

**PROGRAM MANAGEMENT SERVICES AGREEMENT
FOR THE SAN ANTONIO WATER SYSTEM
SERVICE CENTER FACILITIES PROGRAM**

This Program Management Services Agreement (“Agreement” or “Contract”) is made and entered into on this [] day of [], 2011 between the San Antonio Water System, an agency of the City of San Antonio in the State of Texas, hereinafter called “Owner” and [], a [] corporation, having its principal place of business located at [] (“Program Manager”).

RECITALS

WHEREAS, the San Antonio Water System is undertaking a Service Center Facilities Program, and as part of this endeavor, has determined that it requires the services of a Program Management Consultant; and

WHEREAS, Program Manager is qualified and has agreed to provide the services contemplated hereunder; and

WHEREAS, Owner has agreed to compensate Program Manager for these services, as provided herein;

NOW, THEREFORE, in consideration of the mutual promises, commitments and representations herein it is hereby agreed as follows:

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I. Definitions

1. **“Additional Service(s)”** shall have the meaning set forth in [Section IV.4](#).
2. **“A/E”** means the Service Provider(s) engaged by the Owner as the Architect/Engineer(s) for the Project(s), and their subconsultants.
3. **“Anticipated Program Schedule Completion Date”** means the date for final completion of the Program as shown on the Program Master Schedule.
4. **“Applicable Laws”** means the laws, rules, regulations, codes, ordinances and restrictive covenants (whether federal, state or local) of any kind governing the Program or the development, approval, use or occupancy of the Projects.
5. **“Assignment”** means an assignment of Additional Services as described in a Task Order.
6. **“Board”** shall mean the San Antonio Water System Board of Trustees, which is the governing body of the Owner.
7. **“Building Information Model”** or **“BIM”** means a computable representation of all the physical and functional characteristics of the Project facilities and their related life-cycle information, to serve as a repository of related information, as required by the Building Information Modeling Protocols ([Exhibit L](#)), for use by the Project Team during the design, bidding and construction phases of the Project, and for the Owner to continue to use and maintain throughout the life-cycle of the Project.
8. **“Confidential Information”** means all data and information of Owner, including all Work Product, which Owner owns as its proprietary and/or confidential property, including but not be limited to, trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, source code, schematics, designs, contracts, vendor and contractor lists, financial information, operational plans and schedules and business information in any way relating to the Projects.
9. **“Conflict of Interest”** shall have the meaning set forth in [Section V.9](#).
10. **“Construction Contract Documents”** means all the contract documents comprising the contract between the Owner and the Construction Manager, including, as applicable, the

Owner's solicitation, addenda, notice(s) to bidders, Construction Manager's Guaranteed Maximum Price(s) (as applicable), prevailing wage schedule, list of subcontractors, the Owner's notice to proceed, bonds, general provisions, special provisions, Specifications, Drawings, all modifications, all written amendments, change orders, field orders, orders for minor changes in the work, and the Architect/Engineer's written interpretations and clarifications issued on or after the effective date of such contract.

11. **“Construction Cost Limitation”** means the maximum amount of funding that has been authorized by and is available to Owner to pay Construction Manager for the services and Work required under the Construction Contract Documents, including any preconstruction services fee, Guaranteed Maximum Prices (including all construction management fees therein) and all change orders.
12. **“Construction Documents”** means those Construction Contract Documents to be prepared and issued by the Architect/Engineer and approved by the Owner, setting forth in detail the requirements for construction of the Project, including Drawings and Specifications that establish in detail the levels of quality and functionality for the materials and systems to be incorporated into the Project(s), as well as any compilation of all or a part of the Construction Documents to be referred to as the Project Manual.
13. **“Construction Manager Service Provider”** or **“Construction Manager”** means the Service Provider(s) engaged by the Owner as the Construction Manager(s)-at-Risk or the General Contractor for the Project(s).
14. **“Construction Project Management Software”** or **“CPMS”** means a single point, collaborative sharing, state of the art, Web-based project communication and information management system approved by the Owner with, at a minimum, the following features: collaboration capabilities allowing for use of BIM software; estimation and planning; scheduling; cost control and budget management; resource allocation; quality management; and document management capabilities, all as more fully described in Section IV.2(A)(3).
15. **“Cost of Construction”** shall mean the Owner's total cost to complete construction of all Projects, including all Project components, which includes all permitted costs the Construction Manager necessarily incurs to properly perform the Work in compliance with the Construction Contract Documents, exclusive of all design, construction management, and consulting fees and markups for overhead and profit.
16. **“Design and Pre-Construction Phases”** refers to the phases set forth in the order in which they will occur, as listed below:
 - (A) **“Conceptual Design Phase”** means that stage of a Project culminating in the preparation of a preliminary design or series of preliminary design alternatives based on the Program Manager's review of the Owner's Program and the A/E Service Providers' design challenge submissions. This phase includes the

Program Manager’s preliminary evaluation of alternative approaches to designing the Project, taking into consideration the requirements of the Project, as contemplated by the Program Budget, illustrating the scale and relationship of the Project components, as approved by Owner.

- (B) **“Schematic Design Phase”** means that phase of a Project that follows the Conceptual Design Phase, culminating in the preparation of preliminary drawings and other documents including a site plan and preliminary building plans, sections and elevations, study models, perspective sketches, or digital modeling, alternative material selections, all as approved by Owner.
 - (C) **“Design Development Phase”** means that phase of a Project that follows the Schematic Design Phase, and culminates in the preparation of fully developed design documents as approved by Owner and based on the input of the Owner and its representatives on the preliminary schematic design documents, and consisting of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of a Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate, and specifications that identify major materials and systems and establish in general their quality levels.
 - (D) **“Construction Documents Phase”** means that stage of a Project that follows the Design Development Phase, and culminates in the preparation of construction design documents as approved by Owner that illustrate and incorporate Owner’s approved changes to the Design Development Documents and consisting of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work, subject to additional information to be provided by the Construction Manager for the A/E Service Provider’s review, such as shop drawings, product data, samples and other similar submittals.
 - (E) **“Bidding and Negotiation Phase”** means that phase of a Project that follows the Construction Documents Phase, and culminates in the preparation of construction bidding documents as approved by Owner to be issued to prospective bidders for submission of proposals to provide construction services and the incorporation of any substitutions or modifications that Owner may, as a result of the bidding and negotiation process, approve for inclusion in the Construction Documents.
17. **“Drawings”** means the graphic and pictorial portrayal of portions of the Construction Documents, and including all information required for building information modeling purposes, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
18. **“Effective Date”** means the effective date of this Contract as stated on the first line of this Contract, above.

19. **“Excusable Delay”** shall have the meaning set forth in [Section VI.3](#).
20. **“Existing Facilities”** shall have the meaning set forth in [Exhibit I](#).
21. **“Final Completion”** means that stage of completion by which all deficiencies in the Work which have been presented to the Construction Manager by the Owner, Program Manager, Architects/Engineer, all Building Inspectors, and all other governmental authorities having jurisdiction have been corrected, completed, or otherwise addressed to the satisfaction of such governmental authorities as evidenced by the issuance of a Final Certificate of Occupancy by the authority having jurisdiction. It shall be a condition precedent to Final Completion that the Architect/Engineer shall have delivered to the Owner and the Program Manager written documentation from the United States Green Building Council (“USGBC”) and the Green Building Certification Institute (“GBCI”) evidencing that the Project has achieved a Leadership in Energy and Environmental Design (“LEED”) rating of “Silver” under LEED 2009 New Construction and Major Renovations (or such other level of certification as Owner may establish in accordance with [Section II.1\(A\)](#)), and the Architect/Engineer has issued a certificate of final completion signed by the Construction Manager, Program Manager and Owner.
22. **“Fixed Limit of Cost”** means that portion of the Program Budget for the Project(s), as approved by Owner, for the design and construction, and procurement of furniture, fixtures and other equipment (FFE) to be installed in the Project(s). Fixed Limit of Cost shall be established upon Board approval of the Program Budget. The Fixed Limit of Cost may be adjusted up or down at any phase of the Project by the Owner, in the Owner’s sole discretion, whether by use of any contingency budgeted by Owner or otherwise, subject to approval of the Board.
23. **“Hourly Fee Rates”** shall mean the rates set forth in [Exhibit E](#) for Additional Services, if any, to be performed by the Program Manager.
24. **“Owner”** means the San Antonio Water System and its authorized representatives and successors in interest.
25. **“Owner’s Project Manager”** means Julie Valadez, or such other representative as may be designated in writing by Owner, who has the authority to act on behalf of Owner with respect to the Work and Services under this Agreement.
26. **“Owner Indemnitees”** means Owner, its trustees, directors, officers, employees and any other persons or entities expressly identified as Owner Indemnitees as under [Section VIII](#).
27. **“Owner’s Written Notice to Proceed”** means the written notice that Owner issues to Program Manager to proceed with the performance of the Services hereunder, which shall be issued only upon Owner having approved this Contract for execution by its duly authorized officer.

28. **“Parent Company”** means _____, a _____ corporation, which owns all of or a controlling interest in the stock of Program Manager’s corporate entity, and whose principal corporate headquarters are located in _____.
29. **“PM Contract Documents”** means this Contract and all of the Exhibits attached hereto and which are expressly identified herein to be incorporated as a part hereof, in addition to all amendments or supplements that may be mutually agreed upon by Owner and Program Manager, and any Changes that may become effective in accordance with the provisions of this Contract, from time to time.
30. **“Program”** means the Service Center Facilities Program, which is the Program to be developed by the Program Manager and approved by Owner in conjunction with development of the individual Projects, including development of the Program Management Plan (PMP) and Project Implementation Plan (PIP), which will include all appropriate components for the implementation of each Project. The Service Center Facilities Program is comprised of three Program Phases as described in [Section II](#), Program Description, below.
31. **“Program Budget”** shall mean the budget developed by the Program Manager for all aspects of the Program. The Program Budget includes itemized cost for the design and construction for each of the Projects, and procurement of furniture, fixtures and other equipment (FFE) to be installed in each of the Project(s), all land acquisition costs, and all legal fees and other expenditures required of Owner to develop and implement the Program. The Program Budget shall appropriately allocate Owner’s available funds to specific line items of cost for each of the Projects and shall be presented to the Owner and its Board for establishment of the Fixed Limit of Cost and Construction Cost Limitation for each Project.
32. **“Program Management Plan”** or (“PMP”) shall mean a management plan for the Program, to be developed by the Program Manager, which PMP shall also include Project Implementation Plans specific to each of the Projects, as more fully described in [Section IV.2\(A\)](#).
33. **“Program Manager”** means _____, a _____ corporation, having its principal corporate headquarters located at _____.
34. **“Program Manager Personnel”** means and includes all Program Manager’s subcontractors, subconsultants and vendors of any tier who, subject to Owner’s approval in accordance with [Section IX](#), below, enter into a contract to perform any of Program Manager’s obligations or duties hereunder.
35. **“Program Manager’s Fee”** shall mean the lump sum fee that Program Manager agrees to accept for the performance of the Services, as set forth in [Section VII.1\(A\)](#).

36. **“Program Manager’s Fee Schedule and Staffing Plan”** is that fee schedule that provides for payment of the Program Manager’s fee and Program Manager’s plan for staffing to be included in Program Manager’s Fee, as described in Program Manager’s Fee Schedule and Staffing Plan (**Exhibit A**).
37. **“Program Master Schedule”** shall mean a comprehensive schedule prepared by the Program Manager for the Owner, incorporating the Project Schedules for each of the Projects, and integrating all major Project activities, including the following: (i) phasing and alternatives for accelerating completion based on detailed phasing plans developed by the Program Manager; and (ii) establishment of schedule milestones and procedure relationships to a level of detail acceptable to the Owner.
38. **“Program Phase(s)”** shall mean the phase(s) for implementation of the Program, as described in [Section II.1\(B\)](#). Program Phase(s) are separate and distinct from the Design and Pre-Construction Phases for the various Projects.
39. **“Project(s)”** shall mean the projects comprising the San Antonio Water System Service Center Facilities Program, which include the following Projects: (i) the Far West Service Center Project; (ii) Modifications to Existing Facilities Project; and (iii) the Satellite Center Facilities Project, including all Program Phases as they relate to each of the Projects, all as further defined in [Section II](#).
40. **“Project Manual”** means the compilation of the general requirements and the Specifications developed and issued by the Architect/Engineer for the Work.
41. **“Project Schedule(s)”** shall mean the schedule or schedules prepared by Program Manager and approved by Owner for execution of each of the Projects.
42. **“Project Team”** means the Owner, Program Manager, Architect/Engineer, and Construction Manager for the Project(s). The Project Team members will be designated by each of the foregoing Project Participants, subject to the approval of the Owner. The Project Team members may be changed from time to time with the approval of the Owner, in its sole discretion.
43. **“Scope of Services”** shall have the meaning set forth in [Section IV](#).
44. **“Services”** means all consultancy, managerial, budget control, scheduling, and other professional services to be performed by Program Manager hereunder, as further described in [Section IV](#).
45. **“Service Providers”** means all architectural and engineering service firms, construction managers, commissioning agents, construction contractors, subcontractors and suppliers of the geotechnical, environmental, engineering, architecture, materials, systems, construction management, construction and other services and vendors of equipment and materials (whether or not procured by Owner) for the Projects, but does not include the Program Manager or its personnel or subconsultants.

46. **“Specifications”** means that portion of the Construction Documents consisting of the written technical requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services, including all requirements of applicable building and life safety codes.
47. **“Standard of Care”** shall have the meaning set forth in [Section V.2](#).
48. **“Substantial Completion”** means that stage of completion by which the Work or a portion thereof is accepted by execution of a certificate of Substantial Completion by Owner, Program Manager and Architect/Engineer as sufficiently completed, inspected, and approved by the appropriate regulatory authority or authorities as evidenced by issuance of a Certificate of Occupancy, for Owner’s occupancy or partial occupancy for its intended purposes, excluding only minor portions of the Work that remain unfinished pending Final Completion and final inspection. Partial use or occupancy shall not result in the Project being deemed substantially complete and shall not be evidence of substantial completion.
49. **“Task”** means a Task as described in a Task Order for Additional Services.
50. **“Task Order”** means a Task Order as described in [Section IV.4](#), assigning a Task(s) to the Program Manager to be performed as Additional Services.
51. **“Work”** means all labor, parts, supplies, skill, supervision, transportation, construction related activities, and all other items of cost or value, and other facilities and things necessary, proper or incidental and required or reasonably inferable to produce, construct and fully complete the construction of the Projects in strict accordance with the requirements of the Construction Contract Documents (as they may be modified or amended). The Work also refers to the performance of the physical construction thereof, as well as the incorporation of all material and equipment therein.
52. **“Work Product”** shall mean all work product, including all instruments of service, submittals, Drawings, Specifications, Building Information Models, plans, data compilations or calculations, studies, reports, or other documents, and all ideas incorporated therein, and all intellectual property rights associated therewith, which are prepared by or on behalf of Program Manager or any Service Provider in connection with the PMP, the PIP, the Program, and/or the Projects or in connection with the performance of the Services or Additional Services hereunder, which Work Product shall be and remain the exclusive property of Owner, and shall not be used by Program Manager or Program Manager’s Personnel, except in connection with the Service Center Facilities Program, without the Owner’s prior written consent.

II. Program Description

1. Description of Program.

- (A) The Program includes all aspects of the Owner's Program for the planning, development, engineering and design, procurement, demolition, renovation and construction of facilities and improvements related to the Projects, including but not limited to all program management services, project management services, architectural and engineering services, geotechnical, environmental, commissioning and other consulting services, and construction services in support of the Service Center Facilities Program, all as more fully described in [Section IV](#) below and in the Program Manager's Detailed Task List of Services (**Exhibit N**). The Program Manager acknowledges and understands the Owner's objective that the Projects be designed and constructed in accordance with LEED 2009 New Construction and Major Renovations, such that all Projects achieve at least a "Silver" certification by the USGBC and GBCI. Program Manager shall assist, and shall cause the Architect/Engineer to assist if necessary, Owner in evaluating the feasibility of achieving a higher or lower level of LEED certification for each Project. Failure of any of the Projects to achieve, or lose through an appeal to the USGBC, such certification as a result of the Program Manager's (or any Program Manager Personnel) failure to adhere to its Standard of Care shall be considered a material breach of this Agreement.
- (B) The Program includes the various Program Phases for the development of facilities and improvements, and related renovations. Program Phases may overlap in the Program Master Schedule and Project Schedules. The Program Phases are described as follows:
- (1) Phase I - Far West Service Center Project. The Far West Service Center (FWSC) is to be constructed in Phase I. It consists of a service center operations facility located on an existing site of Owner. The FWSC will be comprised of three (3) buildings totaling approximately 58,000 square feet (sf). The FWSC will also include a fully operational service yard including fuel islands, fleet parking, employee parking, truck and car wash, pipe supply, outdoor material storage, training areas and security.
 - (2) Phase II - Existing Facilities Project. Facility assessments, project scheduling and coordination of construction of renovations, additions and modifications at Owner's existing service centers shall be completed in Phase II, to accomplish realignment of operations at the Existing Facilities with the FWSC. This Program phase also includes the following:
 - (a) Facility condition assessments of the Eastside Service Center, Northwest Service Center and Northeast Service Center;
 - (b) Implementation of phased construction schedules of the New Far West Service Center, and improvements to Existing Facilities with minimal impact to Owner's existing operations;

- (c) Implementation of realignment strategy of staff, fleet and equipment from Eastside Service Center, Northwest Service Center, Northeast Service Center, and Mission Road Service Center into the New Far West Service Center, and improvements to Existing Facilities; and
 - (d) Establishment of scheduled dates for (i) Substantial Completion, (ii) relocation of staff into the New Far West Service Center, and (iii) improvements to Existing Facilities in a coordinated, sequenced manner.
- (3) Phase III - Satellite Center Facilities Project. Construction of two (2) new satellite center facilities shall comprise Phase III. This phase will establish operation hubs that will enable Owner to efficiently respond to future growth in Owner's service area.

The Program Manager will review Owner's Program for each Program Phase, each Project, and each impacted Existing Facility for efficiencies and improvements and provide a Program summary for each Project. This summary will be based on Program Manager's comprehensive understanding of the existing users and location of user groups, and shall include at a minimum a program review for the overall Service Center Facilities Program, scheduling of consultants and Service Providers for each Program phase, sequencing of construction, and site location assessment.

- (C) As the Program Manager develops the PMP and the PIP, the parties contemplate that the facilities and improvements for the Projects may be revised, deleted, enhanced or otherwise adapted, as Owner determines to be appropriate for the recommendation of a final PMP and PIP for adoption by the Owner, at no additional cost or fees to the Owner. The Program Manager shall complete the PMP for Owner's final approval by no later than 30 days after the Effective Date.

2. **PM Contract Documents.** The PM Contract Documents include the following Exhibits, each of which are incorporated by reference as if fully stated herein:

- (A) Program Manager's Fee Schedule and Staffing Plan, which includes an organizational chart identifying all Program Manager Personnel in key positions and all subconsultants, attached hereto as **Exhibit A**;
- (B) Program Manager's Acknowledgement of Data Use Protocols, attached hereto as **Exhibit B**;
- (C) Program Manager's Confidentiality Agreement, attached hereto as **Exhibit C**;

- (D) Resolution in Support of Contract, executed by Program Manager’s Governing Board of Directors, attached hereto as **Exhibit D**;
- (E) Schedule of Program Manager’s Hourly Fee Rates for Additional Services, attached hereto as **Exhibit E**;
- (F) Owner’s Security Procedures, attached hereto as **Exhibit F**;
- (G) Schedule of Program Manager’s Reimbursable Costs and Expenses, attached hereto as **Exhibit G**;
- (H) Owner’s Requirements of Insurance, attached hereto as **Exhibit H**;
- (I) List of Owner’s Existing Facilities, attached hereto as **Exhibit I**;
- (J) Agreement to Adopt Dispute Resolution Procedures, attached hereto as **Exhibit J**;
- (K) Executed Parent Guaranty of _____, as Guarantor of Program Manager’s obligations under this Contract, attached hereto as **Exhibit K**;
- (L) Building Information Modeling Protocols and AutoCAD Standard Exchange Protocols, attached hereto as **Exhibit L**;
- (M) Owner’s Confirmation of Funding, attached hereto as **Exhibit M**; and
- (N) Program Manager’s Detailed Task List of Services, attached hereto as **Exhibit N**.

III. Term of Agreement

1. **Term of Agreement.** This Contract shall remain in effect until the latter of the date on which expiration of the Construction Manager’s warranty period occurs for the last completed Project, or the date on which all Projects have achieved LEED “Silver” certification by the USGBC (or such other level of certification as Owner may establish in accordance with [Section II.1\(A\)](#)), by which latter date all Services of the Program Manager shall be deemed completed. Notwithstanding expiration of this Contract pursuant to the foregoing, unless Owner otherwise directs in writing, Program Manager shall complete all outstanding Tasks assigned prior to the expiration of the term hereof.

IV. Scope of Services

1. **General Program Management Services.**

- (A) Program Manager shall, in exchange for Owner's agreement to pay to Program Manager the Program Management Services Fee, and in accordance with the Program Manager's Standard of Care, perform all Services, and oversee the performance of all services and Work, including architectural and engineering, procurement, construction, geotechnical and commissioning services, as necessary for the execution and completion of the Projects in accordance with the Service Center Facilities Program, using methodologies, systems and practices as described in [Section IV.1\(B\)](#), below. Subject to [Section XV.10](#), all Services shall be performed with the reasonable involvement, cooperation and assistance of, and subject to the approval of, the Owner. Program Manager shall also perform the Services so as to cause the Services to be performed in accordance with the Program Manager's Standard of Care.
- (1) Program Manager shall provide all geotechnical engineering, commissioning and surveying services necessary to support the successful execution and completion of the Program and Projects, including but not limited to establishing and implementing all commissioning protocols and commissioning plans, and providing all soils reports, site surveys, traffic engineering, tree surveys and topographical surveys as needed for all Program Phases and for all impacted facilities. In the event Program Manager subcontracts with a professional services provider for the provision of any geotechnical engineering, commissioning or surveying services, or any other professional services required herein, such services shall be procured in accordance with all applicable laws, including but not limited to Section 2254, Subchapter A, of the Texas Government Code.
 - (2) The Program Manager shall, if requested by Owner and at no additional cost to Owner, participate in public awareness and community outreach presentations as required periodically throughout the Program.
- (B) **Methodologies, Systems and Practices.** In performing the Program Management Services hereunder, the Program Manager shall consider and make recommendations to Owner concerning Owner's adoption as a part of the best industry practice methodologies, systems and practices, to the extent reasonably and commercially appropriate, as follows:
- (1) Methodologies (including incentive based methodologies) to contract design, construction and procurement services;
 - (2) Project communications, information management, and document control systems (ensuring full time, continuous access to CPMS and communication of latest updated project information among all participants in the Project, including Owner, and maintenance of a log of the record date and time of transmittal and receipt of such information as between each sender and recipient);

- (3) Quality control processes encompassing applicable code and functional space program compliance through commissioning;
 - (4) Cost and schedule control systems and practices within the CPMS for cost estimating and reporting, including a comprehensive system for tracking and forecasting costs throughout the process of development of designs and construction processes;
 - (5) Value engineering and analysis methodologies; and
 - (6) Master and detailed scheduling within the CPMS (providing for detailed assignment of responsibility and tracking of performance).
- (C) The foregoing notwithstanding, Program Manager understands and acknowledges that Program Manager has assumed the contractual obligation to Owner to assist Owner in the oversight and management of the Service Center Facilities Program, and that Program Manager shall have authority to manage and communicate with the Service Providers on Owner's behalf. Unless otherwise directed by Owner, the communications of a Service Provider with respect to the Services shall be directed to Program Manager, who shall be the single point of contact to Owner for the Service Providers; provided, however, nothing in this Contract shall be construed to limit or restrict the right of Owner to communicate directly with a Service Provider at any time. Owner expressly reserves such right hereunder, which right Owner intends to expressly reserve in all of Owner's contracts with the Service Providers. In no event shall Owner's election to initiate any such communication be deemed or construed to be an interference with the contractual relationship or rights of Program Manager or any Service Provider, or an abrogation of any rights of Owner under this Contract.

2. **Specific Program Management Services.** To more particularly describe the Scope of Services, Program Manager shall:

- (A) **Program Management Plan.** Recommend to Owner and establish a Program Management Plan (PMP) that will allow for organized and proper management of all Projects and all Phases of the Program. Program Manager shall prepare the PMP for all Projects for incorporation into the Program in cooperation and consultation with the Owner with the objective of optimizing opportunities for Owner to reduce Project costs and expedite delivery of the Projects, to the extent reasonably and commercially possible. The PMP will include, but not be limited to:
- (1) Establishment and implementation of the following protocols: (i) a communication protocol which includes a visual organizational chart of key team players and diagrammatic depictions of the flow of communication; and (ii) a decision making and approvals protocol, including a flow chart of team roles and decision making points. The

protocols herein shall be continuously managed and updated as A/E(s), Construction Manager(s), subconsultants, other Service Providers, and Owner's consultants are added to the Project Team(s). Facilitate management and tracking of all team communication, including tracking of the status of all actions, items and activities, and the parties responsible therefor, and coordinate with Program Master Schedule and individual Project Schedules during design and construction.

- (2) Coordination of day-to-day operations of the Project Team, including the A/E(s), Construction Manager(s), and their respective sub-consultants and subcontractors, and Owner's consultants, as well as conduct and document team meetings to establish and meet the Program Master Schedule.
- (3) Implementation, coordination, and management of the CPMS. Prior to implementation of a CPMS for the Program, Program Manager shall develop an advisory memorandum for Owner describing in detail the construction project management software currently utilized by Program Manager, and include in such memorandum Program Manager's recommendations to Owner for a software system based on Owner's requirements set forth below and in Section I.14. Further, Program Manager shall include in such memorandum five (5) owner references currently using the recommended software system. Owner shall have the right to reject Program Manager's recommended construction project management software and require Program Manager, at no additional cost to Owner, to adapt and implement Owner's standard CPMS (exact system yet to be defined).

Program Manager shall provide and assign a key team member as a single point of contact to manage and maintain the CPMS on a daily basis. The CPMS shall provide all project participants and the Owner real time access to all Project information and communication throughout the completion of each Project. The recommended CPMS system shall:

- (a) Provide effective and organized methods of archiving information to facilitate retrieval when needed;
- (b) Consist of a complete paperless filing and document management with query capabilities across multiple Projects, with ongoing retrieval and support available to the Owner;
- (c) Provide for integrated project delivery if needed;
- (d) Allow real time access to the all project participants and the Owner to all project information and communication, and redline interface and markup capabilities on all documents and drawings;

- (e) Allow for multiple Projects within the same user interface and database, which will allow for a master report as well as individual Project reports for schedules, costs, changes, communication, and bidding;
- (f) Allow the Owner to establish role-based security and assign “titles” to all project participants which will limit access to different team members based on their role on the Project;
- (g) Allow for facilities maintenance features and capabilities that will allow the Owner continued access to all Project information and communication;
- (h) Allow for pre-configured and customizable templates with custom fields that allow for online input and queries and searches for standard forms of communication, including but not limited to Requests for Information, Architect’s Supplemental Instructions, Submittals, and Field Reports;
- (i) Be all inclusive and allow for scheduling, document control, cost and schedule forecasting, and cost-estimating, all in the same software system without the need for add-ons or supporting software systems, as more fully described in Section IV.2(A)(6);
- (j) Allow for structured workflow approvals and for document management or tracked flowchart approval process;
- (k) Include a tracking system and log of all changes, including identification of the team member handling the change, as well as cost and schedule implications;
- (l) Provide live technical support (service level agreements to be negotiated by Program Manager and Owner once a CPMS is selected);
- (m) Include a central vendor contact database that can synchronize with Microsoft Outlook and other commonly used databases; and
- (n) Provide security for data and transactions to protect Owner’s critical infrastructure.

- (4) Implementation, coordination, and management of state of the art PC based project communication for BIM (building information modeling) shared file and CAD shared file systems in accordance with **Exhibit L**. The Owner will cause the Architect/Engineer to provide to Program Manager and Program Manager Personnel, free of charge, limited electronic access to use and make copies of BIM data and electronic files of Construction Documents, subject to their prior execution and compliance with the Acknowledgement of Data Use Protocols (**Exhibit B**), with respect to such data and electronic files, in accordance with [Section V.10](#) (Confidentiality).
 - (5) Implementation, coordination, and management of a state of the art project quality control process that considers all aspects of quality from code and functional space program compliance through Project completion for all Phases and all impacted facilities.
 - (6) Implementation, coordination, and management of a state of the art project cost and schedule control processes and related policies including but not limited to the following:
 - (a) Estimating; cost reporting including a comprehensive system for tracking and predicting the cost of all items of change whether in the design or construction process; independently formulated cost estimates and cash flow projections;
 - (b) Value engineering and value analysis and identification of methods to reduce cost, shorten schedule, and/or utilization of substitute materials and systems;
 - (c) Budget analysis methods and identification of strategies for optimum utilization of Owner's limited financial resources; and
 - (c) Master and detailed scheduling (with related responsibility assignment); establishment and routine tracking of completion of all scheduled milestones.
 - (7) Develop the schedule to engage the selected A/Es, Construction Manager(s), and other Service Providers deemed necessary for the Program, for all Project Phases.
- (B) **Project Implementation Plan.** Recommend to the Owner and establish a Project Implementation Plan (PIP) to include all appropriate components for the

implementation of each of the Projects. Program Manager shall prepare the PIP in cooperation and consultation with the Owner with the objective of optimizing opportunities for Owner to reduce Project costs and shorten Project delivery schedules, to the extent reasonably and commercially possible. Program Manager shall recommend Owner approval and adoption of a final PIP within 120 days from the date of issuance of Owner's Written Notice to Proceed. Once the final PIP has been approved by Owner, such date of approval shall serve as the Owner's notice to the Program Manager to proceed to execute the PIP, as approved by Owner for the initial phase. The PIP is to specifically focus on the following:

- (1) Review the Program for each Project and each Existing Facility for efficiencies and improvements and provide a Program summary for each Project. This will include comprehensive understanding of the existing users and location of user groups, program review for overall Service Center Facilities Program, scheduling of consultants and Design team for each Phase, sequencing of construction, and site location assessment.
- (2) Analyze the Owner's Program for each Program Phase and each facility and review the conditions of the site and develop a Program Budget and Program Master Schedule, to be presented to the Board and approved by the Owner.
- (3) Analyze Owner's Existing Facilities and provide a comprehensive facility condition assessment of the Eastside Service Center, Northwest Service Center and Northeast Service Center. Program Manager shall prepare an assessment ("Facility Condition Assessment") to accurately determine the extent of repairs needed to cause each of these facilities to be in compliance with all applicable building codes and programmatic revisions. A list of Owner's existing facilities by area type, age and location are attached as **Exhibit I**. The Facility Condition Assessment shall, at a minimum, accomplish the following for each of the existing facilities herein identified:
 - (a) Identify deficient conditions of the facility, as well as any health/safety or non-compliant code issues in respective building systems;
 - (b) Identify options for correcting each facility and itemize such options based on deficient conditions encountered (corrective actions);

- (c) Provide cost estimates for correcting deficient conditions in each facility, using current industry standard construction data;
- (d) Establish the relative condition of the facility using a ratio of needed repairs over replacement value;
- (e) Conduct review workshop on the results of the Facility Condition Assessment with Owner's staff and the impact of the conditions Assessment on the Program, Program Budget and Program schedule.
- (f) Conduct inspections (inspections to be performed by Program Manger's architectural and engineering professionals) of all facilities as specified herein. Program Manager shall produce an accurate analysis that identifies visible and discernable (through non-destructive means) components as well as elements requiring repair or replacement effort to existing maintenance equipment or other planned actions. The final summarized report will include the Facilities Condition Index (FCI) for each of the existing facilities and a recommendation for repair, renovation or replacement, that includes estimates of cost and schedule.
- (g) The Facility Condition Assessment will include, but not be limited to, the following property elements:
 - (i) Site – Sidewalks, parking and accessibility;
 - (ii) Exterior Systems – roofs, walls, window systems, doors;
 - (iii) Interior Construction – walls, doors, flooring, visible structural components, foundation;
 - (iv) Environmental – including asbestos, mold, air quality
 - (v) Interior Finishes – flooring, ceiling, wall finishes;
 - (vi) Health/Fire/Life – building code & safety systems;
 - (vii) Accessibility – ADA and TDLR requirements;
 - (viii) Building systems: Retro commissioning of systems, including: HVAC, Plumbing, Electrical, Lighting control systems, Fire suppression system, and security systems; and

- (ix) Special Construction/ systems (elevators, telecom, low voltage systems, and other systems).
- (h) Analyze Owner's realignment and move phasing sequence models against Project Schedules to increase efficiencies and identify opportunities to shorten construction schedules through performance of the following non-exclusive tasks:
 - (i) Prepare a proposed alignment strategy memorandum;
 - (ii) Develop schematic layouts and drawings of alignment options;
 - (iii) Review and analyze Owner's current alignment strategy and provide conceptual alignment options with an explanation of the benefits and disadvantages of each option;
 - (iv) Provide imagery exhibits showing the alignment options;
 - (v) Include recommendations for any additional acquisitions for permanent and temporary staff accommodations during the re-alignment;
 - (vi) Conduct coordination to identify all potential conflicts with Owner's existing operations; and
 - (vii) Conduct review workshop on the alignment alternatives with Owner's Project Manager and other key members of Owner's staff.
- (C) **Program Manager Control and Oversight.** As the Program Manager develops the PMP and PIPs and subsequently begins performance of Services on each of the specific Projects with the Service Providers, the Program Manager will be responsible for communication, cost, schedule control and oversight. This will comprise the following:
 - (1) Prepare for Owner's approval a Program Master Schedule (for all Projects), in keeping with schedule milestones approved by Owner in the PIP, to include phasing and alternatives for accelerating completion, and based upon detailed phasing plans to be prepared by Program Manager. The Program Master Schedule shall integrate all major project activities and establish milestones and precedence relationships to a level of detail reasonably acceptable to Owner. In addition, the Program Manager shall:

- (a) Cause the A/E(s) and Construction Manager(s) to prepare detailed schedules for the timely completion of their respective activities and implement CPMS system to integrate each Project Schedule into the Program Master Schedule and to provide regular schedule progress reports (all schedules must be integrated and live via web-based online collaborative system);
 - (b) Update the Project Team at regular Project meetings of the status of the Program Master Schedule and tasks needed to recover any lost days to maintain the approved Program Master Schedule;
 - (c) Continuously and independently evaluate and monitor progress of the Projects and effectively coordinate the design, construction, and procurement activities for the Projects on a day-to-day basis, so as to timely achieve all scheduled milestones in accordance with the Program Master Schedule;
 - (d) Cause Service Providers and consultants to perform services in a timely fashion and in a manner that supports the Program Master Budget. Keep Owner fully apprised of the status of progress of all major scheduled activities (or such other activities as Owner may specifically direct from time to time), and the occurrence of any events or circumstances that delay or may threaten to delay progress in accordance with the Program Master Schedule. Make recommendations to Owner as necessary to maintain the schedule; and
 - (e) Adjust the Program Master Schedule in the event of a suspension of Work, or suspension of a part or all of the Program, as described in [Section X.6](#).
- (2) Compare initial budget and schedule with plans emerging from the Owner's required Program, Conceptual Design Phase, Facility Condition Assessments, and proposed alignment strategy, and provide Program Budget and Program Master Schedule, and rework Program and schedule as needed to align with Owner's Program Budget and prepare summary presentations for Board review as required by Owner.
- (3) At the Owner's discretion, Program Manager may be required, during specific phases, to have an assigned team member or members be stationed on site or at one of Owner's facilities. Program Manager shall have a daily presence and shall provide administrative support to the Owner's Project Manager. Program Manager shall provide its own office equipment, computers, software, and office supplies as required at no additional cost to Owner.

- (4) Continually review all elements associated with the Program against the Program Budget and Program Master Schedule, including any amendments or changes thereto, as approved by Owner from time to time, and including all supporting documentation used in the development and implementation of the PMP and PIP and propose alternatives that would accelerate project delivery and reduce costs.
- (5) Oversee the development of the scope of services and Work, solicitations, and review of contracts for the selected A/E(s), Construction Manager(s), and other Service Providers that Owner deems necessary for the Program, for all Program Phases and all impacted facilities.
- (6) Review qualification submissions, bids and submittals of Service Providers and make recommendations to the Owner as to the acceptance or rejection thereof, as appropriate to the execution of each PIP. Assist Owner in issuing bid solicitation documents and addenda with respect to the Projects, receiving bids and proposals from and awarding contracts to certain Service Providers, as appropriate to the approved PIP.
- (7) Develop, implement and enforce, all project-specific plans and policies necessary to govern the quality, progress and requirements for Work, materials, equipment and services to be delivered or rendered under the Program, and cause the Construction Manager to manage quality of all construction Work according to the Construction Contract Documents established for the execution of the construction of the Projects. In particular, Program Manager shall implement, comply with and enforce such plans, including but not limited to the following:
 - (a) **Program Management Plan (PMP).** Refer to [Section IV.2\(A\)](#).
 - (b) **Project Implementation Plan (PIP).** Refer to [Section IV.2\(B\)](#).
 - (c) **Quality Plan.** A Quality Plan is considered a base document for quality control and assurance and describes the means by which each Service Provider will ensure that the standard of the work complies with the contract requirements established therefore. The Quality Plan shall be established by Program Manager and shall list all tasks and include applicable procedures, interfaces, (including witness, hold and inspection points), and documents recording attainment of quality. The Quality Plan shall include methods to reconcile identified quality assurance and quality control items with Project requirements, the Program Budget and the Program Master Schedule.
 - (d) **Materials Management Plan.** Program Manager shall establish the requirements for, and cause to be produced, a template for a

Materials Management Plan specific to each Project site that covers all activities associated with materials supplied by each applicable Service Provider. The Material Management Plan shall require each Construction Manager to list activities in a logical order and include references to applicable procedures, plans and documents/reports to be maintained. Some of these activities would include but not limited to material receipt, secure and insured storage, issue and surplus including the type of system (automation) to be used to monitor these activities.

- (e) **Commissioning and Warranty Plans.** Program Manager shall establish and implement commissioning protocols and plans for all Phases and for all impacted facilities, and provide all commissioning Services, including enhanced commissioning if required by Owner, in accordance with LEED 2009 New Construction and Major Renovations requirements. Such commissioning Services include but are not limited to review and coordination of mechanical, electrical and plumbing design during design phases for each Project, test and balance services for mechanical, electrical and plumbing systems and other equipment installed in the Projects, development of proper documentation of all test results to be provided to Owner, and preparation of a Commissioning Report in matrix format for each equipment item installed in the Projects. The Commissioning Plan shall document all activities in chronological order from initial drawings through manufacturing/construction, process controls, final testing, and documentation/certification.
- (f) The Program Manager shall provide a warranty management and follow-up plan in matrix form to include, as a minimum, the following items:
 - (i) List of all items, equipment, materials under warranty, whether items were part of Commissioning Plan; any testing performed or required on equipment, installer and install date, warranty expiration date, follow-up date prior to warranty expiration;
 - (ii) Records/documentation produced; and
 - (iii) Approval signatures by Program Manager and others as required;
- (g) **Communication Protocol Training Plan.** The Program Manager shall develop communication protocol training plans or procedures for each of the Projects to ensure that all necessary training is

given to appropriate personnel as required by Owner. The training requirements shall encompass organizational and procedural information as well as technical communication training of the selected CPMS system and drawing exchange protocols in accordance with Acknowledgement of Data Use Protocols (**Exhibit B**), and BIM/AutoCAD standards (i.e., layers, blocks, BIM element libraries) through collaboration with the Project Team. The training performed shall be documented.

(h) **Other Policies.** Other policies shall be developed and implemented as required by the PIP.

(8) During the development of each PIP, plan and coordinate the use of the Building Information Modeling (“BIM”) and AutoCAD Protocols established in **Exhibit L**, and the communication protocol related to the CPMS system to expedite, manage and coordinate the transfer and exchange of technical data, construction cost estimating and scheduling information among Service Providers with a view toward early identification and resolution of design conflicts, inconsistencies, and interface issues, developing a comprehensive and effective budget for all costs, and developing a comprehensive master schedule for all Project activities. Program Manager shall assume responsibility to implement and manage BIM systems and CPMS system for the Program and coordinate and facilitate transfer of the complete BIM model and/or “As-Built” Drawings in electronic format.

(9) Develop a detailed Program Budget for Owner’s approval for each of the Projects which appropriately allocates Owner’s available funds to specific line items of cost of each of the Projects, based on the most current understanding of Owner’s requirements for each of the Projects, and regularly update the Program Budget for each of the Projects while maintaining an appropriate level of contingency funding for each Project;

(10) Prepare an estimate based on Owner’s approved Realignment Plan and available repositioning studies, and assist Owner to balance the Realignment Plan with the Program Master Schedule and the Program Budget; and

(11) Comment on the qualifications of candidates who may be considered for service as members of the Disputes Board as contemplated in **Exhibit J**.

(D) Coordination and Oversight of Design and Construction Phases.

(1) Assist Owner to formulate a pre-qualification and solicitation process to enable Owner to advertise through requests for qualifications, requests for proposals and/or requests for bids that will encourage competition among

all Service Providers and promote the participation of small, minority and/or women-owned business enterprises, and underutilized and historically disadvantaged businesses in the Projects.

- (2) Review, comment, compare, participate in interviews with, investigate and verify the qualifications of, and make recommendations to Owner concerning the selection or approval of, Service Providers, and assist Owner and Owner's legal counsel with Owner's negotiation and approval of contracts and procurements with certain Service Providers as required for execution of the Projects. In particular, the Program Manager will be responsible for assisting Owner in reviewing Service Provider submissions and developing a due diligence process to evaluate, compare and verify the ability and effectiveness of Service Provider candidates to execute services for the Projects based on their experience on similar work and the internal procedures of such candidates to measure, monitor, and minimize rework and delays as a result of design and/or construction errors, omissions or inefficiencies on the Projects, and with respect to Owner-selected A/E candidate firms, participate in interviews with such candidate A/E firms.
- (3) Coordinate and facilitate a collaborative workshop of all Project Team members and consultants to develop the metrics of communication and shared platforms of information exchange.
- (4) Conduct regular reviews of the progress and services of any sub-consultants and the A/E Service Providers to verify that the schedule of deliverables meets the Project Schedule established in each PIP. Make visits to the sites of the Projects as necessary to maintain a thorough awareness of the status and content of the Program as it relates to the progress of the Projects.
- (5) Refine and develop the division of responsibilities and the assignment of functions to accomplish completion of the Scope of Services as between Program Manager and the Service Providers with respect to the Projects, and incorporate such division of responsibilities into a corresponding responsibilities matrix to be submitted to Owner for review and coordination for development of the solicitations for the Services Providers, and further assist Owner to develop further divisions of responsibilities of Service Providers with respect to the Projects, all so as to avoid unnecessary or inappropriate duplication of effort, cost and expense as between the Service Providers and the Program Manager.
- (6) Participate in work sessions with the Service Providers to recommend to Owner phasing and staging options for all construction activities, including temporary facilities and anticipated building demolition, remodeling and repair. This includes construction cost estimating and

cash flow projections, advice on constructability and staging, evaluation of systems and material options, and structuring of bid packages with the construction schedules as required for execution of the Projects and consistent with the Owner's available, limited financial resources.

- (7) Coordinate design and construction progress review meetings and value engineering efforts, and provide accurate meeting documentation reflecting appropriately assigned action items and periodic progress reports to Owner, and assure that all issues of concern over the progress of the Projects are properly and timely resolved;
- (8) Take all necessary and appropriate actions to ensure that the Construction Manager will be sufficiently involved in the design effort to enable it to perform comprehensive, thorough constructability reviews of the design. Program Manager shall, prior to issuance of the design for bid purposes, be responsible for confirming that all questions and issues raised through the constructability review process as between the architectural and engineering firms and such construction management Service Providers have been resolved in a manner acceptable to Owner. Program Manager shall maintain Owner's intent of achieving compliance with the Program Budget and Program Master Schedule;
- (9) Prepare estimates for and analyze construction feasibility associated with each A/E Service Provider's design challenge submission, and also prepare an estimate at the conclusion of the Conceptual Design Phase based on the results of the design challenge process through the A/E Service Provider procurement process;
- (10) Review and comment on the reasonableness and completeness of the estimates to be prepared by the Construction Manager(s), at the Schematic Design Phase, Design Development Phase, Construction Documents Phase, and Bidding and Construction Phase for the various Projects, and take appropriate action to assist Owner to exercise due diligence in reconciling the scope of the requirements for each Project to the Program Budget, and to otherwise assist the Owner to (i) maintain and compare, to the extent necessary and appropriate, initial and updated cost estimates that will emerge at each stage of design development as established under the PIP for the production of the Program Budget, (ii) identify, quantify and report to the Owner all contingency costs included therein, and (iii) cause the Construction Manager Service Providers for the Projects to prepare final estimates of the cost of construction in conjunction with the establishment of final pricing of construction contracts and subcontracts, identifying therein all contingency costs;
- (11) Develop and maintain, and use, a cost control system acceptable to Owner for all of the Projects that will (i) accurately record all commitments and

expenditures (including those by Owner), including any estimated additional costs not contemplated in the Program Budget against each budget line item, (ii) establish a total estimated cost to complete each Project and further detailed cost estimates for each Facility affected within each Project, (iii) enable the Program Manager to obtain approvals from Owner for the expenditure of contingency funds consistent with each PIP, and (iv) prepare in format acceptable to Owner actual vs. budgeted financial management reports in connection with each of the Projects;

- (12) Identify all permits and governmental inspections and approvals required for the Projects and cause the appropriate Service Providers to timely obtain all such permits, and coordinate all required governmental inspections and approvals;
- (13) Monitor and comment on the effectiveness of status and construction administration services to be provided by the A/E Service Providers and other Service Providers for the Projects;
- (14) Conduct site visits and inspections as reasonably necessary to monitor and observe (and to verify with reasonable certainty that the A/E Service Providers are accurately reporting) the progress and quality of the performance of design and construction services by the Service Providers so that all Work is being performed and executed according to the PIP and the contractual duties and obligations owed to Owner under the various contracts awarded in connection with the Projects;
- (15) Establish a protocol to monitor, and promptly accept or reject the services or Work Product of any Service Provider if such services or Work Product will not produce a completed, functioning Project that conforms to the PIP and the requirements of the contracts awarded or to be awarded therefore, or will prejudice the integrity of the design objectives and criteria approved by Owner for the Projects;
- (16) Timely and correctly issue to the Service Providers all necessary clarifications and interpretations of the requirements of the contracts awarded for each Project, and authorize only minor variations from such requirements when necessary and appropriate, to accomplish the objectives of Program without increase in the cost to Owner or material change to the schedule for the performance of a Project;
- (17) Conduct comprehensive drawing reviews in conjunction with peer review processes of the Work Product of the Service Providers to determine conformance with the requirements of, and compatibility with the design objectives and criteria approved by Owner for each Project, and as indicated in the PIP;

- (18) Evaluate and determine, or cause to be evaluated and determined by the appropriate Service Provider, the suitability and acceptability of any substitute or “or-equal” materials and equipment proposed by Service Providers, but only for conformance with the requirements of, and compatibility with the design objectives and criteria approved by Owner for the Project as a functioning whole, as indicated in the PIP and applicable contract documents;
- (19) Review, and comment upon, and provide solutions in regard to all proposed or contemplated changes to the Service Providers’ contracts, including contract modifications, Task Orders, change directives notice regarding unforeseen conditions, change proposals, construction change directives, contract amendments, schedule changes or updates, claims and other information requested or information submitted by the Service Providers, and prepare a response of acceptance, rejection or other resolution in a form acceptable to the Owner; and
- (20) Give final review of and recommend to Owner acceptance or rejection of payment applications and invoices in connection with the Projects, consistent with Owner’s payment processing objective to strive to pay properly submitted invoices within a period of fifteen (15) to thirty (30) days after receipt, and to release payment thereof after review and acceptance.

(E) LEED and Project Close-Out Procedures.

- (1) Evaluate and recommend use of LEED principles and guidelines, provide (to an order of magnitude that Owner approves as reasonably appropriate) cost-benefit analysis of various LEED credits, and establish and maintain procedures to ensure the Project achieves no less than a “Silver” certification by the USGBC and GBCI under LEED 2009 New Construction and Major Renovations, or such other level of certification as Owner may establish in accordance with [Section II.1\(A\)](#).
- (2) Oversee and coordinate the development and modification of all LEED Certification documentation, and ensure all such documentation necessary for LEED Certification is submitted to and approved by the USGBC.
- (3) Conduct Substantial Completion inspections and prepare a “punch-list” of items needed for Final Completion for each Project. Advise and recommend to the Owner as to when Substantial Completion of a Project, or completion of significant Project components has been achieved in relation to the schedule milestones established therefore, and obtain all warranties, as-built drawings, and other deliverables necessary to the final completion and close-out of all Projects.

- (4) Monitor completion of “punch list items,” conduct a Final Completion inspection, and submit a report to Owner confirming Final Completion of the Project.
- (5) Require special inspections or tests of the Work of Service Providers for the Projects, and receive, review and comment on all certificates of inspections, tests and approvals required by Applicable Laws or the applicable contracts for such Project, but only for conformance with the requirements of, and compatibility with the design objectives and criteria approved by Owner for the Project as a functioning whole, as indicated in the PIP and applicable contract documents.
- (6) Oversee commissioning and taking possession of completed Projects, or completed portions thereof. Coordinate all commissioning activities, including submission of all commissioning reports, plans and other verification documents and establish and coordinate post-construction commissioning prior to expiration of warranties and guarantees.
- (7) Coordinate transfer of property operation to Owner, including coordination of all warranties and guarantees, equipment and product/project manuals.
- (8) Establish and manage a warranty protocol throughout the warranty period to identify, enforce and resolve all warranty claims in consultation with the Owner.
- (9) Coordinate and ensure access to all electronic project documentation, as-built drawings, BIM models, and electronic Drawings. Facilitate and coordinate transfer of ownership of such items to Owner in accordance with [Section V.14](#) and [Section XV.2](#).
- (10) Prepare documents for and coordinate with all associated local, state, and federal agencies as required, including but not limited to the City of San Antonio (CoSA), Bexar County, Texas Department of Transportation (TxDOT), TCEQ, and the United States Army Corps of Engineers (USACE).
- (11) Oversee development and submission of all documentation required for Asbestos Free certification and American Lung Association certification.

3. **Changes to Scope of Services.** Owner may, by Task Order, order a change related to the above scope of the Services by altering, adding to, or deducting from the scope of such Services. Program Manager shall proceed with the Services as directed by Owner upon receiving a Task Order from Owner specifying the change. However, if Program Manager intends to claim that the change necessitates adjustment in compensation or the schedule for completion of Services, Program Manager shall notify Owner of same prior

to proceeding with the change and not later than ten (10) days following Program Manager's receipt of the Owner's Task Order, whereupon the parties shall promptly negotiate an appropriate adjustment and, pending such negotiations and agreement in writing on any adjustment, Program Manager shall not proceed with the extra Services or change unless Owner expressly directs the Program Manager to do so in writing after receiving Program Manager's notice. If Program Manager fails to timely notify Owner that Program Manager intends to make a claim for adjustment in accordance with the above, Program Manager shall be deemed to have waived its right to claim an adjustment. All such changes shall be performed under the provisions of this Contract, as amended by Owner's Task Order.

4. **Additional Services.** Program Manager, as may be authorized by Owner under separate written Task Order issued by Owner with reference to this Contract and accepted in writing by Program Manager, shall undertake specific Tasks for the performance of certain Additional Services and the price to be paid by Owner therefore shall be as defined in the Task Order, and may be based upon the Schedule of Additional Services Hourly Fee Rates or establish limits on the amount to be paid by Owner for the performance of such Task Order. A Task Order may include or be based upon amendments to this Contract or a change issued by Owner. For convenience, Owner may issue a Task Order using Owner's customary purchase order forms. However, in such event, any general terms and conditions appearing on such forms, or on the reverse side thereof, shall be of no force or effect; instead, the Task Order shall be governed only by the terms of this Contract and of the provisions typed by Owner on the face of such forms or incorporated by such typed provisions.

V. Standard of Care, Representations and Warranties

The Program Manager hereby makes the following representations and warranties:

1. **Familiarity with Project.** Program Manager has thoroughly reviewed the Request for Qualifications for Program Management Services dated _____*, the Scope of Services, and the Project description, visited the sites for the Projects, and, in development of the PIP, is thoroughly familiar with the local conditions under which the Services are to be performed.
2. **Program Manager's Standard of Care.** The Program Manager shall, in the performance of the Services, comply with the standard of care described herein. Notwithstanding anything to the contrary contained in this Agreement, Owner and Program Manager agree and acknowledge that Owner has entered into this Agreement in reliance on Program Manager's special and unique program management abilities to perform its obligations hereunder. The Program Manager accepts that, by this Agreement, a relationship of trust and confidence is hereby established between it and the Owner, and that the Program Manager shall, at all times, act in the Owner's best interests with respect to the performance of the Services hereunder. Program Manager will

perform, or cause to be performed, all Services and undertakings of Program Manager hereunder expeditiously, and in no event later than is required to conform to the Project Schedules and Program/Project Master Schedule, and shall do so with that degree of professional skill and care practiced, and in accordance with industry standards customarily adhered to, by other firms experienced in the performance of services and undertakings of the same or similar nature for other service centers and fleet facilities of comparable value. Program Manager shall employ and exercise the professional judgment of its experienced and qualified design professionals to provide Owner confidence that the Projects will be completed in conformity with the design concepts and construction requirements established by Owner for the Projects. All Program Manager Personnel performing Services under this Contract shall at all times be under Program Manager's exclusive direction and control and Program Manager shall be responsible for proper supervision and examination of the performance of the Services by the Program Manager Personnel consistent with the requirements of this Contract. Program Manager Personnel assigned to the Projects shall possess sufficient skills and professional expertise as required to satisfactorily meet all obligations and requirements of this Contract. Owner retains the right to reject or require Program Manager to remove any Program Manager Personnel who Owner determines in its sole judgment and discretion to fail to meet the standards for qualifications and performance established for performance of the Services hereunder. Owner hereby approves of the key positions listed on Program Manager's Fee Schedule and Staffing Plan (**Exhibit A**) as the key positions to be occupied by Program Manager Personnel, and Program Manager's assignments to such positions as shown thereon. Owner reserves the right to participate in the interview process and review resumes of all other Program Manager Personnel who are being considered by Program Manager for assignment to such key positions in the performance of Services hereunder. Program Manager agrees that it will obtain the written consent of Owner and Program Manager prior to the assignment of any individual to such key positions for the performance of Services under this Contract. Individuals assigned by Program Manager to such key positions shall not be removed from their positions or reassigned by Program Manager except in the case of an employee's voluntary or involuntary termination of employment, due to serious illness, death, or a bona fide family emergency. Unless otherwise directed or approved by Owner, individuals for whom Program Manager has obtained Owner's approval to be assigned assign to such key positions shall also be retained and assigned to the performance of Services in connection with the construction management phase of the Projects absent removal for permitted causes.

3. **Familiarity with Applicable Laws, Rules, and Regulations.** Program Manager is knowledgeable of Applicable Laws and will diligently use all reasonable care to ensure that it, and all Program Manager Personnel and the Service Providers perform all Services and undertakings hereunder in compliance therewith.
4. **No Material Change in Qualifications or Responses to Request for Proposal.** All information contained in Program Manager's Statement of Qualifications, and all other information Program Manager has furnished Owner in pursuit of this Contract following

Owner's Request for Qualifications dated _____ * _____, 20____, including but not limited to Program Manager's statements and representations as to its history, experience, capabilities, litigation disclosure, financial information, and other qualifications are accurate and complete, and no material change in circumstances has occurred that would cause Program Manager's responses to be untrue or materially different than what was originally stated.

5. **Financial Ability and Insurance.** Program Manager is financially solvent and possesses or is able to engage sufficient working capital to complete the Services as required by this Contract. Program Manager's insurance policies are and will be maintained in the form required under the Owner's Requirements of Insurance (**Exhibit H**), and contain no exclusions or exceptions to coverage other than what is provided in or equivalent to the standard forms published for such policies of insurance by Insurance Service Office, Inc. (ISO). Program Manager has submitted to Owner all evidence of insurance, including all certificates of insurance, in strict accordance with the insurance requirements set forth in the Request for Qualifications for Program Management Services dated _____ * _____.
6. **Qualifications of Program Manager Personnel.** Program Manager presently employs or is able to engage sufficiently qualified and experienced Program Manager Personnel as required by this Contract.
7. **Completeness of Schedule of Additional Services Hourly Fee Rates.** The Schedule of Additional Services Hourly Fee Rates makes appropriate provision for and includes all classifications of Program Manager Personnel that may reasonably be required to perform Additional Services necessary for the Projects, as described in this Contract. The Additional Services Hourly Fee Rates include applicable excise, use or sales tax imposed by government regulations that are not avoidable by exemption.
8. **General and Professional Licensing.** Program Manager (and all Program Manager Personnel) and its personnel and their respective employees and representatives hold in its and their names all licenses and permits required to render the Services, and they are duly licensed as required by Applicable Law to perform the Services required hereunder.
9. **Conflicts of Interest; Solicitation.** Program Manager represents that it has advised Owner in writing of any past or present relationship or dealing with any third party, including competitors of Owner or Program Manager, which could or could be perceived to impair or interfere with the Program Manager's exercise of its independent judgment and discretion in professionally and ethically rendering of Services for the sole benefit and enjoyment of Owner under this Contract or which could cause Owner to change its evaluation of Program Manager and the decision to enter into this Contract with Program Manager ("Conflict of Interest"). A Conflict of Interest shall be deemed to exist when, because of undisclosed activities or relationships with third parties, Owner determines in its sole discretion that Program Manager is unable to render impartial assistance, advice, or Services to Owner, or the Program Manager's objectivity in performing the Services is or might be otherwise impaired, or when Program Manager gains an unfair advantage or

receives undisclosed profits or benefits in addition to compensation for its performance of Services under this Contract. Program Manager shall at all times during the performance of this Contract remain free of any obligation of any kind to any person other than Owner where such obligation may cause or require Program Manager to compromise or otherwise be in breach of its obligations to Owner, including without limitation its obligations with respect to proprietary rights and confidentiality and conflicts of interests. Program Manager has not undertaken, and during the period covered by this Contract, Program Manager shall not undertake any relationship with any party that could give rise to such a Conflict of Interest without the prior written consent of Owner. Program Manager shall immediately advise Owner of any relationship that may give rise to a Conflict of Interest during the term of this Contract. If Owner becomes aware of any such relationships, through Program Manager's disclosure or otherwise, Owner shall have the option to terminate this Contract in whole or in part without further liability to Program Manager.

Program Manager acknowledges that Owner adheres to the ethical requirements of the Charter of the City of San Antonio and its Ethics Code. Accordingly, no officer or employee of the San Antonio Water System shall have a financial interest, directly or indirectly, in any contract with the San Antonio Water System, or shall be financially interested, directly or indirectly, in the sale to the San Antonio Water System of any land, materials, supplies or service, except on behalf of the San Antonio Water System as an officer or employee. Program Manager represents and certifies that it, its officers, employees and agents are neither officers nor employees of the City or the San Antonio Water System. Program Manager further represents and certifies that it has tendered to the San Antonio Water System all necessary disclosures and other documents in compliance with the City's Ethics Code, including, without limitation, a Discretionary Contracts Disclosure Statement. Program Manager agrees that Owner has entered into this Contract in reliance on Program Manager's foregoing representations and certification.

The Program Manager represents that Program Manager has not employed or retained any company or person other than a bona fide employee working solely for the Program Manager, to solicit or secure this Contract, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for the Program Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In the event of a breach of this covenant by Program Manager, the Owner shall have the right to terminate this Contract under the provisions of [Section X](#) below, in addition to Owner's other rights and remedies under this Contract.

10. **Protection of Confidential Information.** All Owner's information is confidential and shall be protected by Program Manager, unless otherwise communicated by Owner in writing to Program Manager. Program Manager shall ensure that all Program Manager Personnel execute and comply with the same form of Confidentiality Agreement in favor of Owner, obligating them to similarly protect Owner's proprietary information in

accordance with the terms and conditions of this paragraph and such Confidentiality Agreement (**Exhibit C**). Owner has a proprietary interest in this Contract and in the advisory and consulting services provided by Program Manager. Accordingly, this Contract, the services, and any information obtained by Program Manager through Owner in connection with the performance of the Services shall not be disclosed by Program Manager to any third party. In the event Program Manager is subject to the Texas Public Information Act, upon receipt of a request for any information obtained by Program Manager in the performance of this Contract, Program Manager shall provide written notice to Owner of the request along with a copy of the request, and give Owner the opportunity to respond to the request prior to its release by Program Manager. In no event shall Program Manager or any of its subconsultants provide or participate in any public presentations or prepare or present any papers for public dissemination concerning any Project, or with information obtained in connection with any Project, without receiving the prior written approval from the Owner, which approval may be withheld in the sole and absolute discretion of the Owner. Program Manager represents that it has at all times remained in compliance with the requirements of this provision, has not disclosed to third parties any information concerning any Project, and will not do so without Owner's prior written consent.

11. **Execution of Contract Duly Authorized.** Program Manager's execution and adoption of this Contract has been duly authorized, approved and/or ratified, as set forth in the Resolution in Support of Contract, signed by Program Manager's governing board of directors, confirming the authority of the person executing this Contract on behalf of the Program Manager to bind the Program Manager to this Contract (**Exhibit D**).
12. **Compliance with Applicable Laws.** Program Manager warrants that all Services shall be performed in strict compliance with all Applicable Laws and regulations and all other laws and regulations dealing with employer-employee relations, including, as amended, the "Fair Labor Standards Act" of 1938, the "Walsh-Healy Act," and "Nondiscrimination in Employment," Executive Order No. 11246 of September 24, 1964, and all codes laws and regulations required to be incorporated in a contract of this character are hereby incorporated herein by reference. Compliance with the above shall include the adoption of all programs, making of all certifications and filing of all reports as required thereby. All terms required by any of the foregoing are hereby incorporated herein by reference. Program Manager shall execute and deliver to Owner such documents as may be required to effect or evidence compliance.
13. **Workforce/Employee Composition.** It is the policy of the Owner to assist in increasing the competitiveness and qualifications of Small, Minority and Women-Owned Businesses ("SMWB") to afford greater opportunity for such groups to obtain and participate in Owner's contracts. Program Manager agrees to complete and submit a Good Faith Effort Plan as part of its response to the Owner's request for qualifications. Program Manager shall take all reasonable steps to be in compliance with and maintain compliance with at least the minimum percentage participations for SMWB set out in Program Manager's proposal to the Owner. Program Manager shall maintain records of all SMWB contracts

and programs applicable to this Project, and shall submit a Vendor/Subcontractor Report Form to the Owner when submitting any applications for payment to the Owner.

14. **Royalties and Licenses to Use Intellectual Property.** Program Manager shall ensure that Owner shall at all times have a non-exclusive right to use all software used in the development and management of the Program and the Projects. Program Manager shall pay all royalties and license fees due in connection with the Services. Program Manager warrants that neither the Services nor use of Program Manager's Work Product will infringe any patent or other proprietary right. If requested by Owner as an Additional Service, Program Manager shall provide to Owner Program Manager's proprietary information, data or systems used to manage the Program and/or the Projects. In such event, Owner agrees to enter into a licensing agreement as reasonably necessary to enable Owner to utilize Program Manager's proprietary information, data or systems, in connection with the Program and/or Projects and the ongoing use and maintenance of the Projects, which license agreement shall be non-exclusive and perpetual. If necessary, Program Manager shall cause, through agreement with the developer of any proprietary software system used by Program Manager for the Program and/or the Projects, a transfer of a non-exclusive right to use such software to the Owner without any limitation of Owner's right of use thereof.

15. **Program Manager's Warranty.** Program Manager warrants each Task and all Services rendered hereunder shall be performed in accordance with Program Manager's Standard of Care, all Applicable Laws and the requirements of this Contract and any applicable Task Order. Program Manager shall re-perform, at no cost to Owner, any Services or Additional Services in accordance with this Contract as required to correct any error, omission, defect or deficiency arising within a period of two (2) years following the completion of all Services required under this Contract to the extent any such error, omission, defect or deficiency arises as a result of Program Manager's failure to perform the Services or Additional Services hereunder in accordance with Program Manager's Standard of Care. This warranty does not apply to a defect in any equipment designed and manufactured by others and furnished or specified by Owner or others acting on behalf of Owner unrelated to breach of warranty, nor does it apply to defects caused by other Service Providers. **ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AS TO SUCH EQUIPMENT ARE SPECIFICALLY EXCLUDED.** This warranty does not apply to any defect or deficiency caused by ordinary wear and tear, corrosion or erosion unrelated to a breach of warranty, or by operations contrary to or under conditions more severe than those permitted by written operating specifications, or by Owner's failure to report a defect or deficiency to Program Manager not otherwise known to Program Manager within a reasonable time after the defect or deficiency becomes known to Owner.
 - (A) The foregoing notwithstanding, Program Manager shall not, as a result of performing the Program/Project Management Services, be deemed to have direct control over the work or services of any Service Provider under its contract with Owner for the design, procurement or construction of the Projects. Program

Manager shall not have any responsibility or liability for (i) the safety of persons and property during construction, (ii) the Service Providers' construction means, methods, techniques, sequences or procedures of construction, including any defects or deficiencies caused by such construction means, methods, techniques, sequences or procedures; or (iii) the Service Providers' compliance with safety precautions and programs incident to their work or (iv) the Service Providers' compliance with Applicable Law. Program Manager shall not be required to make inspections or reviews of the construction operations of Service Providers or their independent contractors for compliance with safety standards, programs or procedures, or for their compliance with Applicable Law pertaining to the safety of construction operations. Construction safety shall remain the sole responsibility of the Service Providers who are performing construction operations; provided, however, Program Manager shall be responsible for causing all Program Manager Personnel to take notice of and observe all safety precautions and safety rules published by the Service Providers with respect to the safety of persons in the proximity of their operations.

- (B) Program Manager shall be sufficiently familiar with the schedules of all Service Providers as necessary to enable Program Manager to coordinate and conduct reviews of Service Providers' milestone dates, design deliverables, and pricing packages within sufficient time to permit adequate time for Program Manager's review in the exercise of Program Manager's professional judgment, and Program Manager shall complete such reviews with reasonable promptness so as to cause no delay in the Project Schedule or Master Program/Project Schedule. Program Manager's review of Service Providers' submittals such as shop drawings, product data and samples, shall be for the purpose of checking for the conformance thereof to applicable contract requirements, and Program Manager shall not be required to verify the accuracy and completeness of all details, dimensions and quantities therein. Program Manager shall not be deemed to guarantee the performance, and shall not be responsible or assume liability for the acts or omissions, of any Service Provider other than in connection with Program/Project Management Services performed by, through or under the Program Manager and Program Manager Personnel and the administration services performed by, through or under the Program Manager.

16. **Independent Contractor Status of Program Manager.** In performing the Services, Program Manager shall operate as and have the status of an independent contractor and shall not act as or be an agent or employee of Owner. The foregoing notwithstanding, Program Manager and except as expressly provided otherwise herein, Program Manager shall act as Owner's agent only to the extent such agency is required to be granted for the purpose of authorizing Program Manager to act as Owner's representative.
17. **Communications between Owner, Program Manager and Service Providers.** Program Manager shall assist Owner in the oversight and management of all Projects, and shall have authority to manage and communicate with the Service Providers on

Owner's behalf. Unless otherwise directed by Owner, the Program Manager shall cause all communications of the Service Providers with respect to their respective Projects to be directed to Program Manager, who shall act as the single point of contact to Owner for the Service Providers. Unless otherwise directed by Owner, the communications of the Service Providers shall be limited to parties with whom they have their respective contractual relationships; provided, however, nothing in this Contract shall be construed to limit or restrict the right of Owner to communicate directly with a Service Provider at any time, and in no event shall Owner's election to initiate any such communication be deemed or construed to interfere in the contractual relationship or rights of Program Manager or any Service Provider. Owner expressly reserves such right hereunder, and such right shall be expressly established and recognized in all contracts with the Service Providers.

VI. Time for Performance, Completion and Acceptance, Excusable Delay

1. **Time for Performance.** Program Manager shall complete each Service and Task in accordance with the Master Program Schedule and the completion date set out in the Assignment, as applicable, or as otherwise agreed in writing by the parties; provided, however, that the schedule and applicable completion date may be extended, upon written Approval of Owner, to allow for any delays occasioned by Owner's changes in the work or extra work, or Excusable Delay.
2. **Completion and Acceptance.** When Program Manager has completed a Service or a Task Order, or any separable portion thereof, Program Manager shall so inform Owner in writing, and it shall be considered complete and accepted by Owner unless, within thirty (30) days following tender of such notice, Owner informs Program Manager by notice stating in reasonable detail the reasons why it is not considered complete and acceptable. Upon receipt of Owner's notice, Program Manager shall remedy such matters in accordance with the Assignment and this Contract and the above procedure shall be repeated. Payment, including final payment for any Services shall not be deemed an acceptance of any Services or Task, or a release of Program Manager's warranty obligations with respect thereto, if subsequently determined by Owner not to be in accordance with this Contract.
3. **Excusable Delays.** Delays due to any circumstances that are beyond a party's reasonable control to avoid or mitigate, including, but not limited to, strikes, riots, wars, fires, flood, explosion, acts of nature, acts of government, and labor disturbances shall constitute Excusable Delays. Program Manager shall keep Owner advised of any delay, whether or not it constitutes an Excusable Delay, which may affect the schedule or any completion date. The parties shall have no liability to each other for, and each party shall bear its own costs due to the impact of, Excusable Delays in the performance of their respective obligations under this Contract.

4. **Equitable Adjustments to Program Master Schedule.**

- (A) **Notice of Potential Delay.** Program Manager shall submit written notice to Owner's Project Manager advising of the risk of any potential delay, stating in detail any and all actions reasonably required of Owner to appropriately mitigate or avoid the risk of delay, within seven (7) days after Program Manager knew or, in the exercise of reasonable diligence, should have known of the potential delay. The foregoing notwithstanding, Program Manager shall not be entitled to an equitable adjustment to the Program Master Schedule if the potential delay actually results in a delay unless the resulting delay would not have occurred but for Owner's failure to take reasonable and appropriate action as described in such notice to prevent such resulting delay.
- (B) **Notice of Actual Delay.** Subject to Program Manager's compliance with the foregoing requirements of notice, Program Manager shall only be entitled to receive an equitable adjustment to the Program Master Schedule to allow such additional time as may be required as the result of a delay, including an Excusable Delay, to complete the affected Services if, as a condition precedent thereto, Program Manager has submitted to the Owner's Project Manager within seven (7) days after Program Manager knew or, in the exercise of reasonable diligence, should have known of the delay, a detailed written notice of the circumstances of the delay together with supporting documentation thereof, the resultant cost and schedule impact thereof, and a description of any and all actions reasonably required of Owner to reasonably and appropriately mitigate the delay.

If Program Manager submits all notices required hereunder in accordance with the foregoing provisions, the Owner, in its sole discretion, shall determine, whether the delay constitutes an Excusable Delay, and whether, as a result of any Excusable Delay, an extension of time should be granted to the Program Manager through equitable adjustment of the Program Master Schedule. The Program Manager's entitlement to an equitable adjustment to the Program Master Schedule is absolutely conditioned upon Program Manager's timely submission of the written notices required herein. Subject to the foregoing, an equitable adjustment to the Program Master Schedule shall be the Program Manager's sole remedy for Excusable Delays. Owner shall make no adjustment to the Program Master Schedule and Program Manager shall reimburse Owner for any additional costs incurred by Owner as a result of any delays deemed by Owner, in its sole discretion, to have been caused jointly or solely by the Program Manager.

VII. Program Manager's Services

1. **Program Manager's Compensation.**

- (A) **Program Management Services Fee.** Program Manager shall be paid a Program Management Services Fee, including all reimbursable expenses, not to exceed the

fixed lump sum of _____ and No/100 (\$ _____), payable in monthly installments of \$ _____ .00 for each month during the first _____ days of Program Manager's performance hereunder, based on Program Manager's preliminary staffing plan. The Program Management Services Fee shall be payable monthly as provided in the Owner-approved Program Fee Schedule and Staffing Plan for rendering and properly performing the Services.

Program Management Services Fee shall cover all costs and expenses of Program Manager and all Program Manager Personnel to perform the Services, including but not limited to:

- (1) Expenses relative to on-Site staff mobilization from Program Manager's Home Office to the Site(s) of the Work, relocation, hardware, software, and communications during the term of this Contract, subject to Owner providing a fully equipped and functioning on-site office for Program Manager's use commencing no later than Owner's approval of the PIP, or 120 days from the effective date of this Contract whichever is sooner.
- (2) Expenses relative to Home Office technical support, hardware, software, and communications for the Program Schedule during the term of this Contract.
- (3) On-site office rent, equipment, computers, software, land line telephones, mobile phones, operating supplies, etc. and other office facilities or the cost of relocation thereof during program implementation.
- (4) All costs related to performance of the Services hereunder except for the following, which shall be considered an Additional Service if authorized by Owner's Task Order Owner:
 - (1) On-site staff pre-approved travel outside of San Antonio, or Home Office based technical support personnel pre-approved travel to San Antonio or any other Owner directed location during for the term of this Contract.

If the Program duration extends beyond the Owner-approved Master Program Schedule Completion Date and such extension is not due to the fault or failure of the Program Manager to fulfill its obligations hereunder, the Program Manager shall continue execution of the PIP hereunder, such continued performance to be considered as Additional Services, and the parties shall, prior to the commencement of such extension, mutually agree upon the expected period of such extension and an equitable adjustment to the Program Management Services Fee, to be paid to the Program Manager during such extension. If the parties cannot agree upon such equitable adjustment before the extension commences, the parties shall resort to the Dispute Resolution Process to determine an equitable

adjustment that is fair and equitable under the circumstances; provided, however, in no event shall Program Management Services Fee be equitably adjusted for delays to the Program or Projects which Program Manager caused or contributed to by failing to perform its Services set forth herein in accordance with its Standard of Care.

(B) **Adjustment of Program Management Services Fee.** If Owner approves a PIP that extends or reduces the Program Master Schedule beyond _____*_____, 20____, then the Program Management Services Fee, and the distribution thereof over the Program's duration, shall be subject to an equitable adjustment of the Program Management Services Fee within 10 days, if such adjustment is believed to be necessary. If no such adjustment is requested by either party within such 10 day period, the Program Management Services Fee shall remain unchanged. If an equitable adjustment is requested within such 10 day period, and if Owner and Program Manager cannot reach an agreement as to such adjustment within sixty (60) days after Owner approves the PIP, the parties shall resort to the Dispute Resolution Process to determine an adjustment to the Program Management Services Fee that is fair and equitable under the circumstances.

(C) **Additional Services.** With Owner's advance written approval by Task Order, Program Manager shall be paid an Additional Services Fee for the labor of Program Manager Personnel, in accordance with the terms of the Task Order and the Schedule of Program Manager's Hourly Fee Rates for Additional Services (**Exhibit E**).

2. **Reimbursable Costs and Expenses.** Reimbursable costs and expenses shall be limited to those items set forth in the Schedule of Program Manager's Reimbursable Costs and Expenses (**Exhibit G**). Program Manager's charges to Owner for reimbursable costs and expenses shall be subject to audit to verify the Program Manager's actual reimbursable costs.

3. **Taxes.** Program Manager acknowledges and agrees that Owner is a political subdivision of the State of Texas organized as an agency of the City of San Antonio in the State of Texas pursuant to Section 552 of the Texas Local Government Code and, as such, is a tax-exempt organization, exempt from certain sales and use taxes with respect to the purchase price of all materials, supplies, equipment and consumables purchased under a separated contract and which are incorporated into the Work. Owner shall provide its Sales Tax-Exemption Certificate to Program Manager, whereupon Program Manager shall appropriately obtain and fully utilize such Certificate, and shall not invoice or charge Owner for taxes avoidable by exemption.

4. **Dispute Resolution Costs of Owner.** Program Manager has included an allowance of \$_____ to be available for expenditure by Program Manager by the issuance of payment to the Dispute Review Board and/or Mediator for Owner's share of any reasonable and necessary dispute resolution costs upon Program Manager's receipt of Owner's written approval of the invoice of the Dispute Review Board and/or Mediator, as

applicable. Program Manager shall promptly issue payment of such invoices upon receipt of Owner's approval. Payment of any such approved dispute resolution costs shall be considered a reimbursable cost to be invoiced to Owner.

5. **Invoicing and Payment Procedures.**

- (A) **Time for Payment.** Payment of fees earned and authorized expenses incurred for Services properly performed or otherwise properly reimbursable in the prior month shall become due and payable to Program Manager within 30 days after Owner's receipt of a properly submitted invoice. The form of any invoice submitted must comply with the specifications of Owner and must be submitted in the manner and with the documentation required by Owner.
- (B) **Submission of Invoices.** To be properly submitted, the Program Manager shall submit on or before the 5th day of each month, or such later day of each month as Owner may in writing designate in the future, the Program Manager's monthly invoice for all fees earned and reimbursable expenses incurred during in the preceding month. Invoices must be submitted with all supporting documentation reasonably required to demonstrate entitlement to payment, failing in which Owner shall be entitled to reject the same as to any disputed or questioned portion without penalty or interest charge. Untimely or improperly submitted invoices, if rejected by Owner, shall be resubmitted for the reconsideration the following month. Such supporting documentation shall include at a minimum invoices, receipts and all other evidence of the expenses incurred by Program Manager.
- (C) **Certification of Correctness.** Each invoice shall constitute Program Manager's representation to Owner that the Services and reimbursable expenses reflected thereon have been fully rendered or incurred in accordance with this Contract, and that payment of the indicated amount has been earned by, and is properly due and payable to, Program Manager in accordance with this Contract. Notwithstanding the foregoing, the amount reflected on any invoice shall only be due and payable to Program Manager to the extent such payment has actually been earned by Program Manager in accordance with this Contract.
- (D) **Submittal of Payment Reports into B2GNow Reporting System.** Within 30 days of the Effective Date and on a monthly basis thereafter throughout the Contract Term, Program Manager shall log on to the Owner's B2GNow Reporting System ("B2G System") and submit, and shall require its Program Manager Personnel, subconsultants, and vendors to log on to the B2G System and submit, all data required to be maintained under in the B2G System to appropriately and timely identify each of Program Manager's subcontractors, subconsultants, and vendors and to promptly verify the amounts of all payments as and when issued and released to or received by them in connection with the performance of Services under this Agreement.

(E) **Right to Withhold Payment.** Notwithstanding anything in this Contract to the contrary, Owner shall not be obligated to make, and may withhold interest free, any payment to Program Manager under this Contract if any one or more of the following Four (4) conditions exist:

- (1) Program Manager is in default of any of its obligations under this Contract, and fails to correct such default within seventy-two (72) hours after receiving Owner's written notice of such default;
- (2) Program Manager seeks payment for Services that were not performed under and in accordance with this Contract, in which case the amount of such payment may be withheld without notice;
- (3) Program Manager has failed to make promptly when due any payment to any Program Manager Personnel or other third party used by Program Manager to perform this Contract, and for which the Owner has paid Program Manager, in which case payment equal to such amount may be withheld without notice; or
- (4) Program Manager fails to provide the proper invoice or necessary documentation required for payment in accordance with the terms of this Agreement.

Owner's right to withhold payment hereunder is in addition to any and all legal and/or equitable remedies available to Owner under the law. Program Manager shall not claim or file, and hereby waives to the maximum extent permitted by law, any lien rights or other rights of encumbrance against the Owner's property and the Projects. Program Manager shall expressly refer to this waiver provision in all agreements with all Program Manager Personnel engaged to perform the Services and require them to similarly agree to waive all such rights.

VIII. Indemnity, Insurance and Liability

1. **General Indemnity. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN EFFECT AS OF THE EFFECTIVE DATE, PROGRAM MANAGER SHALL FULLY DEFEND, INDEMNIFY AND SAVE HARMLESS OWNER AND ITS OFFICERS, DIRECTORS, BOARD MEMBERS, EMPLOYEES AND AGENTS (HEREINAFTER COLLECTIVELY AND SEVERALLY REFERRED TO AS "OWNER INDEMNITEES") FROM AND AGAINST ALL LOSSES, EXPENSES, LIENS, CLAIMS, DEMANDS, DAMAGES AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WHATSOEVER, FOR INJURY TO OR DEATH OF ANY THIRD PARTY PERSONS (INCLUDING BUT NOT LIMITED TO OWNER'S EMPLOYEES) AND/OR DAMAGE TO ANY PROPERTY (INCLUDING BUT NOT LIMITED**

TO PROPERTY BELONGING TO OWNER) AND/OR ANY OTHER LIABILITY, DAMAGES, FINES OR PENALTIES (EXCEPT WHERE REIMBURSEMENT FOR FINES OR PENALTIES IS PROHIBITED BY APPLICABLE LAW), INCLUDING ALL COSTS OF DEFENSE, ATTORNEY'S FEES AND SETTLEMENTS ARISING OUT OF OR IN ANY WAY CONNECTED WITH PROGRAM MANAGER'S NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF ITS OBLIGATIONS HEREUNDER, OR OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SERVICES OR THE PERFORMANCE OR FAILURE TO PERFORM THE SERVICES, INCLUDING ALL OF THE FOREGOING TO THE EXTENT CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH THE NEGLIGENCE OF AN OWNER INDEMNITEE. THE OBLIGATIONS OF PROGRAM MANAGER HEREUNDER SHALL SURVIVE TERMINATION OF THIS CONTRACT FOR ANY REASON. THE FOREGOING NOTWITHSTANDING, IT IS AGREED THAT, WITH RESPECT TO ANY STATUTORY RESTRICTIONS AFFECTING THE VALIDITY OR ENFORCEABILITY OF THE INDEMNIFICATION OBLIGATION HEREIN, IT SHALL BE SUBJECT TO SUCH RESTRICTIONS, AND THE INDEMNIFICATION OBLIGATION HEREIN SHALL BE DEEMED TO BE AMENDED TO THE MINIMUM EXTENT NECESSARY TO CONFORM THEREWITH, AND SHALL OTHERWISE CONTINUE IN FULL FORCE AND EFFECT.

2. **Indemnity Against Infringement Claims.** Program Manager shall, at its sole cost and expense, defend the Owner Indemnitees against, hold them harmless, and indemnify, pay and discharge them in all suits, actions and proceedings for any actual or alleged infringement caused or permitted by Program Manager's acts or omissions and shall pay and discharge any and all judgments or decrees which may be rendered therein against them or any of them arising from such infringement.

3. **Insurance.** Program Manager shall provide insurance coverage in accordance with the Owner's Requirements of Insurance (**Exhibit H**). Program Manager shall not commence Services under the Agreement until it has obtained all required insurance and until such insurance has been reviewed and approved in writing by the Owner. Owner's approval of such insurance shall not relieve nor decrease the liability of the Program Manager hereunder. Prior to commencing any of the Services, Program Manager shall provide evidence satisfactory to Owner that all insurance coverages for the limits and forms of coverage required under Owner's Requirements of Insurance (**Exhibit H**) are in full force and effect.
 - (A) **Maintenance of Insurance.** Program Manager shall not cause or allow any of its insurance to be canceled, nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

 - (B) **Right to Review Policies.** Owner reserves the right to review the insurance required hereunder and to make reasonable adjustments to the insurance

coverages and their limits when deemed necessary and prudent by the Owner. The reasonable additional premium cost of additional insurance to be borne by Program Manager to make such adjustments shall be addressed by Task Order.

(C) **Right to Receive Certified Summaries.** The Owner shall be entitled, upon request, and without expense, to receive certified summaries of the Program Manager's relevant insurance policies and all endorsements thereto required by this Agreement or by Contract Amendment, and may make any reasonable requests for deletion, or revision or modification of particular policy terms, conditions, limitations, or exclusions, except where policy provisions are established by law or regulation binding upon either of the Parties or the underwriter of any of such policies. Actual losses not covered by insurance as required by this Section shall be paid by the Program Manager.

(D) **Pre-Condition to Commencement of Services.** The Program Manager shall not knowingly, except by agreement or instruction of the Owner in writing, commence Services prior to the date Program Manager has fulfilled the insurance requirements of this Agreement.

4. **Owner's Right to Approve Counsel and Participate in Defense of Claims.** Except to the extent that Program Manager is not permitted to approve legal counsel appointed by its insurer to defend a claim against an Owner Indemnitee under this [Section VIII](#), the Owner Indemnitee reserves the right to participate in the approval of such appointed counsel. If an Owner Indemnitee does not have the right to approve of such appointed legal counsel, the Owner Indemnitee shall have the right to have independent legal counsel of its own choice participate with the appointed legal counsel at Owner's expense in the defense of the claim. In addition to the foregoing, an Owner Indemnitee shall have the right to assert against any third party any and all cross claims and counterclaims that an Owner Indemnitee has against the third party claimant, and to attend and participate in all conferences concerning the defense and or settlement of the claim against the Owner Indemnitee through the Owner Indemnitee's independent counsel and/or its own designated management representative; however, to the extent such participation is not otherwise required or requested by appointed counsel for the defense of the claim, such participation shall be at Owner's expense

IX. Restrictions against Assignment and Subcontracts

1. Program Manager shall not assign this Contract in whole or in part or assign any monies due or to become due to Program Manager, or delegate any of its duties and obligations hereunder, without Owner's prior written approval and the written assumption by the approved assignee of all of Program Manager's duties and obligations hereunder. Any assignment or attempted assignment without Owner's prior written approval shall be void. No assignment or delegation by Program Manager shall relieve Program Manager

of its obligations hereunder to Owner. Program Manager shall not replace any subconsultant without prior written consent of the Owner.

X. Suspension and Termination

1. **Right of Either Party to Terminate for Cause.** This Contract may be terminated for cause by either party for material breach by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Contract.

(A) Program Manager's Default.

- (1) Material breach by Program Manager shall include, but is not limited to the following: (a) Program Manager has made, or allows to be made, any material misrepresentation with respect to the Contract; (b) Program Manager materially fails to timely perform any obligation or duty of Program Manager under this Contract (c) Program Manager materially fails to timely cure any default or breach in accordance with the terms of this Contract; (d) Program Manager assigns its rights and/or obligations under this Contract without the prior written consent of the Owner; (e) Program Manager ceases to continue to do business as a going concern employing the engineers working on the Project; or (f) Program Manager violates any rule, regulation or law applicable to the Project and/or the Contract and fails to timely correct such violations following receipt of notice by Owner.
- (2) When any of the reasons described herein exist, Owner may, without prejudice to any other rights or remedies, and after giving Program Manager the notice required hereunder, and Program Manager's failure to cure, terminate this Contract and do any one or more of the following, at the sole discretion of the Owner:
 - (a) take possession of the Work and of all documents and materials owned or in the possession of the Program Manager;
 - (b) accept assignment of service contracts relating to the Program Manager's work on terms and conditions acceptable to Owner;
 - (c) finish the Program Manager's work by whatever reasonable method Owner may deem expedient, in which event, upon written request of the Program Manager, Owner will furnish the Program Manager with an accounting of the costs incurred by Owner in finishing Program Manager's Work; and
 - (d) recover from the Program Manager, or deduct from any sums then owed to the Program Manager, the losses, costs and damages

incurred by Owner, directly or indirectly arising from Program Manager's default, including attorneys' fees.

If Owner terminates this Contract for Program Manager's substantial failure as set forth above, Program Manager shall not be entitled to receive further payment on the Project for Work performed until all amounts owed to Owner pursuant to the terms hereof have been fully paid.

- (B) **Owner's Default.** Substantial failure to perform by the Owner shall include, but is not limited to the following: (a) the Owner fails to timely pay Program Manager any sums due under the Contract, which are not then the subject of a good faith dispute; (b) the Owner fails to timely cure any noticed default or breach under this Contract; or (c) the Owner fails to timely perform any obligation or duty of the Owner under this Contract, which is not then the subject of a good faith dispute between Owner and Program Manager. Upon the Owner's failure to cure default as hereinafter provided, the Program Manager may terminate this Contract by written notice to Owner.
 - (C) **Notice and Opportunity to Cure Default.** The party not in default of the Contract shall send the defaulting party written notice of the alleged default. The party in default shall have a period of fifteen (15) business days from the date notice is received to cure the default. If the default is not cured within the fifteen (15) business day period, then the other party may thereafter terminate the Contract by sending the defaulting party notice of termination, which termination is effective upon sending of the notice.
2. **Right of Owner to Terminate for Convenience.** The Owner reserves the right to terminate this Contract for the convenience of the Owner by issuing a signed, written notice of termination (citing this paragraph), which termination shall become effective on the twentieth (20th) day following receipt of notice, or upon the scheduled completion date of the milestone, task, or phase of work in which Program Manager is then currently authorized to work, whichever occurs first.
3. **Right of Owner to Suspend Work.** The Owner reserves the right to suspend Work under this Contract at any time and from time-to-time for the convenience of the Owner by issuing a written notice of suspension (citing this paragraph), which notice outlines the reasons for the suspension and the then estimated duration of the suspension. The Owner's estimated duration of the suspension shall in no way constitute a representation or guarantee of the total number of days of suspension. Such suspension shall take effect immediately upon the date specified in the notice and if no date is specified, then the date the notice of suspension is received by the Program Manager. Upon receipt of a notice of suspension in excess of one hundred twenty (120) consecutive days, the Program Manager shall have the right as its sole and exclusive remedy, to terminate this Contract by written notice to the Owner. Program Manager may exercise this right to terminate any time after a suspension has continued for more than one hundred twenty (120) consecutive days, but before the Owner gives Program Manager written notice to resume

the Work. Termination (under this paragraph) by Program Manager shall be effective immediately upon the Owner's receipt of written notice from Program Manager.

4. **Legal Prohibition.** If any state or federal law, rule or regulation is enacted, promulgated or interpreted to prohibit the performance of any part of this Contract or the Project, that would make the Project unachievable under normal expectations, then either party may terminate this Contract by giving the other party not less than twenty (20) days prior written notice of the effective date of termination. Program Manager shall be paid for the portion of the Work completed through date of termination.

5. **Procedures Program Manager to Follow upon Receipt of Notice of Termination.**

(A) Upon receipt of any notice of termination, unless the notice otherwise directs, Program Manager shall immediately begin the phase out and the discontinuance of all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to the Owner under this Contract. Within thirty (30) days after receipt of such notice of termination, the Program Manager shall submit a statement showing in detail the services performed under this Contract prior to the effective date of termination. The Owner shall have the option to grant a written extension to the time period for submittal of such statement.

(B) All completed or partially completed designs, plans, specifications and reproducibles prepared under this Contract, as well as all other documents, property records, tests, charts, reports and other materials, or information pertaining to the Project and/or Program Manager's services hereunder, including the Program Manager's most current documents stored on the document management system (the "Project Documents"), shall be delivered to the Owner without further cost or charge to the Owner. Further payment to the Program Manager is conditioned upon delivery of all such documents to the Owner. These documents shall be subject to the restrictions and conditions set forth in [Section XV.2](#) below.

(C) Upon the above conditions being met, the Owner shall pay the Program Manager within thirty (30) days following receipt of an invoice therefore, the unpaid portion of the Contract Price limited to the Services actually performed in accordance with the terms and provisions this Contract, unless the termination is by the Owner for cause, in which event any further payment may be withheld until final completion of the Project(s), as applicable.

(D) Failure of the Program Manager to comply with the submittal of the statement and documents as required above, shall constitute a waiver by the Program Manager of any and all rights or claims to collect monies that Program Manager may rightfully be entitled to for services performed under this Contract.

6. **Procedures Program Manager to Follow upon Receipt of Notice of Suspension.**

- (A) Upon receipt of written notice of suspension the Program Manager shall, unless the notice otherwise directs, immediately begin to phase out and discontinue all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to the Owner under this Contract.
- (B) Program Manager shall prepare a statement showing in detail the services performed by Program Manager under this Contract prior to the effective date of suspension and deliver the same to Owner within thirty (30) days after the date of the suspension.
- (C) Copies of all completed or partially completed designs, plans, specifications and reproducibles prepared under this Contract, prior to the effective date of suspension, and all other Project Documents shall be prepared for delivery to the Owner but shall be retained by the Program Manager until such time as Program Manager or the Owner may exercise the right to terminate this Contract.
- (D) In the event that Program Manager exercises the Program Manager's right to terminate this Contract for cause or following a suspension, then the Program Manager shall submit to the Owner an update and final statement showing in detail the services performed under this Contract prior to the effective date of suspension.
- (E) Upon the above conditions being met, and the final determination that Program Manager has the right to terminate for cause or as a result of such suspension, which final determination, to the extent possible, will be made within sixty (60) days following the effective date of termination, the Owner shall promptly pay the Program Manager the unpaid proportion of the Contract Price for the services actually performed in accordance with the terms and provisions of this Contract. Final payment shall be made within thirty (30) days of delivery of all Project Documents, the delivery of which shall be a pre condition to final payment.

7. **Owner's Access to and Rights in Document Management Software in Event of Termination or Suspension.** If Owner for any reason suspends the Program or Project(s) or terminates the Program Manager, Program Manager shall thereafter ensure Owner's unlimited access to the CPMS, and the transfer of usage and/or ownership rights in the CPMS to Owner in accordance with [Section V.14](#) and [Section XV.2](#).

8. **Remedies.** The Owner's right or act of terminating this Contract, whether for cause or otherwise, shall not be an election of remedies. In addition to any right of termination, the Owner shall be entitled to pursue and enforce any other right or remedy available by contract, law or at equity, including the right to pursue damages. The remedies of the Owner set forth in this Contract shall not be restrictive but shall be cumulative and in addition to all other remedies of Owner hereunder and under applicable state laws, including all laws related to fraud or latent defects. Nothing herein shall restrict, limit or otherwise diminish in any way the liability of the Program Manager for errors, omissions,

design defects or deficient work under the statutory and common laws of the State of Texas. Notwithstanding anything in this Contract to the contrary, Program Manager shall not be entitled to lost or anticipated profits should the Owner choose to exercise its option to terminate this Contract for cause or convenience.

9. Owner, as a public entity, has a duty to document the expenditure of public funds. Program Manager acknowledges this duty on the part of the Owner. To this end, Program Manager understands that failure of Program Manager to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the Program Manager of any portion of the fee for which Program Manager did not supply such necessary statements and/or documents.

XI. Audit

1. All records, books, correspondence, accounting procedures and practices and any other supporting evidence (“Records”) relating to the performance of this Contract by or on behalf of Program Manager shall be open to examination and subject to audit and/or reproduction, during normal working hours, by Owner or its authorized representative to the extent necessary to adequately permit evaluation and verification of actual costs (including direct and indirect costs and any overhead costs claimed by Program Manager in excess of those covered by overhead markups) incurred, or units expended, in the performance of Services hereunder, to determine compliance herewith, or to ascertain any facts relative to any claim by or against Program Manager. Program Manager shall ensure that this section concerning the Owner’s authority to audit all direct and indirect costs, and the requirement to cooperate with Owner in the exercise of such right, is included in any contract Program Manager awards to any Program Manager Personnel. Such Records shall be maintained and made available to the Owner or the Owner’s authorized representative upon reasonable advance notice. All such Records shall be preserved by the Program Manager and Program Manager Personnel for a period of three (3) years after receipt of final payment hereunder or until a final resolution of all billing issues, whichever is later. Owner and Owner’s representatives shall have access during normal working hours to all such records as they are maintained in the ordinary course of business at the offices and facilities of Program Manager or the applicable Program Manager Personnel, and Owner and Owner’s representatives shall be provided adequate, reasonable and appropriate workspace to conduct audits hereunder.

XII. Equal Employment Opportunity Requirements

1. The Program Manager 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 Program Manager 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 Program Manager, upon written notification by the Owner, will commence compliance procedures within thirty (30) days.

2. Program Manager confirms for itself and all Program Manager Personnel that Program Manager and each of the Program Manager Personnel who is an employer has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion or handicap; and that Program Manager and each of such Program Manager Personnel maintain no employee facilities segregated on the basis of race, color, national origin, sex, age, religion or handicap.

XIII. Dispute Resolution Procedures

1. **Dispute Resolution Generally.** The Program Manager shall continue to timely and properly perform all Services, and Owner will continue to pay for all Services properly performed, in accordance with the requirements of this Contract during the pendency of dispute resolution proceedings. The parties agree that, except as provided in [Section XIII.2](#), below, they shall attempt to resolve any dispute arising out of or related to this Contract in accordance with the Dispute Resolution Procedures (**Exhibit J**). The Program Manager will cooperate with and assist Owner to identify individuals to be approved by Owner as candidates qualified to serve as Disputes Board Members on a Disputes Board during the period that the PIP is under development.
2. **Exceptions to Dispute Resolution Procedures.** The foregoing notwithstanding, the Dispute Resolution Procedures may be discontinued or disregarded by Owner at any time for the purposes of taking any action, including seeking immediate judicial relief, in order to pursue, enforce, enjoin or otherwise take action in regard to:
 - (A) Liens filed or threatened against the Project(s);
 - (B) Insurance claims for any loss or liability of Owner or an Owner Indemnitee;
 - (C) Obligations to indemnify or defend an Owner Indemnitee against third party claims;
 - (D) Warranty claims;
 - (E) Termination for default for failure to deliver documents required to be furnished to Owner hereunder;
 - (F) Claims for fraud, trespass, conversion, intentional destruction of property or violation of trade secrets;

- (G) Claims for abandonment; and
 - (H) Unsafe or illegal conduct of the Program Manager or those for whom Program Manager is responsible.
3. **Prevailing Party.** In any dispute arising under this Agreement, the following shall apply in the determination of which party is the prevailing party. If a party claiming a right to payment of an amount in dispute is awarded all or substantially all of such disputed amount, then such claiming party shall be the prevailing party. If a party defending against such claim is found to be not liable to pay all or substantially all of the disputed amounts claimed by the claiming party, then the party so defending against such claim shall be the prevailing party. If both parties prevail with respect to different claims by each of them, then the party who is prevailing with respect to the substantially greater monetary sum shall be deemed the prevailing party; otherwise, if both parties prevail with respect to monetary sums on different claims, neither of which sums is substantially greater than the other, the tribunal having jurisdiction over the controversy, claims or actions shall in rendering the award determine in its discretion whether and to what extent either party should be entitled to recover any portion of its attorney fees.

XIV. Guaranty

- 1. **Parent Guaranty of [REDACTED].** Program Manager has caused its Parent Company to execute in favor of Owner, and Program Manager hereby delivers to Owner, and acknowledges that Owner has entered into this Contract in reliance on the representations and commitment of its Parent Company contained in, the Parent Guaranty (**Exhibit K**), guaranteeing to Owner all of the obligations, duties and undertakings of Jacobs Project Management Co. as the Program Manager under this Contract.
- 2. **Joinder Agreement of [REDACTED].** Program Manager has caused its Parent Company to execute below the Joinder Agreement confirming its obligations under the Parent Guaranty with respect to this Contract.

XV. Miscellaneous

- 1. **Applicable Law.** All questions relating to the validity, interpretation or performance of this Contract shall be determined in accordance with the laws of the State of Texas, disregarding any conflict of law rules which may dictate the application of the laws of any other jurisdiction. Venue for any action or proceedings arising under or pertaining to this Contract shall be in Bexar County, Texas.
- 2. **Work Product.** Program Manager assigns to Owner without limitation the entire right, title and interest in and to the exclusive use or reuse of all Work Product, which shall be

and remain the exclusive property of Owner; however, Program Manager shall have no liability to Owner for Owner's reuse of Work Product by others without the involvement of Program Manager. Upon request of Owner, Program Manager shall execute, assign to and assist Owner to pursue, obtain and enforce for Owner's benefit all patents, copyrights, and other intellectual property rights, and all applications therefore, in and to the Work Product in any and all countries. If called upon to render assistance after the termination of this Contract, Program Manager will be entitled to a fair and reasonable compensation for such assistance as Additional Services. Work Product shall be and remain the Owner's exclusive property, and shall not be used by Program Manager or Program Manager's Personnel, except in connection with the Project, without the Owner's prior written consent.

- 3. **Authority to Execute Contract.** Each party represents to the other that it has the power and authority to enter into this Contract, and that the person executing this Contract on its behalf has to power to do so and to bind it to the terms of this Contract.

- 4. **Notices.** Any notice, approval, or other communication directive provided for between the parties pursuant to this Contract shall be in writing and shall be deemed to have been properly given and effective upon receipt, if such notice shall have been (i) delivered by hand, (ii) mailed, postage prepaid, registered or certified, addressed to the following individuals, who shall be the parties' respective authorized agents:

To Owner:

With a copy to:

To Program Manager:

With a copy to:

5. **Third Party Beneficiaries.** No provision of this Contract shall confer or be construed to create any right or benefit in any third party, or in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of the Contract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. Program Manager shall provide that the Owner, the San Antonio Water System, may, at its election, assume the status of a third party beneficiary to any contracts, subcontracts, consulting agreements, purchase orders and other agreements executed by Program Manager in connection with this Agreement and/or the Program, which election may be exercised as to any such agreement by Owner's issuance of written notice of such election to the other party or parties to such agreement.

6. **Non-Waiver.** Failure of Owner to insist upon strict performance of any of the terms and conditions hereof, or Owner's failure or delay to exercise any rights or remedies provided herein or to properly notify Program Manager in the event of breach, or the acceptance of or payment for any of the Services hereunder, or approval of any design or work product, shall not release Program Manager of any of Program Manager's warranties, responsibilities or other obligations under this Contract and shall not be deemed a waiver of any right of Owner to insist upon strict performance hereof or any of its rights or remedies as to the Services, regardless when performed or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this Contract by Owner operate as a waiver of any of the terms hereof.

7. **Severability.** If any provision in this Contract is held to be unenforceable, the remainder of this Contract shall continue in full force and effect and, to the extent permitted by Applicable Law, this Contract shall be interpreted so as to give the effect to the original written intent of the parties. If any portion of a provision is held to be unenforceable, the

remainder shall be enforced to the maximum extent so as to give effect to the original written intent of the parties.

8. **Non-Appropriation.** Program Manager agrees that the Owner has projected costs for this Contract and Owner expects to pay all obligations of this Contract from projected revenues of the Owner. All obligations of the Owner are subject to annual appropriations by its Board of Trustees. Accordingly, notwithstanding anything in this Contract to the contrary, in the event that the Owner should fail to appropriate funds to pay any of Owner's obligations under the terms of this Contract, then the Owner's obligations under this Contract shall terminate, and the Program Manager's sole option and remedy shall be to terminate this Contract by written notice to Owner, and neither the Owner nor the Program Manager shall have any further duties or obligations hereunder, except those which expressly survive. Owner agrees to use good faith efforts to provide written notice to Program Manager when funds have been appropriated for expenditure under this Contract, and if expected funds are requested and not appropriated, Owner agrees to use good faith efforts to provide written notice to the Program Manager of the non-appropriation. Owner has obtained approval from its Board for funding for this Contract, to the extent set forth in Owner's Confirmation of Funding, attached hereto as **Exhibit M**.
9. **Security Procedures.** Program Manager shall comply with all security procedures set forth in Owner's Security Procedures, attached hereto as **Exhibit F**.
10. **Approval Not Release.** Approval by the Owner shall not constitute nor be deemed a release of the responsibility and liability of Program Manager, Program Manager Personnel, its employees, subcontractors, agents and consultants for the accuracy and competency of the Services and Work Product; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect, error or omission in the Services, Work Product or other documents prepared by Program Manager, Program Manager Personnel its employees, subcontractors, agents and consultants. Owner's approval or acceptance of Program Manager's tasks and/or Services will not release Program Manager from any liability for such tasks and/or Services because Owner is, at all times, relying upon Program Manager's skill and knowledge in performing its tasks and Services.
11. **Entire Agreement and Amendments.** This Contract has been the result of joint negotiation of the parties, each of whom has experience in the evaluation and assumption of risks and liabilities of the nature provided for herein, and each of whom has been represented and advised by legal counsel. This Contract constitutes the entire agreement between the parties pertaining to the subject matter hereof and shall not be construed more severely against one party than against the other. This Contract supersedes all prior or contemporaneous agreements and negotiations between them, and may not be modified orally or otherwise, other than by written instrument executed on behalf of each party by its duly authorized representatives. Owner shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not expressly set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Contract 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.

San Antonio Water System:

Program Manager:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

JOINDER AGREEMENT IN SUPPORT OF PARENT GUARANTY

Parent Company joins in the execution of this Contract for the limited purpose of evidencing that, in connection with the Parent Guaranty, it has reviewed and has knowledge of the terms and conditions hereof, and the obligations, duties and undertakings of Program Manager assumed herein.

By: _____

Name: _____

Title: _____