

AN ORDINANCE 2010-04-29-0362

**AMENDING A UTILITY SERVICE CONTRACT WITH THE SAN ANTONIO WATER SYSTEM FOR CHILLED WATER AND STEAM SERVICE, TO REDUCE THE MONTHLY SURCHARGE PAID BY THE CITY.**

\* \* \* \* \*

**WHEREAS**, the San Antonio Water System ("SAWS") operates a combined water, chilled water and steam, and wastewater utility system on behalf of the City of San Antonio, which serves approximately 500,000 water and 546,000 wastewater customers, including apartment units, in the San Antonio metropolitan area; and

**WHEREAS**, on April 13, 2000, the City Council passed Ordinance No. 91622 (attached as Exhibit A), which approved the terms and conditions a Utility Service Agreement ("USA") between the City and SAWS, and authorized the execution of said USA for financing, design, and construction of a chilled water facility to meet the heating and cooling demand of the expanded Henry B. Gonzalez Convention Center; and

**WHEREAS**, the City provided land and necessary easements for the installation of the chilled water and steam facility in the approximate area of the eastside of the Alamodome on Parking Lot B; and

**WHEREAS**, under the USA, the City agreed to pay a surcharge (the "Surcharge") to cover the debt service expense associated with the construction of the chilled water and steam facility given that the purpose of the facility was to meet the cooling and heating demand of the expanded Convention Center; and

**WHEREAS**, under the USA, the City is to continue paying the Surcharge until such time as other chilled water and steam demand customers contract for service and pay revenues to SAWS to cover the debt service expense associated with the facility; and

**WHEREAS**, the Grand Hyatt Hotel and Hotel Contessa (the "New Customers") have contracted with SAWS for chilled water and steam service in the downtown area; and

**WHEREAS**, under the proposed amendment to the USA, the Surcharge will be reduced by an amount equal to the additional contribution that the New Customers make toward coverage of the debt service expense until the Surcharge is discontinued; and

**WHEREAS**, the proposed amendment to the USA will result in savings to the Convention Center utility budget of approximately \$510,000 on an annual basis, including approximately \$306,000 for Fiscal Year 2010; and

**WHEREAS**, the Supervisor of Public Utilities, with the assistance of the Office of City Attorney, negotiated the proposed amendment to the USA and recommends approval of the contract amendment; and

**WHEREAS**, following City Council approval, the contract amendment is scheduled to be presented to the SAWS Board of Trustees for consideration and approval on May 4, 2010; **NOW THEREFORE**:

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

**SECTION 1.** The City Council authorizes amendment to Section 6(e) of the USA as provided in Exhibit B, which is approved and incorporated into this Ordinance for all purposes.

**SECTION 2.** The City Manager, or her designee, is hereby authorized to execute an amendment to the USA as provided in Exhibit B within 45 days and to execute any other documents necessary to implement the purpose of this Ordinance.

**SECTION 3.** This Ordinance shall become effect immediately upon passage by eight (8) affirmative votes of the City Council; otherwise it shall take effect on the tenth (10<sup>th</sup>) day following passage by majority vote.

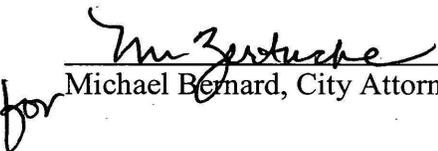
**PASSED AND APPROVED**, this 29<sup>th</sup> day of April 2010.

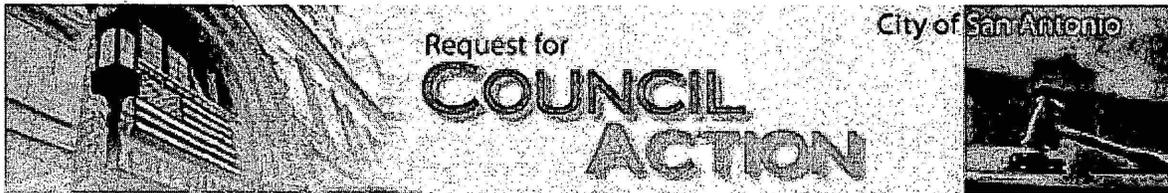


**M A Y O R**  
Julián Castro

**ATTEST:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk  
\_\_\_\_\_  
for Michael Bernard, City Attorney



### Agenda Voting Results - 24

<b>Name:</b>	5, 6, 7, 8, 10, 11, 12A, 12B, 13A, 13B, 14, 15, 16, 17, 18A, 18B, 18C, 19, 22, 23, 24, 25, 26, 28, 30, 31, 32						
<b>Date:</b>	04/29/2010						
<b>Time:</b>	09:23:08 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance amending a utility service contract with the San Antonio Water System for chilled water and steam service, to reduce the monthly surcharge paid by the City. [Pat DiGiovanni, Deputy City Manager; Ben Gorzell, Chief Financial Officer, Finance]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Leticia Cantu	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x			x	
John G. Clamp	District 10		x				

**EXHIBIT A**

AN ORDINANCE 91622

APPROVING THE TERMS AND CONDITIONS AND AUTHORIZING THE EXECUTION OF A UTILITIES SERVICE AGREEMENT WITH THE SAN ANTONIO WATER SYSTEM ("SAWS") FOR CHILLED WATER AND STEAM SERVICE AND THE FINANCING, DESIGN AND CONSTRUCTION BY SAWS, OF A CHILLED WATER FACILITY IN THE APPROXIMATE AREA OF THE EASTSIDE OF THE ALAMODOME ON PARKING LOT B TO MEET THE SERVICES NEEDS OF THE EXPANDED HENRY B. GONZALEZ CONVENTION CENTER; AND PROVIDING FROM CONVENTION CENTER EXPANSION PROJECT FUNDS FOR PAYMENT OF A \$200,000.00 CONNECTION FEE.

\* \* \* \* \*

WHEREAS, the City of San Antonio is undergoing an expansion of the Henry B. Gonzalez Convention Center (the "Center") in order to bring total square footage of the Center to 1.3 million and double the exhibit space to 440,000 square feet; and

WHEREAS, pursuant to Ordinance No. 90006, passed June 24, 1999 City Council approved the terms and conditions and authorized the execution of a Memorandum of Understanding ("MOU") with the San Antonio Water system ("SAWS") for the financing, design, and construction by SAWS of a Chilled Water Facility to provide service to this expanded area; and

WHEREAS, SAWS' current central plant produces 15,000 TN/HR of chilled water and 80,000 LBS/HR of steam to meet the thermal needs of 22 chilled water customers and 13 steam customers, with the City of San Antonio accounting for 75% of its customer load; and

WHEREAS, in order to adequately heat and cool the expanded Center it is projected that the City, will need an additional 4,000 TN/HR and 25,000 LBS/HR of steam; and

WHEREAS, SAWS has determined that the City's additional demand for steam is within its current plant capacity but that it cannot meet the City's additional demand for chilled water utilizing its current plant; and

VMZ/svr  
4/13/00  
Item39

WHEREAS, the City has therefore requested that SAWS finance the design and construction a facility sufficient to meet the expanded Center's demand for chilled water, the best location for construction of said facility having been determined to be the northeast corner of the Alamodome Parking Lot B; and

WHEREAS, as part of this Agreement and the MOU, SAWS will: (1) utilize the City's environmental consultant Cook-Joyce; and (2) charge the City for services at the current rates approved by City Council; and

WHEREAS, as part of this Agreement and MOU the City agrees to: (1) provide at no cost, a easement for the land for the chilled water facility and easements needed to make pipe line connections only for City owned facilities; (2) maintain approval authority of site plans and property requirements including location, temporary easements and permanent easements; (3) monitor and retain control of the proper disposal of all excavated material; and (4) pay for: incremental cost to properly dispose of excavated material, the costs of temporary chillers if needed, demand charges upon beneficial use or February 1, 2001, whichever is later, services based on the rates approved by City Council, a \$200,000 connection fee; and a surcharge for debt service if construction cost for the plant exceeds \$6.5 million; and

WHEREAS, the SAWS Board of Trustees will consider approval of the Agreement at the April 4, 2000 meeting; **NOW THEREFORE:**

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

**SECTION 1.** City Council hereby approves the terms and conditions of a Utilities Service Agreement (the "Agreement") with the San Antonio Water System for the financing, design, and construction of a chilled water facility to meet the heating and cooling demands of the expanded Henry B. Gonzalez Convention Center.

**SECTION 2.** The City Manager is hereby authorized to execute, for 45 days following the effective date of this ordinance, said Utility Service Agreement, a copy of which is affixed as Exhibit I. Failure to execute this agreement within said time frame shall result in this authority being void and thereby requiring further City Counsel authority to execute the Agreement. The City Manager is further authorized to execute necessary documents, including easement documents that maybe required in the future for the delivery by SAWS of chillwater and steam water service to the City.

**SECTION 3.** The budget in Fund 47-001095, Convention Center Expansion Project shall be revised by reducing Index Code 481739, entitled "Unallocated Appropriations Proceeds" in the amount of \$200,000.00 and increasing Index Code 616060, entitled "Connection Cost."

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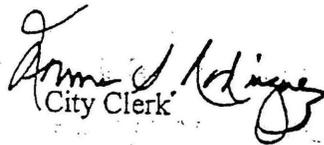
SECTION 4. The amount of \$200,000.00 in Fund 47-001040, in Index Code 616060, entitled "Connection," is authorized to be encumbered and made payable to San Antonio Water Systems upon execution of the Agreement.

SECTION 5. This ordinance shall become effective ten (10) days after the passage hereof.

PASSED AND APPROVED this 13th day of April, 2000

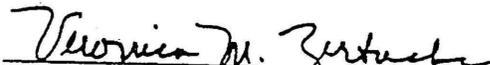
  
M A Y O R

ATTEST:

  
City Clerk

Howard W. Peak

APPROVED AS TO FORM:

  
for City Attorney

RECEIVED  
APR 17 '00  
CONVENTION CENTER  
EXPANSION OFFICE

## UTILITY SERVICE CONTRACT

*(Chilled Water & Steam - with Return)*

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This Utility Service Contract ("CONTRACT") is made this 15<sup>th</sup> day of June 2010 for the purchase of chilled water and steam service between The CITY OF SAN ANTONIO, herein called "CUSTOMER", and the SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, herein called "SAWS". SAWS and CUSTOMER agree as follows:

### 1. CUSTOMER AGREES TO PURCHASE CHILLED WATER AND STEAM SERVICES

- (a) The CUSTOMER shall purchase from SAWS and SAWS shall sell to the CUSTOMER chilled water and steam 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, Steam Service and Customer Equipment Installation" and amendments thereto, hereinafter called the "Regulations."
- (c) Chilled water and steam utilization facilities shall be installed and maintained in accordance with SAWS' Regulations.

### 2. SAWS AGREES TO DELIVER CHILLED WATER AND STEAM

- (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 8a of this Contract

providing the Customer return temperature conditions are met as specified Paragraph 3 c of this Contract.

- (b) For steam service, SAWS shall deliver continuously to CUSTOMER'S premises at the point of the CUSTOMER service valve, steam having a minimum pressure of 100 pounds per square inch and a maximum pressure of 125 pounds per square inch in a quantity adequate to meet the minimum connected load specified in Paragraph 8b of this Contract.
- (c) Notwithstanding the requirements of paragraphs 2a and b, 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.
- (d) Premises to which service shall be delivered are described as follows:
  - That property belonging to the CUSTOMER commonly known as the Henry B. Gonzalez Convention Center Complex and located at 200 E, Market St., in San Antonio, Bexar County, Texas.
- (e) As used herein, the term "Premises" shall include the above-described property and all improvements now existing as well as expansion currently under construction.

3. **CUSTOMER AND SAWS RESPONSIBILITIES**

- (a) CUSTOMER commits to utilize the contracted loads contained in this agreement, section 8, to heat and cool above described premises unless changed by mutual agreement of both parties.

- (b) The CUSTOMER shall return all chilled water and steam condensate to SAWS' return pipes. Suitability of steam for process shall be the responsibility of CUSTOMER. Process steam should employ the use of heat exchangers or reboilers. Chemicals used in steam system are not food grade. Condensate contaminated by CUSTOMER process will not be accepted in SAWS return system. CUSTOMER will pay SAWS cost for replacement of non returned condensate.
- (c) 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.
- (d) The CUSTOMER shall have control and possession of steam and chilled water after it passes the outlet side of the CUSTOMER'S inlet service valve and until the condensate and return chilled water passes the inlet side of the CUSTOMER'S leaving service valve.
- (e) SAWS shall maintain service valves as well as metering facilities at its expense.
- (f) 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.
- (g) CUSTOMER agrees that SAWS shall have no responsibility for the use, handling, or action of steam, condensate, 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 101.001 *et sea.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

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

- (h) The CUSTOMER grants SAWS the right, upon reasonable 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.
- (i) The CUSTOMER, after reasonable 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.
- (j) 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 the condition prior to excavation after installing, replacing, repairing, or maintaining its pipe line and facilities.
- (k) The CUSTOMER (City of San Antonio) will provide land by an easement in a

form to be recorded, at the southwest corner of the Alamodome parking lot east of the railroad on which to construct a chilled water production facility. Land is further described in attached Exhibit C incorporated by this reference. Land will be available by easement dedicated for the use and benefit of SAWS. Any building changes on the site shall be coordinated with and approved by City Council.

- (I) SAWS will design and construct a 4000 ton capacity chilled water production facility on the CUSTOMER furnished site (Exhibit C) and have beneficial use on or before April, 1, 2001. If circumstances prevent beneficial use of the new chilled water production facility April 1, 2001 then SAWS will furnish the needed 4000 ton added chilled water capacity from temporary facilities which will be paid for by CUSTOMER. SAWS will fund routine environmental consulting services required during the design and construction of the facility performed by Cook-Joyce, Inc. presently under contract with CUSTOMER, in an amount not to exceed thirty thousand dollars (\$30,000). CUSTOMER shall maintain soils ownership and monitor and control the excavation, transportation and disposal of all excavated material from the construction site (Exhibit C). CUSTOMER shall be responsible for all incremental costs including environmental service costs associated with the excavation, transportation and disposal of contaminated material excavated from the Alamodome site (Exhibit C) due to environmental requirements of the Texas Natural Resources Conservation Commission (TRNCC). Such costs shall be deemed incremental to those costs normally associated with the excavation, transportation and disposal of non-contaminated materials. Payment for such normal costs shall be the responsibility of SAWS. Payment for such incremental costs shall be the responsibility of CUSTOMER. CUSTOMER shall reimburse SAWS for all such incremental costs at completion of design and construction of the facility to be constructed to meet the additional chilled water demands of CUSTOMER.

4. METERING

- (a) SAWS shall furnish, install, and maintain the necessary metering devices for chilled water service and steam 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) The CUSTOMER and SAWS shall mutually agree on the amount of space and places to be provided by CUSTOMER for SAWS metering of chilled water and steam on the premises described in Paragraph 2(d) of this Contract.
- (c) The CUSTOMER shall furnish at each metering place a 120 volt, 60 cycle, single phase electrical outlet and electric power for such outlet. The CUSTOMER shall also 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 the CUSTOMER'S premises has 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 30 days and as a result CUSTOMER provides temporary services from other sources. Charges will resume when restoration of service has been accomplished.

6. **RATES 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. 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 and steam service in accordance with the schedule of rates as established by Ordinance of the City Council of the City of San Antonio as set forth in Schedules "A" and "B" attached hereto and made a part hereof. Such rates will be charged until modified or changed by appropriate action of the SAWS Board of Trustees and the City Council of the City of San Antonio, in which event the rates as changed will apply.
- (c) The CUSTOMER agrees that it shall pay SAWS a minimum monthly capacity charge for chilled water and steam service based on the current rate for chilled water and steam service applied to the connected loads specified in Paragraph 8 of this Contract unless CUSTOMER qualifies for cessation of charges as specified in Paragraph 5 of this Contract.
- (d) CUSTOMER agrees that it shall pay SAWS a commodity charge for chilled water and steam service based on the current rate applied to actual consumption

of chilled water or steam. No commodity charge shall be made if the metered use of the CUSTOMER is zero (0) during the month.

- (e) CUSTOMER agrees that it shall pay SAWS a monthly surcharge in an amount equal to eighty five hundredths of one percent (0.85%) of new plant project costs in excess of six and one half million dollars (\$6,500,000). Plant project costs are defined as all costs incurred by SAWS associated with the engineering, development, construction and interim financing of the new facilities at the Alamodome site. Actual bond interest will be deducted and remainder applied to retirement of principal. ~~The surcharge will be discontinued when~~ (1) excess principal has been retired or (2) CUSTOMER has provided funds to SAWS in the amount of new plant project costs exceeding \$6,500,000 or (3) ~~SAWS has contracted to furnish and has commenced invoicing for additional chilled water service where the additional demand charges from these services exceed the added new plant project fixed costs by an amount equal to or greater than the surcharge.~~ In this event the added new plant project costs would include new plant expansion necessary to serve the added load. The additional chilled water service required is currently estimated at 2500 tons.
- (f) CUSTOMER agrees to pay a connection fee of \$ 200,000 due and payable upon execution of this contract.
- (g) CUSTOMER agrees to pay site incremental environmental costs described in above section 3(l) at completion of engineering and construction.
- (h) CUSTOMER agrees that it shall pay SAWS for any necessary temporary chilled water production facilities required to furnish the expanded requirements of CUSTOMER if SAWS cannot have permanent facilities available for beneficial use by April 1, 2001. The parties recognize that the expanded Convention Center

chilled water and steam requirements necessitate addition of new chilled water production facilities and the April 1, 2001 beneficial use requirement may not allow time for engineering and construction even under fast track arrangements. SAWS' acceptance of the challenge was based on assistance from CUSTOMER in land and siting related issues as well as expediting of City reviews and permits.

7. **TERM**

The term of this Contract shall begin upon the date of its execution by all parties and shall continue for a primary term of 25 years and thereafter for consecutive two year automatic renewals until cancelled by either party. Any termination of this contract shall be made only after negotiations by both parties and subject to the approval by both the City Council and the SAWS Board of Trustees.

8. **CONNECTED LOADS – CONTRACT DEMAND**

- (a) The number of tons per hour of connected cooling load at date of execution of this contract is 3019 tons. The number of tons per hour of connected cooling load beginning April 1, 2001 will be 7019 tons per hour.
- (b) The number of pounds per hour of connected steam load at date of execution of this contract is 17,900 pounds per hour. The number of pounds per hour of connected load beginning February 1, 2001 will be 42,900 pounds per hour.
- (c) Contract demands shall be the amounts shown in sections 8(a) and 8(b) effective on the dates outlined in same sections unless modified by the mutual agreement of both parties.

9. **NOTICES**

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

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

**SAWS:** San Antonio Water System Board of Trustees  
Attn: Contract Administration  
1001 E. Market Street  
P.O. Box 2449  
San Antonio, Texas 78298-2449  
(210) 704-7297

11. **ASSIGNMENT**

This Contract may not be assigned by CUSTOMER without the written consent of SAWS, which consent shall not be unreasonably withheld. Such assignment shall give the address of the assignee. SAWS has the right, subject to City Council approval, to assign all rights and delegate all duties and obligations under this Contract to any person or entity at any time during the term of this Contract. SAWS also has the right, subject to City Council approval, to grant, sell transfer, convey and/or assign its ownership interest in its chilled water service or steam service system to any person or entity at any time during the term of this Contract.

12. **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.

13. **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 take or held to be a waiver of any other provision hereof or any other breach hereof.

14. **SEVERABILITY**

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

15. **CUMULATIVE REMEDIES**

To the extent 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 in equity.

16. **SUCCESSORS and ASSIGNS**

The parties hereby bind themselves, its heirs, executors, administrators, other legal representatives, successors and assigns for the faithful and full performance of the terms and

provisions of this Contract.

17. **FORCE MAJEURE**

Neither party shall be considered to be in default with respect to any obligation hereunder, other than the obligation of a party to pay sums of money due to the other party under or pursuant to this Contract, if failure of performance shall be due to force majeure. The obligation to pay money in a timely manner is absolute and shall not be subject to force majeure provisions. If either party is affected by a force majeure event, such party shall immediately within reason give notice to the other party stating the nature of the event, its anticipated duration and any action being taken to avoid or minimize its affect. The suspension of performance shall be of no greater scope and no longer duration than is reasonably required and the non-performing party shall use its best efforts to remedy its inability to perform.

Force majeure shall mean the occurrence of any of the following events beyond the control of a party hereto, which results in the failure or delay by that party of some performance mandated by this Contract: failure due to fire, earthquake, flood, storm, lightning, epidemic, war, riot, civil disturbance, sabotage, strike or labor difficulty, accident or casualty to equipment, unavailability of replacement equipment, inability to maintain required authorizations from governmental bodies or restraint, order or decree by court or public authority.

18. **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.

19. **GOVERNING LAW**

This Contract is governed by the laws of the State of Texas and all obligations of the parties under this Contract are performable in Bexar County, Texas.

20. **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.

EXECUTED on this 15<sup>th</sup> day of June, 2000.

CUSTOMER:

CITY OF SAN ANTONIO

By: Christopher J. Brady  
Name: Christopher J. Brady  
Title: ASSISTANT CITY MANAGER

AGREED TO AND ACCEPTED on this 8 day of June, 2000

UTILITY:

SAN ANTONIO WATER SYSTEM  
BOARD OF TRUSTEES

By: Leonard D. Young  
Name: Leonard D. Young  
Title: Chief Operating Officer

**EXHIBIT A**

# San Antonio Water System

## **RATE SCHEDULE**

*Chilled Water Service - Convention Center Area*

*Effective November 1999*

### **CAPACITY CHARGE**

The monthly capacity charge shall be \$ 18.40 per ton of Chilled Water Refrigeration demand. The demand shall be equal to the contract specified demand or the highest actual instantaneous demand recorded during the previous twelve (12) month billing period, whichever is the larger amount.

### **COMMODITY CHARGE**

The commodity charge shall be \$ 0.0658 per ton hour for each ton hour of Chilled Water Refrigeration used during the monthly billing period. The commodity charge shall be increased by 2.7% to recover franchise payment to City of San Antonio.

### **COMMODITY ADJUSTMENT CHARGE**

A commodity adjustment for the current billing period will be charged during the next billing period. This adjustment will reflect actual changes in primary energy costs (when costs are known) from a base amount for energy used to produce the chilled water previously billed. The base electricity rate shall be \$ 0.044 per kwh. Adjustment will be calculated by multiplying the customers chilled water usage by the difference in the actual electricity cost for chilled water production compared to costs at the base rate.

EXHIBIT B

# San Antonio Water System

## RATE SCHEDULE

*Steam Service – Convention Center Area*

*Effective November 1999*

### CAPACITY CHARGE

The monthly capacity charge shall be \$ 88.42 per 100 pounds per hour of steam demand. The demand shall be equal to the contract specified demand or the highest actual instantaneous demand recorded during the previous twelve (12) month billing period, whichever is the larger amount.

### COMMODITY CHARGE

The commodity charge shall be \$ 8.05 per 1000 pounds for each 1000 pounds of steam used during the monthly billing period.

### COMMODITY ADJUSTMENT CHARGE

A commodity adjustment for the current billing period will be charged during the next billing period. This adjustment will reflect actual changes in primary energy (gas) costs (when costs are known) from a base amount for energy used to produce the steam previously billed. The base utility (Gas) rate shall be \$ 0.316 per ccf (1998 average cost).

CHERRY STREET

S00d-16'27"E 275.94'

DEDICATED FOR  
PLANT EXPANSION

INITIAL PLANT  
CONSTRUCTION

S89d-59'31"E 389.94'

SERVICE  
AREA

N0d-01'33"W 105.98'

N56d-39'58"W 197.41'

DURANGO

NB4d-56'31"W  
53.88'

N67d-27'50"W 129.16'

NB2d-13'28"W  
53.81'

SOUTHERN PACIFIC RAILROAD



**EXHIBIT B**

## **6. RATES AND BILLING**

(e) CUSTOMER agrees that it shall pay SAWS a monthly surcharge in an amount equal to eighty five hundredths of one percent (0.85%) of new plant project costs in excess of six and one half million dollars (\$6,500,000). Plant project costs are defined as all costs incurred by SAWS associated with the engineering, development, construction and interim financing of the new facilities at the Alamodome site. Actual bond interest will be deducted and remainder applied to retirement of principal. The surcharge will be discontinued when (1) excess principal has been retired or (2) CUSTOMER has provided funds to SAWS in the amount of new plant project costs exceeding \$6,500,000 or (3) SAWS has contracted to furnish and has commenced invoicing for additional chilled water service where the additional demand charges from these services exceed the added new plant project fixed costs by an amount equal to or greater than the surcharge. Subject to conditions (1) to (3) above, beginning January 1, 2010, the surcharge will be directly reduced to the CUSTOMER by an amount equal to the additional demand charges from these services that SAWS has contracted to furnish and has commenced invoicing until the surcharge is discontinued. Should said additional demand be discontinued through no fault of SAWS, the surcharge to the CUSTOMER shall be increased by the amount of charges for the discontinued demand. Such payments will be considered on an annual basis consistent with SAWS fiscal year. Subsequent to January 1, 2010, the adjusted annual surcharge owed by the CUSTOMER for each succeeding calendar year will be further credited on a one-time basis for any months of any additional demand contracted and invoiced in the preceding year. The additional chilled water service required is currently estimated at 2500 tons.