

AN ORDINANCE 2014 - 04 - 17 - 0262

**AUTHORIZING A CHILLED WATER CONTRACT WITH SAN ANTONIO WATER SYSTEM (SAWS) TO PROVIDE CHILLED WATER SERVICE TO THE ALAMODOME FOR A PERIOD OF FIVE YEARS WITH THREE FIVE-YEAR EXTENSIONS AT AN ESTIMATED ANNUAL COST OF \$1,820,000.**

\* \* \* \* \*

**WHEREAS**, chilled water is necessary for the Alamodome to operate as a state of the art major events entertainment facility; and

**WHEREAS**, the current chilled water contract between the City and SAWS is outdated in its rates and terms of service which were originally established in 1991 during the initial construction of the events facility; and

**WHEREAS**, the current chilled water agreement expired on May 31, 2013, but SAWS agreed to continue to provide chilled water service to the Alamodome under the same terms and conditions of the existing agreement contingent on renegotiations; and

**WHEREAS**, the parties have concluded a multi-month negotiation process that has resulted in agreement on a revised chilled water contract that more accurately reflects the current needs of the Alamodome; and

**WHEREAS**, the SAWS Board of Trustees held a meeting on April 1, 2014 in which it passed a resolution recommending approval of the renegotiated chilled water contract, attached as **Exhibit A**, and if approved by City Council the contract will become retroactively effective on June 1, 2013; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The terms and conditions of the Chilled Water Service Contract between the City of San Antonio and the San Antonio Water System (Chilled Water Contract) as it appears in **Exhibit B** are hereby approved.

**SECTION 2.** Consistent with the Chilled Water Contract, the Special Capacity Charge for the Alamodome as specified in Schedule "C" of Ordinance No. 96794 is no longer applicable and is hereby repealed.

**SECTION 3.** The following language shall be added to the Capacity Charge of Schedule "A" Chilled Water Service Rate Schedule for Downtown Area, which appears in Chapter 34, Article X of the City Code:

The demand for the Alamodome, which is an event driven facility with occasional peaks in demand during off peak hours and long periods of low demand, 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.

The Municipal Code Corporation is authorized to make this addition to the Capacity Charge of Schedule "A" found in Chapter 34, Title X of the San Antonio City Code.

**SECTION 4.** The City Manager or her designee is hereby authorized to execute the Chilled Water Contract retroactively to June 1, 2013, and may execute and all other documents necessary to fulfill the purpose and intent of this Ordinance.

**SECTION 5.** The funds to support the Chilled Water Contract will come from the Community and Visitor Facilities Fund.


**SECTION 6.** This Ordinance becomes effective immediately upon the receipt of eight affirmative votes, or in the event eight affirmative votes are not received, on the tenth day after passage by majority vote.

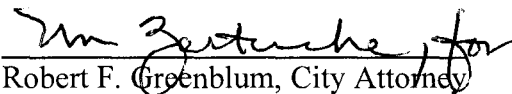
**PASSED AND APPROVED**, this 17<sup>th</sup> day of April 2014.

  
M A Y O R  
Julián Castro

**ATTEST:**

**APPROVED AS TO FORM:**

  
Leticia M. Vacek, City Clerk

  
Robert F. Greenblum, City Attorney

Voting Results Interface

<b>Agenda Item:</b>	23 ( in consent vote: 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 17A, 17B, 18, 18A, 18B, 19, 21, 23, 24, 26, 27, 28, 29, 30, 30A, 30B, 31 )
<b>Date:</b>	04/17/2014
<b>Time:</b>	09:47:00 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An ordinance authorizing a Chilled Water Contract with San Antonio Water Systems (SAWS) to provide chilled water service to the Alamodome for a period of five years with three five-year extensions at an estimated annual cost of \$1,820,000.00. [Ed Belmares, Assistant City Manager; Michael J. Sawaya, Convention & Sports Facilities]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

# **Exhibit A**

TO: San Antonio Water System Board of Trustees

FROM: Daniel G. Myers, P.E., Director, Fleet and Facilities and Steven Clouse, Senior Vice President/Chief Operating Officer

THROUGH: Robert R. Puente, President/Chief Executive Officer

SUBJECT: AUTHORIZING AN AGREEMENT WITH THE CITY OF SAN ANTONIO FOR CONTINUED CHILLED WATER SERVICE

Board Action Date: April 1, 2014

**SUMMARY AND RECOMMENDATION:**

The attached resolution authorizes the President/Chief Executive Officer or duly appointed designee to execute the utility service agreement with City of San Antonio for continued chilled water service for a period of five (5) years with options for three (3) additional five-year terms with revised demand terms and authorizes the San Antonio Water System to adjust monthly billings retroactively to the City of San Antonio for chilled water service back to June 1, 2013 based on the revised demand terms;

- In 1993, the City Water Board (“CWB”), predecessor to the San Antonio Water System (the “System”) began providing chilled water service for the City Of San Antonio (“COSA”) Alamodome stadium facility under the terms of a contract executed in 1991.
- The original contract provided for a twenty (20) year term beginning with dome operation and allowed for total chilled water demand of 7,140 tons of capacity and included two types of demand charges – a lower Special Capacity Charge which recovers fixed costs associated only with the City-VIA funded “increased facility” (4,800 tons), and a Standard Capacity Charge (assessed on all other customers of the downtown chilled water system) which recovers fixed costs associated with existing CWB chilled water capacity (originally 2,340 tons). The original contract also provided for a Commodity Charge which recovers variable utility costs associated with the operation of plant, a charge which is also assessed other customers.
- The original contract for chilled water service to the Alamodome expired at the end of its twenty-year contract term on May 31, 2013. Section 10f of that contract provided that the separate Standard Capacity Charge, Special Capacity Charge and Commodity Charge last only as long as the contract was in effect.
- Pursuant to demand studies based on information from April 2013, current Alamodome total demand stands at 7,055 tons. The updated contract terms will lower total Alamodome demand from 7,055 tons to 5,000 tons; however, all of the demand going forward will be assessed the same Standard Capacity Charge as all other customers, thus eliminating the Special Capacity Charge. The new contract also eliminates any penalties to COSA if the

Alamodome peaks usage above contracted demand.

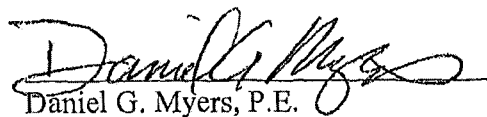
- The System and COSA wish to execute the new contract to continue the provision of chilled water service to the Alamodome with an effective date of June 1, 2013. The System will make billing adjustments retroactively reflecting the revised terms specified in the new contract to all billings issued to COSA for Alamodome service since June 1, 2013 through the last billing issued prior to the approval of the referenced contract by the System's Board of Trustees and the City Council.
- The terms of the contract between the COSA and the System will be for a period of five (5) years starting on June 1, 2013, with the option of three (3) additional five-year terms if each option is mutually agreed to by both parties.
- Following approval of this item by the San Antonio Water System Board of Trustees, the City of San Antonio will present a similar item before City Council for their approval.

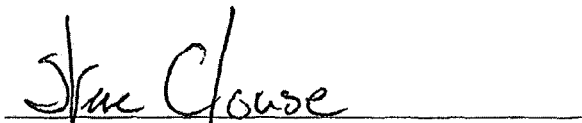
Staff recommends that the Board approve this resolution.

**FINANCIAL IMPACT:**

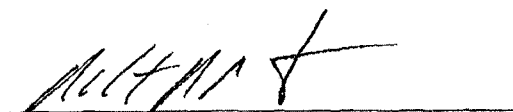
Entering into this agreement with the City of San Antonio will limit the revenues earned for chilled water service to the tonnage allowed for in the contract. While demand may go over the contracted amount, no penalties will be collected should an overage occur. Compared to charges applied under the expired contract, it is estimated that the terms of the new contract will reduce annual Downtown Chilled Water demand charge revenue by \$50,544, or 4.4%, annually.

Revenues from the effective date of this agreement will continue to be applied to the System Fund. No funds are being requested.

  
Daniel G. Myers, P.E.  
Director, Fleet & Facilities

  
Steven Clouse  
Sr. Vice President/Chief Operating Officer

APPROVED:

  
Robert R. Puente  
President/Chief Executive Officer

**RESOLUTION NO.**

**OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES AUTHORIZING THE PRESIDENT/CHIEF EXECUTIVE OFFICER OR DULY APPOINTED DESIGNEE TO EXECUTE THE UTILITY SERVICE AGREEMENT WITH CITY OF SAN ANTONIO FOR CONTINUED CHILLED WATER SERVICE FOR A PERIOD OF FIVE YEARS WITH OPTIONS FOR THREE ADDITIONAL FIVE-YEAR TERMS; AUTHORIZING THE SAN ANTONIO WATER SYSTEM TO ADJUST RETROACTIVELY MONTHLY BILLINGS THE CITY OF SAN ANTONIO FOR CHILLED WATER SERVICE BACK TO JUNE 1, 2013 BASED ON THE REVISED DEMAND TERMS; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE**

**WHEREAS**, in 1993 the City Water Board (“CWB”), predecessor to the San Antonio Water System (the “System”) began providing chilled water service for the City of San Antonio’s (“COSA”) Alamodome stadium facility under the terms of a contract executed in 1991; and

**WHEREAS**, the original contract provided for a twenty (20) year term beginning with dome operation and allowed for total chilled water demand of 7,140 tons of capacity and included two types of demand charges – a lower Special Capacity Charge which recovers fixed costs associated only with the City-VIA funded “increased facility” (4,800 tons), and a Standard Capacity Charge (assessed on all other customers of the downtown chilled water system) which recovers fixed costs associated with existing CWB chilled water capacity (originally 2,340 tons), and the original contract also provided for a Commodity Charge which recovers variable utility costs associated with the operation of plant, a charge which is also assessed other customers; 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 that Section 10f of the original contract provided that the separate Standard Capacity Charge, Special Capacity Charge and Commodity Charge last only as long as the contract was in effect; and

**WHEREAS**, pursuant to demand studies based on information from February 2013, current Alamodome total demand stands at 7,055 tons; the updated contract terms will lower total Alamodome demand from 7,055 tons to 5,000 tons; will require that all demand going forward be assessed the same Standard Capacity Charge as all other customers; and eliminates any penalties to COSA if the Alamodome peaks usage above contracted demand; and

**WHEREAS**, COSA and the System wish to enter into a new contract to continue the provision of chilled water service to the Alamodome; and

**WHEREAS**, the effective date of the new contract will begin June 1, 2013 and as such, the System will make billing adjustments retroactively reflecting the revised terms specified in the new contract to all billings issued to COSA for Alamodome service since June 1, 2013 through the last billing issued prior to the approval of the referenced contract by the System's Board of Trustees and the City Council; and

**WHEREAS**, the terms of the contract between COSA and the System will be for a period of five (5) years starting on June 1, 2013, with the option of three (3) additional five-year terms if each option is mutually agreed to by both parties; and now, therefore

**BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:**

1. That System's President/Chief Executive Officer or duly appointed designee is hereby authorized to execute the utility service agreement referenced as Attachment "A" and included herein with City of San Antonio for continued chilled water service for a period of five (5) years with options for (3) three additional five-year terms.
2. That the San Antonio Water System is authorized to retroactively bill the City of San Antonio for Alamodome chilled water service to June 1, 2013 based on the revised demand terms of the new contract.
3. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.
4. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.



5. This resolution shall take effect immediately upon its passage.

PASSED AND APPROVED this 1<sup>st</sup> day of April, 2014.

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Berto Guerra, Jr., Chairman

ATTEST:

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Patricia E. Merritt, Secretary

# **Exhibit B**

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”:

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 No. 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; and

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 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(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 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.

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

**Deleted:** (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. ¶  
¶  
(j) . The CUSTOMER will provide land by an easement in a form to be recorded, at the southwest corner of the Alamedome 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.¶

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 with the following exception as mutually agreed by the CUSTOMER and SAWS: as specified in Paragraph 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 Paragraph 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 SAWS' 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 Alamodome'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 Alamodome.
- (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 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 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 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.

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

**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 sixty (60) consecutive minutes. Gross Revenues is defined in City Ordinance No. 75686

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.