

## **WATER SUPPLY CONTRACT**

THIS WATER SUPPLY (the "Contract") is dated and entered into as of the \_\_\_\_ day of June, 2014, between the City of Seguin, Texas, a home-rule city ("Seguin"); and Springs Hill Water Supply Corporation ("Springs Hill"), a non-profit water supply corporation duly formed under Texas Water Code, chapter 67.

### **I. RECITALS**

WHEREAS, Seguin has determined that the City's Water System and sources of supply have capacity to produce, treat, and deliver water in excess of Seguin's immediate needs and its needs in the foreseeable future and that Seguin may deliver water to the Springs Hill during the term of this Contract; and

WHEREAS, Springs Hill desires to obtain an additional firm water supply to supplement its existing water supply sources; and

WHEREAS, Springs Hill has other options to obtain supplemental water and to increase its water supply and Springs Hill has determined that obtaining water from Seguin is in Springs Hill's best interest and that the terms and conditions of this Contract are fair and reasonable and that there is no disparate bargaining power between the parties to the Contract.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the sufficiency of which are hereby acknowledged, and upon and subject to the terms and conditions hereinafter set forth, Seguin and Springs Hill mutually undertake, promise, and agree as follows:

### **ARTICLE I DELIVERY OF WATER**

**Section 1.01. Water Supply Connection.** Subject to the terms and conditions of this Contract, Seguin will allow Springs Hill to connect to Seguin's water supply system at the terminus of a water line that will be installed along Highway 123 south of Cordova Road (at property currently owned by Helmich & Payne, Inc). In order to carry the extra capacity to serve Springs Hill, the line will be over-sized, at Springs Hill's expense, from eight to twelve inches. Springs Hill is responsible, at its own cost, for constructing a pipeline from its system to the City's system at the point herein described.

**Section 1.02. Point of Delivery.** Subject to the terms and conditions of this Contract, Seguin will deliver water to Springs Hill at (or through) the Point of Delivery once Springs Hill makes its connection to the point of delivery.

**Section 1.03. Volume.** Over the term of this contract Springs Hill shall be entitled to 500 acre feet of water per year, to be taken at the maximum rates of delivery set out in Section 1.04.

**Section 1.04. Rate of Delivery.** The volume of water actually delivered by Seguin depends upon Springs Hill's demand, but the amount of water delivered and the rate of delivery shall not exceed the following:

- a. The City shall deliver up to 500,000 gallons during any twenty-four consecutive hours; or 20,834 gallons per hour; all at a maximum, instantaneous rate not to exceed 750 gallons per minute, which is a rate equal to 1.5 times the rate of 500,000 gallons per twenty-four hours. Seguin will deliver the water to Springs Hill at the Point of Delivery at a minimum pressure of twenty pounds per square inch, except during those times when repairs, maintenance, or improvements are being performed on Seguin's water distribution system or as a result of force majeure.

**Section 1.05. Metering.** At the Point of Delivery Seguin may acquire, at Springs Hill's sole expense, a site of sufficient size and configuration to install, operate, and maintain a valve, measuring, metering and recording devices, and other equipment or devices required by Seguin (the "Metering Station"), together with a right of unrestricted ingress and egress between the site and a public road, electric power supply, and communication access. The location, size, and boundaries of the Metering Station and the exact location shall be determined by mutual agreement of the Parties.

**Section 1.06. Metering Equipment.** At the Point of Delivery, Seguin may acquire or install, at Springs Hill's sole expense, any and all equipment of the type and number deemed necessary by Seguin's engineer, such as storage tanks, piping and fittings, one or more valves capable of stopping or reducing the flow of water, devices to measure and record the rate of flow, surge protection devices, electric controls to operate and monitor the valve(s) and measuring devices, communication equipment, electric power connections, controls and wiring, and security devices including a lockable gate, buildings, security systems, and lights. If deemed necessary by Seguin it may require Springs Hill to construct a ground storage tank so that Seguin may deliver the water to by means of an air gap. Such meter or meters and other equipment so installed shall be and remain the property of Seguin.

**Section 1.07. Water Conservation, Drought Contingency, and other Required Plans.** Springs Hill shall cooperate with and assist Seguin in its efforts to develop and implement plans, programs, and rules to promote practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in use of water. Seguin's obligations under this Contract shall be subject to water conservation plans, drought contingency plans, or any other plan adopted by Seguin and required or approved by the Texas Commission on Environmental Quality (the "TCEQ"), the Texas Water Development Board, or any other federal, state, or local regulatory authority with power to require or approve water conservation and drought contingency plans. As required by rules promulgated by TCEQ in effect on the effective date of this Contract, Springs Hill shall develop and implement a water conservation plan or water conservation measures using the standards established by TCEQ. If required by order of TCEQ,

Seguin may be required to implement water conservation strategies and if Seguin is so ordered, Springs Hill will cooperate and consent to Seguin's implementation of such water conservation strategies required by the TCEQ. As required by TCEQ rules in effect on the effective date of this Contract, in case of a shortage of water resulting from drought, the water to be distributed by Seguin to its customers will be distributed in accordance with the provisions of this contract, or to the extent required by law.

**Section 1.08. Water Quality.** The water that Seguin delivers to Springs Hill is of the same quality of water that Seguin delivers to its customers. Springs Hill has satisfied itself that such water is suitable for its needs. The quality of water to be supplied and delivered by Seguin must meet the quality criteria prescribed by federal or state law for public water supply and specifically satisfy the TCEQ Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems, 30 TAC Chapter 290 subchapter F, as currently in effect or as may be amended or superseded from time to time.

**Section 1.09. Title.** During the time that water is delivered at the Point of Delivery, the title to the water shall transfer from Seguin to Springs Hill on the discharge side of the meter. To the extent allowed by applicable laws each of the Parties hereto hereby agrees to indemnify and save and hold each other party hereto harmless from all claims, demands and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party.

**Section 1.10. Approvals.** Unless otherwise required by law, each consent, approval, or other official action required of Seguin or Springs Hill by any provision of this Contract shall be deemed in compliance with this Contract when written evidence of such action, signed by the respective Authorized Representative, is delivered to the party who is to receive evidence of such action. Seguin and Springs Hill will cooperate with one another in the design, financing, acquisition, and construction of the Point of Delivery and will not take any action or fail to take any action (including, without limitation, any exercise or denial of its consent or approval of any action proposed to be taken by the Seguin or Springs Hill or any of their agents hereunder), if taking or failing to take such action, respectively, would unreasonably delay or obstruct the completion of the Point of Delivery.

**Section 1.11. Other Source of Supply.** Since Springs Hill obtains a supply of water from another source, Seguin shall install the equipment or take other action as may be necessary to satisfy regulatory requirements to prevent back-flow or cross contamination between the water systems operated by Seguin and Spring Hill's water system.

## **ARTICLE II PAYMENTS**

**Section 2.01. Monthly Payments.** As consideration for the service to be provided to Springs Hill under this Contract, Springs Hill agrees to pay Seguin monthly charges calculated as follows:

a. Monthly Charge based on take or pay, that is due and payable whether or not Springs Hill demands or receives any water from Seguin:

Rate per thousand gallons then in effect times 500,000 gallons per day times the number of days in the month.

**Section 2.02. Rate.** The initial rate paid by Springs Hill to Seguin shall be \$3.50 per thousand gallons (the "Initial Rate"). The rate may be adjusted by Seguin each year; equivalent to its rates to other similar customers but in no case may the rate be increased more than 5.0% per year.

**Section 2.03. Due Date.** The monthly charges shall be paid in full on or before the fifteenth day after receipt of the monthly statement of charges from Seguin. The initial monthly charge shall be due on the effective date of this Contract. The effective date shall be set to coincide with Seguin's billing cycle and will reflect the first full month.

**Section 2.04. Other Charges.** In the event any sales or use taxes, or taxes, assessments, production fees or charges of any similar nature are imposed on production, storing, delivering, gathering, impounding, taking, selling, using or consuming the water received by Springs Hill, the amount of tax, assessment, or charge shall be born by Springs Hill, in addition to all other charges, and whenever Seguin shall be required to pay, collect or remit any tax, assessment, or charge or water received by Springs Hill, then Springs Hill shall promptly pay or reimburse Seguin for the tax, assessment, or charge in the manner directed by Seguin. Seguin agrees that Springs Hill shall not be charged impact fees, as defined by Chapter 395 of the Texas Local Government Code, as long as the Seguin's rates include a component to collect a capital outlay for future water supply.

**Section 2.05. Default in Payments.** All amounts due and owing to Seguin by Springs Hill shall, if not paid when due, bear interest at the Texas post-judgment interest rate under Texas law from the date when due until paid, provided that such rate shall never be usurious or exceed the maximum rate as permitted by law. If any amount due and owing by Springs Hill to Seguin is placed with an attorney for collection, Springs Hill shall pay to Seguin, in addition to all other payments provided by this Contract, including interest, Seguin's collection expenses, including court costs and attorneys' fees. Seguin shall, to the extent permitted by law, suspend delivery of water to Springs Hill if Springs Hill remains delinquent in any payments due hereunder for a period of sixty (60) days, and shall not resume delivery of water while Springs Hill is so delinquent. Seguin may pursue all legal remedies against Springs Hill to enforce and protect the rights of Seguin, other parties, and the holders of Seguin's bonds. It is understood that the foregoing provisions are for the benefit of the holders of Seguin's bonds.

**Section 2.06. Pledge of Revenue.** Springs Hill represents any covenants that all payments to be made by it under this Contract shall constitute reasonable and necessary "operating expenses" of its system, and that all such payments will be made from the revenues of its water system. Springs Hill represents and has determined that the water supply to be obtained from Seguin is absolutely necessary and essential to the present and future operation of its water system, and accordingly all payments required by this Contract to be made by Springs Hill shall constitute reasonable and necessary operating expenses of Springs Hill's system as described above with the effect that the obligation to make such payments from revenues of such system or systems shall have priority over any obligation to make any payments from such revenues, whether of principal, interest, or otherwise, with respect to all bonds heretofore or hereafter issued by Springs Hill, unless this obligation is inconsistent with Springs Hill's obligations under debt instruments. Springs Hill agrees throughout the term of this Contract to continuously operate and maintain its water system and to fix and collect such rates and charges for water services to be supplied by its water system as will produce revenues in an amount equal to at least all of its payments under this Contract.

**Section 2.07. Payment under Protest.** If Springs Hill at any time disputes the amount to be paid by it to Seguin, Springs Hill shall nevertheless promptly make the disputed payment or payments, but if it is subsequently determined by agreement or court decision that the disputed amount paid by Springs Hill should have been less, or more, Seguin shall promptly revise the monthly payment in a manner that Springs Hill or Seguin, will recover the amount due and interest.

**Section 2.08. Rate Case.** If a court, the TCEQ, or any federal or state regulatory authority finds that Seguin's rates or policies for delivering water to Springs Hill under this Contract are unreasonable or otherwise unenforceable, Seguin has the option to terminate this Contract without liability to Springs Hill, but Seguin shall provide Springs Hill at least six months' notice prior to such termination. By signing this Contract, Springs Hill stipulates and agrees that Seguin and its other customers will be prejudiced if Springs Hill avoids the obligation to pay the rates for water specified in this Contract while accepting the benefits of obtaining water from Seguin. Nothing in this Contract shall be construed as constituting an undertaking by Seguin to furnish water to Springs Hill except pursuant to the terms of this Contract. Springs Hill stipulates and agrees that the Initial Rate does not violate the public interest, and that the rates and policies defined in this Contract are just and reasonable. Notwithstanding any provision to the contrary, Springs Hill does not waive any right to file and pursue an appeal of any increase in rates proposed or adopted by Seguin that is not in conformance with the terms of this Contract.

### ARTICLE III TERM OF CONTRACT, REMEDIES, AND INDEMNITY

**Section 3.01. Term.** This Contract shall be effective beginning October 1, 2014, and shall continue in effect for a period of fifteen (15) years from the effective date unless this Contract is terminated pursuant to its terms.

**Section 3.02. Renewal.** This Contract will renew for an additional term of fifteen (15) years unless Springs Hill or Seguin gives notices that the party issuing the notice objects to the renewal of this Contract. The notice of the objection to renewal must be given at least one year prior to the termination date of this Contract.

**Section 3.03. Termination.** Upon termination, neither Springs Hill nor Seguin will have any obligation to the other except each party will:

- (a) Remove its facilities from property owned or controlled by the other party.
- (b) Pay or reimburse the other party all amounts that may be due upon the date of termination.
- (c) Indemnify and defend the other party in accordance with this Contract for claims that may be pending at the end of the term of this Contract or may be filed forty- nine months after the end of this Contract or any extension thereof.

**Section 3.04. Remedies.** It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies existing at law or in equity may be availed of by any party hereto and shall be cumulative. Recognizing, however, that failure in the performance of any party's obligations hereunder could not be adequately compensated in money damages alone, each party shall have available to it the equitable remedy of mandamus and specific performance, in addition to any other legal or equitable remedies which also may be available.

**Section 3.05. Early Termination by Springs Hill.** Springs Hill may terminate this Contract at any time upon twelve (12) months' written notice to Seguin within its sole discretion. If Springs Hill elects to exercise this early termination provision, it shall pay to Seguin an amount equal to six (6) months of the Monthly Charge.

#### ARTICLE IV METERING AND MEASUREMENT

**Section 4.01. Unit of Measurement.** The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U.S. Standard Liquid Measure.

**Section 4.02. Measuring Equipment.** In accordance with sections 1.05 and 1.06 of this Contract, Seguin shall, at Spring Hill's expense, furnish, install, operate and maintain the necessary electronic or other equipment and devices of standard type for measuring properly the quantity of water delivered under this Contract. Such meter or meters and other equipment so installed shall remain the property of Seguin. Springs Hill shall have access to such metering equipment at all reasonable times, but the reading, calibration and adjustment thereof shall be done only by the employees or

agents of Seguin. For the purposes of this Contract the original record or reading of the meter or meters shall be the journal or other record book of Seguin in its office in which the records of the employees or agents of Seguin who take readings are or may be transcribed. Upon written request of Springs Hill, Seguin will give Springs Hill a copy of such journal or record book, or permit Springs Hill to have access to the same in the office of Seguin during reasonable business hours.

Seguin shall calibrate its meters periodically, but at least every three (3) years, if requested in writing by Springs Hill to do so, in the presence of a representative of Springs Hill, and the parties shall jointly observe any adjustments which are made to the meters in case any adjustments shall be necessary, and if the check meters hereinafter provided for have been installed, the same shall also be calibrated by Springs Hill in the presence of a representative of Seguin and the parties shall jointly observe any adjustment in case any adjustment is necessary. If Springs Hill shall in writing request Seguin to calibrate its meters and Seguin shall give Springs Hill forty-eight (48) hours written notice of the time when any such calibration is to be made and a representative of Springs Hill is not present at the time set, Seguin may proceed with calibration and adjustment in the absence of any representative of Springs Hill.

If either party at any time observes a variation between the delivery meter or meters and the check meters or meters, if any such check meter or meters shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the said meter or meters shall then be adjusted to accuracy. Each party shall give the other parties forty-eight (48) hours' notice of the time of all the tests of meters so that the other parties may conveniently have a representative present.

If upon any test, the percentage of inaccuracy of any metering equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. If for any reason any meters are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registered. Otherwise the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registered accurately. Springs Hill may, at its option and expense, install and operate a check meter to check each meter installed by Seguin, but the measurement of water for the purpose of this Contract shall be solely by Seguin's meters, except in the case hereinabove specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of Seguin,

but the reading, calibration and adjustment thereof shall be made only by Springs Hill, except during any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration and adjustment thereof shall be made by Seguin with like effect as if such check meter or meters had been furnished or installed by Seguin.

If Springs Hill requests Seguin to test Seguin's meter, either more frequently than once every three years required by this section or because Seguin's meter and Springs Hill's check meter show different readings, Springs Hill will pay the cost of the test if the test shows that the meter is accurate (within two percent registration), but if the test shows that the meter is not accurate (in excess of two percent registration), then Seguin will pay the costs for conducting the test.

## **ARTICLE V GENERAL PROVISIONS**

**Section 5.01. Interpretation.** Captions and headings of this Contract are for reference purposes only and shall not affect its interpretation in any respect. Unless the context otherwise requires, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa. This Contract and all the terms and provisions shall be liberally construed to effectuate the purpose set forth herein and to sustain the validity of this Contract.

**Section 5.02. Existing Contract.** This Contract does not terminate, impair, amend or supersede the agreement between Seguin and Springs Hill regarding the treatment of Springs Hill's water and delivery of the water to Springs Hill.

**Section 5.03. Participation by the Parties.** The parties to this Contract each represent to the others that it is empowered by law to execute this Contract and other agreements and documents as are or may hereafter be required to accomplish the same; and that its execution of this Contract have been duly authorized by action of its governing body.

**Section 5.04. Force Majeure.** If by reason of Force Majeure any party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of the Springs Hill to make the payments required under this Contract, then if such party shall give notice and full particulars of such Force Majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, or any civil or military



authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, blue northers, storms, floods, washouts, droughts, arrests, restrain of government and people, civil disturbances, explosions, breakage or accidents of machinery, pipelines or canals, partial or entire failure of water supply, inability on the part of Seguin to deliver water for any reason, or on account of any other causes not reasonably within the control of the party claiming such inability.

**Section 5.05. Modification.** No change, amendment, or modification of this Contract shall be made or be effective that will affect adversely the prompt payment when due of all money required to be paid by the Springs Hill under the terms of this Contract.

**Section 5.06. Addresses and Notice.** Unless otherwise provided herein, any notice, communication, request, reply, or advise (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to the other parties must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall be as follows:

Springs Hill Water Supply Corporation  
P.O. Box 29  
Seguin, Texas 78156

City Manager  
City of Seguin, Texas  
205 N. River Street  
Seguin, Texas 78155

**Section 5.07. State or Federal Laws, Rules, Orders, or Regulations.** This Contract is subject to all applicable federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction. Springs Hill and Seguin represent that, to the best of their knowledge, no provisions of any applicable federal or State law, nor any permit, ordinance, rule, order, or regulation of either party will restrict the ability of either party to carry out their respective obligations under or contemplated by this Contract.

**Section 5.08. Severability.** The parties hereto specifically agree that in case anyone or more of the sections, subsection, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions,

clauses, or words of this Contract or the application of such actions, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

**Section 5.09. Waiver.** Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of Seguin to receive the payments from Springs Hill, which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years plus one (1) day after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto or of the performance by any other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

**Section 5.10. Venue.** All amounts due under this Contract, including, but not limited to, payments due under this Contract or damages for the breach of this Contract, shall be paid and be due in Guadalupe County, Texas, which is the County in which the principal administrative offices of the parties are located. It is specifically agreed among the parties to this Contract that Guadalupe County, Texas, is the place of performance of this Contract; and in the event that any legal proceeding is brought to enforce this Contract or any provision hereof, the same shall be brought in Guadalupe County, Texas.

**Section 5.11. Succession and Assignment.** This Contract is binding on and inures to the benefit of the parties hereto and their respective successors, representatives, and assigns. This Contract may not be assigned by either party hereto without prior written notice to and approval by the other party, which consent may be withheld without cause.

**Section 5.12. Entire Contract.** This Contract constitutes the entire agreement among the parties with respect to the matters described herein.

**Section 5.13. Applicable Law.** This Contract shall be governed by and construed in accordance with the laws of the State, and the obligations, rights, and remedies of the parties hereunder shall be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations.

**Section 5.14. Counterparts.** This Contract may be executed in counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

**Section 5.15. Officers and Agents.** No officer or agent of Seguin or Springs Hill is authorized to waive or modify any provision of the Contract. No modifications to or rescission of this Contract

may be made except by a written document signed by Corporation's and Spring Hill's authorized representatives.

**Section 5.16. Recitals.** Seguin and Springs Hill agree that the recitals in this Contract are true and correct and are incorporated into the terms of this Contract.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed as of the day and year first above written.

**City of Seguin**

**Springs Hill Water Supply Corporation**

\_\_\_\_\_  
Douglas G. Faseler, City Manager

\_\_\_\_\_  
Board President

Attest:

\_\_\_\_\_  
Thalia Stautzenberger, City Secretary

\_\_\_\_\_  
Board Secretary