CONTRACT ADMINISTRATION
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STATE OF TEXAS

TWDB Contract No. 1800012271

COUNTY OF TRAVIS

KSA Engineers, Inc.

This Contract, (hereinafter "CONTRACT"), between the Texas Water Development Board (hereinafter "TWDB") and KSA Engineers, Inc. (hereinafter "CONTRACTOR"),

STANDARD CONTRACT

DEFINITIONS

For the purposes of this CONTRACT, the following terms or phrases shall have the meaning ascribed therewith:

1. TWDB – The Texas Water Development Board

2. CONTRACT – this Agreement, the Statement of Qualifications as submitted by CONTRACTOR and incorporated herein, and Scope of Work, Exhibit B.

3. TWDB PROGRAM MANAGER – The manager of the Asset Management Plan for Small Systems, or a designated representative

4. CONTRACTOR – KSA Engineers, Inc.

5. EXECUTIVE ADMINISTRATOR – The Executive Administrator of the TWDB or a designated representative

6. PARTICIPANT(S) – City of Elkhart

7. SERVICES – Activities to be performed by the Contractor as fully described in Scope of Work, Exhibit B.

8. DELIVERABLES – Items listed in the Scope of Work, Exhibit B

9. DEADLINE FOR CONTRACT EXECUTION –August 27, 2018

10. CONTRACT START DATE – Date of TWDB execution

11. DRAFT DELIVERABLE DUE DATE – Nine (9) months after CONTRACT START DATE

12. FINAL ANALYSIS – the analysis provided by the Contractor to the TWDB 12 to 18 months following the delivery of the Asset Management Plan as described in the Scope of Work, Exhibit B

13. CONTRACT EXPIRATION DATE –The earlier of either October 30, 2020, or the date that the Contractor receives notification from the TWDB that all program requirements have been met.

14. TOTAL COST OF SERVICES – up to, not to exceed $75,000

15. TWDB SHARE OF THE SERVICES – the lesser of $75,000 or 100.00 percent of the SERVICES or individual payment submission

16. PAYMENT SUBMISSION SCHEDULE – Monthly

17. FINAL DELIVERABLE DUE DATE- Sixty (60) days after DRAFT DELIVERABLE DATE

18. PROGRESS REPORT – Report that meets the requirements of Exhibit D

EXHIBIT LIST

A. Statement of Qualifications in response to the RFQ
B. Scope of Work
C. Memorandum of Agreement between City and TWDB
D. TWDB Progress Report and Reimbursement Guidelines

ARTICLE I. RECITALS

WHEREAS, on April 26, 2018, TWDB staff determined that the CONTRACTOR was the top ranked submission in response to the preprogram survey submitted by the participant;

WHEREAS, the Asset Management Plan for Small Systems was considered and approved by the TWDB on January 22, 2018.

Now, therefore, the TWDB and the CONTRACTOR, agree as follows:

ARTICLE II. PROJECT DESCRIPTION AND SERVICES TO BE PERFORMED

1. The TWDB enters into this CONTRACT pursuant to Water Code § 15.603;

2. Exhibit A, KSA Engineers, Inc. Statement of Qualifications in response to TWDB Request for Qualifications No. 580-18-RFQ0057, is incorporated herein and made a permanent part of this CONTRACT.

3. The CONTRACTOR will perform the SERVICES in accordance with the Scope of Work contained in Exhibit B. The Contractor will provide staff and resources as described

in their Statement of Qualifications, Exhibit A, that are necessary to complete the SERVICES.

4. A progress report, including results to date, will be provided to the TWDB Program Manager monthly, based on the State's Fiscal Year, throughout the project. Special interim reports on special topics and/or results will be provided as appropriate. Instructions for the progress report are shown in Exhibit D, TWDB Progress Report and Reimbursement Guidelines.

ARTICLE III. CONTRACT TERM, SCHEDULE, REPORTS, AND OTHER PRODUCTS

1. The CONTRACTOR has until the DEADLINE FOR CONTRACT EXECUTION to execute this CONTRACT or the Contract will be rescinded and void.

2. The CONTRACTOR shall begin performing its obligations hereunder on the CONTRACT START DATE and the CONTRACT shall expire on the CONTRACT EXPIRATION DATE.

3. The CONTRACTOR will complete the Scope of Work and will deliver all relevant documentation to the TWDB Program Manager no later than the DRAFT DELIVERABLES DATE. The TWDB Program Manager will review and return comments within thirty (30) days, if any, to the CONTRACTOR.

4. The CONTRACTOR will consider incorporating comments from the TWDB Program Manager and other commenters on the draft final product into a final product by the final product due date. The CONTRACTOR will include a copy of the TWDB Program Manager comments in the final product.

5. The Contractor will not include the TWDB logo on any of its deliverables.

6. The CONTRACTOR will submit the most recent progress report, as described in Exhibit D, with submittal of payments according to the PAYMENT SUBMISSION SCHEDULE.

7. The EXECUTIVE ADMINISTRATOR may extend the DRAFT DELIVERABLES DATE and the CONTRACT EXPIRATION DATE upon written request. The CONTRACTOR should notify the EXECUTIVE ADMINISTRATOR in writing within ten (10) working days prior to the DRAFT DELIVERABLES DATE or thirty (30) days prior to the CONTRACT EXPIRATION DATE that the CONTRACTOR is requesting an extension to the respective dates.

ARTICLE IV. COMPENSATION AND REIMBURSEMENT

1. The TWDB agrees to compensate and reimburse the CONTRACTOR in a total amount not to exceed $75,000 for costs incurred and paid by the CONTRACTOR

pursuant to performance of this CONTRACT. The TWDB shall reimburse the CONTRACTOR for 95% percent of each invoice received. Upon the CONTRACTOR's completion of a Final Analysis, and written acceptance of Final Analysis by the TWDB Program Manager, the TWDB shall pay the retained five percent (5%) of each invoice to the CONTRACTOR.

2. The CONTRACTOR shall submit progress reports, payments and documentation for reimbursement billing according to the PAYMENT SUBMISSION SCHEDULE and in accordance with the approved task and expense budgets contained in Exhibit D to this CONTRACT.

3. Travel expenses shall be limited to those authorized for state employees by the General Appropriations Act, Tex.Leg. R.S. 2017, Art. IX, Part 5 as amended or superseded.

4. For all reimbursement billings including any subcontractor's expenses, the EXECUTIVE ADMINISTRATOR must have determined that the contracts or agreements between the CONTRACTOR and the subcontractor are consistent with the terms of this CONTRACT. The CONTRACTOR is fully responsible for paying all charges by subcontractors prior to reimbursement by the TWDB.

5. The CONTRACTOR and its subcontractors shall maintain satisfactory financial accounting documents and records, including copies of invoices and receipts, and shall make them available for examination and audit by the EXECUTIVE ADMINISTRATOR. Accounting by the CONTRACTOR and its subcontractors shall be in a manner consistent with Generally Accepted Accounting Principles.

6. By executing this CONTRACT, the CONTRACTOR accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The CONTRACTOR shall comply with and cooperate in any such investigation or audit. The CONTRACTOR agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The CONTRACTOR also agrees to include a provision in any subcontract related to this contract that requires the subcontractor to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received pursuant to the subcontract.

7. The CONTRACTOR shall submit a signed and completed Progress Report and Payment Request in accordance with Exhibit D. If no costs are incurred during a reporting period, the CONTRACTOR shall submit a progress report indicating that zero work was performed.

8. Incomplete requests will be returned to the CONTRACTOR if deficiencies are not resolved within ten (10) business days.

9. If for some reason the reimbursement request cannot be processed due to the need for an amendment to the CONTRACT, the CONTRACTOR will be required to resubmit the Payment Request Checklist dated after the execution of the amendment.

10. The CONTRACTOR is responsible for any food or entertainment expenses incurred by its own organization or that of its subcontractors, outside that of the travel expenses authorized and approved by the State of Texas under this CONTRACT.

11. A compliance report in accordance with Texas Administrative Code (TAC) Title 1, Part 5, Chapter 111, Subchapter B, Rule §111.14: The CONTRACTOR shall maintain business records documenting its compliance with the approved Historically Underutilized Business subcontracting plan in the format prescribed by the Texas Procurement and Support Services (Exhibit F). The compliance reports must include payment information on all HUB and non-HUB subcontractors. Submittal of these monthly compliance reports is required as a condition of payment.

12. The TWDB will monitor the HUB subcontracting plan monthly to ensure the value of the subcontracts meets or exceeds the HUB subcontracting provisions specified in the contract. The CONTRACTOR who fails to implement the HUB subcontracting plan in good faith will be reported to Texas Procurement and Support Services. The TWDB may revoke the contract for breach of contract and make a claim against the CONTRACTOR.

ARTICLE V. INTELLECTUAL PROPERTY: OWNERSHIP, PUBLICATION, AND ACKNOWLEGEMENT

1. For purposes of this Article, "CONTRACTOR Works" are work products developed by the CONTRACTOR and Subcontractor using funds provided under this CONTRACT or otherwise rendered in or related to the performance in whole or part of this CONTRACT, including but not limited to reports, drafts of reports, or other material, data, drawings, studies, analyses, notes, plans, computer programs and codes, or other work products, whether final or intermediate.

    a. It is agreed that all CONTRACTOR Works shall be the joint property of the TWDB, the PARTICIPANT, and the CONTRACTOR.

    b. The parties hereby agree that, if recognized as such by applicable law, the CONTRACTOR Works are intended to and shall be works-made-for-hire with joint ownership between the TWDB, the PARTICIPANT, and the CONTRACTOR as such works are created in whole or part.

    c. If the CONTRACTOR Works do not qualify as works-made-for-hire under applicable law, the CONTRACTOR hereby conveys co-ownership of such

works to the TWDB, and the PARTICIPANT as they are created in whole or part. If present conveyance is ineffective under applicable law, the CONTRACTOR agrees to convey a co-ownership interest of the CONTRACTOR Works to the TWDB and the PARTICIPANT after creation in whole or part of such works, and to provide written documentation of such conveyance upon request by the TWDB or the PARTICIPANT.

d. The TWDB and the CONTRACTOR acknowledge that the copyright in and to a copyrightable CONTRACTOR Work subsists upon creation of the CONTRACTOR Works and its fixing in any tangible medium. The CONTRACTOR or the TWDB may register the copyrights to such Works jointly in the names of the CONTRACTOR and the TWDB.

e. The TWDB, the PARTICIPANT, and the CONTRACTOR each shall have full and unrestricted rights to use a CONTRACTOR Works with No Compensation Obligation.

2. For purposes of this Article, "Subcontractor Works" include all work product developed in whole or part by or on behalf of Subcontractors engaged by the CONTRACTOR to perform work for or on behalf of any CONTRACTOR under this CONTRACT (or by the Subcontractors' Subcontractors hereunder, and so on). The CONTRACTOR shall secure in writing from any Subcontractors so engaged:

a. unlimited, unrestricted, perpetual, irrevocable, royalty-free rights of the TWDB and the PARTICIPANT (and, if desired, of the CONTRACTOR) to access and receive, and to use, any and all technical or other data or information developed in or resulting from the performance of services under such engagement, with No Compensation Obligation; and either

b. assignment by the Subcontractor to the TWDB and the PARTICIPANT (and, if desired by them, jointly to the CONTRACTOR) of ownership (or joint ownership with the Subcontractor) of all Subcontractor Works, with No Compensation Obligation; or

c. grant by Subcontractor of a non-exclusive, unrestricted, unlimited, perpetual, irrevocable, world-wide, royalty-free license to the TWDB and the PARTICIPANT (and, if desired by them, the CONTRACTOR) to use any and all Subcontractor Works, including the right to sublicense use to third parties, with No Compensation Obligation.

3. "Use" of a work product, whether the CONTRACTOR Works, a Subcontractor Works or otherwise, shall mean and include, without limitation hereby, any lawful use, copying or dissemination of the work product, or any lawful development, use, copying or dissemination of derivative works of the work product, in any media or forms, whether now known or later existing.

4. "No Compensation Obligation" shall mean there is no obligation on the part of one co-owner or licensee of a work, whether a CONTRACTOR Works, a Subcontractor Works or otherwise, to compensate other co-owners, licensees or licensors of the work for any use of the work by the using co-owner or licensee, including but not limited to compensation for or in the form of: royalties; co-owner or licensee accounting; sharing of revenues or profits among co-owners, licensees or licensors; or any other form of compensation to the other co-owners, licensees or licensors on account of any use of the work.

5. "Dissemination" shall include, without limitation hereby, any and all manner of: physical distribution; publication; broadcast; electronic transmission; internet streaming; posting on the Internet or world wide web; or any other form of communication, transmission, distribution, sending or providing, in any forms or formats, and in or using any media, whether now known or later existing.

6. The TWDB shall have an unlimited, unrestricted, perpetual, irrevocable, non-exclusive royalty-free right to access and receive in usable form and format, and to use all technical or other data or information developed by the CONTRACTOR and Subcontractor in, or otherwise resulting from, the performance of services under this CONTRACT.

7. No unauthorized patents. The CONTRACTOR Works and Subcontractor Works or other work product developed or created in the performance of this CONTRACT or otherwise using funds provided hereunder shall not be patented by the CONTRACTOR or their Subcontractor unless the EXECUTIVE ADMINISTRATOR consents in writing to submission of an application for patent on such works; and provided that, unless otherwise agreed in writing, any application made for patent shall include and name the TWDB (and, as applicable and desired by them, the CONTRACTOR) as co-owners of the patented work:

   a. no patent granted shall in any way limit, or be used by the CONTRACTOR or Subcontractor to limit or bar the TWDB's rights hereunder to access and receive in useable form and format, and right to use, any and all technical or other data or information developed in or resulting from performance pursuant to this CONTRACT or the use of funds provided hereunder; and

   b. the TWDB (and, if applicable, the CONTRACTOR) shall have No Compensation Obligation to any other co-owners or licensees of any such patented work, unless otherwise expressly agreed in writing.

8. The CONTRACTOR shall include terms and conditions in all contracts or other engagement agreements with any Subcontractors as are necessary to secure these rights and protections for the TWDB; and shall require that their Subcontractors include similar such terms and conditions in any contracts or other engagements

with their Subcontractors. For the purposes of this section, "Subcontractors" includes independent contractors (including consultants) and also employees working outside the course and scope of employment.

9. Any work products subject to a TWDB copyright or joint copyright and produced or developed by the CONTRACTOR or their Subcontractor pursuant to this CONTRACT or using any funding provided by the TWDB may be reproduced in any media, forms or formats by the TWDB or the CONTRACTOR at their own cost, and be disseminated in any medium, format or form by any party at its sole cost and in its sole discretion. The CONTRACTOR may utilize such work products as they may deem appropriate, including Dissemination of such work products or parts thereof under their own name, provided that any TWDB copyright is noted on the materials.

10. The CONTRACTOR agrees to acknowledge the TWDB in any news releases or other publications relating to the work performed under this CONTRACT.

ARTICLE VI. AMENDMENT, TERMINATION, AND STOP ORDERS

1. This CONTRACT may be altered or amended by mutual written consent or terminated by the EXECUTIVE ADMINISTRATOR at any time by written notice to the CONTRACTOR. Upon receipt of such termination notice, the CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue all work in connection with the performance of this CONTRACT and shall proceed to cancel promptly all existing orders insofar as such orders are chargeable to this CONTRACT. The CONTRACTOR shall submit a statement showing in detail the work performed under this CONTRACT to the date of termination. The TWDB shall then pay the CONTRACTOR promptly that proportion of the prescribed fee, which applies to the work, actually performed under this CONTRACT, less all payments that have been previously made. Thereupon, copies of all work accomplished under this CONTRACT shall be delivered to the TWDB.

2. The CONTRACT may be extended beyond the Contract Expiration Date, at the discretion of the TWDB, upon written consent of the CONTRACTOR and the TWDB.

3. The EXECUTIVE ADMINISTRATOR may issue a Stop Work Order to the CONTRACTOR at any time. Upon receipt of such order, the CONTRACTOR shall discontinue all work under this CONTRACT and cancel all orders pursuant to this CONTRACT, unless the order directs otherwise. If the EXECUTIVE ADMINISTRATOR does not issue a Restart Order within 60 days after receipt by the CONTRACTOR of the Stop Work Order, the CONTRACTOR shall regard this CONTRACT terminated in accordance with the foregoing provisions.

ARTICLE VII. SUBCONTRACTS

Each Subcontract entered into to perform required work under this CONTRACT shall

contain the following provisions:

a. The CONTRACTOR will follow all state laws in procuring any other entities performing work on the SERVICES on behalf of the CONTRACTOR.

b. This subcontract does not create any debt by or on behalf of the State of Texas and the TWDB. The TWDB's obligations under this CONTRACT are contingent upon the availability of appropriated funds and the continued legal authority of the TWDB to enter into this CONTRACT.

c. a detailed budget estimate with specific cost details for each task or specific item of work to be performed by the Subcontractor and for each category of reimbursable expenses;

d. a clause stating that the Subcontract is subject to audit by the Texas State Auditor's Office and requiring the Subcontractor to cooperate with any request for information from the Texas State Auditor, as further described in Article X, Section 1, Paragraph D hereof;

e. a clause stating that ownership of data, materials and work papers, in any media, that is gathered, compiled, adapted for use, or generated by the Subcontractor or the CONTRACTOR shall become data, materials and work owned by the TWDB or Participant and that Subcontractor shall have no proprietary rights in such data, materials and work papers, except as further described in Article V hereof;

f. a clause stating that Subcontractor shall keep timely and accurate books and records of accounts according to generally acceptable accounting principles as further described in Article X, Section 2, Paragraph G;

g. a clause stating that Subcontractor is solely responsible for securing all required licenses and permits from local, state and federal governmental entities and that Subcontractor is solely responsible for obtaining sufficient insurance in accordance with the general standards and practices of the industry or governmental entity; and

h. a clause stating that Subcontractor is an independent contractor and that the TWDB shall have no liability resulting from any failure of Subcontractor that results in breach of CONTRACT, property damage, personal injury or death.

ARTICLE VIII. LICENSES, PERMIT, AND INSURANCE

1. For the purpose of this CONTRACT, the CONTRACTOR will be considered an independent contractor and therefore solely responsible for liability resulting from negligent acts or omissions. The CONTRACTOR shall obtain all necessary insurance, in the judgment of the CONTRACTOR, to protect themselves, the TWDB, and

employees and officials of the TWDB from liability arising out of this CONTRACT.

2. The CONTRACTOR shall be solely and entirely responsible for procuring all appropriate licenses and permits, which may be required by any competent authority for the CONTRACTOR to perform the subject work.

3. Indemnification. The CONTRACTOR shall indemnify and hold the TWDB and the State of Texas harmless, to the extent the CONTRACTOR may do so in accordance with state law, from any and all losses, damages, liability, or claims therefore, on account of personal injury, death, or property damage of any nature whatsoever caused by the CONTRACTOR, arising out of the activities and work conducted pursuant to this CONTRACT. The CONTRACTOR is solely responsible for liability arising out of its negligent acts or omissions during the performance of this CONTRACT.

ARTICLE IX. SEVERANCE PROVISION

Should any one or more provisions of this CONTRACT be held to be null, void, voidable, or for any reason whatsoever, of no force and effect, such provision(s) shall be construed as severable from the remainder of this CONTRACT and shall not affect the validity of all other provisions of this CONTRACT which shall remain of full force and effect.

ARTICLE X. GENERAL TERMS AND CONDITIONS

1. GENERAL TERMS.

   a. No Debt Against the State. This CONTRACT does not create any debt by or on behalf of the State of Texas and the TWDB. The TWDB's obligations under this CONTRACT are contingent upon the availability of appropriated funds and the continued legal authority of the TWDB to enter into this CONTRACT.

   b. Independent Contractor. Both parties hereto, in the performance of this contract, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

   c. Procurement Laws. The CONTRACTOR shall comply with applicable State of Texas procurement laws, rules and policies, including but not limited to competitive bidding and the Professional Services Procurement Act, Government Code, Chapter 2254, relating to contracting with persons whose services are within the scope of practice of: accountants, architects, landscape architects, land surveyors, medical doctors, optometrists, professional engineers, real estate appraisers, professional nurses, and certified public accountants.

d. Right to Audit. The CONTRACTOR and its Subcontractors shall maintain all financial accounting documents and records, including copies of all invoices and receipts for expenditures, relating to the work under this CONTRACT. The CONTRACTOR shall make such documents and records available for examination and audit by the EXECUTIVE ADMINISTRATOR or any other authorized entity of the State of Texas. The CONTRACTOR'S financial accounting documents and records shall be kept and maintained in accordance with generally accepted accounting principles. By executing this CONTRACT, the CONTRACTOR accepts the authority of the Texas State Auditor's Office to conduct audits and investigations in connection with all state funds received pursuant to this CONTRACT. The CONTRACTOR shall comply with directives from the Texas State Auditor and shall cooperate in any such investigation or audit. The CONTRACTOR agrees to provide the Texas State Auditor with access to any information the Texas State Auditor considers relevant to the investigation or audit. The CONTRACTOR also agrees to include a provision in any Subcontract related to this CONTRACT that requires the Subcontractor to submit to audits and investigation by the State Auditor's Office in connection with all state funds received pursuant to the Subcontract.

e. Force Majeure. Unless otherwise provided, neither the CONTRACTOR nor the TWDB nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this CONTRACT caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, strike, fires, explosions, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within two (2) business days of the existence of such force majeure or otherwise waive this right as a defense.

f. Does not Boycott Israel. As required by Texas Government Code Section 2270.002, the CONTRACTOR certifies, by executing this CONTRACT, that the CONTRACTOR does not, and will not during the term of this CONTRACT, boycott Israel. The CONTRACTOR further certifies that no subcontractor of the CONTRACTOR boycotts Israel, or will boycott Israel during the term of this CONTRACT. The CONTRACTOR agrees to take all necessary steps to ensure this certification remains true during the term of this CONTRACT.

g. Iran, Sudan and Foreign Terrorist Organizations. As required by Section 2252.151 of the Texas Government Code, as amended, solely for purposes of

compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required by applicable federal law, the Contractor certifies that neither the Contractor nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Contractor (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

2. STANDARDS OF PERFORMANCE.

a. Personnel. The CONTRACTOR shall assign only qualified personnel to perform the services required under this CONTRACT. The CONTRACTOR shall be responsible for ensuring that any Subcontractor utilized shall also assign only qualified personnel. Qualified personnel are persons who are properly licensed to perform the work and who have sufficient knowledge, skills and ability to perform the tasks and services required herein according to the standards of performance and care for their trade or profession.

b. Professional Standards. The CONTRACTOR shall provide the services and deliverables in accordance with applicable professional standards. The CONTRACTOR represents and warrants that it is authorized to acquire Subcontractors with the requisite qualifications, experience, personnel and other resources to perform in the manner required by this CONTRACT.

c. Antitrust. The CONTRACTOR represents and warrants that neither the CONTRACTOR nor any firm, corporation, partnership, or institution represented by the CONTRACTOR, or anyone acting for such firm, corporation, partnership, or institution has (1) violated the antitrust laws of the State of Texas under the Texas Business & Commerce Code, Chapter 15, of the federal antitrust laws; or (2) communicated directly or indirectly the proposal resulting in this CONTRACT to any competitor or other person engaged in such line of business during the procurement process for this CONTRACT.

d. Conflict of Interest. The CONTRACTOR represents and warrants that the CONTRACTOR has no actual or potential conflicts of interest in providing the deliverables required by this CONTRACT to the State of Texas and the TWDB. The CONTRACTOR represents that the provision of services under this CONTRACT will not create an appearance of impropriety. The CONTRACTOR also represents and warrants that, during the term of this CONTRACT, the CONTRACTOR will immediately notify the TWDB, in writing, of any potential

conflict of interest that could adversely affect the TWDB by creating the appearance of a conflict of interest.

CONTRACTOR represents and warrants that neither the CONTRACTOR nor any person or entity that will participate financially in this CONTRACT has received compensation from the TWDB or any agency of the State of Texas for participation in the preparation of specifications for this CONTRACT. The CONTRACTOR represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant in connection with this CONTRACT.

e. Proprietary and Confidential Information. The CONTRACTOR warrants and represents that any information that is proprietary or confidential, and is received by the CONTRACTOR from the TWDB or any governmental entity, shall not be disclosed to third parties without the written consent of the TWDB or applicable governmental entity, whose consent shall not be unreasonably withheld.

f. Public Information Act. The CONTRACTOR acknowledges and agrees that all documents, in any media, generated in the performance of work conducted under this CONTRACT are subject to public disclosure under the Public Information Act, Government Code, Chapter 552. The CONTRACTOR shall, upon request of the TWDB, produce all documents at least two (2) days prior to the TWDB's deadline under the Public Information Act.

g. Accurate and Timely Record Keeping. The CONTRACTOR warrants and represents that it will keep timely, accurate and honest books and records relating to the work performed and the payments received under this CONTRACT according to generally accepted accounting standards. Further, the CONTRACTOR agrees that it will create such books and records at or about the time the transaction reflected in the books and records occurs.

h. Dispute Resolution. The CONTRACTOR and the TWDB agree to make a good faith effort to resolve any dispute relating to the work required under this CONTRACT through negotiation and mediation as provided by Government Code, Chapter 2260 relating to resolution of certain contract claims against the state. The CONTRACTOR and the TWDB further agree that they shall attempt to use any method of alternative dispute resolution mutually agreed upon to resolve any dispute arising under this CONTRACT if this CONTRACT is not subject to Chapter 2260.

i. Contract Administration. The TWDB has designated a TWDB Program Manager for this CONTRACT. The Program Manager will serve as the point of contact between the TWDB and the CONTRACTOR. The TWDB's Program

Manager shall supervise the TWDB's review of the CONTRACTOR's technical work, deliverables, draft reports, the final report, payment requests, schedules, financial and budget administration, and similar matters. The TWDB Program Manager does not have any express or implied authority to waive strict performance of the terms or conditions of the CONTRACT.

ARTICLE XI. CORRESPONDENCE

All correspondence between the parties shall be made to the following addresses:

For the **TWDB**:

Contract Issues:
Texas Water Development Board
Attention: Matthew Schmidt
P.O. Box 13231
Austin, Texas 78711-3231
Email: contracts@twdb.texas.gov

Payment Request Submission:
Texas Water Development Board
Attention: Matthew Schmidt
P.O. Box 13231
Austin, Texas 78711-3231
Email: invoice@twdb.texas.gov

Physical Address:
Stephen F. Austin State Office Building
1700 N. Congress Avenue
Austin, Texas 78701

For the **CONTRACTOR:**

Contract Issues:
Walter F. Hicks, III, P.E.
Vice President
6781 Oak Hill Blvd.
Tyler, Texas 75703
Thicks@ksaeng.com

Physical Address:
KSA Engineers, Inc.
140 E. Tyler Street, Suite 600
Longview, Texas 75601

IN WITNESS WHEREOF, the parties have caused this CONTRACT to be duly executed in multiple originals.

TEXAS WATER DEVELOPMENT BOARD

Jeff Walker
Executive Administrator

Date: 9-12-18

KSA ENGINEERS, INC.

Mitchell L. Fortner, P.E.
President

Date: 8-9-2018

EXHIBIT A

STATEMENT OF QUALIFICATIONS

STATEMENT OF QUALIFICATIONS OF CONTRACTOR AS PROVIDED TO THE TWDB IN RESPONSE TO RFQ 58018RFQ0057
INCORPORATED HEREIN, AVAILABLE UPON REQUEST

EXHIBIT B

SCOPE OF WORK

The scope of work as determined by TWDB for the Contract must follow the methodology and meet all requirements associated with and listed in the most recent version of the TCEQ's Managing Small Public Water Systems (RG-501) and Managing Small Domestic Wastewater Systems (RG-530), as applicable to the type of system, along with supplemental requirements. The work must include the following tasks and meet the following requirements:

A. Asset Management Plan
   - Conduct a system evaluation (asset identification, location, and date of service or approximate age), as needed, resulting in an inventory of the system and prioritization of assets;
   - develop a comprehensive plan for managing system assets;
   - develop a budget for managing system assets;
   - develop an implementation plan, including a time schedule, for implementing and updating the asset management plan; and
   - determine whether a rate study is necessary.

   The resulting asset management plan must fulfill the general requirements of a Fiscal Sustainability Plan as outlined in the Federal Water Pollution Control Act at 33 U.S. Code § 1383(d)(1)(E), which requires:
   "(I) an inventory of critical assets that are a part of the treatment works;
   (II) an evaluation of the condition and performance of inventoried assets or asset groupings;
   (III) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and
   (IV) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.;"

   Further, in the section of the asset management plan that discusses funding sources, it must identify current TWDB financial assistance programs, including the CWSRF and DWSRF programs as applicable, that may be utilized to meets the system's needs. The asset management plan must include an analysis of whether current utility rates would provide adequate revenue to meet future system needs but it does not have to include a full rate study that establishes a new rate structure.

B. For Water Systems: Source Assessment and Planning - Identify the system's drinking water source, develop any appropriate best management practices for sustaining the source (at a minimum develop or update the system's conservation and drought contingency plans), and, if needed, identify options for alternative sources. It will discuss plans for water conservation and detecting and minimizing water loss.

For Wastewater Systems: Sustainable Systems - Create a plan to manage the system more efficiently by conducting an energy assessment of the system and including recommendations for energy-efficiency improvements, and potential public-participation programs.

C. Operations and Maintenance - Create an operations and maintenance manual for the system that includes a plan for scheduling and performing preventative and general maintenance. The plan may identify other resources available to the system such as TCEQ's financial, managerial, and technical assistance.

D. Compliance - Train the system's management and staff on monitoring, reporting, and record-keeping requirements, the TCEQ's investigation and enforcement process (including an enforcement scenario), and develop a compliance manual that includes copies of all required reports, compliance checklists and tables for keeping track of State and/or Federal requirements. The compliance manual may be incorporated into the Operations and Maintenance manual. (For wastewater systems, checklists 1-7 in Part D of Managing Small Domestic Wastewater Systems (RG-530) are not required to be completed.)

E. Other Requirements –

- As part of the project, all tools that are developed, such as spreadsheets and manuals, must be nonproprietary and must be installed on the system's computer system. and Key staff members for the system must be trained sufficiently to implement the plan. The Contractor must coordinate development activities, including the training of key system staff members, with the system's management.

- The system's management and the TWDB must be kept informed monthly of the status of the project while it is under development and be provided an opportunity to provide ample input on the development of plans.

- The Contractor may arrange for periodic meetings between the Contractor, TWDB, and system as necessary to resolve any issues.

- The project activities conducted by the Contractor must include at least one presentation to the system's governing body or owner that provides an overview of the developed plans, the benefits to the system of implementing the plans, and any recommendations.

- The Contractor must return to the system between 12 months and 18 months after delivery of the final plans to assess the system's implementation progress and provide TWDB and the system's governing body or owner a written analysis of the system's implementation of the plans.

EXHIBIT C

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT No. 1800012234 AS EXECUTED BETWEEN THE PARTICIPANT AND THE TWDB INCORPORATED HEREIN, AVAILABLE UPON REQUEST

EXHIBIT D

TWDB PROGRESS REPORT AND REIMBURSEMENT GUIDELINES

The Texas Water Development Board will require a progress report and reimbursement request submitted on a monthly basis, due to the assigned TWDB Program Manager by the last Friday of each month during the duration of this contract. The progress report will be submitted along with the submission of an invoice/payment request.

The progress report shall contain the following standard elements:

- Date: Date the Progress Report is Sent
- Entity Name: Name and primary contact of the PARTICIPANT
- Contractor Name: Name and primary contact of the CONTRACTOR
- Utility: Type of Utility (Water/Wastewater)

The next section of the progress report will provide a brief discussion of the progress completed on the following items, along with an estimated percentage complete:

- Asset Management Plan
- Compliance Manuals
- Operations and Maintenance Manuals
- Training

The final section of the progress report will be titled, "Participant In-Kind Labor Certification", and demonstrate the PARTICIPANTS contribution of providing 80 hours of in-kind labor associated with the project as required by their executed Memorandum of Agreement, and will contain the following elements:

- Date:
- Activity:
- Participant Employee:
- Hours:

The Progress report will be required to be reviewed and signed by the PARTICIPANT and the CONTRACTOR and a copy will be retained by the PARTICIPANT for contract review purposes. At the request of the CONTRACTOR a template Progress Report workbook may be requested from the CONTRACT ADMINISTRATOR.

Along with the Progress Report, the CONTRACTOR shall submit a Reimbursement Request documenting the SERVICES for the reporting period for reimbursement by the TWDB with the

following information:

- TWDB Contractor Number;
- Billing Period; Beginning (Date) to Ending (Date);
- Total Expenses and Description of expenses for this period. The TWDB Program Manager has the authority to request any follow-up documentation related to expenses.
- Total In-Kind Services, if applicable;
- Retainage of 5% of invoice
- Total Costs to be reimbursed by the TWDB for the billing period
- Certification, signed by the PARTICIPANT and CONTRACTOR, that the expenses submitted for the billing period are true and correct representation of amounts of work performed directly related to this CONTRACT.

EXHIBIT E

HUB SUBCONTRACTING PLAN PROGRESS ASSESSMENT REPORT

(Use current form located at:
http://www.window.state.tx.us/procurement/prog/hub/hub-forms/)