Agenda item #12

CITY OF SAN ANTONIO
DEPARTMENT OF ASSET MANAGEMENT
CITY COUNCIL AGENDA MEMORANDUM

TO: Mayor and City Council

FROM: Rebecca Waldman, Director, Department of Asset Management

SUBJECT: Proposed Transfer of Use, Benefit, and Control of Property between the City and SAWS relating to the SAWS' Headquarters Building and the Historic Yturri House

DATE: May 12, 2005

SUMMARY AND RECOMMENDATIONS

Consideration of the following Ordinances related to the Transfer of Use, Benefit and Control of Property between the City and SAWS relating to the SAWS' Headquarters Building and the historic Yturri House:

(A) An Ordinance authorizing the execution and delivery of a Fourth Amendment to Agreement for Transfer of Use, Benefit, and Control of Property between the City and SAWS relating to the SAWS' Headquarters Building and the Historic Yturri House. The Amendment (1) defers to May 31, 2005 the date by which SAWS must close; (2) approves a Leaseback Agreement between the City and SAWS; (3) establishes a re-defined purchase price for the property, ($7,363,590) pursuant to the terms of the Leaseback Agreement; (4) lists personal property that will be conveyed from SAWS to the City at Closing and (5) approves a Tri-Party Agreement among the City of San Antonio, SAWS and CPS pertaining to separation of utilities, along with an Amendment to the Tri-Party Agreement between City Public Service and the City of San Antonio reflecting no third party assignment provisions;

(B) An Ordinance authorizing the execution of a Utilities Service Contract between the City and SAWS by which SAWS will provide chilled water and steam to the City for the current SAWS HQ Building.

Staff recommends approval of these Ordinances.

BACKGROUND

Recently, the San Antonio Water System (SAWS) completed the purchase of the former Valero Headquarters located at State Highway 281 and Mulberry. This property purchase will result in the relocation of the current SAWS operations from their existing headquarters located on Market Street, thereby rendering the property surplus to their needs.

City entered into an Agreement with an effective date of October 19, 2004, for Transfer of Use, Benefit and Control of SAWS' present corporate headquarters located at 1001 E. Market Street and the adjacent Historic Yturri House at 1020 E. Commerce Street. This Agreement has been amended three times to extend the feasibility period to complete due diligence and finalize negotiations. It is anticipated that this property will be needed by the City for future convention center expansion.

The first Ordinance addressed above (A), concerns SAWS' and the City's desire to enter into a Fourth Amendment to Agreement for Transfer of Use, Benefit and Control of Property (Attachment "A") to provide for the following:

- **Closing:** Closing will take place in the offices of the Title Company by May 31, 2005. SAWS will retain possession of the property at closing, in accordance with the terms of the Leaseback Agreement.

- **Leaseback Agreement:** Approval of a Leaseback Agreement between City and SAWS in the form attached as Exhibit "A" to Attachment "A". This Agreement allows SAWS to lease the property past the closing date at a rate of $73,282 per month. SAWS anticipates occupying the building an additional five (5) months past the closing date of May 31, 2005, or through October 31, 2005. If SAWS continues to occupy the building beyond October 31, 2005, it will continue to pay rent in the amount of $73,282 per month. In the event SAWS occupies the building beyond July 31, 2006, the monthly rental payment amount will triple after August 1, 2006, from $73,282 per month to $219,846 per month. While SAWS occupies the building past the closing date, SAWS must pay all utilities, custodial services, provide insurance coverage and abide by all terms and conditions of the Leaseback Agreement.

- **Transfer Price:** The total consideration to be paid for the Property will be $7,363,590. Appraised value of the property is $7,730,000, but SAWS will reduce the purchase price of the property by $366,410 for the 5-month use of the property beyond May 31, 2005 at a rate of $73,282 per month.

- **Personal Property:** The City will take possession at Closing of certain fixtures or personal property listed on Exhibit "B" to this Amendment which is currently situated on the Property, which is surplus to the needs of SAWS and the cost of disposal of which by SAWS exceeds the value of said Personal Property. At Closing, SAWS agrees to relinquish its interest in the Personal Property, in its "as-is, where-is" condition.

- **Tri-Party Agreement:** Approval of a Tri-Party Agreement (Exhibit "C") among the City, SAWS and CPS which establishes the electrical separation of utilities. SAWS will receive the overall electric billing and will notify the City of its share of payment for the building. SAWS and City will each pay CPS directly for their proportionate share. Also attached as Exhibit "A" to Exhibit "C" is an Amendment to Tri-Party Agreement between the City and CPS which reflects that CPS may terminate the Tri-Party Agreement if the City leases all or substantially all of the property in question to a third party.

All other terms, conditions and provisions of the Agreement will remain in full force and effect.

The second Ordinance addressed above (B) concerns the execution of a Utility Service Contract relevant to delivery of chilled water and steam from SAWS to the City. This Contract was not a part of the original Agreement for Transfer of Use, Benefit and Control of Property but will be necessary in the consummation of this property purchase.

Utility Service Contract: Approval of a Utility Service Contract between City and SAWS in the form attached as Attachment "B". This Agreement allows SAWS to provide chilled water and steam to the City for the current SAWS HQ Building in accordance with the schedule of rates as established by Ordinance of the City Council.

POLICY ANALYSIS

Approval of this ordinance is a continuation of City Council policy to support the purchase of the current SAWS main offices located at 1001 E. Market Street and the adjacent Historic Yturri House at 1020 E. Commerce Street.

FISCAL IMPACT

The City of San Antonio will receive a reduction in the purchase price of the property ($7,730,000) at a rate of $73,282 per month from June 1, 2005 through October 31, 2005, or $366,410 for the 5-month period stated above. With the $366,410 reduction, the total consideration to be paid by the City for the Property will be $7,363,590.

COORDINATION

This agenda item has been coordinated with the City Attorney's Office.

SUPPLEMENTARY COMMENTS

The Ethics Ordinance Disclosure Statement form is not required for this action.

Rebecca Waldman

Rebecca Waldman, Director
Department of Asset Management

Erik Walsh
Assistant to the City Manager

FOURTH AMENDMENT TO AGREEMENT FOR TRANSFER OF USE, BENEFIT AND CONTROL OF PROPERTY

This Fourth Amendment to Agreement for Transfer of Use, Benefit and Control of Property ("**Amendment**") is entered into by and between the **San Antonio Water System** ("SAWS"), and **the City of San Antonio,** a Texas municipal corporation ("**CITY**").

For and in consideration of One and No/100 Dollars ($1.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, **SAWS** and **CITY** hereby recite and agree as follows:

1. **Recitals.**

(a) **Agreement for Transfer of Use, Benefit and Control of Property.** SAWS and **CITY** entered into an Agreement for Transfer of Use, Benefit and Control of Property effective October 19, 2004, as amended by that certain Amendment to Agreement for Transfer of Use, Benefit and Control of Property, and as further amended by that certain Second Amendment to Agreement for Transfer of Use, Benefit and Control of Property, and as further amended by that certain Third Amendment to Agreement for Transfer of Use, Benefit and Control of Property (collectively, the "**Agreement**"), pursuant to which **SAWS** agreed, among other things and under certain terms and conditions to transfer to **CITY** the use, benefit and control of certain real property and improvements in the City of San Antonio, Bexar County, Texas, as more particularly described in the Agreement (the "**Property**"). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

(b) **Leaseback Agreement**. As used in this Amendment and the Agreement, the Lease Agreement shall mean the Leaseback Agreement in substantially the form attached as Exhibit A to this Amendment.

(c) **Amendment**. **SAWS** and **CITY** desire to amend the Agreement pursuant to this Amendment as hereinafter provided.

2. **Transfer Price**. The first sentence of paragraph 2 of the Agreement is hereby deleted and replaced with the following:

"The total consideration (the "Transfer Price") to be paid for the Property shall be Seven Million Three Hundred Sixty Three Thousand Five Hundred Ninety and No/100 Dollars ($7,363,590.00)."

3. **Closing Date**. Paragraph 5 of the Agreement is hereby deleted and replaced with the following:

"**Closing Date**. The consummation of the transaction contemplated by this Contract (the "Closing") shall take place in the offices of the Title Company on May 31, 2005 (the "Closing Date"), it being agreed that **SAWS** shall retain possession of the Property at Closing pursuant to the terms of the Leaseback Agreement." If the parties mutually agree, the Closing may occur during the week before May 31, 2005, but **SAWS** need not pay consideration to **CITY** under the Leaseback Agreement for any period before June 1, 2005.

4. **Leaseback Agreement**. The phrase ", if applicable" is hereby deleted from paragraph 7(e) and paragraph 8(d) of the Agreement.

Attachment "A"

5. **Personal Property**. SAWS acknowledges the desire of **CITY** to take possession at Closing of certain fixtures or personal property listed on Exhibit B to this Amendment (collectively, the "Personal Property"), which is currently situated on the Property, which is surplus to the needs of SAWS and the cost of disposal of which by SAWS exceeds the value of said Personal Property. At Closing, SAWS agrees to relinquish its interest in the Personal Property, in its AS IS - WHERE IS condition as of the Closing Date, with no representation or warranty, express or implied, as to the condition of the Personal Property, or the suitability of the Personal Property for any intended or anticipated use. Nothing in the Agreement or this Amendment shall require SAWS to undertake any repair or maintenance of the Personal Property at any time, or deliver the Personal Property to **CITY** in any useable condition.

6. **Tri-Party Agreement**. At Closing, the parties shall execute and deliver the Tri-Party Agreement in substantially the form attached as Exhibit C to this Amendment.

7. **Other Terms**. All other terms, conditions and provisions of the Agreement shall remain in full force and effect as of the date thereof.

8. **Counterparts**. This Amendment may be executed by facsimile transmission in two or more counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute but one and the same instrument.

9. **Binding Effect**. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED to be effective as of the date last set forth below.

SAWS:

San Antonio Water System

By: _____
Name: David E. Chardavoyne
Title: President/Chief Executive Officer
Date: _____

CITY:

City of San Antonio, a Texas municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A

[INSERT FORM LEASE]

Leaseback Agreement

Tenant: **San Antonio Water System**

This Leaseback Agreement ("Lease") is by and between the Landlord and Tenant identified below and pertaining to the identified Premises.

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Effective Date:	The closing date of Tenant's sale of the Premises to Landlord
Landlord:	City of San Antonio
Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966
Authorizing Ordinance (No. & date):	
Tenant:	San Antonio Water System

<u>Exhibit A</u>

To the Fourth Amendment to
Agreement for Transfer of Use, Benefit
and Control of Property

Tenant's Address:	P.O. Box 2449, San Antonio, Texas 78298-2449, Attention: Don Laffere, Manager, Corporate Real Estate
Description of Premises:	The property located at 1001 E. Market, San Antonio, Texas more particularly described on **Exhibit A**, and all improvements, fixtures, personal property and equipment of Landlord on said property
Permitted Use:	Office space and related uses
Rent for Renewal Terms:	$73,282 a month
Initial Term:	June 1, 2005 through October 31, 2005
Last Renewal Expiration Date:	July 31, 2006
Hold-over Percentage:	300%

1. Demise of Premises

Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, under the terms and conditions of this Lease. Landlord must assure Tenant has the quiet enjoyment of the Premises through and including the Last Renewal Expiration Date, unless the lack of quiet enjoyment arises from a condition created or contributed to by Tenant before the closing of its sale of the Premises to Landlord.

2. Use

Tenant may use the Premises for the Permitted Use only. The Premises will not be used for any other uses, whatsoever, without Landlord's prior written approval, evidenced by the passage of a future ordinance by the City Council.

3. Term of Lease/Renewal

3.01 The Initial Term of this Lease is as stated above, unless terminated earlier according to the terms of this Lease.

3.02 By giving Landlord written notice 15 days before the Initial Term or a Renewal Term expires, Tenant may extend this Lease for multiple Renewal Terms of not less than 15 days each up to and including the Last Renewal Expiration Date.

3.03 During the Initial Term or a Renewal Term, Landlord can: (1) post a "**For Lease**" sign in the Premises window(s) and (2) show the Premises to potential tenants during normal business hours, provided Landlord follows all of Tenant's customary security practices and procedures.

4. Acceptance and Condition of Premises

4.01 Tenant has owned and occupied the Premises for multiple years before the Effective Date. Tenant acknowledges that it is not aware of any condition hazardous to life, limb, or health that exists on the Premises. Tenant will neither create such a condition nor permit one created by others to exist. Tenant hereby waives all claims, whether for personal or property damage, arising out of the condition of the Premises as of the Effective Date. Tenant accepts the Premises "**As Is, Where Is, and With All Faults.**"

4.02 Landlord has made no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, except as expressly set forth in this Lease. Landlord **Specifically Disclaims Any And All Warranties Of Habitability or Suitability Of The Premises For Tenant's Intended Commercial Purposes And Uses.**

5. Rent

5.01 Tenant has paid to Landlord $1.00 as Rent for the Initial Term. No rent for the Initial Term will be rebated to Tenant even if, for any reason, the Lease terminates before the Initial Term expires. For any occupancy after the Initial Term, rent must be delivered to Landlord in equal monthly installments on or before the first day of each month. Rent shall be pro-rated for any partial month. Payments may be made in person or mailed for receipt to the City of San Antonio Finance Department, Revenue and Taxation Division, 506 Dolorosa Street, San Antonio, Texas 78205.

5.02 Rent during a Renewal Term is $73,282.00 per month. If Tenant holds over past the Last Renewal Expiration Date for any reason monthly rent is the Rent stated above multiplied times the Hold-over Percentage. Holding over is a month to month tenancy. Rent for any period after the Last Renewal Expiration Date shall not be prorated.

5.03 Late Charge. If the Rent or any other sum due under this Lease is not paid within five business days after written notice of non-payment, Tenant must pay, as additional Rent, a late charge of 5% per cent of the monthly Rent components not paid. If the late charge is deemed usurious, the maximum non-usurious rate applies hereunder, and Landlord will remit to Tenant any previously collected usurious charges.

5.04 Tenant's obligation to pay Rent is an independent covenant, and no act or circumstance, whether or not a breach by Landlord, releases Tenant of the obligation to pay Rent or other sums due hereunder.

5.05 Triple Net. This is a triple net lease. All costs and expenses of occupying and maintaining the premises are allocated to Tenant. This Lease does not obligate Landlord to pay for anything.

6. Construction and Alterations

Tenant may make minor repairs and nonstructural alterations and improvements to the interior of the Premises of $5,000 or less per alteration without Landlord's prior written approval, provided the work is performed in a good and workmanlike manner and in compliance with all federal, state, and city laws, ordinances, codes, and regulations. Other work on the Premises requires the prior written approval of Landlord, which will not be withheld unreasonably.

7. Fixtures and Personal Property

Trade fixtures and other personal property of Tenant installed at the expense of Tenant remain Tenant's property. Tenant may, upon the expiration or earlier termination of this Lease, if Tenant is not in default, remove such items. Tenant, at its sole cost and expense, must immediately repair any damage occasioned to the Premises by reason of the removal. Upon expiration or earlier termination of this Lease, Tenant must leave the Premises in good order and condition, normal wear and tear excepted, free of debris and broom clean. Any trade fixtures or other personal property of Tenant, whether or not installed or attached, if not removed by Tenant from the Premises on or before 30 days after the termination of this Lease, are deemed to be permanently affixed and become the property of Landlord without any further notice to Tenant or to its creditors, and without any liability whatsoever of Landlord. Tenant agrees that the fixtures, furniture and equipment listed on **Exhibit B** shall remain on the Premises at the expiration or earlier termination of this Lease.

8. Taxes and Fees

Both Landlord and Tenant are governmental entities. Neither is ordinarily a taxpayer, and neither expects to pay any taxes in respect of this Lease. But if any level of government does assess taxes on any aspect of this lease relationship, they are not the responsibility of Landlord.

9. Liens

9.01 Tenant must pay promptly for any work done by Tenant (or materials furnished therefor) in or about the Premises.

9.02 Tenant will not bind, or attempt to bind, Landlord for payment of any money in connection with leasehold improvements. Tenant must not permit any liens against the Premises or improvements thereon, or any equipment, machinery and/or fixtures therein belonging to Landlord. If any contractor and/or subcontractor employed by Tenant is bonded, Tenant must use every reasonable effort to have Landlord named in any contractor or subcontractor bond as an additional insured party.

9.03 If any mechanic's or other lien or order for payment is filed against the Premises or improvements thereon, or City (Landlord)-owned property located therein, Tenant must, within 30 days after the date of filing, cause it to be canceled and discharged of record by bond or otherwise.

9.04 Failure of Tenant to comply with any requirement of this article is an event of default.

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10. Maintenance and Repairs

10.01 Tenant must, at its own expense, keep the Premises in good order and in clean, safe, and sanitary condition. Tenant must further comply with all local, state, or federal building and health requirements. Upon termination of this Lease, Tenant must surrender them to Landlord broom clean and in substantially the same condition as at the inception of this Lease, ordinary wear and tear excepted.

10.02 Landlord has no responsibility for any repairs or maintenance, whether structural or otherwise. If Tenant finds needed repairs or maintenance uneconomical, its sole remedy is to terminate as provided in this Lease.

11. Laws and Ordinances

11.01 Tenant must comply promptly with all laws, ordinances, orders, and regulations affecting the Premises. All Tenant's activities in the Premises must be clean and safe and must specifically comply with all regulations of the local Board of Fire Underwriters.

11.02 Hazardous Materials. As used in this Lease, the term "Hazardous Materials" means any substance so identified by any applicable federal, state, or local law, rule, or regulation. Tenant must not introduce any Hazardous Materials to the Premises without the prior written consent of Landlord.

12. Utilities

12.01 Tenant must pay all monthly utility charges as they become due.

12.02 Tenant must furnish all electric light bulbs and tubes. Tenant must not install any electrical or other equipment that overloads electric lines serving the Premises or adjacent premises. Landlord is not liable to Tenant for interruption of utilities.

13. Access to Premises

Landlord, its agents, employees, and servants may enter the Premises for: (a) inspecting the condition; (b) exhibiting the Premises to prospective purchasers or future tenants of the Building; and (c) placing notices. Neither Tenant nor any person within Tenant's control will interfere with such activities or notices. All access to the Premises by Landlord, its agents, employees and servants shall be in accordance with all of Tenant's customary security practices and procedures.

14. Insurance

14.01 Tenant must provide and maintain in full force and effect with respect to the Premises from the Effective Date of this Lease and for the duration of this Lease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Landlord, in the following types and amounts:

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Type:	Amount:
2. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following: (a) Premises/Operations (b) Independent Contractors (c) Products/Completed Operations (d) Contractual Liability (e) Personal Injury Liability (f) Broad-Form Property Damage, to include Fire Legal Liability	For Bodily Injury, Death, and Property Damage of $1,000,000 per occurrence; $2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage

14.02 Landlord may modify the insurance coverage and limits when deemed necessary and prudent by Landlord's Risk Manager, based upon changes in statutory law, court decisions, or circumstances surrounding this Lease, but in no instance will Landlord allow modification increasing Landlord's risk.

14.03 Each insurance policy required by this Lease must contain the following clauses:

"This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:

(a) City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) Department of Asset Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director"

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio."

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14.04 Intentionally Deleted.

14.05 Within 30 days after the Effective Date, Tenant must deliver certificates to Landlord's Risk Manager and the City Clerk from Tenant's insurance carrier, reflecting all required insurance coverage. Delivery must be at the addresses noted above for notices of cancellation.

14.06 Landlord and its agents and employees are not liable, and Tenant waives all claims, for any damage to persons or property sustained by Tenant or any person claiming through Tenant, that may occur on the Premises, or for the loss of or damage to any property of Tenant or of others by theft or otherwise, whether caused by other tenants or persons in the Building or in the Premises or by occupants of adjacent property or the public.

14.07 Tenant may meet its insurance obligations through self-insurance.

15. Assignment and Subletting

Any attempt at transfer, assignment, or subletting of Tenant's rights, duties, and obligations hereunder, without the Landlord's prior written consent, is void and terminates the Lease.

16. Damage or Destruction of Premises

If the Premises are partially damaged or destroyed by fire or other casualty, Tenant must give immediate written notice to Landlord. Tenant may choose to repair or terminate this Lease and leave the Premises. Neither Tenant nor Landlord has a duty to repair.

17. Eminent Domain

17.01 If some or all the Premises are appropriated or taken under the power of eminent domain by any public or quasi-public authority other than Landlord, this Lease terminates and expires as of the date of such taking, unless Tenant otherwise elects in writing. Upon termination, both Landlord and Tenant are released from any liability thereafter accruing hereunder as of the earlier of the date of taking or date on which Premises become unusable.

17.02 If this Lease is terminated because of a condemnation as set forth in Section 17.01 above, Landlord receives the entire award or compensation from such proceedings. Tenant hereby waives all claims to any condemnation award.

18. Default

Each of the following, independently of any other of the following, is an event of default:

A. Tenant's failure to pay any sums due under this Lease ("monetary default") and the failure is not cured within five business days after written notice thereof.

B. Tenant's failure to perform or observe any other term, provision, condition, or covenant of this agreement, and the failure is not cured within 30 days after written

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notice thereof.If more than 30 days is reasonably required to cure a non-monetary default, it is an event of default if Tenant fails to begin cure within 30 days of written notice or if Tenant fails to diligently pursue cure once begun.

C. Tenant becoming subject to an order for relief under the United States Bankruptcy Code, becoming subject to a receivership, or entering into a composition of creditors.

D. Entry by any court of an order modifying the rights of Tenant's creditors.

E. Any other event denominated as an event of default elsewhere in this Lease.

19. Remedies

19.01 If Tenant defaults, Landlord may after the notice and cure periods set forth above, at its option, declare this Lease and all rights and interests created by it to be terminated. Upon Landlord electing to terminate, this Lease ceases as if it were the original expiration of this Lease's term.

19.02 Termination of this Lease for Tenant's default does not relieve Tenant from liability for any sum owing for the period before termination.

19.03 Landlord has all remedies for Tenant's default otherwise provided by Texas law. All rights, options, and remedies of Landlord contained in this Lease are cumulative of the other, and Landlord may pursue any one or all of such remedies or any other remedy or relief available at law or in equity. No waiver by Landlord of a breach of any of the covenants, conditions, or restrictions of this Lease waives earlier or later breach of the same or any other covenant, condition, or restriction herein contained.

19.04 If Landlord terminates this Lease for Tenant's default, Tenant, and those holding under Tenant, must forthwith remove their trade fixtures, equipment, signs, furniture, furnishings, other personal property, and non-structural improvements ("goods and effects") from the Premises. If Tenant fails to timely remove its goods and effects when required to do so, Landlord may, without liability to Tenant, remove the goods and effects and store them for the account of Tenant at any place selected by Landlord, with all costs for the removal and storage to be borne by Tenant. Alternatively, Landlord may assume ownership and control of all goods and effects free of any claim of Tenant, and Tenant must execute and deliver any instruments necessary to document Landlord's ownership.

19.05 All amounts expended by Landlord for the account of Tenant is additional rent and may, at the option of Landlord, be added to any other sums then due or thereafter falling due hereunder.

20. Other Termination

20.01 Tenant may terminate this Lease on 30 days prior written notice to Landlord.

20.02 In accordance with the § 137 of the City Charter, Landlord may further terminate this Lease for any of the following:

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A. This Lease is deemed by the City Council to be inconsistent with the public use of the property.

B. Tenant's use of the Premises is finally adjudicated to be a nuisance by a court of competent jurisdiction.

21. Dispute Resolution.

21.01 As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

21.02. Filing suit on a claim that should be mediated hereunder waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

21.03 Mediation must be conducted in San Antonio, Bexar County, Texas.

21.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

21.05 If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

21.06 Mediator fees must be borne equally.

21.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

22. Miscellaneous Provisions

22.01. Yielding Up. Tenant will, upon expiration or termination, yield up the Premises peacefully to Landlord, in good order and in a clean, safe and sanitary condition, reasonable use and wear and tear excepted,as set forth in Sections 7 and 10 above.

22.02. Authority To Execute. The parties executing this Lease on behalf of Tenant personally warrant that each of them has full authority to execute this Lease on behalf of the entity for whom they are acting.

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22.03. Applicable Law. This Lease is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Lease And The Rights, Remedies, And Obligations Arising Hereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

22.04. Severability. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

22.05 Successors. This Lease inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

22.06. Integration. This Written Lease Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

22.07. Modification. This Lease may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

22.08. Third Party Beneficiaries. This Lease is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

22.09. Notices.

22.09.01 Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the table at the beginning of this agreement. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to conform to the requirement that mailings be done by certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

22.09.02 Notices to Tenant must include a copy of Frank Stenger-Castro, General Counsel, San Antonio Water System, 1001 E. Market, San Antonio, Texas 78205.

22.09.03 Notices to Landlord must include a copy to City Attorney, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.

22.10. Pronouns. In construing this Lease, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Lease, not to any particular provision of it.

22.11. Captions. Paragraph captions in this Lease are for ease of reference only and do not affect the interpretation hereof.

22.12. Counterparts. This Lease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Lease, it is not be necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

22.13. Further Assurances. The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

22.14.. Ambiguities Not to Be Construed against Drafter. Any ambiguities found in this Lease must be resolved without resort to construction against the drafter.

22.15. No Special Relationship. The parties' relationship is an ordinary commercial one. They do not by this Agreement intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

22.16 No Merger. Landlord and Tenant recognize that in some cases a merger of title might arise by rule of law to extinguish the rights granted in this Lease because of the relationship of parties and the fact that Tenant holds title to real property in the name of Landlord. Landlord and Tenant intend for the Board of Trustees of Tenant to exercise independent oversight and use of the Premises as set out in this Lease and as defined in City Ordinance 75686. As such, Landlord and Tenant intend that the doctrine of merger of title not be invoked to extinguish the effect of this Lease.

11

In Witness Whereof, the parties have hereunto caused their representatives to set their hands to be effective as of the Effective Date.

Landlord:

City of San Antonio, a Texas municipal corporation

Signature:_____

Printed Name:_____

Title:_____

Date:_____

Tenant:

San Antonio Water System, an agency of the City of San Antonio

Signature:_____

Printed Name: David E. Chardavoyne

Title:President/Chief Executive Officer

Date:_____

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

EXHIBITS:

EXHIBIT A- Legal Description and Site Plan showing the Premises

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EXHIBIT B –Personal Property

12

Exhibit A
Legal Description and Site Plan showing the Premises

CEC
CIVIL ENGINEERING CONSULTANTS
DON DURDEN, INC.
11550 IH 10 West, Suite 395
San Antonio, TX 78230-1037
T: 210-641-9999 F: 210-641-6440

Job No.: S0267500
January 14, 2005

DESCRIPTION OF A 3.948 ACRE TRACT OF LAND

Being 3.948 acres of land in New City Block, (N.C.B.) 13813, San Antonio, Bexar County, Texas, being portions of Lot 1 and the remainder of Lot 2, Block 2, Civic Center, Project No. 5 Tex. R-83 Urban Renewal Agency, City of San Antonio, Texas, recorded in Volume 9518, Pages 123-126, Deed and Plat Records, Bexar County, Texas, and a 0.043 of one acre tract of land, conveyed unto the City of San Antonio, Texas, and described in Volume 6499, Page 417, Official Public Records of Real Property, Bexar County, Texas, and more particularly described by metes and bounds as follows:

BEGINNING at a 1/2" rebar with a "CEC" plastic cap set at the common corner of southwesterly right-of-way line of Commerce Street, (R.O.W. ~ varies, 80' min.) and the westerly right-of-way line of Interstate Highway 37, at the northeasterly corner of the remaining portion of said Lot 2, the northeasterly corner of this tract;

THENCE, in a southerly direction, coincident with said westerly right-of-way line, the following courses:

South 14°20'20" West, a distance of 52.98 feet, to a Texas Department of Transportation type III right-of-way monument found, at the most northerly corner of said 0.043 of one acre tract, an angle point;

South 25°25'48" East, a distance of 86.85 feet, to a 5/8" rebar found, at the most easterly corner of the 0.043 of one acre tract, an angle point;

South 07°18'55" East, a distance of 150.57 feet, to a 1/2" rebar with a "CEC" plastic cap set, an angle point;

South 06°26'42" East, a distance of 59.40 feet, to a 1/2" rebar with a "CEC" plastic cap set, an angle point, from which a Texas Department of Transportation type II right-of-way monument found bears, North 28°05'49" East, a distance of 0.29 feet ;

South 01°18'51" East, a distance of 148.33 feet, to a 1/2" rebar with a "CEC" plastic cap set, an angle point, from which a Texas Department of Transportation type II right-of-way monument found bears, South 55°33'09" East, a distance of 0.55 feet;

South 11°22'14" West, a distance of 20.77 feet, (Plat = 21.00 feet), to a Texas Department of Transportation type II right-of-way monument found, an angle point;

South 42°58'40" West, a distance of 80.75 feet, to a 1/2" rebar with a "CEC" plastic cap set, at the common corner of the remainder of the aforementioned Lot 2, and Lot 1, Block 3, N.C.B. 13814, said Civic Center, Project No. 5, the most southerly corner of this tract;

THENCE, North 45°33'16" West, coincident with the common line of the remainder of said Lot 2, and Lot 1 and Lot 2, said Block 3, a distance of 348.00 feet, to a PK nail set, at the common corner of said Lot 2 and the E. Market Street right-of-way line, (R.O.W. ~ 75'), as shown on the plat of said Civic Center, Project No. 5, an angle point of this tract;

THENCE, North 47°50'50" West, coincident with the common line of the remainder of Lot 2 and said right-of-way line, passing at a distance of 172.80 feet, the common corner of the remainder of Lot 2 and the aforementioned Lot 1, Block 2, and continuing coincident with the common line of said Lot 1 and said right-of-way line, a total distance of 222.08 feet, to an "X" made in concrete, a point of curvature of this tract;

THENCE, curving to the left, coincident with the common line of said Lot 1, and said right-of-way line, with a radius of 754.09 feet, a central angle 00°15'33", an arc length of 3.41 feet, a chord bearing of North 47°58'37" West, and a chord distance of 3.41 feet, to a 1/2" rebar with a "CEC" plastic cap set, at the end of this curve, the southwesterly corner of this tract;

THENCE, departing said right-of-way line, in a northeasterly and easterly direction, crossing Lot 1 and the remainder of Lot 2, the following courses:

North 42°08'06" East, a distance of 118.09 feet, to a 1/2" rebar with a "CEC" plastic cap set, an angle point;

North 14°19'45" East, a distance of 99.79 feet, to an "X" made in concrete, a corner of this tract;

South 76°40'05" East, a distance of 81.57 feet, to an "X" made in concrete, a reentrant corner of this tract;

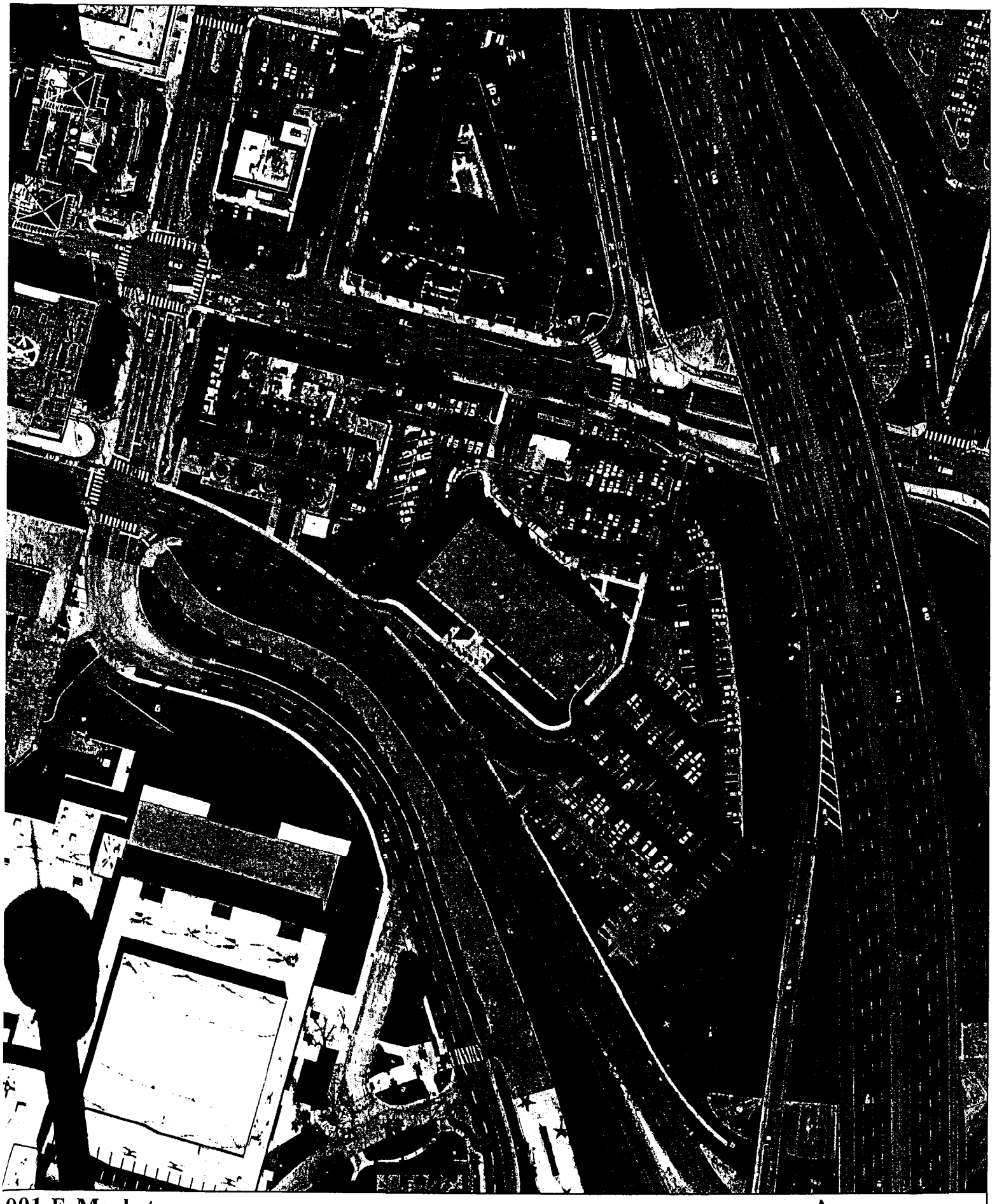
North 14°34'15" East, a distance of 86.46 feet, to an "X" made in concrete, on the common line of the remainder of Lot 2 and the aforementioned southwesterly right-of-way line of Commerce Street, the northwesterly corner of this tract;

THENCE, South 75°35'57" East, coincident with said common line, a distance of 60.04 feet, to a 1/2" rebar with a "CEC" plastic cap set, an angle point of this tract;

THENCE, South 68°10'46" East, continuing coincident with said common line, a distance of 170.36 feet, to the POINT OF BEGINNING and containing 3.948 acres of land, more or less.

I hereby certify that this description was prepared from a survey made on the ground by employees of Civil Engineering Consultants. The basis of bearings recited herein is the plat of Civic Center, Project No. 5, Tex. R-83, Urban Renewal Agency, City of San Antonio, Texas, recorded in Volume 9518, Pages 123-126, Deed and Plat Records, Bexar County, Texas. There is a plat of survey with like job number.

Dion P. Albertson R.P.L.S. # 4963



001 E. Market

N

77 0 77 154 Feet

1:1857

Map Prepared by Aquifer Protection & Evaluation BAH 4/25/2005

Type	Location	Area	Amount
Electric garage door	NE Basement Tunnel	Interior	1
Electric garage door	NW Basement Tunnel	Interior	1
NE Garage door override buttons (stop, close and open)	1st floor Security Desk	Interior	1
NW Garage door override buttons (stop, close and open)	1st floor Security Desk	Interior	1
Pedestal Intercom	NW Basement entrance	Interior	1
Fixed Surveillance Pedestal Intercom Camera (View #13)	NW Basement entrance	Interior	1
Intercom Monitor	1st floor Security Desk	Interior	1
Fixed Surveillance Tunnel exit Camera (View #6)	Tunnel Ceiling facing NW	Interior	1
Fixed Surveillance Tunnel entrance Camera (View #7)	Tunnel Ceiling facing NE	Interior	1
Exit door Alarms	Tunnel stairwell exit	Interior	2
Exit doors Alarm Annunciation system/speaker	1st floor Security Desk	Interior	1
IEI card reader	East Pedestrian door (near ladies room)	Interior	1
East emergency Exit door panic hardware	1st floor EAST side	Interior	1
Fix Surveillance Camera Dome View #12)	1st floor East emergency exit door	Interior	1
Fixed Surveillance Camera Dome (View #11)	1st floor lobby waiting area	Interior	1
Fixed Surveillance Camera (View #1)	Front entrance NE side	Exterior	1
Fixed Surveillance Camera (View #2)	Front entrance NW side	Exterior	1
Fixed Surveillance Camera (View #3)	Front entrance NE corner	Exterior	1
Fixed Surveillance Camera (View #4)	East side of building NE corner	Exterior	1
Fixed Surveillance Camera (View #5)	East side of building (2nd set of double T (North to South)	Exterior	1
Fixed Surveillance Camera (View #9)	East side of building (1st set of double T (North to South)	Exterior	1
Fixed Surveillance Camera (View #10)	West side of building (1st set of double T (North to South)	Exterior	1
Fixed Surveillance Camera (View #8)	East side of building (3rd set of double T (North to South)	Exterior	1
Hydraulic vehicle Barricade	East Side Tunnel Entrance	Exterior	1
Hydraulic vehicle Barricade	West Side Tunnel Exit	Exterior	1
Motion Detector	Yturri House	Interior	1
Motion Detector Alarm (Yturri House)	1st floor hall ceiling near Security Desk	Interior	1
		Total	33

Exhibit B

To the Leaseback Agreement

EXHIBIT B

Location	Equipment	Cabling
Data Center 1st Floor	Liebert A/C Model #FH248-A00	200 Pair copper to telecom room
Data Center 1st Floor	Liebert PDU Model # SCA050C-3616	24 strands fiber 62.5 MM to Fiber Dist.
Computer Room Basement	Liebert A/C unit Model # FH147C-A00	
Main Basement closet		183 copper drops (Cat 5)
Main Basement closet		6 strands fiber 62.5 MM to secondary basement rack
Main Basement closet		6 strands fiber 62.5 MM to Data Center
Main Basement closet		200 pair phone copper to 1st floor telecom room
Secondary Basement rack		6 strands fiber 62.5 MM to Main Basement Closet
1st Floor Bathroom		160 copper drops (Cat 5)
1st Floor Bathroom		6 strands fiber 62.5 MM to Data Center
1st Floor Bathroom		200 pair phone copper to 1st floor telecom room
2nd Floor		413 copper drops (Cat 5)
2nd Floor		6 strands fiber 62.5 MM to Data Center
2nd Floor		200 pair phone copper to 1st floor telecom room
1st Floor East		281 copper drops (Cat 5)
1st Floor East		6 strands fiber 62.5 MM to Data Center
1st Floor East		200 pair phone copper to 1st floor telecom room

19

Exhibit B

Cafeteria Furniture Inventory

Serial # 040D07874
Hobart Mixer
Serial # 1843003
Beverage Air Refrigerator
Serial # ER481AS
General Electric
Model # G136
General Electric Deep Fryer
Model # CK40
Waterless Food Warmer
Model
Toast Master
Serial 3
True Refrigerator 1-3357031
Stainless Steel table with sink
CWB 4829
Large Stainless Steel Prep Table
CWB 4827
Small Stainless Steel table
CWB 4828

Type	Location	Area	Amount
Electric garage door	NE Basement Tunnel	Interior	1
Electric garage door	NW Basement Tunnel	Interior	1
NE Garage door override buttons (stop, close and open)	1st floor Security Desk	Interior	1
NW Garage door override buttons (stop, close and open)	1st floor Security Desk	Interior	1
Pedestal Intercom	NW Basement entrance	Interior	1
Fixed Surveillance Pedestal Intercom Camera (View #13)	NW Basement entrance	Interior	1
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Hydraulic vehicle Barricade	East Side Tunnel Entrance	Exterior	1
Hydraulic vehicle Barricade	West Side Tunnel Exit	Exterior	1
Motion Detector	Yturri House	Interior	1
Motion Detector Alarm (Yturri House)	1st floor hall ceiling near Security Desk	Interior	1
		Total	33

Exhibit B

To the Fourth Amendment to
Agreement for Transfer of Use, Benefit
and Control of Property

EXHIBIT B

Location	Equipment	Cabling
Data Center 1st Floor	Liebert A/C Model #FH248-A00	200 Pair copper to telecom room
Data Center 1st Floor	Liebert PDU Model # SCA050C-3616	24 strands fiber 62.5 MM to Fiber Dist.
Computer Room Basement	Liebert A/C unit Model # FH147C-A00	
Main Basement closet		183 copper drops (Cat 5)
Main Basement closet		6 strands fiber 62.5 MM to secondary basement rack
Main Basement closet		6 strands fiber 62.5 MM to Data Center
Main Basement closet		200 pair phone copper to 1st floor telecom room
Secondary Basement rack		6 strands fiber 62.5 MM to Main Basement Closet
1st Floor Bathroom		160 copper drops (Cat 5)
1st Floor Bathroom		6 strands fiber 62.5 MM to Data Center
1st Floor Bathroom		200 pair phone copper to 1st floor telecom room
2nd Floor		413 copper drops (Cat 5)
2nd Floor		6 strands fiber 62.5 MM to Data Center
2nd Floor		200 pair phone copper to 1st floor telecom room
1st Floor East		281 copper drops (Cat 5)
1st Floor East		6 strands fiber 62.5 MM to Data Center
1st Floor East		200 pair phone copper to 1st floor telecom room

19

Cafeteria Furniture Inventory

Serial # 040D07874
Hobart Mixer
Serial # 1843003
Beverage Air Refrigerator
Serial # ER481AS
General Electric
Model # G136
General Electric Deep Fryer
Model # CK40
Waterless Food Warmer
Model
Toast Master
Serial 3
True Refrigerator 1-3357031
Stainless Steel table with sink
CWB 4829
Large Stainless Steel Prep Table
CWB 4827
Small Stainless Steel table
CWB 4828

TRI-PARTY AGREEMENT

This Tri-party Agreement ("Agreement") is entered into and is effective as of the ____ day of _____, 2005 ("Commencement Date") by and among the City Public Service Board, a natural gas and electric utility owned by the City of San Antonio, d/b/a CPS Energy (herein referred to as "CPS"), the San Antonio Water System, a water, wastewater, and water reuse agency of the City of San Antonio (herein referred to as "SAWS") and the City of San Antonio (herein referred to as "COSA").

WHEREAS, SAWS owns real property located at 1001 E. Market Street and 900 E. Commerce Street, as reflected on Attachment A, that is currently being used as SAWS' Main Office Facility and for operation of the Downtown Chilled Water and Steam Plant, respectively.

WHEREAS, SAWS has entered into a contract with COSA for the transfer of the use, benefit and control of the Main Office Facility tract, as reflected on Attachment A (herein called "Tract A"). The tract bearing the Chilled Water and Steam Plant, as reflected on Attachment A (herein called "Tract B"), shall be retained by SAWS for its downtown chilled water and steam operations.

WHEREAS, CPS Rules and Regulations prohibit a Customer from selling or sub-metering an industrial or commercial establishment located on adjoining premises except where the Service is sold or metered to bona fide tenants on the adjoining premises and the right is specifically provided for in the Customer's Service Agreement.

WHEREAS, construction of new distribution and metering facilities on and to the Tract A, upon transfer of the tract to COSA, result in significant costs to COSA such that COSA has requested that CPS authorize the sub-metering of Tract A, and that this approval be reflected in a written agreement as required by the CPS Rules and Regulations.

WHEREAS, SAWS has agreed to assume responsibility for reading the sub-meter on Tract A, and for sending to COSA a bill for its portion of the monthly bill for electric service provided by CPS to Tract A and B.

NOW THEREFORE, In consideration of the mutual covenants and conditions expressed herein and other valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The Parties agree that (i) the current configuration of distribution facilities and service to Tract A and B shall remain unchanged and that no new equipment will be installed by CPS, SAWS or COSA as a requirement of this Agreement; provided, however, that SAWS may replace the current sub-meter equipment, and (ii) the rates charged for Tract A and Tract B shall be the rates applicable to Tract B.

2. COSA agrees that it shall take its electricity for Tract A through a sub-meter on Tract B, which sub-meter shall measure the consumption and demand of energy on Tract A (the "Tract A Consumption").

3. SAWS agrees that it shall have sole responsibility for reading the sub-meter on Tract B and to send a bill to COSA, at the address set forth below, for Tract A Consumption, as indicated by the measurements of the sub-meter. A copy of such bill for the Tract A Consumption shall also be provided to CPS at the address set forth below.

4. SAWS shall make payment to CPS of the billed amount for energy consumed on Tract B, less the amount for the Tract A Consumption and COSA shall make payment to CPS for the Tract A Consumption by the due date reflected on the bill. CPS agrees that SAWS shall have no responsibility for the payment of any part of the utility bill for the Tract A Consumption, and COSA shall have no responsibility for the payment of any part of the utility bill for the consumption on Tract B that is not attributable to Tract A.

5. SAWS and COSA are each responsible to CPS only for the bill as split between them. If SAWS and COSA disagree on the split of the bill at the due date to CPS, they may continue their dispute between themselves, but they must each pay their share of the bill to CPS timely based on the Contract Historical Split, as hereafter defined. The Contract Historical Split is the average percentage of total kilowatt/hours allocated to COSA on all previous CPS bills during the term of this Agreement. If a dispute arises over the first bill, the Contract Historical Split is 50%. When CPS and COSA resolve their disagreement over allocating CPS bill(s), the party who, under the agreement, paid too little under the Contract Historical Split must promptly make a compensating payment to the other.

6. This Agreement is expressly conditioned upon maintenance of the current configuration of the CPS distribution and metering facilities on Tract A and B. Should COSA or SAWS sell its Tract, or if COSA desires to demolish or construct additional buildings on Tract A such that reconfiguration of the distribution or metering facilities is made necessary in CPS' discretion, CPS shall provide written notice to SAWS and COSA that CPS will proceed with installing separate distribution and service facilities to Tract A, and upon receipt by SAWS and COSA of notice of the completion of such separate facilities, this Agreement shall automatically terminate; provided, however, in no event shall the utilities to either Tract be interrupted. Costs associated with the installation of separate facilities shall be billed in accordance with CPS Line Extension Policy and CPS Rules and Regulations, and at no expense to SAWS.

7. SAWS must include in its invoices to COSA the beginning and ending meter readings on which the split is based and must state the date of the reading. SAWS agrees to provide notice to COSA of the time and date of the reading of the sub-meter, and COSA representatives may be present to observe the sub-meter readings.

8. All obligations to pay money on the part of COSA are subject to City Council appropriation, but in the event COSA fails to make any payment as a result of a lack of such appropriation by City Council, this Agreement shall terminate.

9. COSA may terminate this agreement on 60 days written notice to the other parties. Costs associated with the installation of separate facilities shall be billed

in accordance with CPS Line Extension Policy and CPS Rules and Regulations, and at no expense to SAWS.

10. Any notices under this Agreement shall be provided in writing to the address for the parties set forth below:

SAWS: San Antonio Water System
Attention: Victor Stuckey
900 E. Market Street
San Antonio, Texas 78205

WITH COPY TO: San Antonio Water System
Attention: Dan Titerle
P.O. Box 2449
San Antonio, Texas 78298-2449

AND WITH COPY TO: San Antonio Water System
Attention: General Counsel
1001 E. Market Street
San Antonio, Texas 78205

CITY: City Clerk
City of San Antonio
100 Military Plaza, 2nd Floor, City Hall
San Antonio, Texas 78205

With a copy to:
City of San Antonio
Department of Asset Management
Attention: Rebecca Waldman, Director
114 W. Commerce, 2nd Floor
San Antonio, Texas 78205
Fax: (210) 207-7888
Phone: (210) 207-7837

CPS:

_____

_____

Any Party may change its address or parties to receive notice by written notice to the other parties.

WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY PUBLIC SERVICE BOARD
OF SAN ANTONIO

By: _____

SAN ANTONIO WATER SYSTEM

By: _____

CITY OF SAN ANTONIO, a Texas municipal corporation

Signature_____

Name:_____

Title:_____

Date:_____

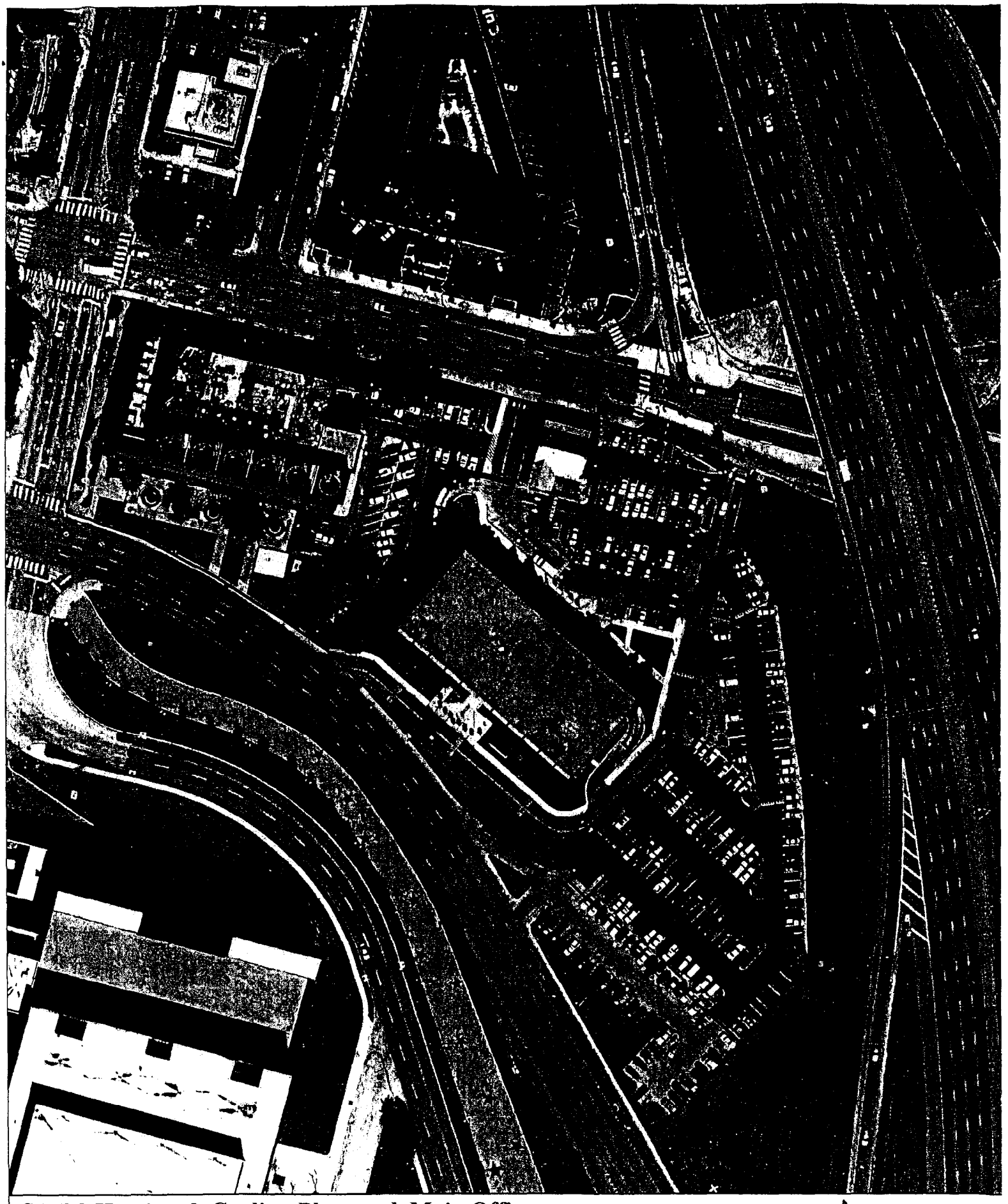
Authorizing Ordinance:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney



SAWS Heating & Cooling Plant and Main Office

900 E. Commerce and 1001 E. Market

Attachment A

To the Tri-Party Agreement

N

62 0 62 124 Feet

1:1486

Map Prepared by Aquifer Protection & Evaluation BAH 4/26/2005

Amendment to Tri-Party Agreement

This Amendment to Tri-Party Agreement (Amendment) is entered into between COSA and CPS as of the Effective Date.

1. Identifying Information.

Authorizing Ordinance (No. & Date):	
Effective Date:	The effective date of the Contract to be Amended
CPS:	City Public Service
CPS's Address:	145 Navarro, San Antonio, Texas 78205
COSA:	City of San Antonio
COSA's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966
SAWS:	San Antonio Water System
SAWS' Address:	P.O. Box 2449, San Antonio, Texas 78298-2449
Contract to be Amended:	Tri-Party Agreement among CPS, COSA, and SAWS relating to submetering the electrical service to 1001 E. Market, San Antonio, Texas

2. No Lease of Premises.

CPS may terminate this agreement if COSA leases all or substantially all of the property at 1001 E. Market, San Antonio, Texas.

3. No Default.

Neither Seller nor Buyer is in default under the Contract to be Amended and neither party is aware of a cause of action against the other arising out of or relating to the period before this Amendment.

4. Same Terms and Conditions.

This renewal and extension instrument is a fully integrated statement of the modifications to the Contract to be Amended. Except as expressly modified by this Amendment, the Contract to be Amended remains a comprehensive statement of the

rights and obligations of Buyer and Seller. Buyer and Seller reaffirm the Contract to be Amended.

COSA

City of San Antonio,
a Texas municipal corporation

By:_____

Printed
Name:_____

Title:_____

Date:_____

CPS

City Public Service

By:_____

Printed
Name:_____

Title:_____

Date:_____

Attest:

_____
City Clerk

Approved As To Form:

_____
City Attorney

UTILITY SERVICE CONTRACT

(Chilled Water & Steam - with Return)

THE STATE OF TEXAS §

COUNTY OF BEXAR §

THIS CONTRACT ("Contract") is made this ____ day of _____ 20__ for the purchase of chilled water and/or steam service between the City of San Antonio, a Texas municipal corporation, herein called "CUSTOMER", and the SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES, herein called "SAWS".

W I T N E S S E T H

WHEREAS, thermal energy services in the form of chilled water and/or steam have been furnished by SAWS to the office building previously occupied by SAWS located at 1001 E. Market Street (the "Building"); and

WHEREAS, CUSTOMER has entered into a contract (the "Transfer Agreement") to acquire from SAWS the Premises (as hereinafter defined), and other land and property; and

WHEREAS, CUSTOMER desires to continue to purchase and utilize the chilled water and steam services for an additional period of time; and

WHEREAS, SAWS desires to continue to provide these services for an additional period of time as hereinafter provided;

NOW THEREFORE, in consideration of the above and the mutual agreements and covenants set forth herein, the parties agree as follows:

Attachment "B"

1. **CUSTOMER AGREES TO PURCHASE CHILLED WATER AND/OR STEAM SERVICES**

(a) The CUSTOMER shall purchase from SAWS and SAWS shall sell to the CUSTOMER chilled water and/or steam service beginning not later than the date of execution of this Contract.

(b) The CUSTOMER agrees to operate systems in a safe and compatible manner with SAWS central production and distribution facilities and maintain systems in a condition that does not allow introduction of air or makeup water.

2. **SAWS AGREES TO DELIVER CHILLED WATER AND/OR STEAM**

(a) For chilled water service, SAWS shall deliver continuously to CUSTOMER'S premises, at the point of the CUSTOMER'S chilled water service valve, chilled water at an approximate temperature of 42 degrees Fahrenheit and at sufficient flow to meet the contracted connected load as specified in Paragraph 8(a) of this Contract provided that the Customer return temperature conditions are met as specified in Paragraph 3(c) of this Contract. SAWS agrees to use good faith efforts to provide chilled water at a temperature of not warmer than 45 degrees Fahrenheit.

(b) For steam service, SAWS shall deliver continuously to CUSTOMER'S premises, at the point of the CUSTOMER's steam 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 contracted connected load specified in Paragraph 8(b) of this Contract.

(c) Notwithstanding the requirements of paragraphs 2(a) and 2(b) of this Contract, 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.

(d) Premises to which service shall be delivered are described as follows:

> That property belonging to the CUSTOMER formerly known as the SAWS Central Office, and located at:1001 E. Market Street, San Antonio, Bexar County, Texas 78205

(e) As used herein, the term "Premises" shall include the above-described property and all improvements now existing.

3. **CUSTOMER AND SAWS RESPONSIBILITIES**

(a) All cooling and heating of the above-described premises shall be accomplished by means of chilled water or steam purchased from SAWS under the terms of this Contract. It is not a breach of this Contract for occupants of the building to have space heaters and fans.

(b) The CUSTOMER shall endeavor to 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.

(c) The CUSTOMER shall not draw off any chilled water from its system and shall endeavor to return chilled water to SAWS at a temperature not less than 54 degrees Fahrenheit.

(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 water passes the inlet side of the CUSTOMER'S leaving service valve.

(e) SAWS shall maintain service valves 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 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.

(h) The CUSTOMER grants SAWS the right to interrupt service to make non-emergency repairs to the system; provided, however, no prior written notice shall be required in the event of emergency repairs. SAWS will schedule repairs to minimize service interruption and inconvenience to CUSTOMER. CUSTOMER may from time to time give notice to SAWS of a Designated Customer Representative. Before any interruption not occasioned by an emergency, SAWS must first check with the Designated Customer Representative to see if the interruption or presence of SAWS personnel in CUSTOMER's offices is convenient. Upon such inquiry, CUSTOMER may require SAWS to come back another day when CUSTOMER would find the disruption less inconvenient. SAWS may find it convenient to check with the Designated Customer Representative in advance.

(i) The 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) Upon written request from SAWS, the CUSTOMER will grant, or cause to be granted to SAWS, without cost and unburdened by improvements, a license in a form mutually acceptable to the parties, for a period of the term of this Contract, in and across the CUSTOMER'S site for pipe lines to serve the CUSTOMER. SAWS will restore the surface of the licensed areas to the condition prior to excavation after installing, replacing, repairing, or maintaining its pipe line and facilities. If Customer fails to enter into the license described above, or terminates the license and interrupts SAWS' right to use pipelines across Customer's property to serve Customer and the parties do not reach agreement on an alternative way for SAWS to provide services under this Contract, this Contract may be terminated by written notice, and neither SAWS nor Customer will be liable to the other hereunder for matters relating to the period after termination.

4. METERING

SAWS shall furnish, install, and maintain the necessary metering devices for chilled water and steam service. Such metering devices shall remain the property of SAWS. SAWS agrees to cause the metering devises to be inspected and calibrated at least once every twelve months at SAWS' expense. CUSTOMER may have representatives present when the meters are checked to verify the process.

5. CESSATION OF CHARGES

(a) In the event the CUSTOMER'S premises should be destroyed by fire or other hazard 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 5(b) below.

(b) When a CUSTOMER's premises have been destroyed or 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 consecutive days, charges will resume when restoration of service by SAWS has been accomplished.

6. RATE AND BILLING

(a) 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 City Council of the City of San Antonio in which event the rates as changed will apply. CUSTOMER is not in default of payment made within 45 days of receipt of invoice.

(b) The CUSTOMER agrees that it shall pay SAWS a minimum monthly capacity charge for chilled water and/or steam service based on the current rate for chilled

water and steam service applied to the contracted connected loads specified in Paragraph 8 of this Contract unless CUSTOMER qualified for cessation of charges as specified in Paragraph 5 of this Contract.

(c) 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.

(d) All CUSTOMER's promises to pay in this Contract are subject to appropriation by City Council; provided, however, if CUSTOMER fails to make payment required herein, SAWS has no duty to perform its obligations under this Contract, and SAWS may terminate this Contract by immediate written notice to CUSTOMER.

7. TERM

(a) The term of this Contract shall begin upon the date of its execution by all parties and shall continue for a primary term of five (5) years and will renew annually thereafter unless terminated by either party with thirty (30) days written notice prior to a renewal date. This Contract may be terminated by SAWS at any time upon the expiration of thirty (30) days after notice to CUSTOMER for non payment of services. Notice to CUSTOMER shall be in writing and delivered by first class mail.

(b) CUSTOMER may terminate this Contract at any time on 60 days prior written notice if CUSTOMER ceases to use the Building for office space.

8. CONNECTED LOADS – CONTRACT DEMAND

(a) The number of tons of connected cooling load in the first year of this Contract is _302__ tons per hour. (zero if service not desired)

(b) The number of pounds per hour of connected steam load in the first year of this Contract is _2800_____ lbs per hour. (zero if service not desired)

Contract demands shall be the amounts shown in 8(a) and 8(b).

(c) Not more often than once every twelve month period after the first year of this Contract, CUSTOMER may request a reduction in the above contract demand loads by giving thirty (30) days prior written notice to SAWS. SAWS agrees to adjust the contract demand loads in (a) and (b) above of this Paragraph 8 based on the historical peak demands for the twelve month period immediately preceding the written request of CUSTOMER described above.

9. DEFAULT

In the event of default by CUSTOMER, this Contract shall not be terminated until thirty (30) days after written notice of such default is delivered to CUSTOMER at the premises, if CUSTOMER fails to cure within the 30 days.

10. 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 Clerk
City of San Antonio
100 Military Plaza, 2nd Floor, City Hall

San Antonio, Texas 78205

With a copy to:

City of San Antonio
Department of Asset Management
Attention: Rebecca Waldman, Director
114 W. Commerce, 2nd Floor
San Antonio, Texas 78205

SAWS:

San Antonio Water System Board of Trustees
Attn: Contract Administration
P.O. Box 2449
San Antonio, Texas 78298-2449
(210) 704-7436

With a copy to:

San Antonio Water System Board of Trustees
Attn: General Counsel
1001 E. Market Street
San Antonio, Texas 78205

11. NO BENEFIT OR GIFT TO SAWS

CUSTOMER shall not offer, confer or agree to confer any benefit or gift to any SAWS employee.

12. ASSIGNMENT

This Contract may be assigned by either party only with the prior written consent of the other, which consent may be withheld in the sole and absolute discretion of the party whose consent is required. Such assignment shall give the address of the assignee. SAWS also has the unconditional 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.

13. 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.

14. WAIVER

The failure on the part of SAWS at any time to require the performance by CUSTOMER of any portion of this Contract shall not be deemed a waiver of or in any way affect SAWS' right to enforce such provision or any other provision. Any waiver by SAWS of any provision hereof shall not be taken or held to be a waiver of any other provision hereof or any other breach hereof.

15. 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.

16. CUMULATIVE REMEDIES

In the event of default by CUSTOMER under this Contract, SAWS shall have all rights and remedies afforded to it at law or in equity to enforce or interpret the terms of the 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. Nothing herein waives any sovereign immunity or other defense of SAWS or CUSTOMER.

17. SUCCESSORS and ASSIGNS

CUSTOMER hereby binds itself, its heirs, executors, administrators, other legal representatives, successors and permitted assigns for the faithful and full performance of the terms and provisions of this Contract.

18. 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, terrorism, 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.

19. SURVIVAL

Any and all representations, conditions and warranties made by the parties 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 hereunder, whether delivered at the time of the execution, or at a later date, shall constitute representations and warranties hereunder.

20. 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.

21. 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 to be effective as of the date of closing under the Transfer Agreement.

SAN ANTONIO WATER SYSTEM
BOARD OF TRUSTEES

By: _____
Name: _____
Title: _____

Date: _____

CITY OF SAN ANTONIO, a Texas municipal corporation

By: _____

Name: _____

Title: _____

Date:_____

Authorizing Ordinance:_____

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

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 preceding 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.

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

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

SCHEDULE "B"

STEAM SERVICE RATE SCHEDULE FOR DOWNTOWN AREA

SAN ANTONIO WATER SYSTEM
San Antonio, Texas
Effective December 1, 2002

Billings for steam 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 $88.42 per 100 pounds per hour of demand. The demand shall be the largest number of pounds of steam demanded in any hour of the twelve months ending with the month next preceding 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.

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

ADJUSTMENT FOR PAYMENT TO THE CITY GENERAL FUND

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DEFINITIONS

An hour is defined as 60 consecutive minutes.