

LETTER OF AGREEMENT

This is a Letter of Agreement (“Agreement”) between the City of Killeen (“City”) and 120Water, Inc. (“Contractor”); collectively, the “Parties”.

In consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the Parties hereby agree as follows:

Scope of Agreement. The purpose of this Agreement is to enlist the services of the Contractor to:

This letter of agreement is for the continued assistance to develop and implement an all-inclusive lead and copper program as mandated by the Environmental Protection Agency’s revised Lead and Copper Rule. This includes the PWS Pro application program & event management workflow, the LCRR Managed Services-coaching and guidance through inventory building, verification, on-going management sampling and communication, water testing kits, Lead and Copper testing, annual mailout of Notices to customers (the “Project”).

Term of Agreement. This Agreement shall become effective on _____ and shall automatically terminate 365 days from the effective date.

Consideration. Contractor agrees to provide the services stated above:

_____ at the rate of \$0.00 per ;

_____ for the lump sum payment not to exceed \$0.00

For progress payments in the total amount not to exceed \$59,247.42.

Independent Contractor. Contractor shall act as an Independent Contractor. Under no circumstances shall Contractor be deemed an employee or partner of Owner.

Applicable Laws: Contractor shall follow all applicable local, State, and Federal laws, regulations, and requirements for the abatement and disposal of lead, asbestos, and other routinely encountered hazardous substances. If any unusual substances or extraordinary amounts of the aforementioned substances are encountered, the Contractor will contact the City to contact the State and the relevant agency with authority for regulation of the substance.

Standard of Care. The standard of care for all professional engineering and related services performed or furnished by Contractor under this Agreement will be the care and skill ordinarily used by members of the Contractor’s profession practicing under similar circumstances at the same time and in the same locality.

Insurance. Contractor shall procure and maintain insurance in the following amounts:

| | |
|------------------------|--|
| Worker’s Compensation | Statutory |
| Automobile Liability | \$500,000 Combined single Limit for each accident (Bodily injury and property damage). |
| General Liability | \$1,000,000 each occurrence (Bodily injury and property damage). |
| Professional Liability | \$1,000,000 general aggregate. |

On all policies, except Worker's Compensation and Professional Liability, City shall be listed as an additional insured with a full waiver of subrogation. A certificate of coverage shall be provided to the City prior to commencing work on the Project.

Subcontracts and Assignments. Contractor's rights and obligations hereunder are deemed to be personal and may not be transferred or assigned. Any assignments shall be void and of no effect.

Indemnification. To the fullest extent permitted by law, City or Contractor, as applicable, shall indemnify and hold harmless the other party, and the other party's officers, directors, partners and employees from and against any and all costs, losses and damages (including, without limitation, all fees and charges of attorneys and other professionals, and all court or dispute resolutions costs) caused by the negligent acts or omissions of the City or Contractor, as applicable, or their respective officers, directors, partners, employees and consultants with respect to the performance under this Agreement or the Project.

Termination. This Agreement may be terminated by either party for cause upon thirty (30) calendar days' written notice, provided such cause cannot be reasonably cured within such thirty (30) day period. City may terminate this Agreement for convenience effective upon receipt of written notice declaring the same and Contractor shall be compensated for all work completed at that time in accordance with this Agreement.

Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas. The Parties agree that for venue purposes, any and all lawsuits, disputes, or causes of action shall be in Bell County, Texas.

Severability. If any provision of this Agreement shall, for any reason, be held to violate any applicable law, then the invalidity of such a specific provision in this Agreement shall not be held to invalidate the remaining provisions of this Agreement.

Survival. Any provision of this Agreement providing for indemnity, insurance or a duty that necessarily will not be completed until after the expiration or termination of this Agreement shall continue in full force and effect until such a time as all duties have been fully performed.

Non-waiver. Failure to enforce any provision of this Agreement by either party shall not constitute a waiver of that provision for purposes of the subsequent enforcement of that provision or the remainder of this Agreement.

Contract Verification. Texas law provides that a governmental entity may not enter into contracts over for goods and services valued at \$100,000 or more with a company that employs at least 10 full-time employees unless the company provides written verification regarding aspects of the company's business dealings.

- Texas Government Code, Chapter 2271 – Contractor must verify that it does not boycott Israel and will not boycott Israel during the term of the contract. Boycott Israel is defined in Government Code Chapter 808.
- Texas Government Code, Chapter 2276 – Contractor must verify that it does not boycott energy companies and will not boycott energy companies during the term of the contract. Boycott energy company is defined in Government Code Chapter 809.
- Texas Government Code, Chapter 2274 – Contractor must verify that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract against a firearm entity or firearm trade association. Discriminate, firearm entity and firearm trade association are defined in Government Code Chapter 2274.

Entire Agreement. This Agreement shall represent the entire agreement by and between the Parties and it may not be changed except by written amendment duly executed by all Parties.

SIGNED, ACCEPTED, AND AGREED to by the undersigned Parties, on the dates indicated, who acknowledge that they have read and understand this Agreement and that the Agreement is issued in accordance with local, State, and Federal laws, and the undersigned Parties hereby execute this legal document voluntarily and of their own free will.

City

Contractor

Kent Cagle
City Manager

Date

By:

Date

Title: