owner’s share of any such Approved dispute resolution costs shall be considered a reimbursable cost to be invoiced to Owner and paid by Owner in accordance with the terms of this Agreement. For the avoidance of doubt, such allowance does not represent funding the Design-Build Firm may claim it is entitled to use to offset any cost for performance of any Services or Work if the allowance is not required or used, such allowance being set aside exclusively for the Owner's use and benefit.”

The $15,000 reduction in the above described Allowance has been used to establish the FGMP. The $10,000 in funds remaining in such Allowance shall remain available to be used in accordance with Section IX.K of the Agreement to pay for Owner’s share of dispute resolution costs for any mediation services necessary for resolution of any claim or dispute arising after the effective date of this Amendment that is pending at the time of Final Payment. Any unused portion of the remaining funds in such Allowance shall be returned to Owner, and the FGMP shall be reduced by the amount of such unused funds and deducted from the Final Payment, in accordance with Section XII.D(2) of the Agreement.

P. The Design-Build Firm represents and warrants that:

i. The permit necessary to commence construction of the NWOC has been obtained from the applicable authority having jurisdiction and the application for the permit to commence construction of the ESOC has been approved by the applicable authority having jurisdiction, subject only to final approval for revisions to the Construction Drawings as necessary for the Building Envelope Substitution;
ii. Construction of the Project in accordance with such Construction Documents will meet and comply with all applicable laws, rules, regulations and code requirements;

iii. Design-Build Firm and its DPOR understand, and have evaluated and resolved, SAWS’ past comments related to the Construction Documents, all of which are reflected therein and have been included in the FGMP and the Project Schedule, or the same (including expressly 172 outstanding items previously identified on the Outstanding Items Log, dated July 16, 2018) shall, without further adjustment to the Cost of the Work or the Project Schedule, be resolved by them during the course of the Project, as reasonably necessary to avoid Subcontractor claims for any increased costs to perform the Work arising out of or related to the observations made in such comments; and

iv. The statements made in Design Build Firm’s letter, dated May 30, 2018, and the DPOR’s letter, dated May 30, 2018, confirming that each of them has thoroughly reviewed the 100% Construction Documents Set and that such Construction Documents are, to the best their knowledge, free from errors, omissions and defects, and adequate for construction in accordance with the terms of the Agreement, are still true and correct as of the effective date of this Amendment, subject only to further revision to implement the Building Envelope Substitution in accordance with Section 2.K(i), above.

Q. Design Build Firm represents, warrants and agrees that following Exhibits are hereby amended in the form attached to this Amendment, and are substituted into and made a part of the Agreement:

i. Exhibit 3 - Pricing Schedule, as amended. Design-Build Firm hereby represents and warrants Exhibit 3, as amended, is an accurate breakdown of the FGMP established by this Amendment.

ii. Exhibit 5 - Design Build Firm’s Staffing Plan. Design-Build Firm hereby represents and warrants that Exhibit 5, as amended, is the staffing plan that Design Build Firm will follow in performance of the Work.
iii. Exhibit 6 - Project Schedule. Design-Build Firm hereby represents and warrants that Exhibit 6, as amended, is a reasonable and acceptable Project Schedule to govern the performance of the Work.

iv. Exhibit 8.1 – Form of Payment Bond, in its unexecuted form, and showing a penal sum equal to the construction portion of the FGMP, which Design-Build Firm represents and warrants to be the form of such Bond that will be issued after this Amendment becomes effective, as provided in Section 2(N), as provided above.

v. Exhibit 8.2 – Form of Performance Bond, in its unexecuted form, and showing a penal sum equal to the construction portion of the FGMP, which Design-Build Firm represents and warrants to be the form of such Bond that will be issued after this Amendment becomes effective, as provided in Section 2(N), as provided above.

vi. Exhibit 9 - Project Management Plan, dated November 9, 2018, which Design-Build Firm represents and warrants to be a reasonable and acceptable plan to govern the performance of the Work. (Due to its volume, the Project Management Plan, it is not attached to this Amendment, but shall be substituted and incorporated into the Agreement.)


viii. Exhibit 16 – Form of Resolution Authorizing Contract.

ix. Exhibit 21 – Owner's Confirmation of Funding.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
3. **Adjustments to Design-Build Firm’s Initial GMP.** The amount of Design-Build Firm’s Initial GMP, which includes all Design-Build Firm’s Fees, is amended in accordance with the schedule below:

<table>
<thead>
<tr>
<th>DESCRIPTION OF ADJUSTMENTS</th>
<th>AMOUNT</th>
<th>APPROVALS</th>
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<tr>
<td>Initial GMP</td>
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<td>By:</td>
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<td>Final GMP</td>
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<td></td>
<td></td>
<td>Date:</td>
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<tr>
<td>Net Amount of Any Adjustments to Final GMP by Contract Amendments or Construction Change Directives Preceding this Amendment (+/-)</td>
<td>$0</td>
<td>Approved:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By:</td>
</tr>
<tr>
<td>Adjustment to Final GMP by this Amendment # ___ or Construction Change Directive # ___ (+/-)</td>
<td>N/A</td>
<td>Owner</td>
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<tr>
<td></td>
<td></td>
<td>Title:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Date:</td>
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</table>

**AMENDED FINAL GMP AMOUNT** $19,250,000*

* For clarity, attached to this Amendment is a spreadsheet labeled “9-24-18 Meeting - Negotiation Worksheet” that both parties agree describes the various adjustments used to establish the FGMP, which adjustments are described in detail above in Section 2.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
4. **Adjustments to the Scheduled Dates of Completion.** The Scheduled Dates of Substantial and/or Final Completion shall be adjusted in accordance with the schedule listed below:

<table>
<thead>
<tr>
<th>DESCRIPTION OF DATE</th>
<th>SCHEDULED DATE OF SUBSTANTIAL COMPLETION</th>
<th>SCHEDULED DATE OF FINAL COMPLETION</th>
</tr>
</thead>
</table>

II. **Special Exceptions.**

This Contract Amendment addresses all aspects of the Services and Work added by such Contract Amendment except as approved by Owner below:

SEE ABOVE PROVISIONS.

III. **Full and Final Satisfaction.** Except as specifically described above or as expressly otherwise stated in the Agreement, Design-Build Firm accepts the terms of this Amendment as full and final satisfaction to all claims, adjustments, and Contract revisions associated with such Amendment, and acknowledges that no further adjustment to the Design-Build Firm’s compensation or time for performance shall be allowed. Design-Build Firm otherwise waives any and all rights to future claims for additional adjustments to such compensation or time for performance and/or revisions to the Contract arising under, associated with, or in any way related to this Contract Amendment.

Except as hereby modified, amended, or changed, all terms and conditions of the Agreement and any amendments thereto shall remain in full force and effect.

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

**EXECUTED ON THE DATE FIRST WRITTEN ABOVE**

[**SIGNATURES APPEAR ON NEXT PAGE**]
OWNER:
San Antonio Water System:

By: __________________________
Name: _______________________
Title: ________________________

DESIGN-BUILD FIRM:
Teal Construction Company:

By: __________________________
Name: _______________________
Title: ________________________
TO: San Antonio Water System Board of Trustees

FROM: Tracey B. Lehmann, 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 AGREEMENTS FOR WATER AND/OR WASTEWATER SERVICES TO TRACTS REQUIRING THE SAN ANTONIO WATER SYSTEM FINANCIAL PARTICIPATION IN THE DEVELOPMENT OF INFRASTRUCTURE THROUGH OVERSIZING AND/OR IMPACT FEE CREDITS AND/OR IS LOCATED OUTSIDE THE SAN ANTONIO WATER SYSTEM WATER AND/OR WASTEWATER CERTIFICATE OF CONVENIENCE AND NECESSITY

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution approves Utility Service Agreements (USAs) 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 and/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 two tracts, which total 364.38 acres; 1,435 water Equivalent Dwelling Units (EDUs); and 1,335 wastewater EDUs.

- Board approval is required since the tracts require the System’s financial participation in the development of infrastructure through oversizing and/or impact fee credits and/or is located outside the System’s water and/or wastewater CCN.

- The Schwab 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 1,100 EDUs of water and 1,000 EDUs of wastewater services and consists of oversized infrastructure and impact fee credits.

- The Palo Alto Villas 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 335 EDUs of water and 335 EDUs of wastewater services and consists of oversized infrastructure and impact fee credits.

- 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.
Utility Service Agreements to the Specified Tracts Requiring Oversizing And/or Outside the System’s Water and/or Wastewater CCN

- The Developer is responsible for the construction and engineering costs associated with all required water and/or wastewater mains to serve the tracts (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 / Outside</th>
<th>EARZ / CZ</th>
<th>JBSA</th>
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<tr>
<td>1</td>
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<td>KB Homes</td>
<td>302</td>
<td>1,100</td>
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<td>COSA ETJ</td>
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<td>OVR/IFC</td>
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</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  JBSA = Joint Base San Antonio Buffer Zone

**EXTENT AND CONDITIONS OF UTILITY SERVICE AGREEMENT:**

Upon approval by the System of this USA, the Developer Customer has 36 months to complete the required utility master plan and to start construction. If the 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 Customer is 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:
Utility Service Agreements to the Specified Tracts Requiring Oversizing
And/or Outside the System’s Water and/or Wastewater CCN

<table>
<thead>
<tr>
<th>No.</th>
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<td>$1,872,000*</td>
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<td>1</td>
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<td>$1,930,500*</td>
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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 and/or impact fee credits and/or facilities based on the System’s Master Plan.

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<th>No.</th>
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<td>$369,800</td>
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<td>80.25%</td>
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<td>$1,930,500*</td>
<td>8.78%</td>
<td>91.22%</td>
</tr>
<tr>
<td>1</td>
<td>Schwab Tract 27 INCH SEWER</td>
<td>$1,684,800</td>
<td>$0</td>
<td>$1,684,800*</td>
<td>0.00%</td>
<td>100.00%</td>
</tr>
<tr>
<td>1</td>
<td>Schwab Tract 30 INCH SEWER</td>
<td>$6,136,000</td>
<td>$767,000</td>
<td>$6,903,000*</td>
<td>11.11%</td>
<td>88.89%</td>
</tr>
<tr>
<td>2</td>
<td>Palo Alto Villas Tract 27 INCH SEWER</td>
<td>$3,746,167</td>
<td>$360,533</td>
<td>$4,106,700**</td>
<td>8.78%</td>
<td>91.22%</td>
</tr>
</tbody>
</table>

*$Note: The Developer is eligible for impact fee credits for their share of the cost for the water (12-inch water main – not oversized/not listed) and wastewater infrastructure for the Schwab Tract.*

**Note: The Developer is eligible for impact fee credits for their share of the cost for the wastewater infrastructure for the Palo Alto Villas Tract.**

The Developer is required to install all other necessary on-site facilities in accordance with the Board’s regulations at the Developer’s total cost.
Utility Service Agreements to the Specified Tracts Requiring Oversizing
And/or Outside the System’s Water and/or Wastewater CCN

Tracey B. Lehmann, P.E.
Director
Development

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

APPROVED:

Robert R. Puente
President/Chief Executive Officer

Attachments: Table 1, Tract Information
### Table 1
**Tract Information**

<table>
<thead>
<tr>
<th>No.</th>
<th>Tract Name</th>
<th>Developer</th>
<th>Principal</th>
<th>CoSA / CoSA</th>
<th>EARZ / CZ</th>
<th>JBSA</th>
<th>PZ</th>
<th>Acres</th>
<th>Water EDU</th>
<th>WW EDU</th>
<th>Watershed</th>
<th>Board Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Schwab Tract</td>
<td>KB Homes</td>
<td>Joe Hernandez</td>
<td>COSA ETJ</td>
<td>INSIDE</td>
<td>N</td>
<td>10</td>
<td>302</td>
<td>1,100</td>
<td>1,000</td>
<td>Mud Creek</td>
<td>OVR/IFC</td>
</tr>
<tr>
<td>2</td>
<td>Palo Alto Villas Tract</td>
<td>TVPA Partners, LLC</td>
<td>Danny Yoo</td>
<td>COSA ETJ</td>
<td>OUTSIDE</td>
<td>N</td>
<td>2</td>
<td>62.838</td>
<td>335</td>
<td>335</td>
<td>Elk Creek</td>
<td>OVR/IFC</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>364.38</strong></td>
<td><strong>1,435</strong></td>
<td><strong>1,335</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Acronyms:**
- EARZ = Edwards Aquifer Recharge Zone
- OVR = Oversizing
- IFC = Impact Fee Credits
- CZ = Edwards Aquifer Contributing Zone
- WW = Wastewater
- PZ = Pressure Zone
- CoSA = City of San Antonio limits
- ETJ = Extraterritorial Jurisdiction
- JBSA = Joint Base San Antonio Buffer Zone
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES APPROVING UTILITY SERVICE AGREEMENTS 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 AND/OR IMPACT FEE CREDITS AND/OR IS 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 Customer, specified in the table below, has requested the San Antonio Water System (the “System”) to provide water and/or wastewater service(s), and has satisfied the requirements of the Board's Regulations for Developer Customer Applicant; and

<table>
<thead>
<tr>
<th>No.</th>
<th>Tract Name</th>
<th>Developer</th>
<th>Acres</th>
<th>Water EUs</th>
<th>W Wast EUs</th>
<th>WCCN</th>
<th>WWCCN</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Schwab Tract</td>
<td>KB Homes</td>
<td>302</td>
<td>1,100</td>
<td>1,000</td>
<td>N</td>
<td>OVR/IFC</td>
</tr>
<tr>
<td>2</td>
<td>Palo Alto Villas Tract</td>
<td>TVPA Partners, LLC</td>
<td>62.383</td>
<td>335</td>
<td>335</td>
<td>N</td>
<td>OVR/IFC</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>INSIDE</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>INSIDE</td>
</tr>
</tbody>
</table>

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 a tract of land requiring the System’s financial participation in the development of infrastructure through oversizing and/or impact fee credits and/or is 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 Agreement 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 and/or impact fee credits and/or is 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 ADOPTED this 13th day of November, 2018.

__________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Patricia E. Merritt, Assistant Secretary

Attachments: Project Site Maps
Tract is Located:
- Over the Edwards Aquifer Recharge Zone

Schwab Tract
1,100 Water EDUs
1,000 Sewer EDUs
302 Acres
USA-20053

Proposed Impact Fee Credit Eligible 12-inch Main
Tract is Located:
- Over the Edwards Aquifer Recharge Zone

Segment D
Approximately 4,800 LF of 27-inch main (100% SAWS)

Segment B
Approximately 5,500 LF of 8-inch main oversized to 27-inch main

Segment A
Approximately 17,700 LF of 10-inch main oversized to 30-inch main

Segment C
Approximately 8,000 LF of 8-inch main oversized to 18-inch main

Job No 00-1610

Job No 17-1539

Fossil Ridge

Wortham Oaks

Fox Grove

Legend
- Existing Sewer Main
- Existing Force Main
- USA Tract
- Parcels Update
- Lift Station

Proposed Sewer Main
- Segment A
- Segment B
- Segment C
- Segment D

Project Location
TO: San Antonio Water System Board of Trustees

FROM: Tracey B. Lehmann, 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 IN CONNECTION WITH THE GREEN MOUNTAIN PUMP STATION FACILITY PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract in the amount of $9,176,000.00 to Payton Construction, Inc., a non-local, SBE contractor, on a Developer Customer construction contract, and authorizes the expenditure of funds in the amount of $8,625,440.00 for associated construction fees to Payton Construction, Inc., and reimbursements of $862,544.00 for associated design fees to KB Home Lone Star Inc., in connection with the Green Mountain Pump Station Facility Project.

- On January 9, 2018, by Resolution No. 18-022, the San Antonio Water System’s (the “System”) Board of Trustees approved a Utility Service Agreement (USA) to provide water and/or wastewater services to a tract of land known as the Fischer Tract (revised), a 141.23-acre tract, being developed by KB Home Lone Star Inc., (the “Developer”), and the oversizing of the Green Mountain Pump Station Facility near the intersection of E. Evans Rd and W. Green Mountain Rd, in order to conform with the Water Infrastructure Master Plan.

- The Developer is required to construct the proposed Green Mountain Pump Station with 0.75 MGD of high service pump capacity. System staff recommends oversizing the Green Mountain Pump Station to 2.5 million gallons of elevated storage and 8.0 MGD of pump capacity. The Developer is responsible for six percent of the oversizing of the Green Mountain Pump Station for an estimated $550,560.00 of the project costs. The System is responsible for 94 percent of the oversizing of the Green Mountain Pump Station for an estimated amount of $8,625,440.00.

- The System solicited bids for the construction of the oversize pump station facility. 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 the Green Mountain Pump Station consisting of 2.5 million gallons of elevated storage and 8.0 MGD of pump capacity. The Green Mountain Pump Station Facility Project is inside the City of San Antonio limits and is located within the System’s water and wastewater CCN.
Payton Construction, Inc., a non-local, SBE contractor, has submitted the lowest responsible bid of $9,176,000.00 for construction of the project.

The System will pay Payton Construction, Inc. monthly, for the construction costs for the oversize project. The Developer will pay the System prior to beginning 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:

The Project Fund will finance this expenditure included in the Water Main Oversizing, Mains New Category, Water Delivery Core Business. This project is included in the Water Main Oversizing, Mains New Category, Water Delivery Core Business budget line item under job number 17-1121. The applicable oversize pump station facility payment will be made monthly to Payton Construction, Inc., in accordance with the Utility Service Regulations. The applicable design fees payment will be made to the Developer. The System will pay $8,625,440.00 for construction costs and $862,544.00 for associated design fees for a total cost of $9,487,984.00. The Developer will pay $550,560.00 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 October 26, at 2:00 P.M. The following bids were accepted for submittal:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Bid Amount</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineer’s Estimate</td>
<td>$8,013,031.00</td>
<td></td>
</tr>
<tr>
<td>Payton Construction, Inc.*</td>
<td>$9,176,000.00</td>
<td>Non–Local/SBE</td>
</tr>
<tr>
<td>Shannon-Monk Inc.</td>
<td>$9,281,500.00</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Associated Construction Partners, Ltd.</td>
<td>$9,330,000.00</td>
<td>Local/WBE–Caucasian</td>
</tr>
<tr>
<td>Keystone Construction, Inc.</td>
<td>$9,395,000.00</td>
<td>Non–Local/Non–SMWVB</td>
</tr>
<tr>
<td>Archer Western Construction Ltd.</td>
<td>$9,642,000.00</td>
<td>Local/Non–SMWVB</td>
</tr>
</tbody>
</table>

*Lowest Responsible Bidder

The bid amount represents a 14.51 percent increase from the estimated construction cost. The contract provides for the completion of this project within 450 calendar days.
Additionally, the overall SMWVB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>SMWVB Analysis – Board Award</th>
<th>Payton Construction, Inc.</th>
<th>*Payton is non-local and does not count toward the aspirational 20% goal.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
<td>14.17%*</td>
<td></td>
</tr>
<tr>
<td>MBE – African American</td>
<td>0.00%</td>
<td></td>
</tr>
<tr>
<td>MBE – Asian</td>
<td>0.00%</td>
<td></td>
</tr>
<tr>
<td>MBE – Hispanic</td>
<td>0.00%</td>
<td></td>
</tr>
<tr>
<td>MBE – Other</td>
<td>0.00%</td>
<td></td>
</tr>
<tr>
<td>WBE – Minority</td>
<td>0.00%</td>
<td></td>
</tr>
<tr>
<td>WBE – Non-Minority</td>
<td>0.00%</td>
<td></td>
</tr>
<tr>
<td>SMWVB Total</td>
<td><strong>14.17%</strong></td>
<td></td>
</tr>
</tbody>
</table>

Tracey B. Lehmann, P.E.
Director
Development

APPROVED:

Robert R. Puente
President/Chief Executive Officer

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

Attachments:
1. Project Area Map
2. Project Site Map
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A CONSTRUCTION CONTRACT TO PAYTON CONSTRUCTION, INC. IN AN AMOUNT NOT TO EXCEED $9,176,000.00 IN CONNECTION WITH THE GREEN MOUNTAIN PUMP STATION FACILITY PROJECT; AUTHORIZING THE EXPENDITURE OF SYSTEM FUNDS IN THE AMOUNT OF $8,625,440.00 FOR THE SYSTEM'S PROPORTIONATE SHARE OF THE PROJECT WORK; AUTHORIZING THE EXPENDITURE OF SYSTEM FUNDS IN THE AMOUNT OF $862,544.00 FOR THE SYSTEM'S PROPORTIONATE SHARE OF THE ENGINEERING DESIGN FEES; AUTHORIZING A TOTAL AMOUNT NOT TO EXCEED $9,487,984.00 FROM THE WATER MAIN OVERSIZING, MAINS NEW CATEGORY, WATER DELIVERY CORE BUSINESS CAPITAL IMPROVEMENT PROGRAM 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 KB HOME LONE STAR INC. AND PAYTON CONSTRUCTION, INC. AND PROVIDE PAYMENT IN AN AMOUNT NOT TO EXCEED $8,625,440.00 TO PAYTON CONSTRUCTION, INC. AND REIMBURSEMENTS OF $862,544.00 TO KB HOME LONE STAR INC. FOR THE SYSTEM'S PROPORTIONATE SHARE OF THE COST TO OVERSIZE THE PROPOSED PUMP STATION FACILITY; 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. 18-022, on January 9th, 2018, the San Antonio Water System (the “System”) Board of Trustees approved a Utility Service Agreement (USA) to provide water and/or wastewater services to a tract of land known as Fischer Tract (revised), a 141.23-acre tract, being developed by KB Home Lone Star Inc. and the oversizing of the Green Mountain Pump Station Facility near the intersection of E. Evans Rd and W. Green Mountain Rd, in order to conform with the Water Infrastructure Master Plan; and

WHEREAS, the Developer is required to construct the proposed Green Mountain Pump Station with 0.75 MGD of high service pump capacity; and
WHEREAS, the System has elected to oversize the Green Mountain Pump Station to 2.5 million gallons of elevated storage and 8.0 MGD of pump capacity; and

WHEREAS, the System has solicited bids for the Green Mountain Pump Station Facility Project (the “project work”); and

WHEREAS, Payton Construction, Inc., a non-local, SBE contractor, submitted the bid of $9,176,000.00 for construction of the project and this bid is determined to be the lowest responsible bid; and

WHEREAS, KB Home Lone Star Inc. is responsible for funding their proportionate share of the construction of the project; and

WHEREAS, KB Home Lone Star Inc. is responsible for six percent of the project costs for the oversized Green Mountain Pump Station Facility; the System is responsible for 94 percent of the project costs for the oversized Green Mountain Pump Station Facility; and

WHEREAS, the System will pay to Payton Construction, Inc., monthly, for the System’s proportionate share of the cost to oversize the pump station facility in accordance with the Board Regulations; and

WHEREAS, the amount of $9,487,984.00 is available in the Water Main Oversizing, Mains New Category, Water Delivery Core Business Program for the System’s proportionate share of the project work costs and engineering fees related to oversizing the pump station facility; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a construction contract to Payton Construction, Inc. in an amount not to exceed $9,176,000.00 in connection with the Green Mountain Pump Station facility Project, (ii) to authorize System funds in the amount of $8,625,440.00 for the project work, (iii) to authorize System funds in the amount of $862,544.00 for design fees, (iv) to make available a total amount not to exceed $9,487,984.00 from the System’s Water Main Oversizing, Mains New Category, Water Delivery Core Business Program for the System’s proportionate share of the project work and engineering fees related to oversizing the proposed pump station facility, and (v) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a contract with to KB Home Lone Star Inc. and Payton Construction, Inc. for the project work and to provide payment in an amount not to exceed $8,625,440.00 to Payton Construction, Inc. and reimbursements in an amount not to exceed $862,544.00 to KB Home Lone Star Inc. for the System’s cost to oversize the proposed pump station facility; now, therefore:

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

1. That a construction contract in an amount not to exceed $9,176,000.00 is hereby awarded to Payton Construction, Inc. in connection with the Green Mountain Pump Station Facility Project.
2. That the expenditure of System funds in the amount of $8,625,440.00 for the System's proportionate share of the project work is hereby approved.

3. That the expenditure of System funds in the amount of $862,544.00 for the System’s proportionate share of engineering design fees associated with the project work is hereby authorized and approved.

4. That a total amount not to exceed $9,487,984.00 consisting of the System’s proportionate share of the project work costs and engineering fees related to the Green Mountain Pump Station Facility is hereby made available and is to be expended from the Water Main Oversizing, Mains New Category, Water Delivery Core Business Program.

5. That the President/Chief Executive Officer or his duly appointed designee, is hereby authorized to execute a contract with to KB Home Lone Star Inc. and Payton Construction, Inc. and to further provide payment in an amount not to exceed $8,625,440.00 for the cost to oversize and construct the pump station facility to Payton Construction, Inc. and reimbursements in an amount not to exceed $862,544.00 to KB Home Lone Star Inc. in accordance with the Utility Service Regulations in connection with the Green Mountain Pump Station Facility 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 on this 13th day of November 2018.

____________________________________
Berto Guerra, Jr., Chairman

ATTEST:

____________________________________
Patricia E. Merritt, Assistant 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: AWARD OF CONSTRUCTION CONTRACT IN CONNECTION WITH THE C5 CULEBRA – CASTROVILLE TO LAREDO & C28 ZARZAMORA CREEK – SAN GABRIEL TO NW 23 RD STREET, PHASE 3 PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract to Qro Mex Construction Company, Inc., a local, MBE-Hispanic contractor, in the amount of $14,024,873.83, in connection with the C5 Culebra – Castroville to Laredo & C28 Zarzamora Creek – San Gabriel to NW 23rd Street, Phase 3 Project (the “Project”).

- The contract that is the subject of the attached resolution will, if approved, authorize work required by the Consent Decree between the San Antonio Water System, the United States of America, and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013. The project will address an existing capacity constraint in the wastewater collection system.

- The Project will replace and upsize approximately three miles of existing 12-inch to 24-inch gravity sewer main with 18-inch to 33-inch gravity sewer main. The Project consists of two line segments, an eastern segment extending from Houston at 23rd Street to Culebra Road at 28th Street and a western segment from Landa Avenue at Matyear Street to San Gabriel Avenue along Zarzamora Creek. The alignment is shown on Attachment II.

- The Request for Competitive Sealed Proposal (RFCSP) procurement method was used to select the construction contractor. This method allows selection of a contractor based on the “best value” to the System. Best value is determined through scoring and ranking proposals using weighted evaluation criteria published in the solicitation.

- Qro Mex Construction Company, Inc. submitted the best value proposal for $14,024,873.83.

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

The Project Fund will finance this expenditure included in the CY 2018 Capital Improvement Program. This work is included in the Wastewater Core Business, Main Replacement – Sewer budget line item. The amount is $14,024,873.83 for wastewater related construction work. The job number is 18-4501 for construction.

SUPPLEMENTARY COMMENTS:

CP&Y, Inc. prepared the plans and specifications for this project under their professional services contract. The engineer’s estimated construction cost was $11,880,000.00.

Competitive sealed proposals were received on September 14, 2018, at 10:00 AM. Qro Mex Construction Company, Inc. provided the best value to the System based on the following:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Team Qualifications and Experience</td>
<td>20 %</td>
</tr>
<tr>
<td>Quality, Reputation, and Ability to Deliver Projects on Schedule and within Budget</td>
<td>25 %</td>
</tr>
<tr>
<td>Project Approach (including Delivery Schedule)</td>
<td>15 %</td>
</tr>
<tr>
<td>Price</td>
<td>30 %</td>
</tr>
<tr>
<td>SMWVB</td>
<td>10 %</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100 %</strong></td>
</tr>
</tbody>
</table>

The following proposals were submitted:

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Bid Amount</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>SpawGlass Civil Construction, Inc.</td>
<td>$11,292,124.43</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Engineer’s Estimate</td>
<td>$11,880,000.00</td>
<td></td>
</tr>
<tr>
<td>S.J. Louis Construction of Texas, Ltd.</td>
<td>$12,870,843.19</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Qro Mex Construction Company, Inc.</td>
<td>$14,024,873.83**</td>
<td>Local/MBE–Hispanic</td>
</tr>
</tbody>
</table>

*Best value proposal
**Negotiated amount; original price proposal was $14,550,982.00

The price proposal represents an 18.08 percent increase from the estimated construction cost. This contract has 730 days for construction completion. The System’s engineering staff will inspect the work.
Additionally, the overall SMWVB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>C5 Culebra – Castroville to Laredo &amp; C28 Zarzamora Creek – San Gabriel to NW 23rd Street, Phase 3 Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>QRO Mex Construction Company, Inc.</td>
</tr>
<tr>
<td><strong>SMWVB Analysis – Board Award</strong></td>
</tr>
<tr>
<td>SBE</td>
</tr>
<tr>
<td>MBE–African American</td>
</tr>
<tr>
<td>MBE–Asian</td>
</tr>
<tr>
<td>MBE–Hispanic</td>
</tr>
<tr>
<td>MBE–Other</td>
</tr>
<tr>
<td>WBE–Minority</td>
</tr>
<tr>
<td>WBE–Non–Minority</td>
</tr>
<tr>
<td><strong>SMWVB Total</strong></td>
</tr>
</tbody>
</table>

Gail Hahnick-Pigg, P.E.
Director
Pipelines

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

Robert R. Puente
President/Chief Executive Officer

Attachments:
1. Project Area Map
2. Project Site Map
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A CONSTRUCTION CONTRACT TO QRO MEX CONSTRUCTION COMPANY, INC. IN AN AMOUNT NOT TO EXCEED $14,024,873.83 IN CONNECTION WITH THE C5 CULEBRA – CASTROVILLE TO LAREDO & C28 ZARZAMORA CREEK – SAN GABRIEL TO NW 23RD STREET, PHASE 3 PROJECT; APPROVING THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED $14,024,873.83 FROM THE PROJECT FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONSTRUCTION CONTRACT WITH QRO MEX CONSTRUCTION COMPANY, INC., AND TO PAY QRO MEX CONSTRUCTION COMPANY, INC. AN AMOUNT NOT TO EXCEED $14,024,873.83 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, this contract will be used to replace and upsize sewer mains in need of replacement based on capacity, and

WHEREAS, the San Antonio Water System (the “System”) has solicited competitive sealed proposals for the project work; and

WHEREAS, Qro Mex Construction Company, Inc., a local, MBE-Hispanic contractor, has submitted a negotiated price proposal in the amount of $14,024,873.83 for the project work and this respondent has been determined to be the most qualified; and

WHEREAS, System funds in the amount of $14,024,873.83 are required for the project work; and

WHEREAS, the amount of $14,024,873.83 is available from the Project Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a construction contract to Qro Mex Construction Company, Inc. in an amount not to exceed $14,024,873.83 in connection with the C5 Culebra – Castroville to Laredo & C28 Zarzamora Creek – San Gabriel to NW 23rd Street, Phase 3 Project, (ii) to approve the expenditure of funds and make available an amount not to exceed $14,024,873.83 from the Project Fund for the project
work, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a construction contract with Qro Mex Construction Company, Inc., and to pay Qro Mex Construction Company, Inc. an amount not to exceed $14,024,873.83 for the project work; now, therefore:

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

1. That a construction contract in the amount of $14,024,873.83 is hereby awarded to Qro Mex Construction Company, Inc., who is determined to be the offeror that submitted the best value proposal, in connection with the C5 Culebra – Castroville to Laredo & C28 Zarzamora Creek – San Gabriel to NW 23rd Street, Phase 3 Project.

2. That the expenditure of funds in an amount not to exceed $14,024,873.83 for the project work is hereby approved and made available from the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a construction contract with Qro Mex Construction Company, Inc., and to pay Qro Mex Construction Company, Inc. an amount not to exceed $14,024,873.83 for the project 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 November, 2018.

Berto Guerra, Jr., Chairman

ATTEST:

Patricia E. Merritt, Assistant 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: AWARD OF CONSTRUCTION CONTRACT IN CONNECTION WITH THE CENTRAL SEwershed PACKAGE 4 OPEN CUT PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract to Facilities Rehabilitation, Inc., a local, MBE-Hispanic firm, in the amount of $3,724,212.00 in connection with the Central Sewershed Package 4 Open Cut Project.

- The contract that is the subject of the attached resolution will, if approved, authorize work that is required by the Consent Decree for the Central Sewershed Package 4 Open Cut Project between the San Antonio Water System, the United States of America, and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- This contract will be used to rehabilitate sewer mains in need of repair based on condition assessment.

- This contract will be for the replacement of approximately 9,705 feet of 8-inch through 15-inch pipelines by open cut method. Additionally, manholes will be replaced.

- Facilities Rehabilitation, Inc. has submitted the lowest responsible bid of $3,724,212.00.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will finance this expenditure included in the CY 2017 and 2018 Capital Improvement Program. This project is included in the Wastewater Core Business budget line item. The amount is $3,724,212.00 for wastewater related construction work under job number 17-4550.
SUPPLEMENTARY COMMENTS:

Bain Medina Bain, Inc. prepared the plans and specifications for the project. The engineer’s estimated construction cost was $4,025,980.50.

A bid opening was held on September 27, 2018, at 11:00 AM. The following bids were submitted:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Bid Amount</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilities Rehabilitation, Inc.*</td>
<td>$3,724,212.00</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>Nerie Construction, LLC</td>
<td>$3,935,887.00</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>D. Guerra Construction, LLC</td>
<td>$3,936,280.95</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>R.L. Jones, LP</td>
<td>$3,943,981.50</td>
<td>Local/SBE</td>
</tr>
<tr>
<td>Pronto Sandblasting &amp; Coating &amp; Oil-Field Services Co., Inc.</td>
<td>$3,962,775.40</td>
<td>Local/MBE-Hispanic</td>
</tr>
<tr>
<td>Engineer’s Estimate</td>
<td>$4,025,980.50</td>
<td>Engineer’s Estimate</td>
</tr>
<tr>
<td>E-Z Bel Construction, LLC</td>
<td>$5,000,009.00</td>
<td>Local/MBE-Hispanic</td>
</tr>
</tbody>
</table>

*Lowest Responsible Bidder

The bid amount represents a 7.50 percent decrease from the estimated construction cost.

Additionally, the overall SMWVB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>Central Sewershed Package 4 Open Cut Project</th>
<th>Facilities Rehabilitation, Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SMWVB Analysis – Board Award</strong></td>
<td></td>
</tr>
<tr>
<td>SBE</td>
<td>0.00%</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>86.71%</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>86.71%</strong></td>
</tr>
</tbody>
</table>
Award of Construction Contract
Central Sewershed Package 4 Open Cut Project

Gail 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

Attachments:
1. Project Area Map
2. Project Site Map
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A CONSTRUCTION CONTRACT TO FACILITIES REHABILITATION, INC. IN AN AMOUNT NOT TO EXCEED $3,724,212.00 IN CONNECTION WITH THE CENTRAL SEWERSHED PACKAGE 4 OPEN CUT PROJECT; APPROVING THE EXPENDITURE OF FUNDS AND MAKING AVAILABLE AN AMOUNT NOT TO EXCEED $3,724,212.00 FROM THE PROJECT FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONSTRUCTION CONTRACT WITH FACILITIES REHABILITATION, INC., AND TO PAY FACILITIES REHABILITATION, INC. AN AMOUNT NOT TO EXCEED $3,724,212.00 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, this contract will be used to rehabilitate sewer mains in need of repair based on condition assessment; and

WHEREAS, the San Antonio Water System (the “System”) has solicited bids for the project work; and

WHEREAS, Facilities Rehabilitation, Inc., a local, MBE-Hispanic firm, is declared the lowest responsible bidder and has submitted the low responsible bid of $3,724,212.00 for the project work; and

WHEREAS, System funds in the amount of $3,724,212.00 are required for the project work; and

WHEREAS, the total amount of $3,724,212.00 is available from the Project Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a construction contract to Facilities Rehabilitation, Inc. in an amount not to exceed $3,724,212.00 in connection with the Central Sewershed Package 4 Open Cut Project, (ii) to approve the expenditure of funds and make available an amount not to exceed $3,724,212.00 from the Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a construction contract with Facilities Rehabilitation, Inc., and to pay Facilities Rehabilitation, Inc. an amount not to exceed $3,724,212.00 for the project work; now, therefore:
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a construction contract in an amount not to exceed $3,724,212.00 is hereby awarded to Facilities Rehabilitation, Inc., who is determined to be the lowest responsible bidder, in connection with the Central Sewershed Package 4 Open Cut Project.

2. That the expenditure of funds in an amount not to exceed $3,724,212.00 for the project work is hereby approved and made available from the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a construction contract with Facilities Rehabilitation, Inc., and to pay Facilities Rehabilitation, Inc. an amount not to exceed $3,724,212.00 for the project 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 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 November, 2018.

_______________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Patricia E. Merritt, Assistant Secretary
AGENDA ITEM NO. ___36___

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: AWARD OF CONSTRUCTION CONTRACT IN CONNECTION WITH THE WEST SEWERSHED PACKAGE 1 PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract to SAK Construction, LLC, a local, non-SMWVB firm, in the amount of $4,478,947.00 in connection with the West Sewershed Package 1 Project.

- The contract that is the subject of the attached resolution will, if approved, authorize work required by the Consent Decree between the San Antonio Water System, the United States of America, and the State of Texas that was lodged in the United States District Court for the Western District of Texas on July 23, 2013.

- This contract will be used to rehabilitate sewer mains in need of repair based on condition assessment.

- This contract will be for the rehabilitation of approximately 7,300 feet of 54-inch and 66-inch sewer main and related infrastructure by the cured-in-place lining method.

- SAK Construction, LLC has submitted the lowest responsible bid of $4,478,947.00.

Staff recommends that the Board approve this resolution.

FINANCIAL IMPACT:

The Project Fund will finance this expenditure included in the CY 2018 Capital Improvement Program. This project is included in the Wastewater Core Business budget line item. The amount is $4,478,947.00 for wastewater related construction work under job number 17-4546.

SUPPLEMENTARY COMMENTS:

Trihydro Corporation prepared the plans and specifications for the project. The engineer’s estimated construction cost was $6,520,765.00.
A bid opening was held on September 26, 2018, at 3:00 PM. The following bids were submitted:

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Bid Amount</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAK Construction, LLC*</td>
<td>$4,478,947.00</td>
<td>Local/Non–SMWVB</td>
</tr>
<tr>
<td>Insituform Technologies, LLC</td>
<td>$4,538,011.50</td>
<td>Non–Local/Non–SMWVB</td>
</tr>
<tr>
<td>PM Construction &amp; Rehab, LLC dba IPR South Central</td>
<td>$5,717,794.00</td>
<td>Non–Local/Non–SMWVB</td>
</tr>
<tr>
<td>Granite Inliner, LLC</td>
<td>$5,809,086.00</td>
<td>Non–Local/Non–SMWVB</td>
</tr>
<tr>
<td>Engineer’s Estimate</td>
<td>$6,520,765.00</td>
<td></td>
</tr>
</tbody>
</table>

*Lowest Responsible Bidder

The bid amount represents a 31.3 percent decrease from the estimated construction cost.

Additionally, the overall SMWVB analysis is shown in the table below:

<table>
<thead>
<tr>
<th>West Sewershed Package 1 Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>SAK Construction, LLC</td>
</tr>
<tr>
<td><strong>SMWVB Analysis – Board Award</strong></td>
</tr>
<tr>
<td>SBE</td>
</tr>
<tr>
<td>MBE – African American</td>
</tr>
<tr>
<td>MBE – Asian</td>
</tr>
<tr>
<td>MBE – Hispanic</td>
</tr>
<tr>
<td>MBE – Other</td>
</tr>
<tr>
<td>WBE – Minority</td>
</tr>
<tr>
<td>WBE – Non–Minority</td>
</tr>
<tr>
<td><strong>SMWVB Total</strong></td>
</tr>
</tbody>
</table>
Award of Construction Contract
West Sewershed Package 1 Project

Gail 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

Attachments:
1. Project Area Map
2. Project Site Map
WEST SEWERSHED PACKAGE 1

LEGEND
PROJECT LIMITS
RESOLUTION NO.

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A CONSTRUCTION CONTRACT TO SAK CONSTRUCTION, LLC IN AN AMOUNT NOT TO EXCEED $4,478,947.00 IN CONNECTION WITH THE WEST SEWERSHED PACKAGE 1 PROJECT; APPROVING THE EXPENDITURE OF FUNDS AND MAKING AVAILABLE AN AMOUNT NOT TO EXCEED $4,478,947.00 FROM THE PROJECT FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONSTRUCTION CONTRACT WITH SAK CONSTRUCTION, LLC, AND TO PAY SAK CONSTRUCTION, LLC AN AMOUNT NOT TO EXCEED $4,478,947.00 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, this contract will be used to rehabilitate sewer mains in need of repair based on condition assessment; and

WHEREAS, the San Antonio Water System (the “System”) has solicited bids for the project work; and

WHEREAS, SAK Construction, LLC, a local, non-SMWVB firm, was declared the lowest responsible bidder and has submitted the low responsible bid of $4,478,947.00 for the project work; and

WHEREAS, System funds in the amount of $4,478,947.00 are required for the project work; and

WHEREAS, the total amount of $4,478,947.00 is available from the Project Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a construction contract to SAK Construction, LLC in an amount not to exceed $4,478,947.00 in connection with the West Sewershed Package 1 Project, (ii) to approve the expenditure of funds and make available an amount not to exceed $4,478,947.00 from the Project Fund, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a construction contract with SAK Construction, LLC, and to pay SAK Construction, LLC an amount not to exceed $4,478,947.00 for the project work; now, therefore:
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF
TRUSTEES:

1. That a construction contract in an amount not to exceed $4,478,947.00 is hereby awarded to SAK Construction, LLC, who is determined to be the lowest responsible bidder, in connection with the West Sewershed Package 1 Project.

2. That the expenditure of funds in an amount not to exceed $4,478,947.00 for the project work is hereby approved and made available from the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a construction contract with SAK Construction, LLC, and to pay SAK Construction, LLC an amount not to exceed $4,478,947.00 for the project 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 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 November, 2018.

____________________________________
Berto Guerra, Jr., Chairman

ATTEST:

____________________________________
Patricia E. Merritt, Assistant 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 CONSTRUCTION CONTRACT IN CONNECTION WITH THE DOS RIOS WRC CHLORINE SYSTEM IMPROVEMENTS PROJECT

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction contract to MGC Contractors, Inc., a local, non-SMWVB firm, in the amount of $6,530,789.00 in connection with the Dos Rios WRC Chlorine System Improvements Project (the “Project”).

- The disinfection system at the Dos Rios Water Recycling Center (WRC) utilizes chlorine gas for the disinfection of treated wastewater effluent. Sulfur dioxide gas is utilized for de-chlorination of the effluent prior to discharge into the Medina River.

- Due to the corrosive nature of the environment, the facilities have been experiencing frequent process and safety issues, and are in need of improvements. The piping, valves, regulators and other appurtenances are deteriorated, and require frequent maintenance and repairs. The chlorinator and evaporator equipment and controllers for both the chlorine and sulfur dioxide systems are over thirty years old, and in need of replacement with updated technology.

- The project includes:
  
  o Replacement of corroded chlorine and sulfur dioxide piping, valves, filters, regulators, and other outdated equipment and controls,
  o Replacement of the rolling tarp in the chlorine and sulfur dioxide storage areas,
  o Replacement of the existing analog scales with digital scales,
  o Installation of a heating system in the chlorine storage area,
  o Flow-pacing of the chlorine feed system,
  o Replacement of vent piping in the chlorine area to allow for ease of troubleshooting and maintenance,
  o Replacement of outdated controller cabinets in the chlorine building, and
  o Associated civil, structural, mechanical, electrical, instrumentation and controls
work.

- The improvements will increase operational flexibility and efficiency of the disinfection facilities, ensure compliance with the latest local, state and federal regulations, and ensure a safe working environment for the plant staff.

- MGC Contractors, Inc. has submitted the lowest responsible bid of $6,530,789.00.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure included in the CY 2018 Capital Improvement Program. This project is included in the Wastewater Core Business, Treatment, Dos Rios WRC Chlorine System Improvements Project budget line item. The amount is $6,530,789.00 for wastewater related work under job number 17-6508.

**SUPPLEMENTARY COMMENTS:**

Garver, LLC prepared the plans and specifications for this project. The engineer’s estimated construction cost was $7,597,000.00.

A bid opening was held on October 9, 2018, at 2:00 p.m. The following bids were submitted.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Bid Amount</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>MGC Contractors, Inc.*</td>
<td>$6,530,789.00</td>
<td>Local/Non-SMWV</td>
</tr>
<tr>
<td>Archer Western Construction, LLC</td>
<td>$6,597,289.00</td>
<td>Local/Non-SMWV</td>
</tr>
<tr>
<td><strong>Engineer’s Estimate</strong></td>
<td><strong>$7,597,000.00</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Lowest Responsible Bidder

The bid amount represents a 14.03 percent decrease from the estimated construction cost.
Additionally, the overall SMWVB analysis is shown in the following table:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SMWVB Analysis – Board Award</strong></td>
<td></td>
</tr>
<tr>
<td>SBE</td>
<td>0.15%</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>0.61%</td>
</tr>
<tr>
<td>WBE–Non–Minority</td>
<td>27.35%</td>
</tr>
<tr>
<td><strong>SMWVB Total</strong></td>
<td><strong>28.11%</strong></td>
</tr>
</tbody>
</table>

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  
2. Project Site Map
OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A CONSTRUCTION CONTRACT TO MGC CONTRACTORS, INC. IN AN AMOUNT NOT TO EXCEED $6,530,789.00 IN CONNECTION WITH THE DOS RIOS WRC CHLORINE SYSTEM IMPROVEMENTS PROJECT; APPROVING THE EXPENDITURE OF FUNDS AND MAKING AVAILABLE AN AMOUNT NOT TO EXCEED $6,530,789.00 FROM THE PROJECT FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONSTRUCTION CONTRACT WITH MGC CONTRACTORS, INC., AND TO PAY MGC CONTRACTORS, INC. AN AMOUNT NOT TO EXCEED $6,530,789.00 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the disinfection system at the Dos Rios Water Recycling Center (WRC) employs chlorine gas for the disinfection and sulfur dioxide gas for de-chlorination of the treated wastewater effluent; and

WHEREAS, due to the corrosive nature of the environment, the facilities have been experiencing frequent process and safety issues, and are in need of improvements; and

WHEREAS, the improvements will increase operational flexibility and efficiency of the disinfection facilities, ensure compliance with the latest local, state and federal regulations, and ensure safe working environment for the plant staff; and

WHEREAS, the San Antonio Water System (the “System”) has solicited bids for the project work; and

WHEREAS, MGC Contractors, Inc., a local, non-SMWVB contractor, is declared the lowest responsible bidder, and has submitted the low responsible bid of $6,530,789.00 for the project work; and

WHEREAS, System funds in the amount of $6,530,789.00 are required for the project work; and
WHEREAS, the total amount of $6,530,789.00 is available from the Project Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a construction contract to MGC Contractors, Inc. in an amount not to exceed $6,530,789.00 in connection with the Dos Rios WRC Chlorine System Improvements Project, (ii) to approve the expenditure of funds and make available an amount not to exceed $6,530,789.00 from the Project Fund for the project work, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a construction contract with MGC Contractors, Inc., and to pay MGC Contractors, Inc. an amount not to exceed $6,530,789.00 for the project work; now, therefore:

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

1. That a construction contract in an amount not to exceed $6,530,789.00 is hereby awarded to MGC Contractors, Inc., who is determined to be the lowest responsible bidder, in connection with the Dos Rios WRC Chlorine System Improvements Project.

2. That the expenditure of funds in an amount not to exceed $6,530,789.00 for the project work is hereby approved and made available from the Project Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a construction contract with MGC Contractors, Inc., and to pay MGC Contractors, Inc. an amount not to exceed $6,530,789.00 for the project 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 November, 2018.

___________________________________
Berto Guerra, Jr., Chairman

ATTEST:

_______________________________
Patricia E. Merritt, Assistant 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 CONSTRUCTION SERVICES CONTRACT IN CONNECTION WITH THE PRODUCTION CONTROL SYSTEM UPGRADE

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution awards a construction services contract to Tesco Controls, Inc. (Tesco), a non-local, non-SMWVB firm, and authorizes funds in an amount not to exceed $4,321,167.00 in connection with the Production Control System Upgrade. It further amends Resolution 17-204 by approving an amendment to the existing professional services contract with EMA, Inc. dba EMA Services, Inc. (EMA) and additional funds in an amount not to exceed $666,565.00 for construction phase services.

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

- The PCS is both computer hardware and software that provides remote monitoring and control capabilities for field equipment, enabling SAWS water operators to produce water remotely. SAWS currently operates and supports two PCS systems. One control system operates the “traditional SAWS” service area (Transdyn Dynac), and the other control system operates the “former BexarMet” service area (ClearSCADA).

- A SCADA master plan was completed in 2013. An evaluation of both control systems was performed. The SCADA master plan recommended replacement and convergence of both systems into a single new control system.

- As part of this initiative, SAWS issued a Request for Competitive Sealed Proposal (RFCSP) on June 29, 2018. The scope of services encompassed the following items: 1) general construction and system integration services for the upgrade of the SAWS Production Control System and the SAWS Aquifer Storage and Recovery Water Treatment Plant (ASRWTP) SCADA System; 2) new Human-Machine Interface and associated historian and data management interfaces. The SCADA systems shall interface to the existing Programmable Logic Controller (PLC) and Remote Terminal Unit (RTU) systems via existing networks and radio based telemetry system; 3) New Video Wall monitoring system at the operation center; 4) PCS-DYNAC Level Transmitter Recalibration.

- On July 25, 2018, three firms responded to the RFCSP and were evaluated by a Technical
Evaluation Committee. This method allows selection of a firm based on the “best value” to SAWS. Best value is determined through scoring and ranking proposals using weighted evaluation criteria published in the solicitation.

- Tesco submitted the best value proposal and will provide the construction services in the amount of $4,153,967.00.

- Tesco will also provide maintenance for a term of five years in the amount of $167,200.00 for a total contract amount not to exceed $4,321,167.00.

- Resolution No. 17-204 approved on September 13, 2017, authorized a professional services contract with EMA, and authorized funds in the amount of $1,235,238.00 in connection with the design of the PCS Upgrade Project.

- Additional services will be required from EMA to complete the construction services contract that will be awarded to Tesco. The additional amount requested to be paid to EMA is $666,565.00

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The Project Fund will finance this expenditure included in the 2018 Capital Improvement Program. The work is included in the Production Control System Upgrade budget line item in 2018 Capital Improvement Program budget. The job number is 16-6001. The total amount for the project work is $4,987,732.00.

The cost of the construction services contract including reimbursable business expenses is not to exceed $4,321,167.00.

The cost of additional services under the professional services contract with EMA, is not to exceed $666,565.00.

**SUPPLEMENTARY COMMENTS:**

EMA prepared the plans and specifications for this project. The engineer’s estimated construction cost was $4,500,000.00.
Competitive sealed proposals were received on July 25, 2018, at 10:00 AM. Tesco provided the best value to SAWS based on the following:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Team Qualifications and Experience</td>
<td>20%</td>
</tr>
<tr>
<td>Quality, Reputation and Ability to Deliver Projects on Schedule and Within Budget</td>
<td>25%</td>
</tr>
<tr>
<td>Project Approach including Delivery Schedule</td>
<td>20%</td>
</tr>
<tr>
<td>Price</td>
<td>25%</td>
</tr>
<tr>
<td>SMWVB</td>
<td>10%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

The following proposals were submitted:

<table>
<thead>
<tr>
<th>Name of Firm</th>
<th>Bid Amount</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control Panels USA, Inc.</td>
<td>$4,011,250.00</td>
<td>Local/SBE</td>
</tr>
<tr>
<td><strong>Tesco Controls, Inc.</strong>*</td>
<td><strong>$4,321,167.00</strong></td>
<td>Non-Local/Non-SMWVB</td>
</tr>
<tr>
<td>Prime Controls, LP</td>
<td>$4,294,263.00</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td><strong>Estimated Construction Cost</strong></td>
<td><strong>$4,500,000.00</strong></td>
<td></td>
</tr>
</tbody>
</table>

*Best value proposal

The price proposal represents a 3.97 percent decrease from the estimated construction cost. This contract has 420 days for construction completion.

Additionally, the overall SMWVB analysis is shown in the following table:

<table>
<thead>
<tr>
<th>Production Control Systems Upgrade</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tesco Controls, Inc.</strong></td>
</tr>
<tr>
<td><strong>SMWVB Analysis – Board Award</strong></td>
</tr>
<tr>
<td>SBE</td>
</tr>
<tr>
<td>MBE – African American</td>
</tr>
<tr>
<td>MBE – Asian</td>
</tr>
<tr>
<td>MBE – Hispanic</td>
</tr>
<tr>
<td>WBE – Minority</td>
</tr>
<tr>
<td>WBE – Non–Minority</td>
</tr>
<tr>
<td><strong>SMWVB Total</strong></td>
</tr>
</tbody>
</table>
Award of Construction Services Contract
Production Control System Upgrade

Sree Tulapaka  
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 AWARDING A CONSTRUCTION SERVICES CONTRACT TO TESCO CONTROLS, INC. IN AN AMOUNT NOT TO EXCEED $4,321,167.00 IN CONNECTION WITH THE PRODUCTION CONTROL SYSTEM UPGRADE; AMENDING RESOLUTION NO. 17-204 BY APPROVING ADDITIONAL EXPENDITURES IN AN AMOUNT NOT TO EXCEED $666,565.00 TO AN EXISTING PROFESSIONAL SERVICES CONTRACT WITH EMA, INC. DBA EMA SERVICES, INC. FOR ADDITIONAL DESIGN SERVICES; APPROVING THE EXPENDITURE OF FUNDS IN THE AMOUNT NOT TO EXCEED $4,987,732.00 FROM THE PROJECT FUND; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A CONSTRUCTION SERVICES CONTRACT WITH TESCO CONTROLS, INC., AND TO PAY TESCO CONTROLS, INC. AN AMOUNT NOT TO EXCEED $4,321,167.00 FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE AN AMENDMENT TO THE EXISTING PROFESSIONAL SERVICES CONTRACT WITH EMA, INC. AND TO PAY EMA, INC. AN AMOUNT NOT TO EXCEED $666,565.00 FOR ADDITIONAL DESIGN SERVICES; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) intends to upgrade the Production Control System; and

WHEREAS, the upgrade of the Production Control System will improve reliability, security, and operational efficiencies of the Production Control System; and

WHEREAS, the Production Control System consists of both computer hardware and software that provides remote monitoring and control capabilities for field equipment; and

WHEREAS, the System currently operates and supports two Production Control Systems; one for the “traditional SAWS” service area and the other for the “former BexarMet” service area; and

WHEREAS, a Supervisory control and data acquisition (SCADA) master plan
completed in 2013 recommended replacement and convergence of both system into a single control system; and

WHEREAS, a Request for Competitive Sealed Proposal was issued on June 28, 2018, for the construction services for this project; and

WHEREAS, Tesco Controls, Inc., a non-local, non-SMWVB firm, submitted a proposal in the amount of $4,321,167.00 and this respondent was deemed the most qualified; and

WHEREAS, on September 13, 2017, the System’s Board, by Resolution No. 17-204, approved a professional services contract with EMA, Inc. dba EMA Services, Inc. in the amount of $1,235,238.00 in connection with the design of the Production Control System Upgrade Project; and

WHEREAS, additional System funds are needed in the amount of $666,565.00 for design services required from EMA, Inc. in connection with the project; and

WHEREAS, approval of funds in an amount not to exceed $4,987,732.00 is required to construct and deploy the upgrade to the Production Control System; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a construction services contract to Tesco Controls, Inc. in the amount not to exceed $4,321,167.00 in connection with the Production Control System Upgrade, (ii) to amend Resolution No. 17-204, by approving additional funds in the amount not to exceed $666,565.00 to the existing professional services contract with EMA, Inc., (iii) to approve the expenditure of funds in the amount not to exceed $4,987,732.00 from the Project Fund, (iv) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a construction services contract with Tesco Controls, Inc., and to pay Tesco Controls, Inc. an amount not to exceed $4,321,167.00 for the services deliverables, and (v) to authorize the President/Chief Executive Officer or his duly appointed designee to execute an amendment to the existing professional services contract with EMA, Inc., and to pay EMA, Inc. an amount not to exceed $666,565.00 for the services deliverables; now, therefore:

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

1. That a construction contract in an amount not to exceed $4,321,167.00 is hereby awarded to Tesco Controls, Inc. in connection with the Production Control System Upgrade.

2. That Resolution No. 17-204 is hereby amended by authorizing additional expenditures in an amount not to exceed $666,565.00 to the existing professional services contract with EMA, Inc.

3. That an amount not to exceed $4,987,732.00 for the construction and deployment of an upgrade to the Production Control System is hereby approved and to be expended from the Project Fund.
4. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a construction services contract with Tesco Controls, Inc., and to pay Tesco Controls, Inc. an amount not to exceed $4,321,167.00 for the services deliverables.

5. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute and amendment to the existing professional services contract with EMA, Inc., and to pay EMA, Inc. an amount not to exceed $666,565.00 for the services deliverables.

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 November, 2018.

______________________________
Berto Guerra, Jr., Chairman

ATTEST:

______________________________
Patricia E. Merritt, Assistant Secretary
TO: San Antonio Water System Board of Trustees

FROM: Scott R. Halty, Director, Resource Protection and Compliance, and Donovan S. Burton, Vice President, Water Resources and Governmental Relations

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

SUBJECT: AWARD OF SERVICE CONTRACT IN CONNECTION WITH WELL PLUGGING SERVICES FOR THE SOUTH BEXAR COUNTY MONITOR WELL NO. 2 (CATFISH FARM WELL-STATE WELL NO. AY 68-43-617)

Board Action Date: November 13, 2018

SUMMARY AND RECOMMENDATION:

The attached resolution awards a service contract to Weisinger Incorporated, a non-local, non-SMWVB firm, in the amount of $1,384,883.00 in connection with well plugging services for the South Bexar County Monitor Well No. 2 (Catfish Farm Well-State Well No. AY 68-43-617). Site conditions including aquifer level increases or decreases may result in change orders that could alter the accrual contract amount.

- The contract will be used for the plugging of one large 30-inch diameter artesian flowing Edwards well. The work will also include the removal and disposal of all existing surface infrastructure, and installation/removal of temporary controls for the West Bexar County Monitor Well No. 2 Plugging Project.

- The San Antonio Water System (SAWS) has considered this monitor well no longer in use and in a deteriorated condition.

- This well was drilled in 1991 and was the largest artesian flowing water well in the county and believed to be the largest in the world. Observations of the casing below the flange of wellhead indicated that the steel casing is showing signs of rapid deterioration.

- The Request for Competitive Sealed Proposals procurement method was used to select the contractor. This method allows selection of a contractor based on “best value” to the System. Best value is determined through scoring and ranking proposals using weighted evaluation criteria published in the solicitation.

- Weisinger Incorporated submitted the best value proposal in the amount of $1,384,883.00. The project requires Weisinger Incorporated to provide labor, equipment, materials, tools, and supervision, including acquisition of all permits, submittals, utility coordination, safety precautions, and all other incidental costs necessary to plug the well in compliance with all applicable regulations, including site restoration. The contract includes a set cost for the
well plugging, with additional costs per sack and per cubic yard for excess gravel and cement that may be required.

- Weisinger Incorporated is a Texas Licensed Water Well Driller that exceeds the minimum requirement of five years’ experience in the maintenance, construction, demolition, and plugging of wells.

- Staff recommends awarding the service contract to Weisinger Incorporated to plug the South Bexar County Monitor Well No. 2 (Catfish Farm Well-State Well No. AY 68-43-617) in compliance with State and local regulations for a cost of $1,384,883.00.

Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

The System funds budgeted in the 2018 budget (Company: 1000, Accounting Unit: 5005100, Account: 511312, Total 2018 amount: $1,384,883.00).

**SUPPLEMENTARY COMMENTS:**

Competitive sealed proposals were received on August 24, 2018 at 10:00 AM. Weisinger Incorporated provided the best value to the System based on the following:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Background, Qualifications and Experience and Safety</td>
<td>20%</td>
</tr>
<tr>
<td>Proposed Plan and Project Approach</td>
<td>30%</td>
</tr>
<tr>
<td>Ability to Deliver Projects on Schedule within Budget</td>
<td>10%</td>
</tr>
<tr>
<td>Price</td>
<td>30%</td>
</tr>
<tr>
<td>SMWVB Participation</td>
<td>10%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

The following proposals were received:

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Bid Amount</th>
<th>Local/SMWVB</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alsay Incorporated</td>
<td>$653,000.00</td>
<td>Local/Non-SMWVB</td>
</tr>
<tr>
<td><strong>Weisinger Incorporated</strong>*</td>
<td><strong>$1,384,883.00</strong></td>
<td>Non-Local/Non-SMWVB</td>
</tr>
</tbody>
</table>

*Best Value Proposal

This contract will have 60 days for construction completion. Resource Protection & Compliance staff will inspect the work.

Additionally, the overall SMWVB analysis is show in the following table:
South Bexar County Monitor Well No. 2 (Catfish Farm Well-State Well No. AY 68-43-617)

Weisinger Incorporated

<table>
<thead>
<tr>
<th>SMWVB Analysis – Board Award</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>SBE</td>
<td>0.00%</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>0.00%</td>
</tr>
<tr>
<td>WBE – Non-Minority</td>
<td>20.00%</td>
</tr>
<tr>
<td>Total SMWVB</td>
<td>20.00%</td>
</tr>
</tbody>
</table>

Scott R. Halty
Director
Resource Protection and Compliance

Donovan S. Burton
Vice President
Water Resources and Governmental Relations

APPROVED:

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

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AWARDING A SERVICE CONTRACT TO WEISINGER INCORPORATED IN THE AMOUNT OF $1,384,883.00 IN CONNECTION WITH WELL PLUGGING SERVICES FOR THE SOUTH BEXAR COUNTY MONITOR WELL NO. 2 (CATFISH FARM WELL-STATE WELL NO. AY 68-43-617); APPROVING THE EXPENDITURE OF FUNDS AND MAKING AVAILABLE AN AMOUNT NOT TO EXCEED $1,384,883.00 FROM THE SYSTEM FUND FOR THE PROJECT WORK; AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR HIS DULY APPOINTED DESIGNEE TO EXECUTE A SERVICE CONTRACT WITH WEISINGER INCORPORATED, AND TO PAY WEISINGER INCORPORATED AN AMOUNT NOT TO EXCEED $1,384,883.00 FOR THE PROJECT WORK; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the San Antonio Water System (the “System”) solicited competitive sealed proposals for a contractor to plug the South Bexar County Monitor Well No. 2 (Catfish Farm Well-State Well No. AY 68-43-617); and

WHEREAS, Weisinger Incorporated, a non-local, non-SMWVB firm, submitted a negotiated price proposal in the amount of $1,384,883.00 for the project work, and has been determined to be the most qualified; and

WHEREAS, System funds in an amount not to exceed $1,384,883.00 are required for the project work; and

WHEREAS, the total amount of $1,384,883.00 is available from the System Fund for the project work; and

WHEREAS, the San Antonio Water System Board of Trustees desires (i) to award a service contract to Weisinger Incorporated in the amount of $1,384,883.00 in connection with well plugging services for the South Bexar County Monitor Well No. 2 (Catfish Farm Well-State Well No. AY 68-43-617), (ii) to approve the expenditure of funds and make available an amount not to exceed $1,384,883.00 from the System Fund for the project work, and (iii) to authorize the President/Chief Executive Officer or his duly appointed designee to execute a service contract with Weisinger Incorporated, and to pay Weisinger Incorporated an amount not to exceed $1,384,883.00 for the project work; now, therefore:
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That a service contract in the amount of $1,384,883.00 is hereby awarded to Weisinger Incorporated, who is determined to be the offeror that submitted the best value proposal, in connection with well plugging services for the South Bexar County Monitor Well No. 2 (Catfish Farm Well-State Well No. AY 68-43-617).

2. That the expenditure of funds in an amount not to exceed $1,384,883.00 for the project work is hereby approved and made available from the System Fund.

3. That the President/Chief Executive Officer or his duly appointed designee is hereby authorized to execute a service contract with Weisinger Incorporated, and to pay Weisinger Incorporated an amount not to exceed $1,384,883.00 for the project 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 the 13th day of November, 2018.

_________________________________
Berto Guerra, Jr., Chairman

ATTEST:

Patricia E. Merritt, Assistant Secretary