

## **RETAIL RECLAIMED WATER SUPPLY CONTRACT**

This Retail Reclaimed Water Supply Contract (the "Contract") is made and entered into on \_\_\_\_\_, 2020 (the "Effective Date") between Hays Energy LLC (the "Buyer") and the City of San Marcos, Texas (the "Seller").

### **WITNESSETH**

**WHEREAS**, the Buyer owns an electric generating facility (the "Facility") in Hays County, Texas that requires a supply of water for operating purposes; and

**WHEREAS**, the Seller owns and operates a wastewater treatment plant (the "Treatment Plant") with a capacity capable of supplying to the Buyer the amount of reclaimed water specified in this Contract; and

**WHEREAS**, the Buyer has in the preceding 20 years beneficially used water from the Treatment Plant (the "Reclaimed Water") in the Facility for operating purposes, and has satisfied itself as to this suitability; and

**WHEREAS**, the Seller desires to sell and the Buyer desires to purchase Reclaimed Water under the terms and conditions specified in this Contract; and

**WHEREAS**, the Seller and the Buyer entered into a Retail Water Supply Agreement dated June 29, 1999 (the "Original Contract"); and

**WHEREAS**, the Seller and Buyer amended the Original Contract in July of 2000; and

**WHEREAS**, the Seller and the Buyer desire to enter a new Retail Reclaimed Water Supply Contract, which new contract shall supersede the Original Contract (as amended) and the Original Contract (as amended) shall terminate simultaneously with the Effective Date and no longer be of any force and effect.

**NOW, THEREFORE**, in consideration of the foregoing and the following mutual promises, covenants, benefits and agreements contained herein, the Seller and the Buyer agree as follows:

### **Article 1. Provision of Water by the Seller.**

#### **Section 1.01. Quantity of Water to be Supplied.**

**A.** The Seller agrees to provide to the Buyer, and the Buyer agrees to purchase from the Seller, Reclaimed Water as requested by the Buyer. The Seller agrees to supply the Buyer up to 750,000 gallons per day (the "Base Quantity") of Reclaimed Water produced at the Treatment Plant for use in the Facility for operating purposes. The Seller agrees to supply the Buyer an additional 550,000 gallons per day (the "Reserve Quantity") of Reclaimed Water produced at the Treatment Plant for use in the Facility for operating purposes. The Seller agrees the Buyer may purchase Reclaimed Water above the combined Base and Reserve Quantities ("the Maximum Quantity") from the Seller at the prevailing rate for the sale of Reclaimed Water for all Reclaimed Water customers as established by the Seller's governing body (the "Prevailing Rate") to the extent available from production at the Treatment Plant and if not committed to other Reclaimed Water customers or needed by the Seller for other purposes. The Seller does not guarantee the availability of the Reclaimed Water above the Maximum Quantity of water each day. The Reclaimed Water will be delivered at the location (the "Point of Delivery") designated in 2000 by the Seller and the Buyer. The Seller's Treatment Plant operators and the Buyer will coordinate as needed to determine the quantity of Reclaimed Water required each day to maintain the Buyer's 2,200,000-gallon reclaimed water tank at 60% to 95% of the tank's capacity to meet the Buyer's operational needs subject to the limitations stated above.

**B.** The Buyer and Seller shall have until the second (2<sup>nd</sup>) anniversary of the Effective Date to request an increase or decrease of either the Base and/or Reserve Quantity (the "Re-Opener"). The Re-Opener shall be exercised by Buyer or Seller by written notice

to the other party, delivered no later than the second (2<sup>nd</sup>) anniversary of the Effective Date. In the event the Buyer or Seller delivers such notice, the parties may execute an amendment to this Contract to increase or decrease the Base and/or Reserve Quantity if mutually agreed-upon by the parties.

**Section 1.02. Metering Equipment.** The Seller owns and maintains metering equipment and devices previously conveyed from the Buyer which meet the Seller's standard specifications for measuring within a tolerance of 2% (the "Accuracy Tolerance") the quantity of Reclaimed Water delivered to the Point of Delivery, together with devices and equipment of standard type for the proposed application to limit, measure, and record the rate of flow at the Point of Delivery, to prevent the backflow of water or the contamination of water in the Seller's distribution system, and to protect and secure the metering equipment and other devices. The Seller will deliver the Reclaimed Water through this equipment.

**Section 1.03. Maintenance and Testing of Metering Equipment.**

**A.** The Seller will maintain the metering equipment within the Accuracy Tolerance, and will test the metering equipment for accuracy at least once every 12 months.

**B.** The Buyer may have the metering equipment independently tested at its own cost with 48 hours notice to the Seller. The Seller may attend any such test. If a test shows an inaccuracy in the metering equipment, the Seller shall adjust the monthly billing of a period extending back to the time when the inaccuracy began if such time is ascertainable, or if such time is not ascertainable, for a period extending back to the last test of the metering equipment or 120 days, whichever is shorter, in accordance with the percentage of inaccuracy found during the test, whether above or below the correct volume. In the event the meter fails to register for any period, the Seller shall calculate the usage during the time of meter failure to be the amount of Reclaimed Water determined through use of the Seller's Supervisory Control and Data Acquisition system for the period, or as otherwise mutually agreed upon by the parties. The Seller shall recalibrate or replace any inaccurate metering equipment at its expense.

**Section 1.04. Billing.** The Seller will furnish the Buyer with an itemized monthly billing statement showing the actual volume of Reclaimed Water supplied in 1,000 gallon increments and the amounts due in accordance with the Contract Rate. In no event will the invoice amount be less than the Minimum Monthly Payment (as defined in Section 2.01) due for such month.

**Article 2. Obligations of the Buyer**

**Section 2.01. Payment.** The Buyer will pay to the Seller at the Seller's billing offices in San Marcos, Texas, within twenty-five days after receipt of the itemized statement each month: (a) payment per 1000 gallons of Reclaimed Water supplied as shown on the statement at the prevailing reclaimed water rate then in effect as established by the Seller's governing body. Notwithstanding the foregoing, the Buyer shall make a minimum monthly payment to the City (the "Minimum Monthly Payment") for the Reserve Quantity multiplied by the Prevailing Rate multiplied the number of days in the month of the water usage, regardless of the Buyer's actual water usage. In addition to any other amounts payable by Buyer, the Buyer will pay to the Seller a monthly fee of \$500 for each month the Supply Line (as defined hereafter) is not in use. In addition, the Buyer will pay to the Seller the amounts of any monthly minimum fixed charges and all federal, state, and local taxes, fees, and any charges that may be applicable to the provision of Reclaimed Water under this Contract or applicable ordinance.

**A.** Buyer will pay a minimum monthly charge at the rate identified in the then prevailing reclaimed water minimum charge as shown in the Utilities Rates and Fees Schedule.

**Section 2.02. Compliance with Seller's Regulations.** The Buyer will comply with the Seller's ordinances and regulations governing the use and supply of reclaimed water that are currently in effect and as they may be adopted or amended from time to time.

**Section 2.03. Supply.** The Buyer agrees to use the Seller as a source of water for the Facility's operating purposes, provided the Seller is not in default under this Contract.

**Section 2.04. Connections to the Supply Line.** The Seller will ensure that any connections made to the Supply Line to serve other customers are equipped in such a way that the Seller is able to comply with its supply obligations hereunder.

**Article 3. Miscellaneous Provisions.**

**Section 3.01. Regulatory Compliance.** The obligations of the Buyer and the Seller under this Contract are subject to all applicable federal, state and local laws and regulations currently in effect and as amended or modified from time to time (the "Laws and Regulations"), including but not limited to Title 30, Chapter 210 of the Texas Administrative Code, and the Seller's ordinances relating to water conservation.

**A.** The Seller is responsible for compliance with the Laws and Regulations that apply to the Treatment Plant.

**B.** The Seller is responsible for compliance with the Laws and Regulations that apply to the operation of the Supply Line.

**C.** The Buyer is responsible for compliance with the Laws and Regulations that apply to the use of the Reclaimed Water from the Treatment Plant at the Facility. This includes, but is not limited to, implementing an operation and maintenance plan (the "O&M Plan") for the Buyer's use of the Reclaimed Water. The initial O&M Plan is attached as Exhibit B. The Buyer may modify this O&M Plan or adopt a new O&M Plan, subject to regulatory approval and compliance with all Laws and Regulations.

**Section 3.02. Term; Termination.**

**A.** The term of the Contract is 10 years commencing on the Effective Date. This Contract can be renewed or extended with the mutual consent of the parties.

**B.** The Seller may suspend the supply of Reclaimed Water under this Contract, without terminating the Contract, in the following circumstances:

**1.** The Buyer fails to pay any amount billed by the Seller to the Buyer under Section 1.04 of this Contract, unless the Buyer has notified the Seller, in writing prior to the deadline in the Seller's billing notice, of a bona fide dispute concerning the bill.

**2.** The Buyer fails to comply with any of the Laws and Regulations that apply to the Buyer's use of the Reclaimed Water, including but not limited to those contained in Title 30, Chapter 210 of the Texas Administrative Code.

**3.** Any Treatment Plant condition, pipeline failure, or other mechanical or operational condition that would render the supply of Reclaimed Water unavailable during repairs or while quality or quantity do not meet the needed requirements; provided that the Seller notify the Buyer as soon as feasible of such condition or failure, and promptly commences and diligently proceeds to cure such condition or failure as quickly as possible.

**C.** The failure or refusal of a party to comply with any term, provision, or covenant of this Contract will constitute a default by that party. In addition, if the Buyer becomes insolvent, or commences, or has commenced against it, proceedings in bankruptcy, this will constitute a default by the Buyer. This Contract may be terminated by either party upon a default by the other party. In the event of a default by a party, the other party shall give the defaulting party written notice of default, and, if the defaulting party fails to cure or remedy the default within 30 days following receipt of notice, this Contract shall terminate immediately without further notice to the defaulting party. The Seller's acceptance of the Buyer's monthly payments subsequent to the occurrence of any event of default will be as compensation for the provision of Reclaimed Water, and will in no way constitute a waiver by the Seller of its right to exercise any remedy provided for any event of default.

**Section 3.03. Uncontrollable Circumstances.** In this Contract, "Uncontrollable Circumstance" means any act, event, or condition beyond the control of a party that prevents the party from performing any obligation under this Contract. Neither party will be liable to the other for any failure or delay in performance of an obligation under this Contract that results directly from an Uncontrollable Circumstance. An act, event or condition is *not* beyond the reasonable control of a party if it is a result of any willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party. The party experiencing an Uncontrollable Circumstance will notify the other party within five days of the occurrence of the Uncontrollable Circumstance and give a specific description of the Uncontrollable Circumstance, including the impact on the party's obligations under the Contract.

**Section 3.04. Independent Contractors.** Nothing in this Contract will be construed as creating any form of partnership or joint venture relationship between the parties. The parties are independent contractors with respect to each other.

**Section 3.05. Indemnity.** The Buyer will hold harmless, indemnify and defend the Seller and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional acts, errors or omissions of the Buyer, its officers, employees or agents relating to this Contract. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the Seller arising in favor of any party, including the amounts of any damages or awards resulting from claims, demands and causes of action for personal injuries, death or damages to property.

**Section 3.06. Assignment.** This Contract will inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties. Except as provided elsewhere herein, neither party may assign any of its rights or duties under this Contract without the written consent of the other party. The Buyer may, with prior written notice to the Seller, 1) assign or otherwise transfer its rights and obligations under this Contract to an entity acquiring the Facility that will continue the operation of the Facility in the manner contemplated in this Contract, or 2) assign or otherwise transfer this Contract as collateral to secure loans providing financing or refinancing of the Facility.

**Section 3.07. Taxes.** The Seller is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract.

**Section 3.08. Amendments.** This Contract may be amended only through a written amendment executed by the parties. The term "will" in this Contract is mandatory.

**Section 3.9. Governing Law and Venue.** This Contract is governed by the laws of the State of Texas. Exclusive venue for any legal action under this Contract shall be in Hays County, Texas.

**Section 3.10. Severability.** If any portion of this Contract is found by a court to be invalid or unenforceable for any reason, that portion of the Contract will be severed, and the rest of this Contract will continue in effect.

**Section 3.11. Order of Precedence.** In the event of any conflict between the terms of this Contract and the terms of any attachment, exhibit or other document attached to or referred to in this Contract, the terms of this Contract will take precedence.

**Section 3.12. Nondiscrimination.** In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Supply Line, the Buyer will not discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

**Section 3.13. Notice.** All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, or by confirmed electronic mail transmission, by overnight mail or by courier, to the following address for the respective party:

To Seller:

City Manager  
City of San Marcos  
630 East Hopkins Street  
San Marcos, TX 78666  
E-mail:

To Buyer:

Hays Energy LLC  
6555 Sierra Drive  
Irving, TX 75039  
Attn: Gary Spicer

In witness whereof, the parties have caused this Contract to be duly executed in multiple counterparts, each of which shall constitute an original.

CITY OF SAN MARCOS:

HAYS ENERGY LLC:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_