

## **AMENDED RECLAIMED WATER SUPPLY CONTRACT**

This Retail Water Supply Contract (“Contract”) is entered into on \_\_\_\_\_, 2023 (the “Effective Date”) between Martin Marietta North Texas Cement, LLC, a Delaware limited liability company formerly known as TXI Operations, LP (hereinafter, “Martin Marietta”) and the City of San Marcos, Texas, a municipal corporation (the “City”).

### **Recitals**

WHEREAS, Martin Marietta operates a cement manufacturing facility and an adjacent limestone quarry, crushing, and processing facility (the “Martin Marietta Facility”) in Comal County, Texas that requires a supply of water for operating purposes; and

WHEREAS, the City owns and operates a wastewater treatment plant (the “WWTP”) with a capacity capable of supplying to Martin Marietta the amount of reclaimed water specified in this Contract; and

WHEREAS, Martin Marietta has investigated the suitability of using reclaimed water from the WWTP in the Martin Marietta Facility for operating purposes, and has satisfied itself as to this suitability; and

WHEREAS, the City desires to sell and Martin Marietta desires to purchase reclaimed water under the terms and conditions specified in this Contract; and

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

### **Article 1. Provision of Reclaimed Water by the City**

**Section 1.01. Quantity of Water to be Supplied.** The City agrees to provide to Martin Marietta, and Martin Marietta agrees to purchase from the City, reclaimed water produced each day at the WWTP for use at the Martin Marietta Facility for operating purposes. The reclaimed water will be delivered at a location (the “Point of Delivery”) on the Martin Marietta property boundary to be designated by mutual agreement of the City and Martin Marietta. The City will make available to Martin Marietta up to 700,000 gallons of reclaimed water each day (the “Maximum Quantity”), which may be taken in smaller quantities at Martin Marietta’s sole discretion without lessening the guaranteed amount for any subsequent day, through the delivery facilities to be constructed under this Contract (the “Delivery Facilities”), at the rate described in Section 3.01, subject to Section 4.04 related to uncontrollable circumstances. Martin Marietta may purchase additional quantities of reclaimed water from the City in excess of the Maximum Quantity at the same price to the extent they are available from production at the WWTP and deliverable through the Delivery Facilities. The water shall be delivered in a consistent delivery pressure range, at a flow rate of up to 487 gpm. Higher flow rates may be allowed by the City if system conditions permit.

**Section 1.02. Quality of Water to be Supplied.** The City agrees that the reclaimed water supplied under this Contract will conform to the standards for Type I reclaimed water contained in Title 30, Part I, Section 210.33 of the Texas Administrative Code.

The City agrees that it will sample the reclaimed water as may be required by Title 30, Part 1, Section 210.34 of the Texas Administrative Code or other applicable regulation; and shall provide the results of such sample to Martin Marietta, by email or facsimile. In the event the City learns of sample results which may pose a hazard to health or wellbeing of Martin Marietta workers or equipment beyond those known to exist with Type I reclaimed water, the City will notify Martin Marietta of such results immediately.

**Section 1.03. Metering Equipment.** The City will obtain and install metering equipment which meet the City's standard specifications for measuring within a tolerance of 2% (the "Accuracy Tolerance") the quantity of reclaimed water. The metering equipment will be installed at Martin Marietta's property line, which is defined as the "Point of Delivery." The metering equipment shall also include 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 City's distribution system, and to protect and secure the metering equipment and other devices

**Section 1.04. 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. Martin Marietta 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 will 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 will calculate the usage during the time of meter failure to be the amount of reclaimed water furnished during the same period of the previous year, or as otherwise mutually agreed upon by the parties. The City will recalibrate or replace any inaccurate metering equipment at its expense.

**Section 1.05. Billing.** The City will furnish Martin Marietta with an itemized monthly billing statement showing the volume of reclaimed water supplied in 1,000-gallon increments and the amounts due.

**Article 2. Delivery Facilities**

**Section 2.01. Operation and Maintenance of Delivery Facilities.** The City will be responsible for operation and maintenance of the Delivery Facilities. The City will comply with all applicable

laws, regulations, and ordinances relating to the Delivery Facilities, the reclaimed water and the City's other duties set forth in this Contract, at the City's sole cost and expense.

**Section 2.02. Connections to Delivery Facilities.** The City will ensure that any connections made to the Delivery Facilities to serve other customers are equipped in such a way that the City is able to comply with its supply obligations to Martin Marietta under this Contract. In the event of an uncontrollable circumstance set forth in Section 4.04 below which reduces reclaimed water available below the Maximum Quantity Martin Marietta shall not be cut back from its usage of reclaimed water to a greater percentage than any and all other customers of the City, or the City itself.

**Section 2.03. On-Site Facilities of Martin Marietta.** Martin Marietta will be responsible for construction and maintenance of all facilities on Martin Marietta's property needed to transport the reclaimed water from the Point of Delivery to the points on Martin Marietta's property where the reclaimed water will be used.

### **Article 3. Payments for Reclaimed Water and Other Terms of Supply**

**Section 3.01. Payment.** Martin Marietta will pay to the City at the City's billing offices in San Marcos, Texas, within 15 days after receipt of the itemized statement each month at the prevailing reclaimed water rates determined by the City's governing body. In addition, Martin Marietta will pay to the City the amounts of all federal and state, and local taxes, fees, and charges that may apply to the provision of reclaimed water under this Contract. Regardless of the actual amount of reclaimed water used by Martin Marietta each month, Martin Marietta will pay a minimum monthly amount based on the price for 120,000 gallons per day at the applicable rate. This minimum amount will be recalculated annually based on the prevailing reclaimed water rate. This Minimum monthly amount will be reduced on a pro rata basis, however, for each full day in a month in which the supply of Reclaimed water is reduced below 120,000 GPD or ceases without fault of Martin Marietta.

**Section 3.02. Compliance with City's Regulations.** Martin Marietta will comply with the City'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, provided that, if any future City ordinances or regulations result in a reasonably necessary expenditure by Martin Marietta or an increased operating cost to Martin Marietta, the City will allow Martin Marietta to recoup its expenditures or increased operating costs by direct offset against the amounts due to be paid by Martin Marietta hereunder.

**Section 3.03. Primary Supply.** Martin Marietta agrees to use the City as its primary source of reclaimed water for the Martin Marietta Facility's operating purposes, provided the City is not in default under this Contract.

**Section 3.04. Reduction or Cessation of Supply of Reclaimed Water. Notice.** Except under emergency, when notice will be given as soon as practicable, the City will notify Martin Marietta thirty days prior to undertaking scheduled maintenance of the Delivery Facilities that will require a reduction or cessation of supply of reclaimed water to the Martin Marietta Facility. The City will notify Martin Marietta as soon as possible of any unscheduled maintenance or failure of the

Delivery Facilities that has caused or will cause a reduction or cessation of supply of reclaimed water to the Martin Marietta Facility. The City will notify Martin Marietta at least 90 days prior to any other reduction or cessation by the City of supply of reclaimed water to the Martin Marietta Facility that is authorized by this Contract, unless the reduction or cessation is a suspension under Section 4.03.B below, or is based upon a default by Martin Marietta under Section 4.03.C below.

#### **Article 4. Miscellaneous Provisions**

**Section 4.01. Regulatory Compliance.** The obligations of Martin Marietta 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”), including but not limited to Title 30, Chapter 210 of the Texas Administrative Code, as amended.

**A.** The City is responsible for compliance with the Laws and Regulations that apply to the WWTP.

**B.** The City is responsible for compliance with the Laws and Regulations that apply to the construction of the Delivery Facilities, and the maintenance of the Delivery Facilities after completion and acceptance by the City.

**C.** Martin Marietta is responsible for compliance with the Laws and Regulations that apply to the use of the reclaimed water at the Martin Marietta Facility. This includes, but is not limited to, implementing an operation and maintenance plan (the “O&M Plan”) for Martin Marietta’s use of the reclaimed water. The initial O&M Plan will be attached hereto as Exhibit A, prior to commencement of water delivery. Martin Marietta 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 4.03. Term; Termination.**

**A.** The Initial Term of this Contract is five (5) years commencing on the Effective Date. This Contract may be renewed or extended for additional renewal terms with the mutual consent of the parties

**B.** The City may suspend the supply of reclaimed water under this Contract, without terminating the Contract, in the following circumstances:

1. Martin Marietta fails to pay any amount billed by the City to Martin Marietta under Section 1.04 of this Contract, unless Martin Marietta has notified the City in writing of a bona fide dispute concerning the bill prior to the deadline in the City’s billing notice.
2. Martin Marietta fails to comply with any of the Laws and Regulations that apply to Martin Marietta’s use of the reclaimed water, including but not limited to those contained in Title 30, Chapter 210 of the Texas Administrative Code, as amended.

**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 Martin Marietta becomes insolvent,

or commences, or has commenced against it, proceedings in bankruptcy, this will constitute a default by Martin Marietta. 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 will 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 will terminate immediately without further notice to the defaulting party. The City's acceptance of Martin Marietta'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 City of its right to exercise any remedy provided for any event of default.

#### **Section 4.04. Uncontrollable Circumstances.**

**A.** In this Contract, "Uncontrollable Circumstance" means any act, event, or condition beyond the control of a party that prevents the party from performing an obligation under this Contract.

**B.** 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.

**C.** 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.

**D.** 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 4.05. 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 4.06. 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. Martin Marietta 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 Martin Marietta Facility that will continue the operation of the Martin Marietta 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 Martin Marietta Facility.

**Section 4.08. Taxes.** Martin Marietta is responsible for the payment of all taxes that may be levied or assessed on its operations and activities under this Contract, except that no municipal taxes or fees which would otherwise be due to the City of San Marcos shall be payable over and above the consideration stated in this Contract.

**Section 4.09. Amendments.** This Contract may be amended only through a written amendment executed by the parties. The term “will” in this Contract is mandatory.

**Section 4.10. Governing Law and Venue.** This Contract is governed by the laws of the State of Texas.

**Section 4.11. Severability.** If any material portion of this Contract is found by a court to be invalid or unenforceable for any reason, either Party shall have the option of terminating this Contract on a going forward basis.

**Section 4.12. 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. To the extent that this Contract conflicts with City ordinances regarding flow, pressure, and availability of reclaim water, the terms of this Contract prevail.

**Section 4.13. Nondiscrimination.** In furnishing services and conducting activities under this Contract, and in employment practices for employees and subcontractors associated with the construction of the Delivery Facilities, Martin Marietta will not unlawfully discriminate on the basis of race, color, religion, sex, age, natural origin or disability.

**Section 4.14. Prohibition on Contracts with Companies Boycotting Israel.** Pursuant to Chapter 2270 and 808, Texas Government Code, Martin Marietta certifies that is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate. Failure to meet or maintain the requirements under this provision will be considered a material breach.

**Section 4.15. Section 2252 Compliance.** Section 2252 of the Texas Government Code restricts City from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. Contractor hereby certifies that is not ineligible to receive the award of or payments under this Agreement. Failure to meet or maintain the requirements under this provision will be considered a material breach.

**Section 4.16. Notice.** All notices given under this Contract will be delivered personally, by certified mail, return receipt requested, or by confirmed fax transmission, by overnight mail or by courier, to the following address for the respective party:

To City: City Manager  
City of San Marcos  
630 East Hopkins Street  
San Marcos, TX 78666  
Fax No. 512/396-4656

To Martin Marietta: Plant Manager  
Martin Marietta Hunter Cement  
7781 FM 1102  
New Braunfels, TX 78132  
Fax No. 512-\_\_\_\_\_

With a copy to: Martin Marietta Legal Department  
4123 Parklake Avenue  
Raleigh, NC 27612  
Fax: 919-783-4535

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

City of San Marcos

Martin Marietta North Texas Cement, LLC

By: \_\_\_\_\_  
Stephanie Reyes, City Manager

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

\_\_\_\_\_  
Printed name, title

Attested:

\_\_\_\_\_  
Elizabeth Trevino, City Clerk

Revised April 21, 2023

# **MARTIN MARIETTA SOUTH TEXAS CEMENT, LLC**

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## **Reclaim Water System Operation & Maintenance Plan**

*Hunter Facility  
Comal County, Texas*



**PROJECT NUMBER:**  
0239681

**PROJECT CONTACT:**  
James Robin  
**EMAIL:**  
james.robin@powereng.com  
**PHONE:**  
726-842-9715





## *Reclaim Water System Operation and Maintenance Plan*

***PREPARED FOR:*** MARTIN MARIETTA SOUTH TEXAS CEMENT, LLC

***PREPARED BY:*** JAMES ROBIN

726-842-9715

JAMES.ROBIN@POWERENG.COM

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## 1.0 INTRODUCTION

Martin Marietta South Texas Cement, LLC (Martin Marietta) operates the Hunter Facility (Hunter) which is comprised of a cement plant and an adjacent limestone quarry, crushing, and processing facility in Comal County, Texas. The Hunter facility is an industrial site, which operates 24 hours per day and is inaccessible by the public. The entire facility is surrounded by a perimeter fence.

The facility is supplied reclaim water from the City of San Marcos (City) wastewater treatment plant (WWTP). The City pumps reclaim water from the WWTP to the Hunter property line. Once at the property line, the reclaim water enters a locked and fenced vault containing a shut-off valve and flow meter. From there, the reclaim water flows through an underground 12-inch diameter pipe to a large designated reclaim water above-ground holding tank. As needed due to production demand, delivery of reclaim water is coordinated with the City and the holding tank is filled in a batch wise fashion. Note that reclaim water system sits in the cement plant and is not over the Edwards Aquifer recharge zone.

The reclaim water in the holding tank is used in process cooling systems. This includes direct delivery to Kiln 1 and Kiln 2 spray towers for cooling of gas streams and this water is evaporated in its entirety. Additionally, there is a closed loop system for noncontact cooling of various process equipment. The water from this system is returned to the evaporative tank adjacent to the holding tank prior to reuse. There is no discharge of the reclaim water from the Hunter facility.

The Hunter facility is a public drinking water provider (sourced from onsite wells) regulated by the TCEQ and is therefore subject to drinking water regulations associated with being such a provider. The potable water system is entirely separate from the reclaim water process cooling system.

On occasion, as needed, potable water from the drinking water supply system is used to augment reclaim water in the Hunter industrial processes. By engineering design, the potable water is delivered to the reclaim water holding tank with an air break and back flow prevention device separating the potable water line from the holding tank. There is no direct connection that would allow cross-contamination to occur, as all piping and other appurtenances are separate. As with the reclaim water, any potable water used in the industrial process is evaporated in the cooling process.

As part of the renewal process for the water supply contract between Martin Marietta and the City for the Hunter facility, an Operation and Maintenance (O&M) Plan is required to be attached to the contract and maintained by Martin Marietta. This document is the required O&M Plan, which may be modified as needed based on-site conditions, and is subject to regulatory approval and compliance.

As specified in City of San Marcos reclaimed water authorization, the O&M Plan must contain the following, at a minimum:

- A. A labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines.
- B. The measures that will prevent unauthorized access to reclaimed water facilities (e.g., secured valves).
- C. Procedures for monitoring reclaimed water transfers and use.
- D. Steps the user must utilize to minimize the risk of inadvertent human exposure.
- E. Schedules for routine maintenance.

- F. A plan for carrying out provider employee training and safety relating to reclaimed water treatment, distribution, and management.
- G. Contingency plan for remedy of system failures, unauthorized discharges, or upsets.

## 1.1 Points of Contact Information

TYPE	CONTACT	COMMUNICATION
Administrative Contact and Emergency Contact (Primary)	Christopher Houston 7781 FM 1102 New Braunfels, TX 78132-3412	Office – 512-805-4422 Mobile – 830-221-7662
Public Water System Contact and Emergency Contact (Secondary)	Kristin Stein 7781 FM 1102 New Braunfels, TX 78132-3412	Office – 512-805-4465 Mobile – 830-221-5103
Owner	Martin Marietta Materials	Office - 512-396-4244

## 2.0 OPERATION AND MAINTENANCE PLAN COMPONENTS

### 2.1 Copy of Signed Contract

Upon execution, a copy of the signed contract between the user (Martin Marietta) and the provider (City) will be attached to this O&M Plan and maintained on-site. Refer to Appendix A for a copy of the contract.

### 2.2 Labeling and Separation Plan

As described above, by engineering design and the completely separate construction of piping and other appurtenances, there is no direct connection whereby cross-contamination between potable water and reclaim water could occur. Additionally, the Hunter facility is a public drinking water provider and, therefore, is subject to all regulations associated with doing so. Backflow prevention is inherent in the design and construction of the potable water supply components within the industrial process. The reclaim water holding tank and evaporation tank are labeled as non-potable water.

### 2.3 Unauthorized Access Prevention

The Hunter facility is an industrial site that is not accessible to the general public. The facility is completely fenced to avoid unauthorized access to areas within the property boundary. The reclaim water supply pipe is buried below grade. The valve/metering vault described above, within which reclaim water is transferred from the City to Martin Marietta, is fully locked and only accessible by authorized City and/or Martin Marietta individuals. Electrical control boxes which are associated with pumps within the facility are locked and inaccessible to unauthorized individuals.

## **2.4 Reclaimed Water Monitoring**

Reclaimed water quality monitoring is performed by the City. Flow rates are measured at the valve/metering vault monthly by authorized Martin Marietta individuals, and all flow rate monitoring records are maintained on-site.

## **2.5 Human Exposure Risk Minimization**

Due to the Hunter facility being industrial, completely fenced, and inaccessible to the general public, the likelihood of human exposure is minimal. Within the facility, reclaim water is generally contained within enclosed piping, valves, tanks, and process equipment. All of the reclaim water is evaporated in cooling the process, leaving little risk associated with liquid discharge or airborne mist and/or water droplets.

## **2.6 Routine Maintenance**

As mentioned above, most of the reclaim water piping is below ground and inaccessible. Valves and gauges within the valve/metering vault are inspected at least monthly. All valves associated with reclaim water piping within the facility are inspected at least monthly. Records of all valve and meter inspections are maintained at the facility.

## **2.7 Worker Training**

All employees at the Hunter facility working in the industrial process areas are required to undergo annual environmental refresher training. Only Martin Marietta authorized personnel or contractors are allowed access to any components of the reclaim water supply system.

## **2.8 Contingency Planning**

The Hunter facility is subject to industrial stormwater regulatory requirements. The facility's Stormwater Pollution Prevention Plan describes various Best Management Practices (BMPs) which are designed to prevent stormwater from leaving the property boundary. These BMPs include retention ponds, berms, curbs, and other physical features designed to channel and retain stormwater to areas within the property boundary. In the unlikely event that any reclaim water would unexpectedly be released within the property, these BMPs would function to channel and retain the released water to areas within the property boundary until such time that the released water could be completely collected and disposed of in accordance with all applicable regulations.

## **APPENDIX A      UPDATED CONTRACT**