

WASTEWATER TREATMENT SERVICES CONTRACT

This Wastewater Treatment Services Contract (the "Contract") is made and entered into on _____, 2020 (the "Effective Date") between Hays Energy LLC ("Hays Energy") and the City of San Marcos, Texas (the "City"), a Texas municipal corporation.

WITNESSETH

WHEREAS, Hays Energy owns an electric generating facility (the "Facility") in Hays County, Texas that requires wastewater treatment services; and

WHEREAS, the City owns and operates a wastewater treatment plant (the "Treatment Plant") with a capacity capable of providing to Hays Energy the wastewater treatment services described in this Contract; and

WHEREAS, the City desires to provide, and Hays Energy desires to obtain, the wastewater treatment services under the terms and conditions specified in this Contract;

WHEREAS, the City and Hays Energy entered into a Wastewater Treatment Services Contract dated June 29, 1999 (the "Original Contract") that will expire in 2020; and

WHEREAS, the City and Hays Energy desire to enter a new Contract for this service;

NOW, THEREFORE, in consideration of the foregoing and the following mutual promises, covenants, benefits and agreements contained herein, the City and Hays Energy agree as follows:

Article 1. Provision of Wastewater Treatment by the City.

Section 1.01. Services to be Provided. The City agrees to provide to Hays Energy, and Hays Energy agrees to obtain from the City, wastewater treatment services for wastewater (the "Wastewater") produced at the Facility when the Facility's zero liquid discharge equipment is not in operation. The treatment services will consist of those processes (the "Routine Treatment") required at the City's River Road Wastewater Treatment Plant (the "Treatment Plant") to comply with all applicable permit requirements.

Section 1.02. Metering Equipment. Hays Energy will obtain, install and convey to the City metering equipment and devices which meet standard City specifications for measuring within a tolerance of 2% (the "Accuracy Tolerance") the quantity of Wastewater delivered to the point (the "Transfer Point") where the transmission pipeline for the Wastewater crosses the property line of the site of the Facility, together with devices and equipment of standard type for the proposed application to limit, measure, and record the rate of flow at the Transfer Point, to prevent the backflow of water or the contamination of water in the City's distribution system, and to protect and secure the metering equipment and other devices.

Section 1.03. Maintenance and Testing of Metering Equipment.

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

B. Hays Energy may have the metering equipment independently tested at its own cost with 48-hours notice to the City. The City may attend any such test. If a test shows an inaccuracy in the metering equipment, the City 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 City shall calculate the usage during the time of meter failure to be the amount of Wastewater furnished during the same period of the previous year, or as otherwise mutually agreed upon by the parties. The City shall recalibrate or replace any inaccurate metering equipment at its expense.

Section 1.05. Billing. The City will furnish Hays Energy with an itemized monthly billing statement showing 1) the volume of Wastewater measured at the Transfer Point in 1,000-gallon increments and the amounts due for Routine Treatment of the Wastewater at the then current applicable wastewater rate; and 2) the amount of any surcharge due under the City's industrial wastewater discharge regulations.

Article 2. Obligations of Hays Energy

Section 2.01. Payments.

A. Hays Energy will pay to the City at the then prevailing rate per 1,000 gallons for the Routine Treatment of the Wastewater, plus any applicable surcharges due under the City's industrial wastewater discharge regulations, at the City's billing offices in San Marcos, Texas, within twenty-five days after receipt of the itemized statement each month. This rate will change proportionally as changes are made by the City in the residential retail wastewater volume charge.

B. Hays Energy will pay to the City the amounts of all federal, state, and local taxes, fees, and minimum monthly or other charges that may be applicable to the provision of wastewater treatment services under this Contract.

C. Hays Energy will pay a minimum monthly charge of \$500.00.

Section 2.02. Operation of Wastewater Line. Hays Energy will dispose only of process wastewater from the Facility through the Wastewater Line, and the City will not permit any connections to be made to the Wastewater Line for the disposal of untreated wastewater without the written consent of Hays Energy, except as provided in Section 2.04.

Section 2.03. Facility Operation.

A. Hays Energy will operate the Facility so that routine discharges of the Wastewater are treated and disposed of through zero liquid discharge equipment at the Facility. Hays Energy will utilize all commercially reasonable efforts to construct, maintain and operate its zero-discharge equipment in fully functional condition at all times, and to discharge the Wastewater to the Wastewater Line only during periods in which Hays Energy's zero liquid discharge equipment is not operational. Hays Energy agrees to use all reasonable means to keep the duration of such periods to a minimum. When discharge of the Wastewater by Hays Energy to the Wastewater Line is necessary, Hays Energy will provide immediate notice to the City's wastewater treatment plant personnel, and will ensure that the Wastewater discharged at the Transfer Point meets the following parameters:

<u>Characteristic</u>	<u>Parameter</u>
Volume	Not more than 900,000 gallons per day
Discharge Rate	Not more than 625 gallons per minute
Temperature	Not more than 88° F

B. The Wastewater discharged at the Transfer Point must meet all applicable requirements of the Laws and Regulations (as defined below) governing wastewater flows to the Treatment Plant. The parties anticipate that the Routine Treatment may not be sufficient for adequate treatment of the Wastewater, and Hays Energy agrees to have pretreatment facilities and processes in place to meet the City's industrial wastewater discharge regulations prior to initiating discharge of the Wastewater to the Wastewater Line.

C. To ensure the City's compliance with its state wastewater discharge permit, protect river ecosystems, and comply with applicable stream standards, the City reserves the right to limit Hays Energy's discharge volume and rate, to require Hays Energy to schedule its discharges, and to require Hays Energy to temporarily cease its discharges, when the San Marcos River flows are at or below 100 CFS at the closest USGS gauging station above the City's wastewater discharge point on the river.

Section 2.04 Use of Wastewater Line. Hays Energy will permit the City to make connections to the Wastewater Line for use by other City customers provided that the City agrees to reserve 900,000 gallons per day of capacity in the Wastewater Line (at a rate of 37,000 gallons per hour) for use by Hays Energy. In order to protect the right of Hays Energy to this reserved capacity, the City agrees to verify that sufficient capacity remains in the Wastewater Line to serve a request to connect to the line by a third party or such third party's usage of the Wastewater Line, while preserving Hays Energy's reserved capacity, before approving the request or usage ("Request"). To the extent that any such Request by a third party would conflict with Hays Energy's reserved capacity, the City agrees to deny the Request. The City may provide alternative means for wastewater service for persons whose service requests are denied under this paragraph.

Article 3. Miscellaneous Provisions.

Section 3.01. Regulatory Compliance. The obligations of Hays Energy and the City 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").

- A. The City is responsible for compliance with the Laws and Regulations that apply to the Treatment Plant.
- B. The City is responsible for compliance with the Laws and Regulations that apply to the operation of the Wastewater Line.
- C. Hays Energy is responsible for compliance with the Laws and Regulations governing the use of the City's wastewater treatment services, including without limitation, those applicable to industrial wastewater discharge. Hays Energy is not responsible for discharges to the Wastewater Line made by any other City Customer.
- D. Hays Energy is responsible for compliance with the Laws and Regulations that apply to the Facility's zero liquid discharge equipment.

Section 3.03. Term; Termination.

- A. The initial 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 for up to two additional five-year periods.
- B. The City may suspend the provision of wastewater treatment services under this Contract, without terminating the Contract, in the following circumstances:
 - 1. Hays Energy fails to pay any amount invoiced or billed by the City to Hays Energy under this Contract, unless Hays Energy has notified the City, in writing prior to the deadline in the City's billing notice, of a bona fide dispute concerning the invoice or bill.
 - 2. Hays Energy fails to comply with any of the Laws and Regulations for which Hays Energy is responsible for compliance.
- 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 Hays Energy becomes insolvent, or commences, or has commenced against it, proceedings in bankruptcy, this will constitute a default by Hays Energy. 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 City's acceptance of Hays Energy's monthly payments subsequent to the occurrence of any event of default will be as compensation for the provision of wastewater treatment services, and will in no way constitute a waiver by the City of its right to exercise any remedy provided for any event of default.

Section 3.04. Uncontrollable Circumstances. In this Agreement, "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 3.05. Independent Contractors. Nothing in this agreement 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 3.06. Indemnity. Hays Energy will hold harmless, indemnify and defend the City 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 Hays Energy, its officers, employees or agents in connection with 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 City 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 3.07. 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. Hays Energy may, with prior written notice to the City, 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 3.08. Taxes. The City is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract.

Section 3.09. Entire Agreement. This Contract, together with all attachments, exhibits and documents described in it, constitutes the entire agreement between the parties. This Contract may be amended only through a written amendment executed by the parties. The term "will" in this Contract is mandatory.

Section 3.10. 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 3.11. 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 3.12. 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 3.13. Nondiscrimination. In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Wastewater Line, Hays Energy will not discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

Section 3.14. Notice. All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, by confirmed electronic mail, or by overnight mail or 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: _____