

SERVICE AGREEMENT

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This chilled water services agreement (“Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 2014 for the purchase of chilled water service between the CITY OF SAN ANTONIO, herein called “CUSTOMER”, and the SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, herein called “SAWS” which are collectively referred to as the “Parties”:

NOW, THEREFORE, upon and in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**1. CUSTOMER AGREES TO PURCHASE CHILLED WATER SERVICE**

- (a) The CUSTOMER shall purchase from SAWS and SAWS shall sell to the CUSTOMER chilled water service beginning the date of execution of this Contract.
- (b) Service shall be delivered in accordance with SAWS published “Regulations and Criteria for Chilled Water service, and Customer Equipment Installation” which may be amended, or repealed and replaced, hereinafter called the “Regulations”.
- (c) Chilled water facilities shall be installed and maintained in accordance with SAWS’ Regulations.

2. **SAWS AGREES TO DELIVER CHILLED WATER**

(a) For chilled water service, SAWS shall deliver continuously to CUSTOMER'S Premises, at the point of the CUSTOMER'S service valve chilled water at an approximate temperature of 42 degrees Fahrenheit and at sufficient flow to meet the minimum connected load as specified in Paragraph 6(d) of this Contract providing the CUSTOMER return temperature conditions are met as specified Paragraph 3(b) of this Contract.

(b) Notwithstanding the requirements of Paragraph 2(a) the CUSTOMER understands that SAWS does not guarantee continuous uninterrupted service, and the CUSTOMER agrees that SAWS shall not be liable for any damages resulting from interruption of service. SAWS will make best efforts to minimize service interruptions to CUSTOMER.

(c) Premises to which service shall be delivered are described as follows:

To the following designated meters:  
#1, #2, #4, Lila Cockrell, and #5 (new meter) located on that property belonging to the CUSTOMER commonly known as the Henry B. Gonzalez Convention Center Complex and located at 200 E. Market St., in San Antonio, Bexar County, Texas

If CUSTOMER wishes to add more meters to receive additional service, this contract will require a formal amendment to be approved by the SAWS Board of Trustees and the City Council.

(d) As used herein, the term "Premises" shall include the above-described property and all improvements now existing as well as future expansions.

3. **CUSTOMER AND SAWS RESPONSIBILITIES**

(a) CUSTOMER commits to utilize the contract demand specified in Paragraph 6(c) of this Contract to cool above described Premises unless changed by mutual agreement of both Parties.

- (b) The CUSTOMER shall not draw off any chilled water from its system and shall make its best efforts to return chilled water to SAWS after building use at a temperature not less than 54 degrees Fahrenheit. SAWS and CUSTOMER shall jointly work together to identify any problem areas with return temperatures lower than 54 degrees Fahrenheit and resolve any associated issues.
- (c) The CUSTOMER shall have control and possession of chilled water after it passes the outlet side of the CUSTOMER'S inlet service valve and until the return chilled water passes the inlet side of the CUSTOMER'S leaving service valve.
- (d) SAWS shall maintain service valves as well as metering facilities at its expense.
- (e) CUSTOMER agrees that all of the systems in CUSTOMER building between said two service valve points except SAWS' metering devices shall be owned, maintained and controlled by CUSTOMER.
- (f) CUSTOMER agrees that SAWS shall have no responsibility for the use, handling, or action of chilled water or return water, nor any liability for anything which may be done, happen or arise with respect to any of them between the said two service valve points. The Parties acknowledge that they are political subdivisions of the State of Texas and that each is subject to and shall comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practice and Remedies Code, section 101.00 *et seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.
- (g) The CUSTOMER grants SAWS the right, upon notice and coordination with CUSTOMER, to interrupt service to make repairs to the system. SAWS will schedule repairs to minimize service interruption and inconvenience to CUSTOMER.

- (h) The CUSTOMER, upon notice and coordination with CUSTOMER, grants SAWS the right to enter the CUSTOMER'S Premises at any reasonable time for the purpose of installing, maintaining, inspecting, testing, repairing, altering, replacing or removing any of SAWS' property.
- (i) The CUSTOMER will grant, or cause to be granted to SAWS, without cost and unburdened by improvements, an easement in recordable form in and across CUSTOMER'S site for pipelines to serve the CUSTOMER. SAWS will restore the surface easements or licensed areas to the reasonable condition, normal wear and tear excluded, prior to excavation after installing, replacing, repairing, or maintaining its pipeline and facilities.
- (j) The CUSTOMER will execute a transfer of use agreement with SAWS, on the standard form used by SAWS and CUSTOMER, to provide SAWS sole use, benefit and control of the property located at the southwest corner of the Alamodome parking lot east of the railroad on which to construct, improve, operate and maintain a chilled water production facility (the "Chilled Water Facility Site"). The transfer of use agreement shall provide that use, benefit and control of the Chilled Water Facility Site shall revert to Customer when the Chilled Water Facility Site becomes surplus to the needs of SAWS' chilled water system, as reasonably determined by SAWS. The legal property description of the Chilled Water Facility Site will be [prepared by SAWS and] attached to the transfer of use agreement. SAWS sole use, benefit and control of the Chilled Water Facility Site shall survive any sale by the Customer of the Alamodome Property or any determination to otherwise put the Alamodome property to an alternative use, and the Chilled Water Facility Site, like other property held for beneficial use by SAWS, may only be sold upon resolution of the SAWS Board of Trustees, together with City Council concurrence. CUSTOMER shall ensure that any alternative use of the Alamodome property will not interfere with SAWS' operation and maintenance of the Chilled Water Facility Site, including, any mains or related infrastructure that connects the Chilled Water Facility Site to any of its customers.

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**CITY TO PROVIDE LANGUAGE ON JOINT USE AGREEMENT FOR THIS PARAGRAPH.** The CUSTOMER will provide land by an easement in a form to be recorded, at the southwest corner of the Alamodome parking lot east of the railroad on which to construct a chilled water production facility. Land is further described in attached \_\_\_\_\_ incorporated by this reference. Land will be available by easement dedicated for the use and benefit of SAWS. Any building changes on the site shall be coordinated with and approved by City Council.

- (k) SAWS will design, purchase and install a minimum of a ~~1,200~~ 1,800 ton capacity chiller in the Cherry Street Chilled Water Plant located at 725 Cherry Street on or before July 1, 2015. SAWS will provide at notice by May 1, 2015 if circumstances appear to prevent beneficial use of the new chiller by the date required by the CUSTOMER's contractor to support Convention Center expansion construction activities; under these circumstances, then, at the option of the CUSTOMER, SAWS will furnish the needed added chilled water capacity from temporary facilities which will be paid for by the CUSTOMER or the CUSTOMER's contractor. The CUSTOMER reserves the right to obtain temporary chilled water from its contractor pending completion of the additional permanent chiller; if the CUSTOMER so elects, the CUSTOMER shall notify SAWS that its contractor will provide temporary service by June 1, 2015.

#### 4. METERING

- (a) SAWS shall maintain the necessary metering devices for chilled water service on the CUSTOMER'S Premises. Such metering devices shall remain the property of SAWS. Any adjustment or relocation shall only be done by SAWS. CUSTOMER shall not install any piping or otherwise bypass metering and shall not alter or tamper with meter installation.
- (b) In the event that SAWS determines it necessary to replace the chilled water metering devices the CUSTOMER and SAWS shall mutually agree on the

D R A F T ~~10 Sep 2014~~ 17 Oct 2014

amount of space and location to be provided by CUSTOMER for SAWS metering of chilled water on the Premises described in Paragraph 2(d) of this Contract.

- (c) The CUSTOMER shall continue to provide at each metering place a 120 volt, 60 cycle, single phase electrical outlet and electric power for such outlet. The CUSTOMER shall continue to provide a 3/4 inch rigid conduit from the CUSTOMER'S building telephone terminal to a location selected by SAWS. The conduit shall contain a pull wire. Power to meter must remain on at all times.

**5. CESSATION OF CHARGES**

- (a) In the event the CUSTOMER'S Premises should be destroyed by a force majeure event or voluntarily razed, CUSTOMER shall be liable for all charges incurred to the date of such occurrence but shall not be obligated for charges subsequent to such occurrence, except as provided in Paragraphs (b) and (c) below.
- (b) When CUSTOMER'S Premises have been destroyed by a force majeure event, or voluntarily razed, charges shall resume only if the same structure shall be rebuilt or another structure using cooling or heating facilities be erected by the CUSTOMER in the same or essentially the same location.
- (c) When a force majeure event prevents SAWS from performing for a period exceeding thirty (30) days and as a result CUSTOMER provides temporary services from other sources. Charges will resume when restoration of service has been accomplished.

**6. RATE AND BILLING**

- (a) The Parties understand that payment for services is subject to annual appropriation by City Council; however, the Parties further understand and agree that SAWS cannot provide free service pursuant to City Ordinance No. 75686 et

seq. In the event funds are not appropriated by City Council, service cannot be furnished.

- (b) The CUSTOMER shall pay SAWS not later than the due date specified in the statement for chilled water service in accordance with the schedule of rates as established by Ordinance No. 96794 of the City Council of the City of San Antonio as set forth in schedule "A" attached hereto and made a part hereof, except as modified in Paragraph (d). Such rates will be charged until modified or changed by appropriate action of the SAWS Board of Trustees and the City Council of the City of San Antonio, in which event the rates as changed will apply.
- (c) Contract Demand: CUSTOMER agrees that it shall pay SAWS a monthly capacity charge pursuant to the contract demand levels specified in Paragraph (d) of this section for chilled water service at the rate specified under Paragraph (b) of this section unless CUSTOMER qualifies for cessation of charges as specified in Section 5 of this Contract.
- (d) The contract demand at date of execution of this Contract is 7019 tons per hour. Once the CUSTOMER'S contractor for the Convention Center expansion enters into a separate temporary chilled water services contract with SAWS and initiates temporary chilled water service, the CUSTOMER'S contract demand will be ~~6,689~~ tons per hour until the CUSTOMER'S contractor's temporary chilled water service is terminated. Upon termination of the CUSTOMER'S contractor's temporary service, the CUSTOMER'S contract demand will be ~~8,816~~ tons per hour. Twelve (12) months after the ~~8,816~~ tons per hour level contract demand becomes effective and at the end of each subsequent twelve (12) month period, the contract demand will be adjusted if the Average Peak Demand measured during the preceding twelve (12) months exceeds ~~8,816~~ tons per hour. Average Peak Demand is calculated by averaging the three highest demands measured on any given day in total from all five meters identified in paragraph 2(c) during three separate weeks occurring

D R A F T ~~10 Sep 2014~~ 17 Oct 2014

during the preceding twelve (12) months. A week shall be measured between 12:00 a.m. (midnight) on Monday and 11:59 p.m. on Sunday. The contract demand for the next twelve (12) months will be the greater of the Average Peak Demand— measured during the preceding twelve (12) month period or 8,816 tons.

- (e) CUSTOMER agrees that it shall pay SAWS a commodity charge for chilled water service based on the current rate applied to actual consumption of chilled water. No commodity charge shall be made if the metered use of the CUSTOMER is zero (0) during the month. Documentation supporting the calculation of the commodity charge shall be made available to the CUSTOMER upon request.
- (f) CUSTOMER shall pay SAWS \$1,741,223 by August 31, 2015 to reimburse SAWS for (1) the installation of an additional 1,800 tons of chilled water capacity chiller necessary to support the expansion of the Convention Center, and (2) the cost incurred by SAWS to install a twenty-inch (20") chilled water supply and return lines which will to provide the additional service needed to support the expanded Convention Center. If the CUSTOMER does not pay SAWS the \$1,741,223 amount by August 31, 2015, CUSTOMER agrees it shall pay SAWS an additional monthly surcharge for the next twenty (20) years in an amount of \$11,030 which will be back billed to the date of initiation of beneficial use of the additional chiller needed to serve the CUSTOMER. The surcharge amount represents the estimated annual debt service divided by twelve (12) associated with: (1) the installation of the additional a-1,800 tons of chilled water capacity chiller necessary to support the expansion of the Convention Center, and (2) the cost incurred by SAWS to install a twenty-inch (20") chilled water supply line and a twenty-inch (20") chilled water return line to provide the additional service needed to support the expanded Convention Center. Upon initiation of beneficial use of the additional chiller needed to serve the CUSTOMER, for the next twenty (20) years, CUSTOMER agrees that it shall pay SAWS an additional monthly surcharge in an amount of \$10,702.00, which represents the estimated annual debt service divided by twelve (12) associated with: (1) the installation of a 1,200 ton

D R A F T ~~10 Sep 2014-17 Oct 2014~~

~~chiller necessary to support the expansion of the Convention Center, and (2) the cost incurred by SAWS to install a twenty-inch (20") chilled water supply line and a twenty-inch (20") chilled water return line to provide the additional service needed to support the expanded Convention Center.~~ SAWS may, at its discretion, choose to install a larger chiller. The additional cost associated with installing a larger chiller will be the responsibility of SAWS. CUSTOMER agrees to pay the monthly surcharge for the entire 20 year initial term of this contract regardless of the cessation of any other charges due under this contract in accordance with Section 5 of this contract.

- (g) The Parties recognize that the installation of additional permanent chilled water production capacity by SAWS to serve the expanded Convention Center may not be available by the date CUSTOMER'S contractor is ready to commence construction activities that need additional chilled water service. Should the CUSTOMER elect to have SAWS provide additional temporary service as provided for in Section 3(k), the CUSTOMER agrees that it shall reimburse SAWS directly, or through its contractor, for the actual cost of providing temporary chilled water production facilities required to provide additional service (beyond 7,019 tons per hour) during the expansion of the Convention Center.

- (h) In accordance with the provisions of the Utility Services Contract executed between the CUSTOMER and SAWS on June 8, 1990 as amended by City of San Antonio Ordinance 2010-04-29-0362, CUSTOMER agrees that it shall pay SAWS a monthly surcharge in an amount equal to eighty five hundredths of one percent (0.85%) of new plant project costs in excess of six and one half million dollars (\$6,500,000). Plant project costs are defined as all costs incurred by SAWS associated with the engineering, development, construction and interim financing of the new facilities at the Alamodome site. Actual bond interest will be deducted and remainder applied to retirement of principal. The surcharge will be discontinued when (1) excess principal has been retired or (2) CUSTOMER

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has provided funds to SAWS in the amount of new plant project costs exceeding \$6,500,000 or (3) SAWS has contracted to furnish and has commenced invoicing for additional chilled water service where the additional demand charges from these services exceed the added new plant project fixed costs by an amount equal to or greater than the surcharge. Subject to conditions (1) to (3) above, beginning January 1, 2010, the surcharge will be directly reduced to the CUSTOMER by an amount equal to the additional demand charges from these services that SAWS has contracted to furnish and has commenced invoicing until the surcharge is discontinued. Should said additional demand be discontinued through no fault of SAWS, the surcharge to the CUSTOMER shall be increased by the amount of charges for the discontinued demand. Such payments will be considered on an annual basis consistent with SAWS fiscal year. Subsequent to January 1, 2010, the adjusted annual surcharge owed by the CUSTOMER for each succeeding calendar year will be further credited on a one-time basis for any months of any additional demand contracted and invoiced in the preceding year. The additional chilled water service required is currently estimated at 2,500 tons.

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7. **TERM**

- (a) The term of this Contract shall begin upon the date of its execution by all parties and shall continue for a primary term of twenty (20) years and thereafter for consecutive one year automatic renewals until cancelled by either party. Any termination of this Contract shall be made only after negotiations by both parties and subject to the approval by both the City Council and the SAWS Board of Trustees.
- (b) Service Default: If any monthly charge for chilled water service owing under the terms of this Contract is not paid within forty-five (45) days after written notice of

D R A F T ~~10 Sep 2014~~ 17 Oct 2014

non-payment is given to the CUSTOMER, then SAWS shall have the right to terminate this Contract. Any unbilled monthly surcharges under Section 6(f) will be accelerated and CUSTOMER shall be liable for all charges, including interest, incurred to the date of any termination.

**8. NOTICES**

Notice to the Parties shall be considered to have been properly given, if given by first class mail, postage prepaid at the addresses shown below, or at such other addresses as the Parties shall have previously indicated in writing:

**CUSTOMER:** City of San Antonio  
Henry B. Gonzalez Convention Center  
Attn: Administrative Services Manager  
P.O. Box 1809  
San Antonio, Texas 78296-1809

**SAWS:** San Antonio Water System Board of Trustees  
Attn: Contract Administration  
2800 US Hwy 281 North  
P.O. Box 2449  
San Antonio, Texas 78298-2449  
(210) 704-7297

**9. ASSIGNMENT**

This Contract may not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld.

**10. ENTIRE AGREEMENT**

This Contract constitutes the entire agreement and supersedes all prior agreements and understandings between the Parties concerning the subject matter of this Contract.

No rights under this Contract may be waived and no modification, change or amendment to this Contract shall be made except by written agreement executed by the Parties.

11. **WAIVER**

The failure on the part of either party at any time to require the performance by the other party of any portion of this Contract shall not be deemed a waiver of or in any way affect a party's right to enforce such provision or any other provision. Any waiver by either party of any provision hereof shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof.

12. **SEVERABILITY**

The invalidity or non-enforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

13. **CUMULATIVE REMEDIES**

To the event not in conflict with Section 32, subsection S of City of San Antonio Ordinance No. 75686, SAWS shall have all rights and remedies afforded to it at law or in equity to enforce or interpret the terms of this Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or equity.

14. **SUCCESSORS and ASSIGNS**

CUSTOMER hereby binds itself, its heirs, executors, administrators, other legal representatives, successors and assigns for the faithful and full performance of the terms and provisions of this Contract.

15. **FORCE MAJEURE**

In the event that SAWS shall be prevented from completing performance of its obligation under this Contract by an act of God or other occurrence whatsoever which is beyond the control of SAWS, then SAWS shall be excused from any further performance of its obligations and undertakings.

16. **SURVIVAL**

Any and all representations, conditions and warranties made by CUSTOMER under this Contract are of the essence of this Contract and shall survive the execution, delivery and termination of it, and all statements contained in any document required by SAWS, whether delivered at the time of the execution, or at a later date, shall constitute representations and warranties hereunder.

17. **GOVERNING LAW**

This Contract is governed by the laws of the State of Texas and obligations of the Parties under this Contract are performable in Bexar County, Texas. This Contract will be governed by, and interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of the Agreement shall be in Bexar County, Texas.

18. **HEADINGS**

All headings in this Contract have been inserted for convenience reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions hereof.

**SCHEDULE "A"**

**CHILLED WATER SERVICE RATE SCHEDULE FOR DOWNTOWN AREA  
SAN ANTONIO WATER SYSTEM  
San Antonio, Texas  
Effective December 1, 2002**

Billings for chilled water service shall be produced on a monthly basis and shall consist of both a capacity charge and a commodity charge as follows.

**CAPACITY CHARGE**

The capacity charge shall be \$18.40 per ton hour of demand. The demand level billed each customer shall be adjusted if the Average Peak Demand measured during the preceding twelve (12) month calendar period exceeds the demand specified in the contract with the customer. Average Peak Demand is calculated by averaging the three highest demands measured on any given day during three separate weeks occurring during the preceding twelve (12) months calendar period. The demand level billed shall be the larger of the Average Peak Demand or the connected load specified in the contract with the customer, whichever is the greater of the two.

The demand for the Alamodome which is an event driven facility with occasional peaks in demand not indicative of the normal demand placed on the chilled water system , shall be defined in a service agreement between the City of San Antonio and the San Antonio Water System to account for its unique and unpredictable demands on the chilled water system.”

**COMMODITY CHARGE**

A commodity charge will be applied to the monthly metered consumption. The commodity charge will provide for the pass-through of the Utility Costs, including water and energy costs. No commodity charge shall be made if the metered use of the customer is zero (0) during the month. The commodity charge will be computed as follows; all utility costs of the previous month will be recovered through an allocation to the consumption of the billing period. In addition, the Payment to the City’s General Fund will be added where applicable.

$$\text{Utility Costs} + \text{Payment to General Fund} = \text{Commodity Charge Consumption}$$

**ADJUSTMENT FOR PAYMENT TO THE CITY GENERAL FUND**

The City of San Antonio may change the Percentage for payment to the City General Fund pursuant to City Ordinance No. 75686, which is currently established at 2.7% of Gross Revenues. At that time, the commodity and capacity charge will be revised to include the new Percentage of Payment to the City of San Antonio.

**DEFINITIONS**

A ton is defined as 12,000 BTU’s per hour.

D R A F T ~~10 Sep 2014~~ 17 Oct 2014

An hour is defined as sixty (60) consecutive minutes.

A week is defined as beginning 12:00 a.m. (midnight) on Monday and ending at 11:59 p.m. on Sunday.

Gross Revenues is defined in City Ordinance No. 75686

D R A F T ~~10 Sep 2014~~ 17 Oct 2014

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CUSTOMER:**

**CITY OF SAN ANTONIO**

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

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

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

AGREED TO AND ACCEPTED ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**OWNER:**

**SAN ANTONIO WATER SYSTEM**

**BOARD OF TRUSTEES**

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

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

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

EXECUTED AND ACCEPTED in duplicate originals on this \_\_\_\_\_ day  
of \_\_\_\_\_, 2014.