

SERVICE AGREEMENT

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This chilled water services agreement (“Contract”) is made this _____TH day of March, 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.”:

WHEREAS, in 1993 the City of San Antonio began receiving chilled water service for the City’s Alamodome stadium facility under the terms of a contract executed in 1991 with the City Water Board of San Antonio, the predecessor agency to the San Antonio Water System; and

WHEREAS, the original contract for chilled water service to the Alamodome expired at the end of its twenty-year contract term on May 31, 2013; and

WHEREAS, the Special Capacity Charge for the Alamodome as specified in schedule “C” of Ordinance #96794 is no longer applicable and shall be repealed by the City Council; and

WHEREAS, San Antonio Water System expresses its intent to commit capital funds in 2014 for improvements necessary to replace chillers No. 6 and No. 7 at the Central Heating & Cooling Plant and to upgrade chilled water service meters as specified in the adopted 2014 San Antonio Water System Capital Improvements Program and

WHEREAS, both parties wish to enter into a new Contract to continue the provision of chilled water service to the Alamodome; and

WHEREAS, the effective date of this new Contract will be June 1, 2013 and as such, San Antonio Water System will make billing adjustments retroactively reflecting the revised terms specified herein to all billings issued to the City of San Antonio for Alamodome service since June 1, 2013 through the last billing issued prior to the approval of this Contract by the San Antonio Water System Board of Trustees and the City Council.

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“Regulations and Criteria for Chilled Water service, and Customer Equipment Installation” which may be amended, or repealed and replaced, hereinafter called the “Regulations”.

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 CUSTOMERS 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(c) 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) Premise to which service shall be delivered are described as follows:
 - That property belonging to the CUSTOMER commonly known as the Alamodome San Antonio and located at 100 Montana Street, in San Antonio, Bexar County, Texas
- (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 agreement 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 system 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 of easements or licensed areas to its reasonable condition, except for normal wear and tear, prior to excavation. (Need to confirm if this has already been done as part of the previous contract.)

- (j) 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 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. (Need to confirm if this has already been done as part of the previous contract.)

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 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 Paragraph (b) and (c) below.
- (b) When a 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 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 #96794 of the City Council of the City of San Antonio as set forth in schedule "A" attached hereto and made a part hereof with the following exception as mutually agreed by the CUSTOMER and SAWS: as specified in Section 6(c) below, the CUSTOMER'S demand shall be fixed at 5,000 tons for the duration of the initial term of this contract and the CUSTOMER'S demand shall not be subject to any adjustment as otherwise may be allowed under schedule "A". Such rates will be

charged until they are amended or repealed and replaced, 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 based on contract demand of 5,000 tons of demand for chilled water service at the rate specified under paragraph (b) of this section unless CUSTOMER qualifies for cessation of charges as specified in Paragraph 5 of this Contract. This contract demand shall be effective on June 1, 2013 and continue for the primary term of this contract, as specified in section 7(a) unless modified by the mutual agreement of both parties.
- (d) The CUSTOMER acknowledges that it has the capability of exceeding the chilled water demand of 7,140 tons. The CUSTOMER shall use its best efforts to operate the premises in a manner that will not adversely affect the operations of the SAWS chilled water system. The staff at the premises will notify SAWS staff of any pre-cooling operations. SAWS reserves the right to limit flow of 7,140 tons if the CUSTOMER'S operations are adversely affecting the system's other customers.
- (e) The CUSTOMER agrees to inform SAWS of its Schedule of Events so that the chilled water production equipment can be operated in the most effective and efficient manner. The CUSTOMER further agrees to notify SAWS in advance of any unusual circumstances that would change the Stadium's normal operation of its air conditioning system. Reciprocally, SAWS agrees to inform the CUSTOMER if any events or circumstances will adversely affect the service to the Stadium.

- (f) 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.

7. **TERM**

- (a) The effective date of this Contract will be June 1, 2013 and as such, SAWS will make billing adjustments retroactively reflecting the standard monthly capacity charge and the revised contract demand specified in Paragraph 6(c) above to all billings for Alamodome service issued since June 1, 2013 through the last billing issued prior to the approval of this Contract by the SAWS Board of Trustees and the City Council. The term of this Contract shall continue for a primary term of five (5) years starting June 1, 2013, and with the option for three (3) additional five-year terms if each option is mutually agreed to by both parties. 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 non-payment is given to the CUSTOMER then SAWS shall have the right to terminate this Contract. CUSTOMER shall be liable for all charges 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
Alamodome San Antonio
Attn: General Manager
100 Montana Street
San Antonio, Texas 78203

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 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 shall be the largest number of tons of cooling demanded in any of the twelve months ending with the month next proceeding the month in which the bill is dated or the connected load specified in the contract with the customer, whichever is the greater of the two.

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.

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

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. An hour is defined as 60 consecutive minutes.
Gross Revenues is defined in City Ordinance No. 75686

EXECUTED on this _____ day of March, 2014.

CUSTOMER:

CITY OF SAN ANTONIO

By: _____

Name: _____

Title: _____

AGREED TO AND ACCEPTED ON THIS _____ day of March, 2014.

OWNER:

SAN ANTONIO WATER SYSTEM

BOARD OF TRUSTEES

By: _____

Name: _____

Title: _____

**EXECUTED AND ACCEPTED in duplicate originals on this _____ day
of March, 2014.**