



**SOLICITATION NO. R08-001CZ**

**REQUEST FOR PROPOSALS**

**COMPREHENSIVE COST OF SERVICE  
AND RATE DESIGN STUDY**

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**Pre-Submittal Conference: 2:00 PM (CDT) on June 13, 2008**

**Deadline: July 14, 2008 @ 2:00 PM (CDT)**

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**I. GENERAL INFORMATION**

a. OBJECTIVE

The San Antonio Water System (SAWS) is undertaking a comprehensive rates, fees, and charges study (the Rates Study), and is accepting Proposals for technical assistance to complete this effort which will require a Scope of Services to be performed by a qualified consultant or consulting firm.

b. APPROXIMATE TIMELINE

June 6, 2008.....RFP Issued  
June 13, 2008 ..... Non-Mandatory Pre-Submittal Conference  
June 17, 2008 by 4:00 PM (CDT) ..... Receipt of Written Questions Due  
June 30, 2008 by 4:00 PM (CDT) ..... Q & A Posted to Website  
July 14, 2008 by 2:00 PM (CDT)..... Responses Due  
By August 6, 2008 ..... Responses Evaluated  
August 25-26, 2008 ..... Interviews, if necessary  
August 28, 2008..... Selected Firm Notified  
October 7, 2008 ..... SAWS Board Approval and Award  
October 2008 ..... Start Work

Note: Dates for reviews and approvals may change.

**II. COMMUNICATION**

a. RESTRICTIONS ON COMMUNICATIONS

Respondents or their representatives are prohibited from communicating with any City of San Antonio officials to include City Council members (as defined by the City of San Antonio Ethics Code), their staffs, and San Antonio Water System (SAWS) Board of Trustees regarding the RFP or proposals from the time the Request for Proposals/ Request for Qualifications (RFP) is released until it has been acted upon by the Board of Trustees. Respondents or their representatives are prohibited from communicating with SAWS employees regarding this RFP, except as provided under section b. TECHNICAL QUESTIONS, from the time the RFP is released until the contract is awarded. This includes “thank you” letters, phone calls, emails, and any contact that results in the direct or indirect discussion of the RFP and/or proposal submitted by Respondents. Violation of this provision by the Respondent and/or their agent may lead to disqualification of the Respondent’s proposal from consideration.

## b. TECHNICAL QUESTIONS

1. Respondents may ask verbal questions regarding this RFP at the Pre-Submittal Conference. A non-mandatory Pre-Submittal Conference is scheduled for June 13, 2008 at 2:00 PM (CDT). The conference will be held at San Antonio Water System, 2800 U.S Hwy 281 North, San Antonio, TX 78212 in the Customer Service Building, Conference Room CR-C137. Contact Mr. Louis Lendman via email: [llendman@saws.org](mailto:llendman@saws.org) if directions to the location are needed. Anything spoken at the Pre-Submittal Conference is not binding on SAWS unless an Addendum is issued.
2. Respondents may submit questions concerning this RFP, in writing only, to the Contact Persons: Mr. Louis Lendman or Mr. Dan Crowley, 2800 U.S. Hwy 281 North, San Antonio, TX 78212. Verbal questions are not permitted other than as described by this section and during interviews, if any.

It is recommended that all questions be in writing; however electronic inquiries by e-mail will be accepted by the Contact Persons: Mr. Louis Lendman at [llendman@saws.org](mailto:llendman@saws.org) or by fax to 210-233-4643 or Mr. Dan Crowley at [dcrowley@saws.org](mailto:dcrowley@saws.org) or by fax to 210-233-5264. No inquiries/questions regarding this RFP will be answered if received after 4:00 p.m. (CDT) on June 17, 2008 to allow ample time for distribution of answers and/or amendments to this RFP.

Responses to the questions will be posted on the SAWS website by 4:00 p.m. (CDT) on June 30, 2008.

3. Respondents and/or their agents may contact the SAWS Small Business Liaison Office for assistance or clarification with issues specifically related to the Small, Minority, and Woman Business (SMWB) Program policy and/or completion of the *Good Faith Effort Plan* for to Mr. Ruben Saenz, SMWB Development Officer, 210-233-3420, [rsaenz@saws.org](mailto:rsaenz@saws.org).
4. SAWS reserves the right to contact any Respondent for clarification after responses are opened and/or to further negotiate with any Respondent if such is deemed desirable by SAWS.

## c. RFP PROGRESS

1. To check the status of an RFP, visit our website located at [www.saws.org](http://www.saws.org), select Business Center, next select RFP: Consulting, then select View Archive, scroll down to locate the RFP and select more. The RFP status is located under the due date.
2. If the website does not provide sufficient information, please call Contract Administration's main number 210-233-3408 for assistance.

### **III. SCOPE OF SERVICE**

#### **A. Purpose**

The San Antonio Water System (SAWS) is pursuing a comprehensive rates, fees, and charges study, which will require a qualified consultant or consulting firm.

The purpose of the Rate Design Study is to provide SAWS with information concerning the rate structure for water delivery, water resource development, recycled water, wastewater, and chilled water and steam operations. This study will provide information regarding the adequacy and most appropriate structure for all rates, fees, and charges assessed by SAWS considering such current issues as conservation, consumption characteristics of various customer classes, deviation from cost of service principles and fairness and equity implications, financial stability, customer affordability, and economic development.

It is assumed that SAWS' current cost allocation model will be reviewed and changed if required by the rate design. Additionally, it is assumed that the rate design will incorporate SAWS' current multi-year financial planning model, with minimal changes.

The services of a consultant to conduct a rate design study for SAWS were last utilized during 2003 and 2004. The results of this study were the confirmation of cost-of-service based rates, establishment of a consistent irrigation rate policy across classes, adjustment of general class rates using a modified base block rate structure, and confirmation of a single-tiered water supply fee (with a recommendation to review during the next rate study process).

There are various miscellaneous or special services charges and fees that will need to be analyzed in order to develop a thorough cost recovery system. Examples of some of these charges are: meter reactivation fees, lift station maintenance fees, industrial waste-related fees, and lab fees.

#### **B. Scope of Work**

1. General. The selected firm(s) shall provide the analyses and studies described below with respect to each of the following operations conducted by SAWS: water delivery, water resource development, recycled water provision, wastewater services, and chilled water/steam operations. Final reports are to be prepared for all analyzed operations.
  - a) Analysis of historical demand levels and price elasticity of demand with an evaluation and projection of the key components of demand, including numbers and types of customers, daily and hourly demand, and peaking factors.
  - b) Analysis of historical demand and consumption characteristics with the purpose of properly classifying and segregating the costs associated with the different functions and customers of SAWS.

- c) Analysis and classification of SAWS' existing utility plant in service.
- d) Analysis and classification of SAWS' existing debt service requirements.
- e) Review and analysis of the maintenance and operation expense requirements projected by SAWS and allocation to proper cost components.
- f) Evaluation of current rates and rate structure in terms of the ability of these rates to generate adequate revenue to meet requirements from the proper source.
- g) Allocation of the costs of service for a defined test period to the related functional components and customer classes.
- h) Development of a fair and equitable rate structure, which produces sufficient revenues to meet SAWS' needs and which recovers proportionately the cost of services from the customer classes for which costs are incurred by SAWS.
- i) Assessment of need for rates that address customer affordability. Research and development of an affordability index may be necessary to complete this analysis.
- j) Evaluation of adequacy of the existing level and structure of charges in the Utility Service Regulations, in providing for proper cost recovery of service extensions to the System.
- k) Be present and, if necessary, represent the SAWS Board in proceedings before the City Council, its staff and committees.
- l) Be available for support to the project through ultimate City Council action on any rate changes (anticipated by the end of 2009).

## 2. Determination of Revenue Requirements

- a) Meet with the SAWS Vice President/Chief Financial Officer and Finance Department staff to review the operating and capital improvements program (CIP) budgets, to review the SAWS budget and revenue requirements models, and to discuss SAWS major financial policies and objectives related to utility revenue requirements.
- b) In conjunction with SAWS staff, determine total utility service revenue requirements. The consultant should be prepared to provide necessary assistance and review of determinations of revenue requirements using the: Cash Basis and Utility Basis, for In-City service and Out-of-City service, respectively, as those terms are defined in the AWWA Water Rates Manual. Revenue requirement determinations must be consistent with the expressed financial objectives of SAWS, including the accomplishment of

multi-year rate stability and compliance with established SAWS financial policies.

3. Determination of Revenues Realizable at Currently Effective Rates

- a) The consultant will assist in developing and reviewing an estimate of annual service revenues realizable at current rates. This task will entail a determination that SAWS estimate of projected sales volumes realizable during the test period accurately represent sales volumes given normal weather conditions and expected growth.

4. Functionalization of Revenue Requirements

- a) The consultant will develop a plan for assigning or allocating each component of revenue requirements to specific utility functions. The plan will consist of a specification of the utility functions to be used for this purpose, based on the assessment of information available for cost of service analysis, as well as a delineation of the procedures to be employed to accomplish a comprehensive assignment or allocation of revenue requirement components.

5. Classification of Revenue Requirements

- a) The consultant will develop a plan for classifying revenue requirements, which may be in accordance with the commodity-demand method as defined in the AWWA Water Rates Manual. The plan will consist of a delineation of the procedures to be employed to classify costs and will accommodate the potential need to use alternative cost classification assumptions.

6. Allocation of Revenue Requirements

- a) The consultant will prepare a plan for developing alternative allocations of revenue requirements to specific customer classes. This plan will include procedures for the development of a comprehensive scheme for grouping customers into classes, and for each component of revenue requirements, identification of the service characteristic to be used for allocation purposes. Issues for which alternative allocation procedures are likely to be suggested include, but are not necessarily limited to: service level, consumption characteristics, or growth.
- b) The consultant will be primarily responsible for developing and presenting supporting justification for the recommended allocation methods as well as complete discussions of the primary characteristics, major assumptions and relative advantages and disadvantages of alternative cost allocations.

## 7. Rate Design

- a) The consultant will develop options for rate designs for water delivery, water supply and wastewater services for each class of customers. The plan will include procedures for development of rate options under competing cost allocations and address specific policy objectives such as: "lifeline" rates, affordability, water conservation incentives, revenue recovery from growth-type customers, or other rates as may appear appropriate.
- b) The consultant will be primarily responsible for developing and presenting supporting justification for the recommended rate design as well as complete discussions of the primary characteristics, major assumptions and relative advantages and disadvantages of alternative design options.

## 8. Specific Issues for Analysis. In addition to the above analyses, the consultant shall analyze the below specific rate analysis issues and provide recommendations:

- a) System-Wide Issues.
  - (1) Inter-company subsidy transfer of resources from water delivery to water supply
  - (2) Special rates for services over the Edwards Aquifer Recharge Zone
  - (3) Separate rate to recover energy costs
  - (4) Continuation of separate rates for customers inside and outside the limits of the City of San Antonio
- b) Water Delivery Issues
  - (1) Wholesale water supply, water delivery and raw water rates
  - (2) Seasonal rates
  - (3) Drought surcharge rates
  - (4) Interconnect rates (emergency water provision to other water companies)
- c) Wastewater Issues
  - (1) Wholesale wastewater rates
  - (2) Winter average
  - (3) Surcharges (e.g. Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), and Fats, Oils and Grease (FOG))
  - (4) Lift station maintenance fee
- d) Water Supply Issues
  - (1) Block/tier structure
  - (2) Conservation rate



- (3) Recycle water rate
- (4) Funding for SAWS Planning Scenario II

## 9. Public Involvement Effort

- a) The Rate Consultant will work with SAWS staff in coordinating a public involvement process. The main focus of this effort will be a citizen's rates advisory group, which will review findings of the rate consultant and make recommendations to the SAWS Board. The consultant should budget for a professional facilitator or communications consultant to assist in this effort, although it is not necessary to have a final selection included in the proposal. It will not be necessary to include the communications consultant in the Selection Interviews, but questions will be asked about recommendations regarding the communications consultant and prior experience with such consultants. SAWS and the selected rate consultant will agree upon final selection of the communications consultant.

## C. Expectations

### 1. Deliverables

- a) Bi-weekly status reports from the consultant will be required and must, at a minimum, summarize the hours expended, tasks accomplished, assignments, and identify significant problems with suggested solutions.
- b) Final reports: Should include executive summaries that highlight major issues and decisions, a comprehensive rate design section that details all methodologies, assumptions, public input, and calculations, and a background section that includes all data used in the development of recommended and alternative designs.
- c) Models: Several models may need to be developed during the process of rate design. These may include a price elasticity of demand model, cost allocation model, plant in service allocation model, and others. All models will become the property of SAWS, and the appropriate personnel will be trained on the operation of said models. Please identify the software, which will be utilized for model development and transmittal.

### 2. Education

- a) One of the reasons that SAWS is requesting the services of a consultant is to learn more about the process of rate development. This includes traditional methodologies and state of the art ideas that are being used or tested in other companies or industries. The educational component of this relationship is paramount to the success of this study. It should include methodology, computer models, and the capability to modify or update the models or computations if necessary.

### 3. Presentations

- a) It will be necessary to brief various stakeholders. These may include City Council, Council committees, City and SAWS staff, SAWS Board of Trustees, SAWS employees, customer groups, neighborhood associations, and other stakeholders. It is SAWS' expectation that the consultants will organize and develop the presentation materials for and participate in many of these meetings and include the content and conclusions of these meetings in the Deliverables outlined above. The number of presentations required will range from 10 to 20.

Insurance Requirement: See Exhibit "A"

## IV. SPECIAL CONDITIONS

- a. The expectation is that SAWS' standard contract (see Exhibit "G") will be utilized.
- b. Include in your response package a section detailing your experience with rate development and/or cost of service studies. Include the industries for which the studies were done, especially if work was done for a utility. With each copy of the response package, provide one copy of at least one final report the Respondent has developed as a result of a rate development and/or cost of service study prepared for another customer. Provide specific references with points of contact, addresses, e-mail addresses, and telephone numbers. (see section "VII. Response Format")

## V. EVALUATION CRITERIA

- a. All responses received will be evaluated according to a two-tier process. This includes a Technical Evaluation Committee that will review, evaluate and rank the proposals according to a numerical scoring system based on the responses to the criteria listed below. Those firms deemed most qualified by the Technical Evaluation Committee will be forwarded to a Selection Committee for final selection and recommendation for award. The Selection Committee may select two or more firms to be interviewed, based wholly on qualifications. The successful firm will be notified on or about August 28, 2008.
- b. Evaluation criteria are based on order of priority:
  1. Experience with utility rate development;
  2. Related experience of team members;
  3. References of the firm;

4. Thorough understanding of and responsiveness to the Scope of Services, completeness of requested information, clarity and conciseness;
5. Cost Proposal
6. Understanding of San Antonio socio-political environment;
7. Qualifications of team members;
8. Completion and submittal of an Ethics Policy and Disclosure Form; and
9. Adherence to Affirmative Action and Small, Minority and Woman Business (SMWB) participation.

## **VI. SUBMISSION OF RESPONSES**

- a. Submission of Proposals – Seventeen (17) copies to: San Antonio Water System, Contract Administration, Customer Center Building, 2800 U.S. Hwy 281 North, Suite 171, San Antonio, Texas 78212 no later than 2:00 P.M. (CDT) on July 14, 2008.
- b. Responses submitted via any form of electronic transmission, such as electronic mail, facsimile, or telegraph will not be considered.
- c. If the submittal to this RFP is by any means other than personal delivery, then it is the Respondent's sole responsibility to ensure the submittals are delivered to the exact location by the time specified.
- d. Responses should be clear, concise, and complete. They should be submitted using an 8 ½" by 11" portrait format. Illustrations, if required, may be submitted on 11" by 17" sheets.
- e. Responses are limited to a maximum of 30 pages per proposal. A single side equals to a single page.
- f. Responses may be bound by any means **except** by 3-ring binders and paper/binder clips.
- g. By submission of a response, the Respondent acknowledges that it has read and thoroughly understands the Scope of Service, agrees to all terms and conditions stated herein, and acknowledges that it can perform all tasks, as required.

## **VII. RESPONSE FORMAT**

- a. The response shall be organized as follows:
  1. Cover Letter
  2. Project Team and Resumes, including organizational chart
  3. Team Experience including a summary of at least 3 projects in the last 5 years that are similar in nature

4. Project Approach
5. Quality Assurance/Quality Control
6. Exhibit B – Good Faith Effort Plan (Required submittal)
7. Exhibit C – Compliance Agreement (Required submittal)
8. Exhibit D – Acknowledgement of Addendums (Required *ONLY* if an addendum is issued for this RFP)
9. Exhibit E – Conflict of Interest Questionnaire (Required submittal)
10. Exhibit G – Exceptions to terms and conditions must be taken at the time the Proposal is submitted. Respondent shall submit exceptions to SAWS in the cover letter accompanying the proposal with proposed alternative language. Exceptions shall not be allowed after the proposal opening date and time. At the sole discretion of SAWS, the amount and nature of exceptions may be grounds for disqualification..

b. COVER LETTER

1. Submit a cover letter, prepared on the letterhead of the lead Respondent, which summarizes the relevant characteristics that distinguish the Respondent in its ability to work with SAWS on this project.
2. The cover letter should identify each team member and his or her role.
3. The cover letter should identify a principal contact person authorized to commit the respondent to a contractual agreement. In addition to providing the name of a principal contact person, the address, telephone number, facsimile number, and email address of said individual should be provided.
4. If submitting a joint proposal, the above information is requested for all entities and individuals involved.
5. The cover letter should contain a description of the relationship between the lead Respondent, subsidiaries, professional advisors, and other members of the professional consulting team.

c. PROJECT TEAM and RESUMES

1. Provide an organizational chart and a resume of not more than two (2) pages per person on the capabilities, experience, qualifications of each team member. Resumes should include the team member's name, title, education, brief overview of professional experience, and team member licenses or professional affiliations.
2. Provide a summary of not more than one (1) page detailing the unique qualifications of each subconsultant.

d. TEAM EXPERIENCE

Provide a list of at least 3 current and/or previous projects in the last five (5) years, in

which the Respondent has performed services similar to those sought in this solicitation. This list should include:

- Name of client
- Location (city and state)
- Duration of assignment
- Respondent's role in project

e. PROJECT APPROACH

Provide a plan on approaching this project as described in the Scope of Services to maximize efficiencies in procedures in order for SAWS to meet its goal of completing a comprehensive rates, fees, and charges study in a timely manner.

f. QUALITY ASSURANCE/QUALITY CONTROL

Provide a brief description of quality assurance and quality control practices in place.

g. INSURANCE REQUIREMENTS

The insurance specifications for this project are listed in Exhibit "A". When requested, only the selected Consultant will be expected to provide **Certificates of Insurance**. **For submittal purposes, a statement that the Respondent is able to meet the insurance requirements and provide Certificates of Insurances as specified in Exhibit "A" should be provided.**

h. POLICIES ON EQUAL EMPLOYMENT OPPORTUNITY AND SMWB

1. Equal Employment Opportunity Requirements - The San Antonio Water System highly encourages applicants to implement Affirmative Action practices in their employment programs. This means applicants should not discriminate against any employee or applicant for employment because of race, color, national origin, religion, sex, age, handicap, or political belief or affiliation.
2. Effective April 1, 2007, all Small, Minority, or Woman Businesses (SMWB) responding to San Antonio Water System solicitations as either prime or sub contractors, consultants, or vendors will require certification as an SMWB. SMWB certification will be accepted from The South Central Texas Regional Certification Agency (SCTRCA). The Good Faith Effort Plan (GFEP) which is required with submittals of construction bids and professional services and other consulting proposals includes an SMWB goal. In order to comply with the SMWB goal in the GFEP, all firms submitted as SMWB must provide a copy of their certification certificate. If you have questions, please contact Ruben M. Saenz, SMWB Development Officer, at (210) 233-3420.
3. The San Antonio Water System ("SAWS") Board of Trustees has adopted a policy to establish and oversee a program that will support the inclusion of small, minority and woman-owned businesses (SMWB). It is the policy of SAWS that it will ensure that small, minority, and woman-owned businesses have an equal op-

portunity to receive and participate in SAWS contracts. It is our policy:

- To ensure nondiscrimination in the award and administration of SAWS contracts.
  - To create a level playing field on which SMWBs can compete fairly for SAWS contracts;
  - To ensure that the SMWB Program is narrowly tailored in accordance with applicable law;
  - To ensure that only firms that fully meet small, minority, and woman-owned business eligibility standards are permitted to participate as SMWBs;
4. SAWS Board of Trustees has approved overall goals for construction, professional services, and procurement contracts. **The overall professional services goal for this project is 25%.**
  5. The SMWB goal is expressed as a percentage of the total dollar amount of the contract going to SMWBs for those areas which the Consultant has subcontracted or anticipates to subcontract, including any future contract modifications. The goal shall also apply to contract amendments that require work beyond the scope of services originally required to accomplish the project.
  6. The Proposer/Consultant agrees to employ good faith efforts to carry out this policy through award of sub-consultant contracts to small, minority, and/or woman-owned businesses to the fullest extent possible. SAWS Proposers/Consultants are expected to solicit bids from available SMWBs on contracts which offer subcontracting opportunities.
  7. Proposers/Consultants for this contract are asked to make good faith efforts to meet or exceed the goal for SMWB participation. Consultants must satisfy the good-faith effort requirements by either documenting the achievement of the overall goal for professional services or project specific goal (if a project specific goal has been set) on the SMWB Good Faith Effort Plan or completing all sections of the SMWB Good Faith Effort Plan and documenting good faith efforts to meet the goal in order to be approved by the SMWB Development Officer as part of the proposal submittal prior to the award of the contract. Should the Good Faith Effort Plan not be submitted, the proposal may be considered non-responsive.
  8. Adherence to Affirmative Action and Small, Minority and Women Business (SMWB) participation. The San Antonio Water System highly encourages applicants in those instances when joint venturing and/or subcontracting is appropriate to form joint ventures and/or provide subcontract opportunities to small, minority and women owned firms. Accordingly, the San Antonio Water System Good Faith Effort Plan will be used to report SMWB participation. The Good Faith Effort Plan format is attached as Exhibit "B". This form is required and considered as part of the response to the RFP.

i. COMPLIANCE AGREEMENT

The Compliance Agreement, attached as Exhibit "C", shall be completed and submitted as part of the response to this RFP. Failure to complete the Compliance Agreement or comply with its terms may subject your firm to elimination from the selection process at any time. This is required and is considered as part of the response to this RFP.

j. ACKNOWLEDGEMENT OF ADDENDUMS

1. Respondents shall acknowledge receipt of any addendum to this solicitation by signing and returning the attached addendum form attached as Exhibit "D" by the time and date specified for receipt of statements of qualifications.
2. Exhibit "D" is required **only** if an addendum has been issued for this RFP.

k. ETHICS POLICY AND DISCLOSURE FORM

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with SAWS shall file a completed Conflict of Interest Questionnaire (CIQ) with SAWS. The CIQ will be submitted as part of the response to a Request for Qualifications/Request for Proposal from SAWS. The CIQ is attached as Exhibit "E", or is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Please consult your own legal advisor if you have questions regarding the statute or form. This form is required and is considered as part of the response to this RFP.

**VIII. SECURITY PROCEDURES**

The successful Respondent must comply with the security procedures in Exhibit "F" attached. Due to the ever changing security environment and increases in security requirements, Respondent **MUST** be prepared to perform at its own expense background security checks on its employees, or the employees of its consultants or sub-consultants if requested by SAWS. Failure to comply with this requirement may result in immediate termination with cause. **For submittal purposes, a statement that the Respondent has read and understands Exhibit "F" should be provided.**

**IX. CONTRACT**

The form of the general terms and provisions of the contract are attached as Exhibit "G". By responding to this RFP, the Respondent agrees to these standard contract provisions.

## **X. OTHER REQUIREMENTS**

- a. Other key requirements prospective consultants should note are as follows:
  1. Unresolved issues may affect your competitiveness.
  2. Respondents must display adherence to SAWS Affirmative Action and Small, Minority and Woman Business (SMWB) participation policy.
  3. All contracts will require the provision for a "Right-to-Audit" clause.
  4. The Fringe Benefit Multiplier submitted by the consultant during negotiations will be examined for appropriateness and will be subject to audit and payments will be adjusted accordingly.
  5. The Water System shall retain the right to approve or disapprove all sub-consultant selections on all projects.
  6. The Water System shall retain the right to approve or disapprove any changes/variances of proposed sub-consultants and their related percentage of work "as proposed" from the original submittal form of the selected consultants.
  7. Consultant will be required to meet the Insurance Specifications as laid out in Exhibit "A" of this RFP.
  8. All consultant contracts will be required to define reimbursable "direct costs" with no additional markup applied.

## **XI. RESERVATION OF RIGHTS**

- a. SAWS reserves the right to:
  1. Reject any and all proposals received
  2. Issue a subsequent RFP
  3. Cancel the entire RFP
  4. Remedy technical errors in the RFP process
  5. Negotiate with any, all or none of the Respondents to the RFP
  6. Accept the written proposal as an offer
  7. Waive informalities and irregularities
  8. Accept multiple proposals
  9. Make multiple recommendation(s) to the Board
  10. Request additional information or clarification
  11. All responses and their contents will become the property of SAWS
- b. SAWS will not reimburse consultants or sub-consultants for any costs associated with any travel and/or per diem incurred in any presentations.
- c. SAWS reserves the right to end, in its sole discretion, negotiations at any time with any and /or all Respondents. This RFP does not commit the System to enter into a contract, nor does it obligate it to pay any costs incurred in the preparation and submission of proposals or in anticipation of a contract.



## **XII. ATTACHMENTS**

Exhibit A – Insurance Requirements

Exhibit B – Good Faith Effort Plan

Exhibit C – Compliance Agreement

Exhibit D – Acknowledgement of Addendums

Exhibit E – Conflict of Interest

Exhibit F – Security Procedures

Exhibit G – Contract (Review Only)

**Exhibit "A"**  
**SAWS STANDARD INSURANCE SPECIFICATIONS**  
**("Specifications")**

1. Commencing on the date of this Contract, the Consultant shall, at his own expense, purchase, maintain and keep in force such insurance as will protect him and the San Antonio Water System ("SAWS") and the City of San Antonio ("the City") and their employees and agents from claims, which may arise out of or result from his operations under this Contract, whether such operations are by himself, by any sub-consultant, or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, including, without limitation, the following:

a. Workers' Compensation (WC) insurance that will protect the Consultant, SAWS and the City from claims under statutory Workers' Compensation laws, disability laws or such other employee benefit laws and that will fulfill the requirements of the jurisdiction in which the work is to be performed.

This insurance shall be endorsed to provide a **Waiver of Subrogation** in favor of SAWS and the City with respect to both this insurance coverage and the **Employers' Liability (EL)** insurance (as specified immediately below in section 1.b.).

b. **Employers' Liability (EL)** insurance (**Coverage B** under standard Workers' Compensation policy) that will protect the Consultant, SAWS and the City for damages because of bodily injury, sickness, disease of vendor's employees apart from that imposed by Workers' Compensation laws. The employers' liability insurance shall have minimum limits of liability of not less than:

\$ 1,000,000.00	Bodily Injury by Accident
1,000,000.00	Bodily Injury by Disease - Each Employee
1,000,000.00	Bodily Injury by Disease - Policy Limit

c. **Commercial General Liability (CGL)** insurance that will protect the Consultant, SAWS and the City from claims for damages because of bodily injury, personal injury, sickness, disease or death and insurance that will protect the Consultant, SAWS and the City from claims for damages to or destruction of tangible property of others, including loss of use thereof.

This coverage shall:

- Cover independent contractors;
- Not include any exclusions relating to blasting, explosion, collapse of buildings or damage to underground property where applicable;
- Afford coverage for Products Liability and/or Completed Operations and, Contractual Liability.

The minimum limits of liability for this coverage shall be:

\$ 1,000,000.00	Occurrence Limit
2,000,000.00	General Aggregate
1,000,000.00	Products/Completed Operations Aggregate
1,000,000.00	Personal and Advertising Injury
1,000,000.00	Contractual Liability

This insurance shall be endorsed:

- Naming SAWS and the City as an **Additional Insured**; and
- To provide a **Waiver of Subrogation** in favor of SAWS and the City.

- d. **Comprehensive Automobile Liability (AL)** insurance that will protect the Consultant, SAWS and the City from claims for damages arising out of the maintenance, operation, or use of any owned, non-owned or hired vehicles. Minimum limits of liability for bodily injury and property damage **combined** shall be not less than \$1,000,000.00 per each occurrence.

This insurance shall be endorsed:

- Naming SAWS and the City as an **Additional Insured**; and
- To provide a **Waiver of Subrogation** in favor of SAWS and the City.

- e. **Professional Liability** (errors and omissions) insurance with minimum coverage limits of \$1,000,000 per claim, \$1,000,000 in the aggregate, if written on a "Claims Made" form, and Consultant must maintain this coverage period for at least twenty-four (24) months after the date of Contract termination.

2. Consultant shall require all Sub-consultants to carry insurance coverage appropriate to their scope of Work.
3. The Consultant shall furnish a completed Certificate of Insurance, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon.
4. The insurance that is required under these Specifications shall be written so that SAWS and the City will be notified in writing in the event of cancellation, restrictive endorsement or non-renewal at least **thirty (30) days** prior to such action.
5. **Certificates of Insurance** shall be filed with the System 10 days **prior to** the SAWS Board of Trustee's award of the Contract. The SAWS Contract name/Bid number **shall be included** in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

Certificates shall be mailed to SAWS directly to:

San Antonio Water System  
Attention: Contract Administration Division  
P. O. Box 2449  
San Antonio, Texas 78298-2449

Consultant shall be responsible for obtaining **Certificates of Insurance** from the first tier Sub-consultant, and upon request furnish copies to SAWS.

6. Separate **Certificates of Insurance** shall be filed with the City of San Antonio 10 days **prior to** the SAWS Board of Trustee's award of the Contract. The SAWS Contract name/Bid number **shall be included** in the Description of Operations section located in the bottom half of the standard ACORD Certificate forms.

Certificates shall be mailed to the City of San Antonio directly to:

City of San Antonio  
Attention: Risk Management  
P.O. Box 39966  
San Antonio, TX 78283-3966

A copy of the certificate of insurance provided to the City of San Antonio shall be provided to SAWS at the same time.

7. Consultant is responsible for all deductibles under all of the insurance policies required by these specifications.
8. The stated limits of insurance required by these Specifications are **MINIMUM ONLY** and it shall be the Consultant's responsibility to determine what limits are adequate and the length of time this coverage shall be maintained; the insurance limits are not a limit of the Consultant's liability.

These minimum limits may be basic policy limits or any combination of basic limits and umbrella limits. SAWS acceptance of Certificates of Insurance that in any respect do not comply with these Specifications does not release the Consultant from compliance herewith.

9. Consultant agrees that all insurance policies required by these Specifications shall be with insurance companies, firms or entities that have an **A.M. Best** rating of an "**A- ("A"-minus)**" and a **Financial Size Category** of a "**VII**" or better. All insurance policies shall be of an "Occurrence" type except for the Professional Liability line of coverage.

10. **SURVIVAL**

Any and all representations, conditions and warranties made by Consultant under this Contract including, without limitation, the provisions of Section 1.b., 1.c. and 1.d. of these Specifications are of the essence of this Contract and shall survive the execution and delivery of it, and all statements contained in any document required by SAWS whether delivered at the time of the execution, or at a later date, shall constitute representations and warranties hereunder.



EXHIBIT B

**GOOD FAITH EFFORT PLAN FOR  
PROFESSIONAL AND OTHER CONSULTING SERVICES  
SUB-CONTRACTS**

FOR

NAME OF PROJECT: \_\_\_\_\_

**SECTION A - PROPOSER INFORMATION:**

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Tele-  
phone: \_\_\_\_\_

Email Address: \_\_\_\_\_ Fax: \_\_\_\_\_

Is your firm Certified: Yes \_\_\_\_\_ No: \_\_\_\_\_ If certified, Certification Number: \_\_\_\_\_

Type of Certification: \_\_\_\_\_ AABE \_\_\_\_\_ DIBE \_\_\_\_\_ MBE \_\_\_\_\_ WBE  
 \_\_\_\_\_ SBE \_\_\_\_\_ VBE

Prime's Percent Participation on this Project: \_\_\_\_\_ %

1. List ALL SUBCONTRACTORS/SUPPLIERS that will be utilized on this project/contract.

Name & Address of Company	Scope of Work/Supplies to be Performed/Provided by Firm	% Level of Participation on this Project	If Firm is Certified, Provide Certification Number and attach copy of Certification Affidavit	Type Certification
1.				
2.				
3.				
4.				

**SECTION B. – SMWB COMMITMENTS**

The SMWB goal on this project is 25 %

1. The undersigned proposer has satisfied the requirements of the RFQ/RFP specification in the following manner (please check the appropriate space):

The proposer is committed to a minimum of      % SMWB utilization on this contract.

The proposer (if unable to meet the SMWB goal of     %) is committed to a minimum of          % SMWB utilization on this contract. *(If contractor/consultant is unable to meet the goal, please fill out Section C and submit documentation demonstrating good faith efforts).*

2. Name and phone number of person appointed to coordinate and administer the SMWB requirements on this project.

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

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

Phone Number: \_\_\_\_\_

**IF THE SMWB GOAL WAS MET, PROCEED TO AFFIRMATION AND SIGN THE GFEP. IF GOAL WAS NOT MET, PROCEED TO SECTION C.**

**SECTION C – GOOD FAITH EFFORTS (Fill out only, if the SMWB goal was not achieved).**

- List all firms you contacted with subcontracting/supply opportunities for this project that will not be utilized for the contract by choice of the proposer, subcontractor, or supplier. Written notices to firms contacted by the proposer for specific scopes of work identified for subcontracting/supply opportunities must be provided to subcontractor/supplier not less than five (5) business days prior to bid/proposal due date. The following information is required for all firms that were contacted of subcontracting/supply opportunities.

Name & Address of Company	Scope of Work/Supplies to be Performed/Provided by Firm	Is Firm SMWB Certified?	Date Written Notice was Sent & Method (Fax, Letter, E-Mail, etc.)	Reason Agreement was not reached?
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

(Use additional sheets as needed)

In order to verify a proposer’s good faith efforts, please provide to SAWS copies of the written notices to all firms contacted by the proposer for specific scopes of work identified in relation to the subcontracting/supply opportunities in the above named project. Copies of said notices must be provided to the Business Development Liaison with five (5) business days after the bid is due. Such notices shall include information on the plans, specifications, and scope of work.

- Did you attend the pre-proposal conference scheduled for this project?  Yes  No

- List all SMWB listings or directories, contractor associations, and/or any other associations utilized to solicit SMWB Subcontractors/suppliers.

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- Discuss efforts made to define additional elements of the work proposed to be performed by SMWBs in order to increase the likelihood of achieving the goal:

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5. Indicate advertisement mediums used for soliciting bids from SMWBs. (Please attach a copy of the advertisement(s):

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**AFFIRMATION**

I hereby affirm that the above information is true and complete to the best of my knowledge. I further understand and agree that, this document shall be attached thereto and become a binding part of the contract.

Name and Title of Authorized Official:

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

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**NOTE:**

This Good Faith Effort Plan is reviewed by SAWS Contracting Department. For questions and/or clarifications, please contact Ruben M. Saenz at (210) 233-3420. If the SMWB goal was not met, the Business Development Liaison will evaluate the "good faith efforts" of a firm.



## DEFINITIONS:

**Prime Consultant/Contractor:** Any person, firm partnership, corporation, association or joint venture which has been awarded a San Antonio Water System contract.

**Sub-consultant/contractor:** Any named person, firm partnership, corporation, association or joint venture identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing under contract with a prime consultant/contractor on a San Antonio Water System contract.

**Small, Minority and Woman Business (SMWB):** Includes all business enterprises inclusive of sole proprietorship, partnerships, corporations and all other such legal entities that are either classified as small, or are owned, operated and controlled by minority group members, women, or disabled individuals.

**Small Business Enterprise (SBE):** A corporation, partnership, sole proprietorship or other such legal entity which is owned and operated and which is less than 20% of the U.S. Small Business Administration (SBA) size standard for a small business, except in cases where the reduced definition drops below \$1 million average gross receipts (as based on three years of sales) or less than 100 employees.

**Minority Business Enterprise (MBE):** A corporation, partnership, sole proprietorship or any other such legal entity which is owned, operated and controlled by a minority group member(s) who, when combined, have 51 percent ownership. The minority group member(s) must have operational and managerial control, interest in capital, and expertise and earnings commensurate with the percentage of minority ownership. For purposes of the SMWB program, the following are recognized a minority groups:

- a. **African American** – Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian or West Indian.
- b. **Hispanic American** – persons of Mexican, Puerto Rican, Cuban, Spanish or Central or South American origin.
- c. **Asian-Pacific American** – persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- d. **Asian-Indian American** – persons whose origins are from India, Pakistan, Bangladesh or Sri Lanka.
- e. **American Indian/Native American** – persons having no less than 1/16 percentage origin in any of the American Indian Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Women Business Enterprise (WBE):** A corporation, partnership, sole proprietorship or other such legal entity which is owned and operated by women who, when combined, have 51 percent ownership. The women must have operational and managerial control, interest in capital, and expertise and earnings commensurate with the percentage of women ownership.

**African American Business Enterprise (AABE):** A corporation, partnership, sole proprietorship or other such legal entity which is owned and operated by an African American minority group member(s) who, when combined, have 51 percent ownership. The African American group member(s) must have operational and managerial control, interest in capital, and expertise and earnings commensurate with the percentage of ownership.

**Disabled Individual Business Enterprise (DIBE):** A corporation, partnership, sole proprietorship or other such legal entity which is owned and operated by a disabled individual who has at least 51 percent ownership. Disabled means a person (a) with one or more disabilities as defined by the Americans with Disabilities Act (ADA) and amendments thereto, (b) having a record of such disabilities, and (d) regarded as having such disabilities.

**Veteran Business Enterprise (VBE):** A corporation, partnership, sole proprietorship or other such legal entity which is owned and operated by an individual who served in the United States active military, naval, or air service, and who was discharged or released under conditions other than dishonorable, and who has at least 51 percent ownership. ***This certification should not be confused with the Service Disabled Veteran designation available through the federal Small Business Administration.***

**Joint Venture:** A limited association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, efforts, skills and knowledge.

**Exhibit "C"**  
**COMPLIANCE AGREEMENT**

In conjunction with the San Antonio Water System Comprehensive Cost of Service and Rate Design Study, this Compliance Agreement is entered into by and between \_\_\_\_\_ ("Prospective Consultant") and San Antonio Water System ("Water System") as of the date set forth below. Prospective Consultant agrees as follows:

Nondisclosure. No information obtained by Prospective Consultant from the Water System shall be disclosed by Prospective Consultant to any third party. In the event Prospective Consultant is subject to the Texas Public Information Act, upon receipt of a request for any information obtained by Prospective Consultant, Prospective Consultant shall provide notice to Water System of the request along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by Prospective Consultant.

No Lobbying and Compliance with Law. During the selection process for the Comprehensive Cost of Service and Rate Design Study, Prospective Consultant agrees to comply with all applicable laws and regulations, including but not limited to restrictions against direct or indirect lobbying of public officials. Prospective Consultant agrees not to make or permit to be made any improper payments, or to perform any unlawful acts.

This agreement shall be construed to be enforceable to the maximum extent permitted by law.

Failure to complete the Compliance Agreement or comply with its terms may subject this firm to elimination from the selection process at any time.

Agreed:

\_\_\_\_\_  
Company Name

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

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

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

Date: \_\_\_\_\_

**Exhibit "D"**  
**Acknowledgement of Addendums**

**Project Name:** Comprehensive Cost of Service and Rate Design Study

**Lead Contact:** Lou Lendman and Dan Crowley, Finance

**Acknowledgement by Respondent**

Each Respondent is requested to acknowledge receipt of all addendums by his/her signature affixed hereto and to file same with and attach to his/her response to this RFP due by 2:00 PM (CDT) July 14, 2008.

These addendums are applicable to the project designated above. It is an amendment to the services and response requested and as such it will be considered part of and included in the contract documents. **All Respondents MUST acknowledge receipt of these addendums by entering the Addendum number, issue date, initials, with a signature in the spaces provided and include this form with their response.**

Addendum No.	Date Issued	Initials
_____	_____	_____
_____	_____	_____
_____	_____	_____

The undersigned acknowledges receipt of the addendums listed above and in accordance with instructions under section VII. Response Format, item h. Acknowledgment of Addendums, page 13 of the RFP.

\_\_\_\_\_  
Primary Project Manager Signature

\_\_\_\_\_  
Date

Exhibit "E"

**CONFLICT OF INTEREST QUESTIONNAIRE**

**FORM CIQ**

**For vendor or other person doing business with local governmental entity**

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator of the local government not later than the 7<sup>th</sup> business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**OFFICE USE ONLY**

Date Received

**1. Name of person doing business with local governmental entity.**

2

**Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3. Describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money.**

**4. Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire.**

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

Page 2

**5. Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

Yes       No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

Yes       No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes       No

D. Describe each affiliation or business relationship.

**6. Describe any other affiliation or business relationship that might cause a conflict of interest.**

7.

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date

**Exhibit "F"**  
**SECURITY PROCEDURES**

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

Consultant and its employees and agents shall obtain a SAWS photo identification badge (Contractor's Badge) and parking tag, if necessary, prior to any work on SAWS property, which shall be used only for purposes necessary to perform the work under this Agreement. SAWS Badge Office hours are Monday and Friday 1:00 pm to 5:00 pm (hours are subject to change). Security Staff can be contacted at (210) 233-3760 or (210) 233-3619. A replacement fee shall be charged to replace any lost or damaged badges or parking tags. As a condition of final payment, Consultant shall return all badges and parking tags to the Security Office. In the event Consultant fails to return all security badges and parking tags, in addition to any other rights or remedies to which SAWS may be entitled at law or in equity, SAWS may withhold from payment to the Consultant the sum of \$500.00 dollars per badge or parking tag as liquidated damages. Consultant agrees that the actual amount of damages for failure to return the badges and/or parking tags are difficult to determine, and the liquidated damages herein are not a penalty, but are a reasonable estimate of the costs and expenses that may be incurred by SAWS for failure to return the badges or parking tags.

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

Sub-consultants must always be under escort of the Consultant while performing work on any SAWS designated primary facility (list with SAWS Security.) Sub-consultants must display either a company photo badge with name or a valid drivers license at all times while working on any SAWS property. Consultant is solely responsible for the actions of its employees, agents, contractors and consultants.

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

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

**SAN ANTONIO WATER SYSTEM**  
**CONSULTING AGREEMENT**

AGREEMENT FOR

\_\_\_\_\_  
(the "Project")

Contract No. \_\_\_\_\_

THIS IS A CONSULTING AGREEMENT (this "Agreement") by and between

INSERT CONSULTANT NAME

ADDRESS 1

ADDRESS 2

(the "Consultant"), and San Antonio Water System, municipally-owned utility of the City of San Antonio in the State of Texas (the "Water System" or "SAWS"), and by which parties to this Agreement, in consideration of the mutual covenants set forth below and other good and valuable consideration (the mutuality, adequacy, and sufficiency of which are hereby acknowledged), hereby agree as follows:

1. Consulting.

(a) Consulting and Advisory Services. During the term of this Agreement, the Consultant will provide consulting and advisory services to the Water System in accordance with the highest professional standards. Consultant shall perform the services described on Exhibit B attached hereto and incorporated herein. The Consultant shall perform such duties in accordance with the time schedule attached hereto as Exhibit D and comply with the Security Procedures attached as Exhibit E. Acceptance of work of the Consultant by the Water System shall not constitute or be deemed a release of the responsibility, obligations or liability of the Consultant under this Agreement for any errors, omissions, defect in the design, drawings, specifications, documents, reports and work performed by the Consultant. Consultant will utilize only qualified personnel to perform the work under this Agreement. All of such work shall be under the direct supervision of properly licensed professionals as appropriate for the Project and work.

(b) Compensation and Expenses. The Water System shall pay Consultant as set forth on the attached Exhibit A. If Consultant's services do not conform to the specifications stated on Exhibit B, as determined by Water System, Consultant shall promptly re-perform such services to the satisfaction of Water System at no additional charge to Water System.

(c) Independent Contractor. It is acknowledged and agreed that the Consultant is an independent contractor of the Water System and not an employee or agent or fiduciary



of Water System, and each of the parties to this Agreement agrees to take actions consistent with the foregoing. Consultant is not being engaged to perform any fiduciary functions of Water System. Further, nothing in this Agreement shall be construed to create a partnership, joint venture, or other association between the parties.

(d) Water System's Responsibilities. Water System will use its reasonable best efforts to provide Consultant with all documentation and information in the possession of the Water System required to enable Consultant to provide the services, and will cause its employees and agents to cooperate with Consultant's reasonable requests in order to assist Consultant in providing the services.

(e) Work Papers. All final work product and work papers directly relating thereto delivered to Water System by the Consultant in connection with the performance of services pursuant to this Agreement, including public records obtained by the Consultant, shall be the property of the Water System whether or not in the possession of the Consultant, for use and re-use by the Water System, its agents, employees, contractors and consultants, as needed from time-to-time.

(f) Nondisclosure. The Water System has a proprietary interest in this Agreement and in the advisory and consulting services provided by Consultant. Accordingly, this Agreement, the services, and any information obtained by Consultant through Water System in connection with the performance of the services shall not be disclosed by Consultant to any third party. In the event Consultant is subject to the Texas Public Information Act, upon receipt of a request for any information obtained by Consultant in the performance of this Agreement, Consultant shall provide notice to Water System of the request along with a copy of the request, and give Water System the opportunity to respond to the request prior to its release by Consultant. In no event shall Consultant or any of its subconsultants provide or participate in any public presentations or prepare or present any papers for public dissemination concerning the Project, or with information obtained in connection with the Project, without receiving the prior written approval from the Water System, which approval may be withheld in the sole and absolute discretion of the Water System.

(g) Compliance with Law. In performing this Agreement, the Consultant agrees to comply with applicable laws and regulations, and to secure, pay for and comply with all permits, governmental fees, licenses, inspections, bonds, security or deposits necessary for proper execution and completion of the services. Consultant agrees to not make or permit to be made any improper payments, or to perform any unlawful acts.

(h) Insurance. Consultant shall maintain and keep in force for the duration of this Agreement such insurance as set forth on Exhibit C of this Agreement, which is attached hereto and incorporated herein for all purposes as if fully set forth herein. Approval of insurance by the Water System shall not relieve or decrease the liability of the Consultant hereunder and shall not be construed to be a limitation of liability on the part of the Consultant. Consultant shall be responsible for all premiums, deductibles and self-insured retentions, if any, stated in the policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance. All endorsements naming the Water System and the City of San Antonio (the "City") as

additional insureds, waivers, and notices of cancellation endorsements as well as the Certificates of Insurance shall indicate: San Antonio Water System, Contract Administration Division, 2800 US Hwy 281 North, San Antonio, Texas 78212.

(i) Right To Audit. Consultant agrees to maintain appropriate accounting records of costs, expenses, and payrolls of its employees and agents working on the Project for a period of three years after final payment for completed work has been made and all other pending matters concerning the Agreement have been closed. Consultant agrees that the Water System or its authorized representative shall have access during normal business hours to any and all books, documents, papers, and records of the Consultant which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits and examinations.

The Consultant further agrees to make the above requirement apply to any and all subconsultant agreements in which the Consultant has a contractual relationship for the services to be performed under the Agreement. All subconsultants shall agree that the Water System or its authorized representatives shall have access during normal business hours to any and all books, documents, papers, and records of the subconsultant which are directly pertinent to the services to be performed under the Agreement for the purposes of making audits and examinations.

(j) Equal Employment Opportunity/Minority Business Enterprise. The Consultant agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, the Consultant agrees to abide by all applicable provisions of the Nondiscrimination Clause and the Small and Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office. In the event non-compliance occurs the Consultant, upon written notification by the Water System, will commence compliance procedures within thirty (30) days.

(k) Subconsultants. The Consultant acknowledges that it is the policy of the Water System to assist in increasing the competitiveness and qualifications of Small, Minority, and Woman Businesses (SMWB) to afford greater opportunity for such groups to obtain and participate in Water System contracts. Consultant agrees to complete and submit a Good Faith Effort Plan as part of its response to the Water System's request for a proposal. Consultant shall take all reasonable steps to be in compliance with and maintain compliance with the minimum percentage participations for SMWB set out in Consultant's proposal to the Water System. Consultant shall maintain records of all SMWB contracts and programs and submit a Vendor/Subcontractor Report Form to the Water System when submitting pay requests to the Water System.

(l) Consultant's Warranty. The Consultant warrants that he has not employed or retained any company or person other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not 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 Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, the Water System shall have the right to terminate this Agreement under the provisions of Section 2 below.

(m) Indemnification. Consultant agrees to and does hereby fully indemnify, defend, and hold harmless Water System and the City of San Antonio, and their respective members, agents, employees, officers, directors, trustees and representatives (collectively, "Indemnitees"), individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees (including, without limitation, attorneys' fees), fines, penalties, proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including, without limitation, personal injury or death and property damage, incurred by, asserted against or made upon any of the Indemnitees arising out of, resulting from or related to the acts, commissions or omissions of Consultant, any agent, officer, director, representative, employee, consultant, contractor or subconsultant or subcontractor of Consultant, and their respective officers, agents, employees, directors, and representatives, while in the exercise or performance of the rights or duties under this Agreement. Consultant shall promptly advise the Water System in writing of any claim or demand against the Consultant or any of the Indemnitees which relates to or arises out of the Consultant's activities under this Agreement at Consultant's cost. Any of the Indemnitees shall have the right, at their option and at their own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph. The terms and provisions of this Section 1(m) shall survive the expiration of the term or earlier termination of this Agreement. Nothing in this Section 1(m) shall be interpreted to constitute a waiver of any governmental immunity available under Texas law or any available defenses under Texas law.

(n) Default. In the event Consultant fails to perform its duties or obligations under this Agreement, Water System shall be entitled to any and all remedies available at law or in equity (including, without limitation, the recovery from Consultant of all losses and damages, whether actual, direct, consequential, liquidated or otherwise, and all reasonable attorneys' and other professional fees and costs suffered or incurred by the Water System arising from such default) and, in addition, the Water System shall have the right to terminate this Agreement by written notice as provided in Section 2 below. The Water System shall be entitled to recover reasonable attorneys' fees and costs of dispute resolution incurred in connection with enforcement of this Agreement. In addition, the Water System shall have the right to (1) take possession of all materials and work completed under this Agreement, (2) accept assignment of any sub-consultant agreements relating to this Agreement on terms and conditions acceptable to the Water System, and (3) recover from the Consultant and/or deduct from any sums then owed to the Consultant, all losses, damages, penalties and fines, whether actual or liquidated, direct, consequential and/or exemplary, and all reasonable attorneys' and other professional fees and costs suffered or incurred by the Water System by reason of or as a result of Consultant's default. Such amounts, together with interest on same at the highest rate allowed by law until paid in full, shall be binding on Consultant and are due upon demand. No action by the Water System shall constitute an election of remedies.

## 2. Term, Termination and Suspension.

(a) Term. The term of this Agreement shall be for the period provided in Exhibit D attached hereto and incorporated herein, beginning and ending on the dates provided in Exhibit D; provided, however, that the Water System and the Consultant may extend the Agreement for additional periods of time upon their mutual written consent. In the event that Consultant has not completed the work specified on Exhibit B prior to the end of the term of this Agreement, in addition to any other remedies to which the Water System may be entitled, at law or in equity, Consultant shall pay to Water System, or the Water System may withhold from sums then due and owing the Consultant, the amount of \$ \_\_\_\_\_ per day as "Liquidated Damages" until such time as the work is completed to the Water System's satisfaction. It is hereby acknowledged and agreed that the Liquidated Damages to which the Water System is entitled to hereunder are a reasonable forecast of just compensation for the actual damages for delay of the Project caused by Consultant's failure to complete the work within the time allotted in this Agreement.

(b) Termination For Cause. Water System may terminate this Agreement at any time for "Cause" in accordance with the procedures provided below. Termination by Water System of this Agreement for "Cause" shall mean termination upon: (i) the neglect, breach or inattention by Consultant of its duties hereunder, and such neglect, breach or inattention has not been cured within five (5) days after written notice thereof given by Water System to Consultant, (ii) the engaging by Consultant in willful or fraudulent conduct that is injurious to Water System, monetarily or otherwise, (iii) the failure by Consultant to otherwise perform its duties hereunder and such failure has not been cured within five (5) days after written notice thereof given by Water System to Consultant. Notice shall be deemed given as provided in Section 3(a) of this Agreement. Upon such termination for cause, the Consultant shall not be entitled to any further compensation under this Agreement, except for the compensation which has been earned for services rendered by Consultant in accordance with this Agreement through the date of notice of such termination, subject to offset for damages as set forth in Section 1(n) above, and which shall be paid only after final completion of the work provided for under this Agreement by the Water System.

In the event termination for cause is not proper under this Section, the termination shall be deemed to constitute a termination for convenience as set forth in Section 2(c) below.

(c) Other Termination. The Water System may terminate this Agreement at any time for any reason upon thirty (30) days written notice to the Consultant. Upon termination of this Agreement, the Consultant will be entitled only to the compensation and expenses which have been earned for services rendered in accordance with this Agreement through the date of such termination. No termination of this Agreement shall impair or defeat those obligations set forth elsewhere in this Agreement which require either party to do or refrain from doing any specified act or acts after termination of this Agreement, or to perform any obligation which by its terms or normal meaning survives termination of this Agreement.

(d) Suspension. The Water System reserves the right to suspend work under this Agreement at any time and from time-to-time work for the convenience of the Water System by issuing a written notice of suspension, which notice outlines the reasons for the suspension

and the then estimated duration of the suspension, but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, the date of delivery of the notice of suspension to the Consultant. Upon receipt of a notice of suspension in excess of one hundred eighty (180) days, the Consultant shall have the right to terminate this Agreement by written notice to the Water System. Consultant may exercise this right to terminate any time after a suspension has continued for more than one hundred eighty (180) days, but before the Water System gives Consultant written notice to resume the work. Termination (under this paragraph) by Consultant shall be effective immediately upon the Water System's receipt of said written notice from Consultant.

(e) Winding Up. Upon receipt of a written notice of suspension or termination, unless the notice otherwise directs, Consultant shall immediately phase out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to the Water System under this Agreement.

### 3. Miscellaneous.

(a) Notices. Any notice, communication or request under this Agreement to any of the parties shall be in writing and shall be effectively delivered if delivered personally or sent by overnight courier service (with all fees prepaid), or by facsimile as follows:

If to Water System: San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: [Project Manager]  
Fax: \_\_\_\_\_

With copy to: San Antonio Water System  
2800 US Hwy 281 North  
San Antonio, Texas 78212  
Attn: Frank Stenger-Castro, Vice President and  
General Counsel  
Fax: 210.233.5109

or to Consultant: (Consultant Name)  
(Address)  
(City, State, Zip)  
Attn: (Insert Name)  
Fax: \_\_\_\_\_

Any such notice, request, demand or other communication shall be deemed to be given if delivered in person, on the date delivered, if made by facsimile, on the date transmitted, or, if sent by overnight courier service, on the date sent as evidenced by the date of the bill of lading; and shall be deemed received if delivered in person, on the date of personal delivery, if made by facsimile, upon confirmation of receipt (including electronic confirmation), or if sent by overnight courier

service, on the first business day after the date sent.

(b) Former System Employee Prohibitions. Consultant acknowledges and agrees that any former Water System employee who may establish employment with Consultant shall not, for a period of two (2) years from the date of cessation of employment with the Water System, (i) work on Water System or Water System related contracts or projects which the former employee awarded, managed or participated in while an employee of the Water System, (ii) solicit business from the Water System, nor (iii) participate in the negotiation of contracts with the Water System, unless, in any event, the prior written consent is obtained from the President/Chief Executive Officer (or his designee) of the Water System. The terms of this provision shall survive the expiration of the term or earlier termination of this Agreement

(c) Interest in Water System Agreements Prohibited. No officer or employee of the City shall have a financial interest, direct or indirect, in any Agreement with the Water System, or shall be financially interested, directly or indirectly, in the sale to the Water System of any land, materials, supplies or service, except on behalf of the City or Water System as an officer or employee. Any violation of this Section, with the knowledge, expressed or implied, of Consultant contracting with Water System shall render this Agreement voidable by the Board of Trustees or the President/Chief Executive Officer of the Water System.

(d) Gift Policy. Water System employees are prohibited from soliciting, accepting or agreeing to accept any gifts from outside sources. A copy of Water System's Policy 2-17 "Procedures for Gift and Meal Policy" is available upon request.

(e) Tax Matters. Consultant shall be solely responsible for payment of all taxes related to Consultant's provision of the services. A tax exempt certificate is available upon request for the purchase of materials and goods only with regards to the contracted services of this Agreement.

(f) Assignment; Binding Effect. No assignment, transfer, or delegation of any rights or obligations under this Agreement by Consultant shall be made without the prior written consent of the Water System, which may be withheld in the sole and absolute discretion of the Water System. This Agreement shall be binding upon the parties to this Agreement and their respective legal representatives, heirs, devisees, legatees, or other successors and permitted assigns, and shall inure to the benefit of the parties to this Agreement and their respective legal representatives, heirs, devisees, legatees, or other permitted successors and permitted assigns.

(g) Interpretation; Captions. Whenever the context so requires, the singular number shall include the plural and the plural shall include the singular, and the gender of any pronoun shall include the other genders. Titles and captions of or in this Agreement are inserted only as a matter of convenience and for reference and in no way affect the scope for this Agreement or the intent of its provisions.

(h) Entire Agreement. This Agreement constitutes the entire agreement of the parties to this Agreement with respect to its subject matter, supersedes all prior agreements, if any, of the parties to this Agreement with respect to its subject matter, and may not be amended

except in writing signed by the party to this Agreement against whom the change is being asserted. This Agreement consists of this document and attached Exhibits A, B, C, D and E, all of which are incorporated herein by reference for all purposes. Should any conflict arise between the terms of this document and the attached Exhibits, this document shall be controlling.

(i) No Waiver. The failure of any party to this Agreement at any time or times to require the performance of any provisions of this Agreement shall in no manner affect the right to enforce the same; and no waiver by any party to this Agreement of any provision (or of a breach of any provision) of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Agreement.

(j) Governing Law; Jurisdiction. This Agreement has been entered in, and shall be governed by and construed in accordance with the laws of the State of Texas, without regard to principles of conflict or choice of law. This Agreement is performable in Bexar County and sole venue shall be in the courts of Bexar County, Texas.

(k) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or its terms to produce or account for more than one of such counterparts.

(l) Non-Appropriation. Consultant agrees that the Water System has projected costs for this Agreement and Water System expects to pay all obligations of this Agreement from projected revenues of the Water System. All obligations of the Water System are subject to annual appropriations by its Board of Trustees. Accordingly, notwithstanding anything in this Agreement to the contrary, in the event that the Water System should fail to appropriate funds to pay any of Water System's obligations under the terms of this Agreement, then the Water System's obligations under this Agreement shall terminate, and the Consultant's sole option and remedy shall be to terminate this Agreement by written notice to Water System, and neither the Water System nor the Consultant shall have any further duties or obligations hereunder, except those which expressly survive.

DULY EXECUTED and delivered by the parties to this Agreement, effective the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

THE WATER SYSTEM:

San Antonio Water System

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

Robert R. Puente  
Interim President/Chief Executive Officer

CONSULTANT:

(Insert Consultant Name)

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

Signature

\_\_\_\_\_  
Title

LIST OF EXHIBITS:

- Exhibit A: Compensation for Consulting Agreement
- Exhibit B: Scope of Services
- Exhibit C: Standard Insurance Specifications
- Exhibit D: Term and Timeframe for Deliverables
- Exhibit E: Security Procedures