

**UNTREATED WATER SUPPLY CONTRACT
BETWEEN THE CITY OF HOUSTON, TEXAS AND**

THIS UNTREATED WATER SUPPLY CONTRACT (“Contract”) is made and entered into by and between the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city which is principally situated and has its City Hall in Harris County, Texas (“Houston”), and _____, a _____ authorized to do business in Texas by the Secretary of the State of Texas, with corporate offices at _____ (“Customer”).

RECITALS:

WHEREAS, Houston has the right under certain water rights permits to store, divert, and use surface waters from the Trinity River Basin and San Jacinto River Basin; and

WHEREAS, Houston desires to sell Untreated Water to Customer for distribution and non-wasteful beneficial uses consistent with Houston’s water rights and applicable laws and regulations, including, without limitation, the Texas Water Code; and

WHEREAS, Houston has authority to enter into this Contract pursuant to its Home Rule Charter and Texas Local Government Code Section 552.021; and

WHEREAS, Houston has constructed and is constructing facilities to enable delivery of Untreated Water to Customer, and Customer has constructed and is constructing facilities to enable Customer to receive Untreated Water from Houston; and

WHEREAS, Customer has submitted an Application for Untreated Water, a copy of which is attached hereto as Exhibit A and incorporated in this Contract by reference for all purposes; and

WHEREAS, Customer is a corporation with a registered agent authorized to do business in the State of Texas according to documents on file with the Secretary of the State of Texas; and

WHEREAS, Houston desires to sell Untreated Water to Customer, and Customer desires to purchase Untreated Water from Houston for use at its facilities located at _____ (“Customer’s Facilities”).

NOW, THEREFORE, as set out in the Recitals above, the truth of which the Parties acknowledge, and for and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

ARTICLE I

Definitions

As used in this Contract, the following terms are intended and used herein to have meanings as follows:

The term “*Applicable Laws*” means, but is not limited to, limitations, restrictions, conditions, standards, prohibitions, and requirements of any law, statute, ordinance, rule, regulation, order, or determination of any government authority with jurisdiction, including, without limitation, all applicable zoning ordinances, building codes, flood rules and regulations, health laws and regulations, and environmental laws.

The term “*Application for Untreated Water*” means the Application for Untreated Water in the approved form attached to this Contract as Exhibit A and incorporated in this Contract for all purposes.

The term “*Amendment Application*” means an application to amend the Untreated Water Supply Contract, filed in the approved form for the Application for Untreated Water, referencing the existing Contract and stating the requested changes.

The term “*Best Management Practices*” means voluntary efficiency measures that save a quantifiable amount of Untreated Water, either directly or indirectly, and that can be implemented within a specific time frame, as defined by the Texas Commission on Environmental Quality in its rules at 31 Texas Administrative Code, Section 288.1(3).

The term “*Coastal Water Authority*” means Coastal Water Authority, or any successor entity, which operates Houston’s Surface Water System transmission lines. “*CWA*” is an abbreviation for Coastal Water Authority.

The term “*Coastal Water Authority Raw Water Service Connection General Requirements*” means the Coastal Water Authority Raw Water Service Connection General Requirements, as amended from time to time, which clarifies, supplements, and defines the terms of this Contract. The current version of the Coastal Water Authority Raw Water Service Connection General Requirements is attached to this Contract as Exhibit D and incorporated in this Contract by reference for all purposes.

The term “*Contract Quantity*” means the maximum quantity of Untreated Water in millions of gallons per day that Houston agrees to reserve and sell to Customer, in accordance with the terms and conditions set forth in this Contract.

The term “*Contract Term*” means the term of this Contract, beginning on the Effective Date and ending on the Expiration Date, as addressed in Article IX.

The term “*Customer’s Facilities*” means Customer’s Facilities described in the Recitals to this Contract.

The term “*Director*” means the Director of Houston Public Works or any successor department and all persons designated by the Director to administer the sale and delivery of Untreated Water to Customer. The term “Director” shall also mean the “Utility Official” as defined below.

The term “*Effective Date*” means the date of Countersignature by the Houston City Controller and the date this Contract takes effect.

The term “*Expiration Date*” means the date this Contract expires as referenced in Article II and Article IX.

The term “*Facilities*” means all facilities determined by the Director or Coastal Water Authority to be required to connect to Houston’s Surface Water System, or CWA’s system as specified in Article II, the Water Service Manual, and the Coastal Water Authority Raw Water Service Connection General Requirements.

The term “*GPM*” is an abbreviation for gallons per minute.

The term “*Measuring Equipment*” means any meters, totalizers, or other equipment for which the design, construction, installation, and operation has been approved by the Director and accepted by Houston for ownership, operation, and maintenance for the purpose of measuring accurately all Untreated Water delivered to Customer at the Point of Measurement in accordance with this Contract.

The term “*MGD*” is an abbreviation for million gallons of water per day.

The term “*Notice*” means all written Notices required or permitted to be given to the other party under the terms and conditions of this Contract.

The term “*Party*” means either Houston or Customer in accordance with the context.

The term “*Parties*” means both Houston and Customer.

The term “*Peak Rate*” means the maximum rate at which Customer can take Untreated Water at the Point of Delivery as specified in Article II of this Contract.

The term “*Point of Delivery*” means the location, in Texas coordinates, to which Houston agrees to deliver Untreated Water to Customer, which is more particularly described and shown on the map signed and sealed by a Texas Registered Professional Land Surveyor attached to this Contract as Exhibit B and incorporated in this Contract by reference for all purposes.

The term “*Point of Measurement*” means the location, in Texas coordinates, of the meter where Customer’s consumption of Untreated Water is measured, which is more particularly described and shown on the map signed and sealed by a Texas Registered Professional Land Surveyor attached to this Contract as Exhibit B.

The term “*Surface Water System*” means all facilities and surface water sources now owned or hereinafter acquired or constructed by Houston for the purpose of supplying Untreated Water.

The term “*Surface Water System Costs*” means all costs budgeted for expenditure by Houston in Houston’s annual budget as approved by Houston’s governing body or actually incurred by Houston in acquiring, designing, constructing, financing, administrating, operating, and maintaining the Surface Water System and a reasonable allowance for depreciation and replacement of the Surface Water System.

The term “*System Return Flows*” means Untreated Water or treated (potable) water supplied or produced by Houston which is returned to surface watercourses as return flows.

The term “*TCEQ*” is an abbreviation for the Texas Commission on Environmental Quality, and any of its successors or predecessors.

The term “*Untreated Water*” means raw water, from whatever source, that is not potable.

The term “*Utility Official*,” as used herein and in the City Code, means the Director of Houston Public Works, or the Director’s designee.

The term “*Water Service Manual*” means the Water Service Manual for Standard Water Supply Contracts, as amended from time to time, which clarifies, supplements, and defines the terms of this Contract and Houston’s procedures to be used in implementing the terms and conditions of this Contract. The current version of the Water Service Manual is attached to this Contract as Exhibit C and incorporated in this Contract by reference for all purposes.

ARTICLE II

Sale and Delivery of Water

2.1 *Delivery Terms.* Subject to the terms and conditions of this Contract and the then-applicable provisions of the City Code, including, without limitation, Chapter 47 *Water and Sewers*, during the Contract Term, Houston agrees to sell and deliver to Customer, and Customer agrees to purchase and receive from Houston, Untreated Water in the Contract Quantity at the Point of Delivery taken at no more than the Peak Rate.

2.2 *Dates of Untreated Water Delivery.* Houston stands ready to deliver Untreated Water to Customer as of the Effective Date; provided, however, that in no case shall Houston provide Untreated Water at any time before all prior Conditions of Delivery are met and as specified in this Contract and in the Water Service Manual; after the Expiration Date, Houston has no further obligation to deliver Untreated Water to Customer, and this Contract shall automatically terminate.

2.3 *Extension of Time to Take Untreated Water.* If Customer has a valid reason for extending the time before delivery of Untreated Water, the Effective Date may be extended by the Director, in his or her sole discretion. Customer must submit a written request for an extension of

time, dated before the Effective Date, stating the reason the extension is needed. No extension of time is valid until it is approved in writing by the Director. The Director's decision on the extension of time is final and not subject to formal or informal appeal.

2.4 Conditions of Delivery. Houston's delivery of Untreated Water to Customer is conditioned upon the approval, permitting, construction, and installation of all Facilities required by the Director and Coastal Water Authority for connection to Houston's Untreated Water System, including, without limitation, the following:

2.4.1 Facilities specified in the Service Manual;

2.4.2 Facilities required by CWA Raw Water Service Connection General Requirements;

2.4.3 Measuring Equipment and associated meter facilities as specified in the Water Service Manual;

2.4.4 Cross connection control, air gap and or other appropriate backflow prevention devices and equipment;

2.4.5 Rate of flow controller valve and sufficient storage facilities to prevent Customer from exceeding the Peak Rate;

2.4.6 Facilities necessary for compliance with the City Code and Uniform Plumbing Code, as amended from time to time; and

2.4.7 Facilities necessary for compliance with Applicable Laws.

2.5 Rate of Delivery. The Contract Quantity of Untreated Water to be delivered under this Contract is _____ MGD.

2.6 Peak Rate. Customer's Peak Rate is _____ GPM. Customer shall not take Untreated Water in excess of the Peak Rate, and Customer shall not take Untreated Water at any rate that will cause Customer to exceed the Contract Quantity on any day or for any month.

2.7 Purchase Requirements. Customer is required to purchase at least ninety percent of its Untreated Water requirements for its own use from Houston as required under Article IV of this Contract. Customer will provide written evidence of meeting this requirement by submitting the quarterly reports in accordance with Article IV.

2.8 Source of Water. Houston may deliver Untreated Water to Customer from any source or combination of sources available to Houston.

2.9 Limitations on Customer's Use. Customer understands and agrees that Houston maintains control of the Untreated Water supply provided under this Contract and all surface water supplies under water rights and permits owned by Houston. Specifically, Customer agrees to the following requirements:

2.9.1 Customer may not take Untreated Water at any location other than the Point of Delivery;

2.9.2 Customer has no expectation of increases in the Contract Quantity under this Contract; any increase to the Contract Quantity must be approved by Contract amendment signed by both Parties upon Customer's written application in the form specified by the Director; and

2.9.3 Customer is not authorized to use Houston's storage to meet Customer's peak demands; Customer must maintain storage facilities on site to meet demands in excess of the Contract Quantity and Peak Rate.

2.10 Prohibition of Sale, Lease, Assignment, or Other Provision of Untreated Water. Except as specifically provided for in Article XV, Customer may not resell, assign, lease, or otherwise provide Untreated Water delivered by Houston under this Contract to any other person or entity.

2.11 Contract Amendment Required. Customer shall complete an Amendment Application under the following circumstances:

2.11.1 If Customer desires to resell, assign, or otherwise provide Untreated Water to any other person or entity, an application to amend the Contract must be made in writing to the Director on forms provided by the Director for requested sales, leases, or assignments. Such resale, assignment, or other provision of Untreated Water to any other person is not authorized unless or until a Contract Amendment is granted.

2.11.2 If, at any time after the Effective Date, Customer wishes to reserve for itself additional Contract Quantities of Untreated Water, Customer must submit an Amendment Application. Upon review of the application, the Contract may be amended in accordance

with applicable contract amendment procedures, to increase the Contract Quantity of Untreated Water supplied to Customer subject to appropriate terms and conditions.

2.12 Provision of Untreated Water. Houston intends to provide Untreated Water on a first come, first served basis to protect the Untreated Water supply for those who will put the Untreated Water to beneficial use. All Untreated Water to be supplied under this Contract is expected to be put to beneficial use as of the Effective Date. Customers must state on the Application the date on which all or part of the Contract Quantity will be taken.

2.13 Reservation of Untreated Water for up to Two Years. It is understood and agreed that there may be certain circumstances, such as, by way of example only, an extensive and long-term construction contract, which require the reservation of Untreated Water service to some future date or circumstance. If all or any part of the Contract Quantity is not needed immediately, then that portion of the Contract Quantity may be reserved for a time period not to exceed two years, and Customer must pay Houston the Untreated Water Reservation Charges as specified in Article III, below.

2.14 Reservation of Untreated Water Beyond Two Years. If all or any part of the Contract Quantity is not needed for any time period beyond two years, then, Customer must submit a written request for reservation of Untreated Water for any time after beyond two years of the Effective Date. Written requests for reservation of Untreated Water beyond two years of the Effective Date will be forwarded by the Director with the Director's recommendation and the reasons therefor, to the City Council for consideration. The action by the City Council to grant or deny the request for reservation of Untreated Water beyond two years is final and unappealable.

ARTICLE III

Rates and Prices

3.1 *Untreated Water Rate.* The charge for all Untreated Water sold and delivered by Houston to Customer shall be calculated in accordance with the rates for Untreated Water customers as set forth in the Water Service Manual, and the City Code, Chapter 47, especially Section 47-84, *et seq.*, as amended from time to time or renumbered in the future and incorporated herein by reference.

3.2 *Billing for Untreated Water.* Billing at the rate for Untreated Water shall commence on the Effective Date. If any portion of the Contract Quantity is reserved and authorized not to be taken on the Effective Date, then Customer will be billed the Untreated Water Reservation Charges. For all Untreated Water Supply Contracts, Customer billing will begin at the appropriate rate as of the Effective Date.

3.3 *Excess Consumption Charge.* If, at any time, during any day or month, Customer's consumption exceeds the Contract Quantity, then a twenty-five percent surcharge shall be charged against that portion of the consumption that exceeds the Contract Quantity.

3.4 *Untreated Water Reservation Charges.* To reserve all or any portion of the Contract Quantity of Untreated Water for up to two years beyond the Effective Date, the following charges shall apply:

3.4.1 For all months up to the first twelve months following the Effective Date, Customer must pay Houston an Untreated Water Reservation Charge of twenty-five percent times the Contract Rate for Untreated Water times the reserved portion of the Contract Quantity to be calculated as follows:

(Contract Price for Untreated Water x 0.25) x (Reserved Portion of the Contract Quantity) x (Days in the month)

3.4.2 For the next twelve months, Customer must pay Houston an Untreated Water Reservation Fee of fifty percent times the Contract Rate for Untreated Water times the reserved portion of the Contract Quantity to be calculated as follows:

(Contract Price for Untreated Water x 0.50) x (Reserved Portion of the Contract Quantity) x (Days in the month)

3.5 CWA Fees and Charges. Customers are responsible for paying any and all fees charged by the Coastal Water Authority, in accordance with the Coastal Water Authority Raw Water Service Connection General Requirements.

ARTICLE IV

Reports

4.1 Quarterly Reports. Within thirty days after the end of each quarterly period during the Contract Term, Customer shall furnish Houston with a statement under oath showing the quantities and sources of all Untreated Water used or sold by Customer during such quarterly period.

4.2 Annual Water Loss Audit. Customer shall also prepare and file an Annual Water Loss Audit as specified in Section XI.

ARTICLE V

Measuring Equipment

5.1 *Untreated Water Meter Required.* At Customer's own cost and expense, Customer shall furnish and install at the Point of Measurement shown on Exhibit B Measuring Equipment for measuring and recording accurately the quantity of Untreated Water delivered under this Contract as specified in the Water Service Manual. The Measuring Equipment must be installed, inspected, and maintained in accordance with the Water Service Manual.

5.2 *Access to Measuring Equipment.* During all reasonable hours, Houston, Customer, and CWA shall have access to the Measuring Equipment. Customer may have access to all records pertinent to determining the measurement and quantity of Untreated Water actually delivered hereunder, but the reading of the Measuring Equipment for purposes of billing shall be performed by Houston.

ARTICLE VI

Customer Billing and Payment

6.1 *Customer Liability for Rates, Fees, and Charges.* Customer shall pay all rates, fees, and charges billed by Houston in accordance with the duly adopted rates, fees, and charges established by Houston's City Council and as specified in City Code Chapter 47, the Citywide Fee Schedule, and the Water Service Manual; provided, however, that in any case of conflict between the Water Service Manual and the City Code, the City Code prevails.

ARTICLE VII

Title to and Responsibility for Water

7.1 ***No Title; Customer Responsibility.*** As between Customer and Houston, Houston shall be in exclusive control and possession of, and solely responsible for, all Untreated Water until the same shall pass through the Point of Delivery. Thereafter, Customer shall be in exclusive control and possession of, and solely responsible for, all Untreated Water; provided, however, that title to the Untreated Water shall remain with Houston as provided in Article VIII.

7.2 **NO WARRANTIES.** HOUSTON MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE QUANTITY, QUALITY, OR DELIVERY PRESSURE OF UNTREATED WATER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.3 **INDEMNITY.** CUSTOMER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HOUSTON HARMLESS FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH DAMAGE OR INJURY CAUSED BY HOUSTON'S DELIVERY TO CUSTOMER OR CUSTOMER'S POSSESSION OF UNTREATED WATER PURSUANT TO THIS CONTRACT, WHERE SUCH INJURY ARISES OUT OF CUSTOMER'S ACTUAL OR ALLEGED NEGLIGENCE OR WRONGFUL ACTION. CUSTOMER FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS HOUSTON, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, SUCH AS COASTAL WATER AUTHORITY, AND ASSIGNS FROM ALL DAMAGES, CLAIMS, OR FINES (1) ARISING BY REASON OF,

OR IN CONNECTION WITH, DAMAGE OR INJURY CAUSED BY THE DELIVERY TO CUSTOMER OR POSSESSION OF UNTREATED WATER PURSUANT TO THIS CONTRACT AFTER PASSAGE OF THE UNTREATED WATER THROUGH THE POINT OF DELIVERY, AND (2) RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF HOUSTON AND CUSTOMER, WHETHER CUSTOMER IS IMMUNE FROM LIABILITY OR NOT. IT IS THE EXPRESSED INTENTION OF THE PARTIES THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY CUSTOMER TO INDEMNIFY AND PROTECT HOUSTON FROM HOUSTON'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM. THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF HOUSTON UNMIXED WITH ANY FAULT OF CUSTOMER. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF CUSTOMER UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED \$1,000,000 PER OCCURRENCE.

7.4 Untreated Water Handling Facilities. With respect to all water handling facilities (if any) located between the Point of Delivery and the Point of Measurement, Customer and Houston specifically agree that:

7.4.1 All such facilities, other than the Measurement Equipment itself, shall be and remain the property of Customer, subject to the terms of this Contract;

7.4.2 Customer shall take all reasonable steps to maintain such facilities and to prevent leaks or discharges from such facilities;

7.4.3 Customer shall repair any such leak or discharge at once upon receiving Notice thereof and pay Houston the price of any Untreated Water or water lost by reason of such a leak or discharge;

7.4.4 Customer shall correct or repair any damage caused by any leak or discharge and shall hold Houston harmless from and against any damage and claims therefor;

7.4.5 Customer shall promptly remove such facilities and restore their locations to their pre-existing conditions whenever this Contract is no longer in effect and Houston so requests; and

7.4.6 Customer shall alter or relocate, at its sole cost, any such facilities whenever Houston shall reasonably request in writing that the same be done.

7.5 *Suspension of Service During Emergency Conditions.* If Customer does not take the reasonable actions specified in this Article VII, or if major leaks, compliance with Applicable Laws issues, or emergency conditions occur, then Houston may suspend service with no Notice to Customer as needed to address the circumstances of the major leak, compliance issue, or emergency condition. Houston will use its best efforts to provide Notice to Customer of the circumstances and the actions undertaken.

ARTICLE VIII

Title to System Return Flows

8.1 No Title to Return Flows. Customer acknowledges that the Untreated Water supplied to it by Houston may be returned to watercourses as System Return Flows. The Parties agree that, other than for purposes of liability, title to all Untreated Water delivered hereunder remains with Houston. The Parties also agree that Houston has the right, subsequent to Customer's use of the Untreated Water, to make whatever reuse of the Untreated Water Houston deems desirable.

8.2 No Compensation for Return Flows. Customer will receive no compensation, credit, or offset for making System Return Flows available to Houston.

ARTICLE IX

Term and Termination

9.1 Contract Term. This Contract shall be in force and effect beginning on the Effective Date and will continue in effect until December 31, 2035 at 11:59 p.m., which is the Expiration Date.

9.2 Contract Termination for Cause. This Contract may be terminated by the Director for nonpayment of Untreated Water bills. The Director is also authorized to terminate the Contract for convenience on behalf of Houston or reduce the Contract Quantity upon thirty days' Notice to Customer under the following circumstances:

9.2.1 If Customer does not begin taking Untreated Water within twenty-four months of the Effective Date, or for any twenty-four month period after Customer has begun taking Untreated Water under this Contract, then this Contract shall automatically terminate.

9.2.2 If, after a Customer begins taking Untreated Water after the Effective Date, Customer has not taken any Untreated Water for twelve consecutive months after the Effective Date, not including any portion of the Contract Quantity for which the Untreated Water Reservation Fee has been paid, then this Contract may be terminated by the Director.

9.2.3 If Customer has failed to take at least seventy-five percent of the Contract Quantity for each of twelve consecutive months, not including any portion of the Contract Quantity for which the Untreated Water Reservation Fee has been paid, the Director may decrease the Contract Quantity to the average monthly consumption by Customer during the latest twelvemonth period. In calculating the twelve-month period, the Director shall disregard any month where a Force Majeure prevented Customer from taking at least seventy-five percent of the Contract Quantity.

9.3 *No Guarantee of Continued Untreated Water.* Customer acknowledges that there is no guarantee that Houston will continue to provide Customer with Untreated Water beyond the Contract Term.

ARTICLE X

Compliance with Applicable Laws and Performance by Houston and Customer

10.1 *Compliance with Applicable Laws.* Houston and Customer assert that the Contract Quantity will not be supplied under this Contract in any instance where to do so would involve a violation of Applicable Laws. Customer and Houston will provide written Notice to the other Party in any case where performance under this Contract is likely to violate Applicable Laws.

10.2 *No Impairment by Houston.* Houston covenants and agrees that it will not contract for the sale of Untreated Water to other users to such an extent or for such quantities as to impair Houston's ability to perform fully and punctually its obligations to Customer under this Contract. In case of a temporary shortage of Untreated Water, notwithstanding Houston's compliance with the provisions of this Article X, Houston shall distribute the available supply of Untreated Water as provided by the laws of the State of Texas, particularly Texas Water Code Section 11.039 (a), as amended.

10.3 *Emergency Untreated Water Supply.* Customer is strongly encouraged to maintain, at its sole expense, its groundwater wells and/or other Untreated Water storage facilities, in good repair and working order to facilitate the use of such groundwater wells or Untreated Water storage facilities as an emergency source of supply, if required, should Houston be unable to deliver the Contract Quantity for any reason. Customer shall bear all costs of maintaining and supplying such emergency sources of supply.

ARTICLE XI

Environmental Considerations

11.1 *Water Conservation Plan Required.* On or before the first anniversary of the Effective Date, Customer shall create, update, and approve, as necessary, and implement, at all times throughout the term of this Contract an Untreated Water conservation plan (referred to in this section as a water conservation plan for consistency with TCEQ rules) in accordance with the requirements of the TCEQ and consistent with Houston's current Water Conservation Plan. Such water conservation plan (and any amendments thereto) shall provide for the utilization of reasonable practices, techniques, and technologies for Untreated Water use that reduce the consumption of water on a per-unit basis, reduce the loss or waste of water, and improve efficiency for both domestic and

commercial uses that meet or exceed Houston's current Water Conservation Plan and Customer's most recent water conservation plan. Customer's water conservation plan must be submitted to the appropriate regulatory authority as required by state law for review and approval. In the event that the TCEQ adopts new requirements, Customer shall adopt an amended water conservation plan and submit it to the appropriate authority for review and approval. Customer's water conservation plan must contain requirements for the use of practices, techniques, and technologies for water conservation at least as stringent as those adopted by Houston's City Council. Customer must provide a copy of its approved water conservation plan to Houston within three days of its adoption.

11.2 Maintenance of Water Conservation Plan Required. At all times during the term of this Contract, Customer must maintain full compliance with the approved water conservation plan.

11.3 Prohibition of Waste of Untreated Water. Customer agrees to implement waste prohibition actions and measures that increase water-efficiency and prohibit wasteful activities, such as prohibiting water waste during irrigation practices, scheduling, single pass cooling, non-recycling decorative fountains, non-recirculating systems in all new conveyer or in-bay automatic vehicle wash and commercial laundry systems; discharge of process water that could potentially be reused within the facility for another process use or for irrigation; and use of inefficient water softeners. Other water waste practices may include wash and rinse processes which run for longer time periods or at greater flow rates than needed or processes in which water is used as a conveyance.

11.4 Irrigation Water Waste. Water waste during irrigation includes water running down the gutter; irrigation heads or sprinklers spraying directly on paved surfaces such as streets, parking lots, and driveways; operating an automatic irrigation system without a functioning rain shut off device; operating an irrigation system that has misting heads due to broken heads or failure to install pressure reduction

device; irrigating between 10 a.m. and 6 p.m. during seasons with high evapotranspiration; and irrigating more than required by actual or reference evapotranspiration.

11.5 Process Water Waste. Proper controls can limit water use to the minimum necessary in many facility processes. Limiting or eliminating the use of water in facility wash down operations is also another potential means to reduce water waste. Significant water savings can also be achieved through a proactive and frequent facility leak detection and repair program that addresses all facility pipes, valves, plumbing fixtures, and process equipment.

11.6 Required Annual Water Loss Audit. Customer agrees to track non-revenue water through the implementation of an annual water loss audit. These measures (prohibition of wasting water, water-efficiency measures and annual water loss audit) should be included in Customer's water conservation plan.

11.7 Water Management Requirements. As part of Customer's compliance with Applicable Laws, Customer shall make and document all reasonable efforts to prevent and discourage waste of water and use of Best Management Practices provided by the TCEQ. Customer agrees to satisfy Houston's Customer water management requirements prescribed in this Contract, including the Water Service Manual, in addition to the above requirement for a water conservation plan.

11.8 Water Distribution During Water Shortage or Drought. Customer's acceptance of this Contract and its water conservation plan includes an acceptance of the Parties' responsibility for compliance with Applicable Laws and an acceptance that during periods of water shortage or drought, Houston and Customer shall distribute water in accordance with Texas Water Code §11.039.

11.9 Water Conservation in Customer Contracts. Customer agrees that in the event Customer furnishes or sells water to a third party, Customer shall require that the water conservation requirements of this Contract be included in any contractual agreements between Customer and the third party receiving Untreated Water, and that the contractual agreements provide for the implementation and continued compliance with a water conservation program consistent with the requirements of the TCEQ and this Contract as specified in this Article XI.

ARTICLE XII

Remedies Upon Default

12.1 Default and Remedies. In the event any default by Customer in the performance of any of Customer's obligations hereunder continues for a period of thirty days or more, Houston shall give written Notice to Customer specifying the matter with respect to which Customer is in default and requesting that the default be remedied within thirty days. If Customer remains in default and does not cure the default within thirty days after receiving the written Notice from Houston, then Houston may suspend further delivery of Untreated Water to Customer under this Contract. If Customer does not cure the default within sixty days, then Houston may, by an additional written Notice to Customer, cancel and terminate this Contract. If Houston terminates or cancels the Contract under this section, then all rights of Customer and all obligations of Houston under this Contract shall terminate and expire. The exercise of the rights in this section shall be in addition to any other legal, equitable, or extrajudicial remedies available to Houston under the laws of the State of Texas.

12.2 No Waiver of Contract Requirements. The failure of either Party to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Contract

shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition by the other Party, and the obligation of such Party with respect to future performance shall continue in full force and effect.

ARTICLE XIII

Force Majeure

13.1 Definition. Force Majeure means fires, interruption of utility services, epidemics in the City of Houston, floods, hurricanes, tornadoes, ice storms, and other natural disasters, explosions, war, terrorist acts against Houston or Customer, riots, court orders, and acts of governmental or military authority, and which the affected party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn, or other factors of general application, or an event that merely makes performance more difficult, expensive, or impractical.

13.2 Relief for Force Majeure. Timely performance by both Parties is essential to this Contract. However, neither Party is liable for delays or other failures to perform its obligations under this Contract to the extent the delay or failure is caused by a Force Majeure.

13.3 Requirements for Relief. This relief is not applicable unless the affected Party does the following:

13.3.1 Uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and

13.3.2 Provides the other Party with prompt written Notice of the cause and its

anticipated effect.

13.4 Director's Review. The Director will review claims that a Force Majeure that directly impacts Houston or Customer has occurred and render a written decision within fourteen days. The decision of the Director is final.

13.5 Termination for Force Majeure. If the Force Majeure continues for more than thirty days from the date performance is affected, the Director may terminate this Contract by giving seven days' written Notice to Customer. This termination is not a default or breach of this Contract. CUSTOMER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION. .

13.6 No Relief During Labor Action. Customer is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Customer shall employ only fully trained and qualified personnel during a strike.

13.7 Force Majeure for Houston. It is understood and agreed that Houston receives its supply of Untreated Water from others, and this Untreated Water must be transported over long distances before it is received by Houston. Accordingly, it is agreed that stoppage or diminution of the Untreated Water received by Houston from one or more of its sources (other than by reason of Houston's failure to make payments due to its suppliers) shall be deemed a Force Majeure, and that Houston cannot and does not guarantee constant availability of Untreated Water hereunder but does agree to use its best efforts to maintain such availability. It is further agreed that Houston may, without liability or default, interrupt the delivery of Untreated Water under this Contract to make necessary alterations to or repairs to its facilities or CWA facilities, but only if such interruption cannot otherwise reasonably be avoided. Houston shall give reasonable prior Notice of any such

interruption to Customer and, to the extent possible, Houston shall schedule interruptions in advance after consultation with Customer.

ARTICLE XIV

Addresses and Notices

14.1 *Addresses for Notices.* Until Customer is otherwise notified in writing by Houston, Customer shall communicate with Houston on matters involving this Contract as follows:

For Billing and Payment Issues:

Houston Public Works/Customer Account Services
P.O. Box 1560
Houston, Texas 77251
Email address: Contract.Water@houstontx.gov

For all Notices:

Houston Public Works
Attn: Director
611 Walker, 25th Floor
Houston, Texas 77002
Email address: PublicWorks@houstontx.gov

Until Houston is otherwise notified in writing by Customer, the address of Customer is and shall remain as follows:

14.2 Notice Requirements. All written Notices required or permitted to be given under this Contract from one Party to the other Party shall be deemed given when transmitted by certified or registered mail by placement in a United States Postal Service mail box or receptacle, with proper postage affixed thereto and addressed to the other Party at the address set forth above or at such other address as the Parties respectively shall designate by written Notice. Notices required under this Contract sent by U.S. Mail as specified herein must also be simultaneously transmitted by electronic mail to the other Party.

ARTICLE XV

Miscellaneous Provisions

15.1 Assignment. This Contract shall bind and benefit the Parties and their legal successors, but shall not otherwise be assignable, in whole or in part, by either Party without first obtaining the written consent of the other; provided, however, that Customer shall have the right, with the consent of the Director based on a written request by Customer, to pledge or otherwise assign Customer's rights hereunder to the extent required by any mortgage, deed of trust, or other similar agreement to which Customer may now be, or hereafter become, a party or to otherwise assign Customer's rights and obligations hereunder in connection with any merger or consolidation or any sale of all or substantially all of Customer's Facilities. The Director will consent to the assignment as stated herein if the Director can determine that Customer's successor or assignee, as the case may be, is a responsible person and shall (by operation of law or otherwise) expressly assume Customer's obligations hereunder in a written document appended to the assignment request.

15.2 No Third-Party Benefits. This Contract shall be for the sole and exclusive benefit of Customer and Houston and shall not be construed to confer any rights upon any third party. Houston

shall never be subject to any liability in damages to any customer of Customer for any failure to perform under this Contract.

15.3 Governing Law and Venue. This Contract shall be subject to all present and future valid laws, orders, rules, and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction. Venue for any disputes relating in any way to this Contract shall lie exclusively in Harris County, Texas.

15.4 Severability. If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable; this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised part hereof; and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom.

15.5 Entire Agreement. This Contract contains all the agreements made between the Parties concerning the sale and delivery of Untreated Water by Houston to Customer at the Point of Delivery.

15.6 Right to Enforce. Houston's City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Customer covenants to provide to Houston's City Attorney all documents and records that Houston's City Attorney reasonably deems necessary to assist in determining Customer's compliance with this Contract, with the exception of those documents made confidential by federal or state law or regulation.

15.7 *Continuing Obligations.* With respect to any prior agreements between the Parties or their predecessors for the sale of Untreated Water to Customer at any Point of Delivery hereunder, the future obligations of both Parties to perform under any such prior agreement are terminated effective as of the Effective Date; provided, however, that any obligations which arose prior to the Effective Date, including specifically the obligations of Customer to pay money to Houston for time periods or deliveries prior to the Effective Date, are not terminated.

15.8 *Signatures.*

IN WITNESS WHEREOF, the Parties have executed this Contract in multiple copies, each of which is an original. Each person signing this Contract represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Contract. Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations hereunder have been duly authorized, and that this Contract is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. The Parties hereby agree that each Party may sign and deliver this Contract electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

[The rest of this page intentionally left blank. Signature pages follow.]

**CITY OF HOUSTON, TEXAS
("Houston")**

ATTEST/SEAL:

City Secretary

By: _____
Mayor of the City of Houston

APPROVED:

Director, Houston Public Works

COUNTERSIGNED:

City Controller

Date: _____

APPROVED AS TO FORM:

**Senior Assistant City Attorney
L.D. File No.**

DATE OF COUNTERSIGNATURE:

("Customer")

ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):

By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

CUSTOMER'S ACKNOWLEDGMENT

THE STATE OF TEXAS §

COUNTY OF _____ §

The foregoing Untreated Water Supply Contract was acknowledged before me on

_____ by _____
(date) **(name)**

_____ of _____,
(title) **(name of company)**

a _____ corporation, on behalf of said corporation.
(State of incorporation)

Notary Public in and for the
State of _____

* * * * *

Attachments:

- Exhibit A - Customer's Application for Untreated Water Supply Contract**
- Exhibit B - Map showing Customer's Point of Delivery and Point of Measurement**
- Exhibit C - Current version of the Water Service Manual**
- Exhibit D - Current version of Coastal Water Authority Raw Water Service Connection General Requirements**