

ATTACHMENT II

LEASE OF GROUNDWATER

This Lease of Groundwater ("Lease") is entered into to be effective this 1st day of March, 2017 (the "Effective Date"), by and between the **San Antonio Water System** (hereinafter referred to as "Lessor") and the **City of San Antonio** (the "Lessee"). Lessor hereby leases to Lessee the following unrestricted, fully transferable Edwards Aquifer water rights and related rights, on the following terms and conditions:

1. Water Rights.

Lessor leases to Lessee the use of Lessor's groundwater rights and Lessor's permit rights from the Edwards Aquifer Authority ("EAA") to withdraw **3.000** acre-feet of unrestricted Edwards Aquifer groundwater per annum, under EAA Initial Regular Permit **P103-833** (the "Water Rights"). The Water Rights include the use of all property rights to and for the quantity of rights above referenced, including the right to withdraw and/or beneficially use the Water Rights.

2. Additional Lease Rights.

The lease of the Water Rights as defined above shall also expressly include the use of all of Lessor's Groundwater Withdrawal Permit rights to the extent pertaining to the Water Rights, all withdrawal or other permits pertaining to the Water Rights, and all modifications, amendments, renewals, extensions or successor or substitute permits relating to any of the above described items, and the right to withdraw and/or beneficially use the Edwards Aquifer water related to or pertaining to the Water Rights.

3. Term.

The term of this Lease ("Term") shall be for a period commencing on **March 1, 2017** (the "Commencement Date") and continuing through **December 31, 2021** (the "Expiration Date"). Under this Lease, each calendar year that this Lease is in effect, beginning with the calendar year in which the Commencement Date occurs, is a Lease Year.

4. Appropriation.

Notwithstanding anything contained herein to the contrary, Lessee shall have the right to terminate this Lease at the end of each of its annual budget periods if it has not appropriated the necessary funds for payment of the lease payment due during the next annual budget period. Such election shall be made in writing to the Lessor within fifteen (15) days after the end of the applicable annual budget period and shall be effective upon Lessor's receipt of such written notice. Provided, however, Lessee agrees to use its best

efforts to obtain and appropriate funds for the payment of all lease payments and other expenses and obligations due under the terms of this Lease. Pursuant to Section 271.903 of the Texas Local Government Code, Lessor acknowledges and agrees that all lease payments and other expenses and obligations due under the terms of the Lease shall be deemed to be the commitment of the Lessee's current revenues only.

5. Payments.

For each of the Lease Years, rent for the Water Rights will be **one-hundred and forty and no/100 dollars per acre-foot (\$140.00)**, for a total lease payment of **four hundred and twenty and no/100 dollars (\$420.00)** per Lease Year ("Rent").

6. Reductions and Changes in Designation.

In the event that there is a permanent reduction by the EAA or other governmental authority of the maximum authorized withdrawal amount of the Groundwater Withdrawal Permit(s) ("Permanent Reduction"), Lessor must elect one of the two following options within sixty (60) days of the effective date of such Permanent Reduction: (1) Lessor may elect that the amount of the Water Rights leased by Lessee under this Lease shall be reduced on an equal percentage basis (or such method adopted by the EAA or other governmental authority) as of the effective date of the reduction of each Groundwater Withdrawal Permit under the Permanent Reduction, and the Rent shall be reduced accordingly on the per acre foot basis as described in Section 5 of this Lease for the first Lease Year in which the Permanent Reduction is applicable and each subsequent Lease Year; or (2) if Lessor, after such Permanent Reduction, owns sufficient rights under the Groundwater Withdrawal Permit relating to the Water Rights to provide the full amount of the Water Rights described in Section 1, Lessor may elect that there is no reduction of the Water Rights or the Rent under this Lease. If, as a result of the first election, Lessee has prepaid Rent for a Lease Year in which Rent is reduced, then Lessor shall refund to Lessee the amount of the reduction in the Rent within 30 days of date Lessor makes such an election if the reduction in Rent occurs in the final Lease Year. If it is not the final Lease Year, then Lessor shall refund to Lessee the amount of the reduction in Rent for the Lease Year within 30 days of date Lessee makes such a request. If Lessee does not make such a request, Lessee may set off such refund amount against any Rent due Lessor in subsequent Lease Years. In the event of the second election, the parties agree to execute and deliver any documents which are required by the EAA or any other governmental authority.

This section 6 does not apply to a temporary reduction in the use of any part of the Water Rights due to demand management, critical period or similar rules of the EAA or other government authority.

7. Documents to be Delivered on Effective Date of Lease.

On the Effective Date of this Lease, Lessor shall deliver to Lessee the following documents executed and acknowledged by Lessor: an EAA Application to Transfer and

Amend Initial Regular Permit for the Water Rights, including all Exhibits and other forms or documents required by the EAA to approve the transfer of the use of the Water Rights to Lessee; (b) a Memorandum of Lease of Groundwater in the form provided by Lessee and attached hereto as Exhibit "A".

8. Permits.

Omitted.

9. Continued Operation and Compliance with Lease.

Lessor and Lessee agree to comply with all applicable EAA rules or regulations and other applicable federal, state or local laws, regulations or ordinances relating to Water Rights and the Groundwater Withdrawal Permits.

10. Quiet Enjoyment.

Lessor does hereby represent to Lessee that it has the beneficial use and ownership of the Water Rights, including Lessor's Groundwater Withdrawal Permits. Lessor does hereby represent to provide to Lessee quiet enjoyment, without restriction or limitation, of the Water Rights during the full term of this Lease. In addition to and notwithstanding the foregoing, in the event the Lessee is deprived of quiet enjoyment of all or any of the Water Rights at any time during the Term of this Lease, Lessee may terminate this Lease in whole, or in part with respect to that portion of the Water Rights that Lessee is unable to quietly enjoy.

11. Proceeds From Awards.

Omitted.

12. Cooperation.

Omitted.

13. Assignability.

Neither Lessor nor Lessee shall have the right to assign this Lease or any rights hereunder without the written consent of the other party.

14. Notices.

Any notices to be given hereunder shall be given by placing the notice in the United States mail, certified or registered, properly stamped and addressed to the address shown below or such other addresses as the respective party may direct in writing to the other, by overnight delivery service, or by personal delivery to such address. Notice shall be

deemed effective upon such placing in the mails, on the next business day following delivery and acceptance for next day delivery by any overnight delivery service, or upon actual delivery if by personal delivery:

Lessor: San Antonio Water System
Water Resources Department
Mailing Address:
P.O. Box 2449
San Antonio, Texas 78212
Physical Address:
2800 U.S. Highway 281 North
San Antonio, Texas 78298

Lessee: City of San Antonio
ATTN: Assistant Finance Director – Public Utilities
P.O. Box 83966
San Antonio, Texas 78283-3966

15. Fees.

Subject to reimbursement from Lessee, Lessor will pay the EAA transfer application fees and county recordation fees necessary to transfer the Water Rights to Lessee, and will also pay EAA Aquifer Management Fees associated with the Water Rights for each Lease Year. If Lessor has paid some or all of the EAA Aquifer Management Fees for the initial Lease Year prior to the Effective Date of this Lease, Lessee shall reimburse Lessor for such payment. Lessee shall not be liable for any fees, taxes or assessments on the Real Property, or for any EAA fees assessed on or related to water or permit rights not leased to Lessee under this Lease.

16. Liens.

This section is intentionally left blank.

17. Default.

This section is intentionally left blank.

18. Waiver.

The failure on the part of either party to require the performance by the other of any portion of this Lease shall not be deemed a waiver of, or in any way affect that party's rights to enforce such provision. Any waiver by either party of any provision of this Lease shall not be a waiver of any other provision hereof.

19. Severability.

The invalidity or unenforceability of any provision of this Lease shall not affect the validity or enforceability of any other provision of this Lease.

20. Governing Law.

This Lease shall be governed by the laws of the State of Texas and is performable in Bexar County, Texas.

21. Binding Effect.

The Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, except as provided in Section 15.

22. Authority.

Each of the persons signing on behalf of Lessor and Lessee hereby represent and warrant that they have the authority to execute this Lease on behalf of the party indicated by their signature and have the authority to bind such party thereto.

23. Survival.

Omitted.

24. Force Majeure.

If Lessee is denied its use of all or a part of the Water Rights by reason of any laws, regulations, or governmental action or other acts outside of the control of Lessor and Lessee, other than as described in Section 6 above, then Lessee and Lessor shall be excused from their obligations hereunder for so long as these circumstances exist; provided, however, that in the event the Water Rights are reduced as described in Section 6 above, the provisions of Section 6 shall control.

25. Further Assurances.

Lessor and Lessee shall take all further actions and shall execute and deliver to the other any other document or instrument which is necessary or useful to fully carry out the transactions evidenced by this Lease, including any amendments to the Permit Rights carried out in conformance with applicable EAA regulations or any documentation required by the EAA in order to evidence the termination of Lessee's interest in the Water Rights upon the termination of this Lease. In addition, the parties agree to amend this Lease in any manner necessary to cause this Lease to be in compliance with EAA rules and regulations. Lessee shall have the authority to file the Memorandum of Lease

of Groundwater of public record to reflect its interest in the Water Rights as set out under the terms of this Lease.

26. Attorneys Fees.

This section is intentionally left blank.

27. Entire Agreement.

This Lease contains all agreements between the parties hereto as relates to the lease of the Water Rights and any agreement not contained herein shall not be recognized by the parties. The captions used herein are for convenience only and shall not be used to construe this Lease. Words of gender shall be construed to include any other gender, and words in the singular number shall include the plural and vice versa unless the context requires otherwise.

28. Counterparts.

This lease may be executed by the parties in any number of counterparts, each of which when so executed and delivered shall be deemed an original instrument, but all such counterparts together shall constitute but one and the same instrument.

[Signature Page to Follow]

Lessor

SAN ANTONIO WATER SYSTEM

By: Robert R. Puente
Title: President/Chief Executive Officer

Lessee

CITY OF SAN ANTONIO

By:
Title:

EXHIBIT "A"

MEMORANDUM OF LEASE OF GROUNDWATER

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE.

MEMORANDUM OF LEASE OF GROUNDWATER

This Memorandum of Lease of Groundwater ("MOL") is executed this ___ day of _____, 2017 by and between the San Antonio Water System (the "Lessor") and the City of San Antonio, a Texas municipal corporation (the "Lessee").

WITNESSETH:

1. On March 1, 2017, Lessor and Lessee entered into a Lease of Groundwater (the "Lease") of the Water Rights described below:

Water Rights:

The Water Rights consist of the Lessor's groundwater rights and Lessor's permit rights from the Edwards Aquifer Authority ("EAA") to withdraw **three (3.000)** acre-feet of unrestricted Edwards Aquifer groundwater per annum (the "Water Rights") under EAA Initial Regular Permit **P103-833** (the "Groundwater Withdrawal Permit"). The Groundwater Withdrawal Permit authorizes the withdrawal and beneficial use of groundwater from the Edwards Aquifer pursuant to the terms and conditions of the Groundwater Withdrawal Permit.

2. The Lease sets out the rights and obligations of the Lessor and Lessee to the Groundwater Withdrawal Permit.

3. The term of the Lease is for a period, from **March 1, 2017** to **December 31, 2021**.

4. In accordance with the terms of the Lease, the Lessor has agreed to lease a total of three (3) acre-feet per annum of Water Rights to Lessee.

5. This MOL is intended to act only as the notice of the existence of the Lease and its general terms. To the extent the terms of this MOL conflict with the terms of the Lease, the terms of the Lease shall control.

Lessor

SAN ANTONIO WATER SYSTEM

By: Robert R. Puente
Title: Present/Chief Executive Officer

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
2017 by Robert R. Puente, President/Chief Executive Officer of the *San Antonio Water System*.

NOTARY PUBLIC, State of Texas

(Seal)

Lessee:

CITY OF SAN ANTONIO

By:

Title:

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
2017 by _____ of the City of San Antonio.

NOTARY PUBLIC, State of Texas

(Seal)

After recording return to:

**Water Resources
Attn: Darren Thompson
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449**