

AN ORDINANCE 2008 - 03 - 06 - 0180

AUTHORIZING THE TERMS OF AN AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND THE SAN ANTONIO WATER SYSTEM FOR OPERATION OF A GROUNDWATER WELL AT THE GROWDON VEHICLE IMPOUND FACILITY, AND AUTHORIZING THE PLUGGING OF AN ABANDONED WELL ON THE GROUNDS OF THE SAME FACILITY.

* * * * *

WHEREAS, the San Antonio Police Department operates a vehicle impound facility on City property domiciled at 3625 Growdon Road, San Antonio, Texas (hereinafter referred to as "Growdon Facility"), which depends on potable water from an Edwards Aquifer well located on the premises (hereinafter referred to as "Growdon Well"); and

WHEREAS, on August 12, 2004, the City Council approved Ordinance No. 99547 accepting a bid in the amount of \$197,985.00 from Peerless Equipment Ltd. to modify and make improvements to the Growdon Well; and

WHEREAS, in the process of upgrading the infrastructure of the Growdon Well, the City abandoned a second well on the premises of the Growdon Facility (hereinafter referred to as "Abandoned Well"); and

WHEREAS, the City and its contractors failed to obtain permits from the Edwards Aquifer Authority (hereinafter referred to as "EAA") for the modifications to the Growdon Well and for plugging the Abandoned Well; and

WHEREAS, February 12, 2008, the EAA approved a Compromise and Settlement Agreement with the City assessing penalties and fees in the amount of \$5,771.65 for alleged rule violations stemming from the Abandoned Well and modifications to the Growdon Well; and

WHEREAS, as part of the Compromise and Settlement Agreement between the City and the EAA, the City agreed to plug the Abandoned Well and obtain a permit to operate the Growdon Well; and

WHEREAS, the San Antonio Water System (hereinafter referred to as "SAWS") has agreed to plug the Abandoned Well and operate and maintain the Growdon Well on behalf of the City; and

WHEREAS, SAWS has completed the plugging of the Abandoned Well without assessing a fee on the City, but rather in full satisfaction of any remaining obligation to plug a third well under the La Semana Agreement, which was approved by City Council on June 24, 1999 in Ordinance No. 90005 and reconciled on September 26, 2004 in Ordinance No. 99724; and

WHEREAS, the City and SAWS have negotiated the terms and conditions of an operations and maintenance agreement under which SAWS will operate the Growdon Well for an annual fee (to be paid in monthly installments) of \$26,688.00; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of the "Growdon Road Well Operating Agreement between the City of San Antonio and the San Antonio Water System," which is attached as Exhibit A and incorporated into this Ordinance for all purposes, are hereby approved.

SECTION 2. The City authorizes the plugging of the Abandoned Well and accepts the work done by SAWS to plug said well as full satisfaction on the part of SAWS of its obligation to plug the third of three wells under the terms of the La Semana Agreement as approved in Ordinance No. 90005 and reconciled in Ordinance No. 99724.

SECTION 3. This Ordinance is effective immediately upon the receipt of eight affirmative votes.

PASSED AND APPROVED, *this 6th day of March, 2008.*



MAYOR

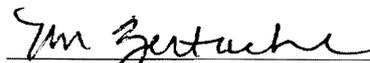
PHIL HARDBERGER

ATTEST:



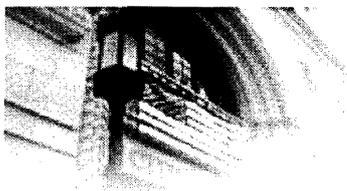
City Clerk

APPROVED AS TO FORM:

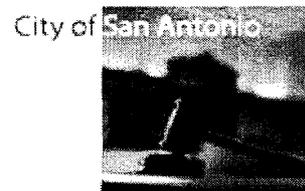


City Attorney

for



Request for
COUNCIL
ACTION



Agenda Voting Results - 27

Name:	7, 9, 10, 11, 17, 19, 20, 21B, 22, 23, 24, 25, 27, 28, 29A, 29B, 29C, 29D, 29E, 29F, 29G						
Date:	03/06/2008						
Time:	10:24:49 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the terms of an agreement between the City of San Antonio and the San Antonio Water System for operation of a groundwater well at the Growdon Vehicle Impound Facility, and authorizing the plugging of an abandoned well on the grounds of the same facility. [Erik J. Walsh, Assistant City Manager; Ben Gorzell, Director, Finance]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5		x			x	
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				x



CMS or Ordinance Number: OR00000200803060180

TSLGRS File Code: 1000-05

Document Title:
ORD - 00000200803060180

Ordinance Date:
3/6/2008

31



CMS or Ordinance Number: CN4600007611 - *SANIS*

TSLGRS File Code:1000-25

Document Title:
CONT - 4600007611

Commencement Date:

3/6/2008

Expiration Date:

3/6/2015

**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 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

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 6, 2008, upon the approval of Ordinance No. 2008-03-06-0180, and continue for seven (7) years. This Agreement may be terminated prior to the expiration of the 7-year term 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, identified in Exhibit A, which is attached hereto and incorporated herein. The Growdon Well will be the exclusive source of 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. The **City** and **SAWS** agree to the scope of services and payment schedule specified in Exhibit B, which is attached hereto and incorporated herein. Under the scope of services generally outlined in Exhibit B, **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 \$2,224.00 beginning on the 1st day of September, 2008. The **City** also acknowledges that there may be start-up costs, not to exceed \$25,000.00, which may be incurred as necessary expenses for operation of the Growdon Well by **SAWS**. To the extent such expenses are incurred, **SAWS** will itemize and invoice these expenses separately to the **City**.
- 2.3 Lease of Water Rights. On February 22, 2008, the **City** and **SAWS** entered into a Lease of Groundwater for 5 acre feet of groundwater which **SAWS** will make available to the **City** for withdrawal at the Growdon Well. A copy of the executed Lease of Groundwater is attached hereto and incorporated herein as Exhibit C. The annual lease fee of \$500.00 has been incorporated into Exhibit B.
- 2.4 Fire Services. **City** acknowledges that there is not sufficient volumetric pressure to provide fire fighting 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 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. On February 22, 2008, **SAWS** filed on behalf of the **City** an Application to Transfer Permit and a Meter Registration Form with the Edwards Aquifer Authority (hereinafter referred to as "EAA"), which are permit requirements necessary to operate the Growdon Well. The final approval of these EAA permits is a condition precedent to **SAWS** obligation to operate the Growdon Well under this Agreement. **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 the Growdon Well in order to fulfill its obligations under this Agreement.

EXECUTED this the 10th day of March to be effective March, 6 2008.

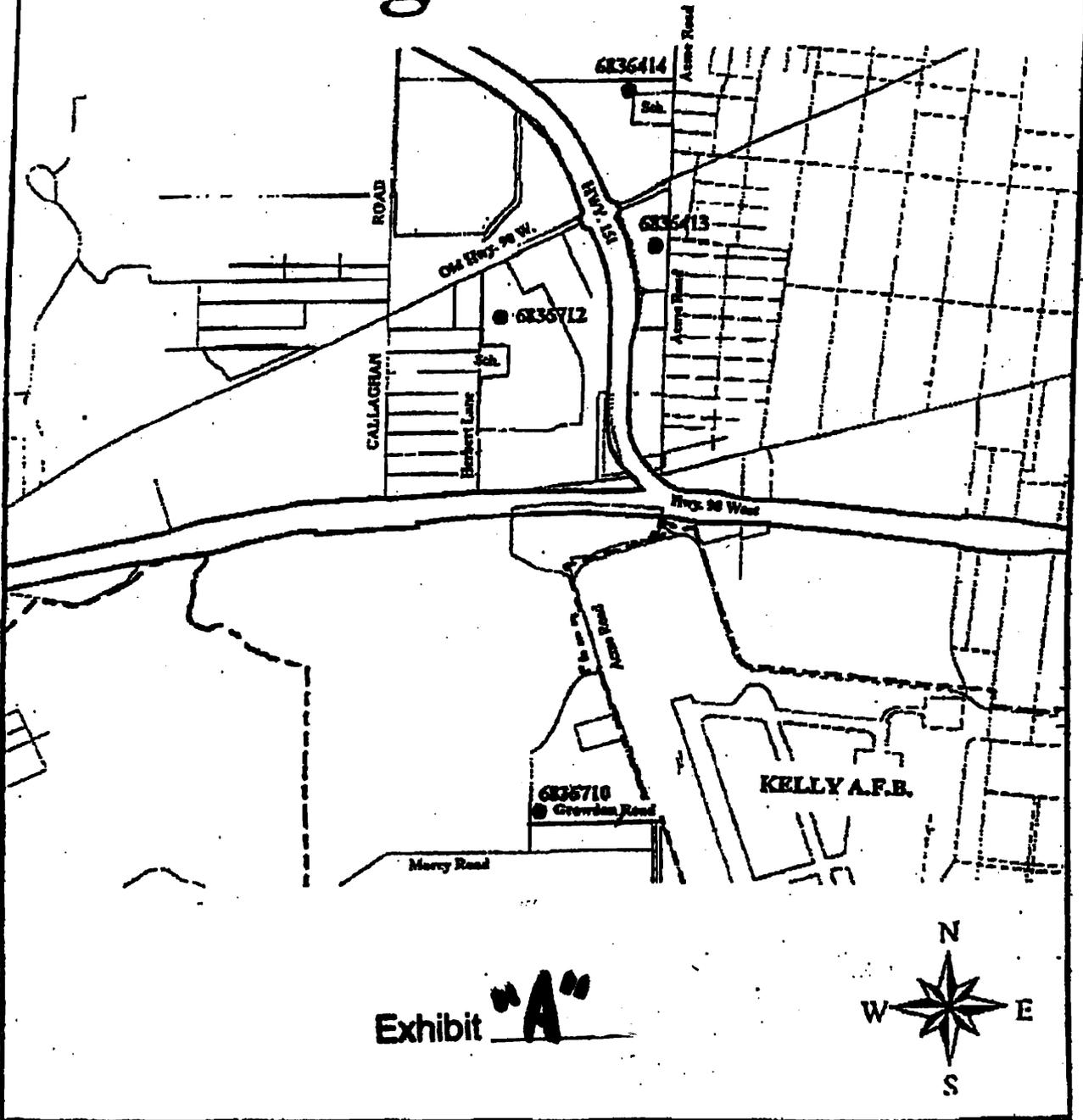
CITY OF SAN ANTONIO

SAN ANTONIO WATER SYSTEM


Sheryl L. Sculley
City Manager


David E. Chardavoyne
President/CEO

Van De Walle Farms Irrigation Wells



Growden Pound Lot Water Annual Service Cost Estimate
Operations and Minor Preventative Maintenance
(Repair costs not included)

Function	Grade	Title	Salary	Benefits	Hourly Rate	Hours	Cost	
Operation & Maintenance								
Inspections	27	Journeyman Mechanic	\$37,974	\$19,025	\$27.40	260	\$7,125	
Mechanical Crew (PM work)	27	Journeyman Mechanic (crew of 2)	\$37,974	\$19,025	\$27.40	80	\$2,192	
Electrical Crew (PM work)	29	Journeyman Electrician (crew of 2)	\$44,706	\$22,398	\$32.26	80	\$2,581	
Instrumentation Tech (PM work)	30	Sr. Control System Technician	\$48,507	\$24,302	\$35.00	40	\$1,400	
Supervision	31	General Foreman - Mech./Elect. Maint.	\$52,632	\$26,369	\$37.98	16	\$608	
Total Operations & Maintenance Costs:							\$13,906	
Vehicle Cost								
						\$4.79	396	\$1,897
Chemicals & Miscellaneous								
							\$500	
							\$750	
Site Maintenance (Lawn Mowing)							\$350	
Miscellaneous Supplies							\$1,000	
Total Chemicals & Miscellaneous Costs:							\$2,600	
Water Rights & EAA Requirements								
Annual Lease Payments of Water Rights (for 5 ac/ft @\$100 per ac/ft)							\$500	
EAA Permit Fee (for 5 ac/ft @\$37 per ac/ft)							\$185	
Annual EAA Reporting	30	Planner III	\$48,507	\$24,302	\$35.00	8	\$280	
Total Water Rights & EAA Requirements Costs:							\$965	
Amortized SCADA Integration Costs (\$35,000 amortized @5% over 7 years)							\$6,049	
Overhead (@5%)							\$1,271	
TOTAL ANNUAL COSTS:							\$26,688	
Other Costs On As-Needed Basis								
Site Inspection & Cleanup							\$15,000	
Mechanical & Electrical Integration							\$10,000	
Total Other Costs on As-Needed Basis:							\$25,000	
NOTE: Only annual operating costs assumed. Capital improvements costs to be borne by the City.								

EXHIBIT "B"

COPY

LEASE OF GROUNDWATER

RECEIVED

FEB 22 2008

EAA

This Lease of Groundwater ("Lease") is entered into to be effective this 22nd day of February, 2008 (the "Effective Date"), by and between San Antonio Water System (SAWS) (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 Lessor's groundwater rights and Lessor's permit rights from the Edwards Aquifer Authority ("EAA") to withdraw five (5) acre-feet of Edwards Aquifer groundwater per annum (the "Water Rights") under EAA Initial Regular Permit No. BE00269 (the "Groundwater Withdrawal Permit").

2. Additional Lease Rights.

The lease of the Water Rights as defined above shall also expressly include all of Lessor's Groundwater Withdrawal Permit rights 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 of ten (10) years commencing on January 1, 2008 (the "Commencement Date") and continuing through December 31, 2018 (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, Lessee 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 Lease Year, rent for the Water Rights will be one hundred and no/100 dollars (\$100.00) per acre-foot, for a total lease payment of five hundred and XX/100 dollars (\$500.00) per Lease Year ("Rent"). Rent for each Lease Year is due in one lump-sum payment on or before January 31st of each Lease Year, or as otherwise agreed to by the parties.

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 6 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 setoff 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 7 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: (a) 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; and (b) a Memorandum of Lease of Groundwater and Right of First Refusal in the form provided by Lessee and attached hereto as Exhibit "A" for each Groundwater Withdrawal Permit relating to the Water Rights;

8. Permits.

Lessee shall have the right but not the duty to initiate, seek party status in, and/or prosecute any proceedings relating to the Water Rights including, at its election, Lessor's EAA Groundwater Withdrawal Permits and the Real Property as may be necessary for the protection of Lessee's interests in the Water Rights or Edwards Aquifer, including but not limited to (i) contesting the validity of law or regulatory action; (ii) contesting fees assessed to or levied upon the Water Rights; or (iii) protecting, defending, and/or preserving the rights to withdraw water from the Edwards Aquifer. Lessor shall cooperate with Lessee's efforts in connection therewith. Lessor shall not take any actions or omit to take any actions which will adversely affect the Water Rights.

9. Continued Operation and Compliance with Lease.

From the Effective Date of this Lease, Lessor shall not take any actions (or omit to take any actions) which will harm or diminish Lessee's interests in the Water Rights. 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 warrant and represent to Lessee that it has good and marketable title to the Water Rights, including Lessor's Groundwater Withdrawal Permits and the Real Property, if any, from which the Water Rights derive. Lessor does hereby represent and warrant to provide to Lessee quiet enjoyment, without restriction or limitation, of the Water Rights during the full term of this Lease, subject only to any matters of record in the Official Public Records of Bexar County, Texas as of the Effective Date hereof. 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, in addition to any other rights and remedies Lessee may exercise under this Lease, 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.

Lessor assigns to Lessee all interest of Lessor in and to any condemnation awards or insurance proceeds which relate to Lessee's leasehold interest in the Water Rights, as determined by the market value of Lessee's leasehold interest at the time of condemnation.

12. Cooperation.

Lessor will use its best efforts, take such actions and execute and deliver such documents Lessee reasonably determines necessary to fully vest Lessee with and protect Lessee's interests in the Water Rights and make effective all of the terms of this Lease.

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
Attn: Patrick Shriver
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: Supervisor of Public Utilities
P. O. Box 839966
San Antonio, TX 78283

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. Current taxes and assessments upon the Water Rights, if any, shall be prorated to the Commencement Date and shall be timely paid by Lessee and Lessor. Lessee shall not be liable for any fees, taxes or assessments on Lessor's 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 confirm 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.

Except as set out herein, all agreements and representations in this Lease shall survive the end of the Term.

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 7 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 7 above, the provisions of Section 7 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 a 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. Lessor agrees to execute any such form of Memorandum of Lease of Groundwater provided by Lessee.

26. Attorneys Fees.

This section is intentionally left blank.

30. Entire Agreement.

This Lease contains all agreements between the parties hereto 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.

31. 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

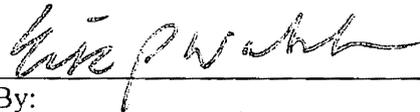


By: David E. Chardavoine

Title: President/Chief Executive Officer

LESSEE

CITY OF SAN ANTONIO



By:

Title: Asst. City Manager

EXHIBIT "A"

MEMORANDUM OF LEASE OF GROUNDWATER

MEMORANDUM OF LEASE OF GROUNDWATER

This Memorandum of Lease of Groundwater ("MOL") is executed this _____ day of _____, 2008, by and between the San Antonio Water System (the "Lessor") and City of San Antonio (the "Lessee").

WITNESSETH:

1. On _____, 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 five (5) acre-feet of Edwards Aquifer groundwater per annum (the "Water Rights") under EAA Initial Regular Permit No. BE00269 (the "Groundwater Withdrawal Permit"), having as its authorized place of use the real property described in Exhibit "A-1" attached hereto. 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 ten (10) years, from January 1, 2008 to December 31, 2018.

4. In accordance with the terms of the Lease, the Lessor has agreed to lease a total of five (5) 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.

[Signature pages to follow]

LESSOR

SAN ANTONIO WATER SYSTEM

David E. Chardavoigne

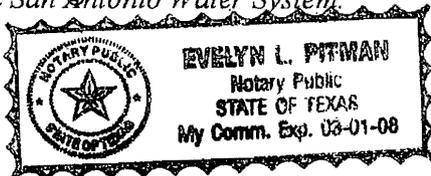
By: David E. Chardavoigne

Title: President/Chief Executive Officer

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF Bexar §

This instrument was acknowledged before me on the 2nd day of February, 2008, by David E. Chardavoigne, President/Chief Executive Officer of the San Antonio Water System.



(Seal)

Evelyn L. Pittman
NOTARY PUBLIC, State of Texas

LESSEE

CITY OF SAN ANTONIO

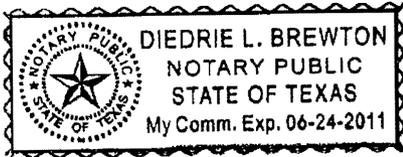


By:
Title: Asst. City Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF Bexar §

This instrument was acknowledged before me on the 21st day of February, 2008, by Erik Walsh of the City of San Antonio.





NOTARY PUBLIC, State of Texas

(Seal)

After recording return to:

Water Resources
Attn: Charles Ahrens
San Antonio Water System
P.O. Box 2449
San Antonio, Texas 78298-2449