

**CHILLED WATER SERVICE
MEMORANDUM OF UNDERSTANDING**

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This utility services memorandum of understanding (the “MOU”) is made as of _____, 2023 for the purchase of chilled water service between The City of San Antonio, herein called “CUSTOMER”, and the San Antonio Water System Board of Trustees, a water, wastewater, and water recycling agency of the City of San Antonio established and created pursuant to the provisions of Ordinance No. 75686 and the Texas Revised Civil Statutes Annotated Article 1115, hereinafter referred to as “SAWS.”

RECITALS

1. The United States Federal Government, acting by and through its General Services Administration (the “Federal Government”) and SAWS entered into an Order for Supplies and Services dated April 24, 2006 for chilled water services at the Wood Courthouse, located at 655 E. Cesar E. Chavez Boulevard in San Antonio, Bexar County (the “Courthouse”) during the period of May 1, 2006 through April 30, 2016 (“Courthouse Chilled Water Services Term”).
2. The Federal Government continued to pay for chilled water services that SAWS provided to it after the Courthouse Chilled Water Services Term expired, according to the applicable chilled water rate ordinance, until the Federal Government sold the Courthouse to the CUSTOMER on September 30, 2022 (the “Sale Date”).
3. From and after the Sale Date, the CUSTOMER has paid SAWS for chilled water services at the Courthouse according to the applicable chilled water rate ordinance.
4. In order to memorialize CUSTOMER’s and SAWS’s obligations with respect to the chilled water services SAWS is providing to CUSTOMER at the Courthouse, the parties desire to enter into this Chilled Water Service MOU.

AGREEMENT

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CUSTOMER and SAWS hereby agree as follows:

1. SERVICE STATEMENT

- (a) The purpose of this MOU is to specify the rights, duties, and responsibilities of the parties in relation to the chilled water services provided by SAWS to the CUSTOMER at the Courthouse.
- (b) The CUSTOMER shall purchase from SAWS and SAWS shall sell to the CUSTOMER chilled water service.
- (c) Capitalized terms not defined herein shall be given the meaning assigned to them under City Council Ordinance Number 2022-11-10-0869.

2. CUSTOMER AGREES TO ACCEPT CHILLED WATER

- (a) CUSTOMER represents that it has the power and authority to enter into and perform this MOU, which shall be a valid and binding obligation of CUSTOMER and enforceable in accordance with its terms.
- (b) CUSTOMER agrees to: (i) operate its systems in a safe and compatible manner with SAWS central production and distribution facilities; and (ii) maintain clean water and water chemistry to industry standards and to provide periodic reports to SAWS of the water chemistry analysis.
- (c) CUSTOMER agrees that all of the chilled water system in CUSTOMER building shall be owned, controlled, maintained, repaired, and replaced by CUSTOMER.
- (d) CUSTOMER agrees that SAWS shall have no responsibility for the use, handling, or action of chilled water, nor any liability for anything which may be done, happen or arise with respect to the chilled water following its delivery by SAWS to CUSTOMER.
- (e) The CUSTOMER shall use best efforts to return all chilled water to SAWS at 57

degrees Fahrenheit.

- (f) The CUSTOMER shall not draw off any chilled water from the SAWS system.
- (g) The CUSTOMER grants SAWS the right, upon notice to the CUSTOMER, to interrupt service to make repairs to the system. SAWS will use best efforts to schedule repairs to minimize service interruption and inconvenience to CUSTOMER.
- (h) The CUSTOMER grants SAWS the right upon reasonable notice 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's property.
- (i) If applicable, the CUSTOMER will grant, or cause to be granted to SAWS, without cost and unburdened by improvements, an easement which upon request by SAWS shall be defined by an instrument in recordable form or an acceptable license for a period not less than the term of this MOU in and across the 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 pipeline and facilities.
- (j) Resale. CUSTOMER may resell Service only to a co-owner, manager, or tenant of the Premises; provided such resale does not subject SAWS to any governmental rules, regulation, laws, or taxes to which it was not otherwise subject. Regardless of any such resale, CUSTOMER remains primarily liable to SAWS for all costs and charges payable under this Agreement. CUSTOMER shall pay all taxes or governmental charges arising from its resale of Service. SAWS will not provide any submetering of Service under this Agreement.

3. SAWS AGREES TO DELIVER CHILLED WATER

- (a) SAWS shall use best efforts to deliver to CUSTOMER's premises chilled water at an approximate temperature of 42 degrees Fahrenheit and at sufficient flow to meet the connected load as specified in Paragraph 8 (a) of this MOU providing the CUSTOMER return temperature conditions are met as specified in Paragraph 2 (e)

of this MOU.

4. METERING

- (a) SAWS shall maintain the necessary control and metering devices for chilled water services on the CUSTOMER'S premises. Such metering devices shall remain the property of SAWS.
- (b) All books and records pertaining to this MOU, including, meter and testing records, will be open and available during normal business hours for copying, inspection, and audit by CUSTOMER and SAWS, with prior reasonable notice. CUSTOMER may, at its own expense, install check meters on chilled water delivered so long as those check meters do not interfere with the operation and maintenance of SAWS' infrastructure and meters.

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 subparagraph (b) of this Paragraph.
- (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 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 CUSTOMER provides temporary services from other sources, then all charges will resume only after restoration of service 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 service in accordance with the schedule of rates as

established by Ordinance of the City Council of the City of San Antonio. 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.

- (b) The CUSTOMER agrees that upon the commencement of chilled water service, Operation Date, it shall pay SAWS a monthly Capacity Charge for chilled water based on the current rate for chilled water service, as set by the City of San Antonio City Council, multiplied by the MOU Demand specified in Paragraph 8 (a) of this MOU, unless CUSTOMER qualifies for cessation of charges as specified in Paragraph 8 (a) of this MOU. This rate is set by the City of San Antonio City Council and is currently \$22.67 per MOU ton.
- (c) CUSTOMER agrees that it shall pay SAWS a Commodity Charge for chilled water service based on CUSTOMER's monthly consumption, in ton-hours, as a pro rata share of the overall system total ton-hours delivered as a pass thru of costs for electric, water, wastewater and water chemistry. No commodity charge shall be made if the metered use of the CUSTOMER is zero (0) during the month.
- (d) CUSTOMER has been provided 'Building Design Best Practice' guide. CUSTOMER agrees to a Delta T adjustment to the Commodity Charge. Delta T is defined as the difference in 1) the temperature at the meter that measures the temperature of the chilled water supplied by SAWS to CUSTOMER (the "Supply Temperature Meter") and 2) the temperature at the meter that measures the temperature of the chilled water returned to SAWS by CUSTOMER (the "Return Temperature Meter") and is an overall measure of system efficiency. This Delta T adjustment charge is applied to the Commodity Charge and represents the added or avoided energy costs. It provides a fee for a customer with low/poor Delta T or an incentive to those with high/good Delta T. A customer Delta T of 12 to 15 degrees will result in no Delta T adjustment. The Delta T adjustment to the Commodity Charge shall be calculated as the Commodity Charge multiplied by 6 percent for each degree (rounded to the nearest degree), in Fahrenheit, when the average return temperature is something other than 12 to 15 degrees. The Delta T adjustment will apply to the Commodity Charge for the months of April, May, June, July, August and September only. No Delta T adjustment shall be assessed until April of 2024, to allow CUSTOMER to optimize their water side system improvements.
- (e) In addition to charging the Delta T Adjustment set forth above, SAWS has the right to: reset the chilled water supply temperature set point and/or vary the chilled water

flow to achieve Customer Design Return Temperature.

7. **TERM.**

The term of this MOU shall begin upon the date this MOU is fully executed and shall continue for a primary term of five (5) years and thereafter for five (5) one (1)-year renewal periods each, unless terminated by either party on twelve (12) months written notice prior to date of renewal of any renewal period. This MOU may be terminated by SAWS at any time upon the expiration of thirty (30) days after notice to CUSTOMER for nonpayment of services. This MOU may also be terminated by CUSTOMER effective upon CUSTOMER's sale of the US Courthouse to a third party (the "Future Customer"), provided CUSTOMER provides SAWS with at least 90 days' notice of the anticipated sale and that CUSTOMER has submitted to SAWS a copy of the fully-executed purchase agreement between CUSTOMER and the Future Customer showing that the closing of such sale is conditioned upon the Future Customer contractually agreeing to enter into a chilled water agreement that is approved by SAWS and that is effective upon the date of such sale. Notice to CUSTOMER shall be in writing and delivered by first-class mail.

8. **CONNECTED LOADS – MOU DEMAND**

- (a) The number of tons of connected chilled water load ("MOU Demand") is 225 tons. In all cases actual metered peak demands will be used for monthly billing if they exceed MOU demands.
- (b) Every January the previous year's metered peak demand data will be evaluated. Should any metered peak demand be greater than 225 tons, the MOU demand will be reset to 325 tons or the actual peak demand, whichever of the two is higher.
- (c) In the event of a sale (as described in section 7 above), the new customers MOU demand will be reset to 325 tons or new peak amount as described above.

9. **DEFAULT**

In the event of default by CUSTOMER, this MOU shall not be terminated until thirty (30) days after written notice of such default is delivered to CUSTOMER at the premises and upon SAWS being provided notice thereof, to the holder of any first mortgage on the CUSTOMER's interest in the premises at such address as such first mortgage holder shall furnish to SAWS. In the event of default by CUSTOMER, CUSTOMER's Mortgagee shall have until thirty (30) days after receipt of written notice of such default to cure such default. As CUSTOMER is an agent of OWNER, notice to CUSTOMER shall be deemed to be notice to OWNER for purposes of any notice provision required in this MOU.

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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:

[Redacted Customer Information]

SAWS:

San Antonio Water System
Contract Administration
Attn: Philip Campos
2800 US Hwy 281 North
P.O. Box 2449
San Antonio, Texas 78298-2449

11. NO BENEFIT OR GIFT TO SAWS

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

12. ASSIGNMENT

This MOU may be assigned by CUSTOMER with the written consent of SAWS, which consent shall not be unreasonably withheld. SAWS has the unconditional right, subject to City Council approval, and after delivery of written notice to CUSTOMER of the effective date, to assign, transfer or delegate any and all rights, duties, and obligations under this MOU to any person or entity at any time during the term of this MOU. SAWS also has the unconditional right, subject to City Council approval, and after delivery of written notice to CUSTOMER of the effective date, to grant, sell, transfer, convey and/or assign its ownership interest in its chilled water system to any person or entity at any time during the term of this MOU.

13. ENTIRE AGREEMENT

This MOU constitutes the entire agreement and supersedes all prior agreements and understandings between the parties concerning the subject matter of this MOU. No rights under this MOU may be waived and no modification, change or amendment to this MOU 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 MOU shall not be deemed a waiver of or in any way affect SAWS's 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 non-enforceability of any provision of this MOU shall not affect the validity or enforceability of any other provision of this MOU. If one or more of the provisions hereof shall for any reason be held to be invalid, illegal, or unenforceable in any respect under applicable law, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this MOU shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

16. JOINTLY AND SEVERALLY LIABLE

If the CUSTOMER and OWNER are different entities, then they shall be jointly and severally liable for the performance of their respective obligations that arise under this MOU.

17. CUMULATIVE REMEDIES

In the event of default by CUSTOMER under this MOU, SAWS shall have all rights and remedies afforded to it at law or in equity to enforce or interpret the terms of the MOU. 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.

18. SUCCESSORS AND ASSIGNS

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

19. OBLIGATIONS OF PARTIES

Parties acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, et. seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. Parties shall each promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this MOU.

20. 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 MOU, 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.

For purposes of this MOU, 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 MOU: 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.

21. SURVIVAL

Any and all representations and conditions made by CUSTOMER under this MOU are of the essence of this MOU 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, shall constitute representations hereunder.

22. GOVERNING LAW

This MOU is governed by the laws of the State of Texas and all obligations of the parties under this MOU are performable in Bexar County, Texas. Venue for any action or proceedings arising under or pertaining to this MOU (including those that may arise under Federal Law) shall be exclusively in Bexar County, Texas.

23. HEADINGS

All headings in this MOU 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.

24. COUNTERPART EXECUTION

This MOU may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

EXECUTED as of the date first above written.

CUSTOMER/OWNER:

[Redacted Signature Line]

By: **[Redacted Signature]**

Title: **[Redacted Title]**

Date: **[Redacted Date]**

SAN ANTONIO WATER SYSTEM

By: **[Redacted Signature]**

Name: Philip C. Campos, Jr., CPA

Title: Senior Director – Contracting

Date: **[Redacted Date]**