

AGREEMENT

GROWDON ROAD WELL OPERATING AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE SAN ANTONIO WATER SYSTEM

This Agreement is entered into by and between the City of San Antonio (hereinafter referred to as "**City**") a Texas home-rule municipal corporation, acting by and through its City Manager, or her designee, and the San Antonio Water System (hereinafter referred to as "**SAWS**").

WHEREAS, as a municipally-owned water and wastewater utility created by **City** ordinance and state law, **SAWS**, through its Board of Trustees, CEO/President and professional staff, is dedicated to the daily management of the System's water and wastewater services; and

WHEREAS, the San Antonio Police Department operates a vehicle impound facility on **City** property located at 3625 Growdon Road, San Antonio, Texas (hereinafter referred to as "Growdon Facility"), which receives non-potable water supply from a groundwater well (hereinafter referred to as "Growdon Well"); and

WHEREAS, the **City** has requested the assistance of **SAWS** in operating and managing the Growdon Well; and

WHEREAS, this Operating Agreement is necessary to identify each party's rights, duties and obligations in performing those services related to the Growdon Well; and

WHEREAS, this Agreement is subject to the approval of the San Antonio City Council by ordinance acknowledging the terms and conditions of the Agreement and the San Antonio Water System Board of Trustees; and

NOW THEREFORE, the **City** and **SAWS** agree to the terms and conditions of this Agreement as follows:

I. TERM

1.1 This Agreement shall commence on March 1, 2017, upon the approval of **City** Ordinance No. _____ and **SAWS** Resolution No. _____, and continue through December 31, 2021. The **City** and **SAWS** may jointly agree to a single five (5) year extension to this agreement. This Agreement may be terminated prior to the expiration of either of the term(s) if the parties mutually agree to terminate. If the **City** sells the property then this Agreement shall terminate. **City** acknowledges that it is the owner of the Growdon Well, and that **SAWS** will not be held responsible for any past regulatory or civil liability issues associated with the Growdon Well as a result of this Agreement.

II. SERVICE WELL

2.1 **Purpose**. On behalf of the **City**, **SAWS** agrees to operate the Growdon Well. The Growdon Well will be the exclusive source of non-potable water for the Growdon Facility to be used for the operation and maintenance of office, landscaping, and bathroom facilities located at

the site. The **City** agrees not to expand the water services at the Growdon Facility without the consultation and prior written approval of **SAWS**.

- 2.2 **Scope of Services and Payment.** **SAWS** will be responsible for the daily operation and maintenance of the Growdon Well, make available water rights to the **City** pursuant to a separately executed Groundwater Lease, and comply with all applicable regulatory requirements associated with the Growdon Well. In the event of failure of the Growdon Well, the **City** will assume fiscal responsibility for the repairs or replacement value of the well infrastructure separate and apart from this Agreement, including, any additional managing and operating water service costs resulting from the failure. The **City** agrees to make monthly payments to **SAWS** in the amount of \$2,000.24 - beginning on the 15th day of March, 2017. With the exception of the Lease of Water Rights payment and the Edwards Aquifer Authority (EAA) Permit Fee, the monthly payment shall be modified each year on the anniversary of contract execution to reflect increases in all other costs calculated by using the annual average percentage change from the previous year in the U.S. Consumer Price Index – All Urban Customers.
- 2.3 **Lease of Water Rights.** The City and **SAWS** mutually agree to terminate an existing Lease of Groundwater. A memorandum of termination of said lease is included as Attachment I. A new Lease of Groundwater for 3,000 acre-feet of groundwater which **SAWS** will make available to the **City**, for withdrawal at the Growdon Well, is included as Attachment II. The annual lease fee will be \$420.00. The annual lease fee shall not be altered for the term of this contract. However the **City** agrees to pay the associated EAA Permit Fee at the rate in effect at the time of each monthly payment required under Section 2.2. The **City** may request to lease more than 3,000 acre-feet of Groundwater specified in this Agreement so long as the **City** agrees to pay all additional costs associated with that increase and a new Lease of Groundwater is entered into to include the increased amount.
- 2.4 **Fire Services.** **City** acknowledges that there is not sufficient volumetric pressure to provide firefighting water services and that **SAWS** operation of the Growdon Well will not alter the water pressure at this site. Therefore, any fire hydrant that might be tied to this well must be covered, painted, or clearly identified so that fire fighters are aware of the need to have a pumper truck respond to any fire emergency service calls at this site.
- 2.5 **Permits.** **SAWS** agrees to assist the **City** in the pursuit of any notices or authorizations that may be required by the EAA or the Texas Commission on Environmental Quality; however, it is the **City's** obligation to provide written notice to **SAWS** of any notices or demands received by the **City** from either state agency.
- 2.6 In the event that unforeseen circumstances impair **SAWS'** ability to manage and operate the Growdon Well and another method of service is preferred as determined by **SAWS**, then **SAWS** may change that method of service if there is no additional cost to the **City**. But if the method of service must be changed because the water at this site requires additional treatment processes to make it potable, then the City shall be responsible for any additional costs related to that change in circumstances.

III. NOTICES

- 3.1 For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City of San Antonio
ATTN: Supervisor of Public Utilities
P.O. Box 839966 San Antonio, Texas 78283-3966

San Antonio Water System
ATTN: Vice President of Production and Treatment
P.O. Box 2449 San Antonio, Texas 78298

Notice of changes of address by either party must be made in writing delivered to the other party's last known address.

IV. SEVERABILITY

- 4.1 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; it is also the intention of the parties hereto that in lieu of each provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible, legal, valid and enforceable.

V. TEXAS LAW TO APPLY

- 5.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created herewith are performable in the State of Texas.

VI. CAPTIONS

- 6.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms or conditions of this Agreement.

VII. COMPLIANCE WITH LAWS AND REGULATIONS

- 7.1 All of the work performed under this Agreement by the participants shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar.

VIII. ENTIRE AGREEMENT

8.1 This instrument contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representative or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing, signed by both parties.

IX. TRANSFER OR ASSIGNMENT

9.1 This Agreement is not transferable or assignable by the **City**.

X. RIGHT OF ACCESS

10.1 **City** grants **SAWS** the right of access to the Growdon Well in order to fulfill its obligations under this Agreement.

EXECUTED this the _____ day of February, 2017, to be effective March 1, 2017.

CITY OF SAN ANTONIO

SAN ANTONIO WATER SYSTEM

Sheryl L. Sculley
City Manager

Robert R. Puente
President/CEO