

ORDINANCE NO. 2008-18

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIESEL, TEXAS,
PROVIDING FOR THE PURCHASE OF A 3.15 ACRE TRACT OF LAND FOR WATER
WELL PROJECT, APPROVING CONTRACT, GRANTING EXECUTION AUTHORITY,
AND APPROVING PAYMENT OF PURCHASE PRICE**

WHEREAS, the City Council of the City of Riesel, Texas wishes to purchase a 3.15 acre tract of land described in the Contract of Sale attached hereto as Exhibit "A" for the purpose of developing a new water well; and

WHEREAS, the property to be purchased is described by metes and bounds and is to be acquired by deed acknowledged in the manner required for deeds by each person having an interest in the property; and


WHEREAS, the City Council finds that the acquisition of such property is in the best interest of the City of Riesel, and is needed for the public purpose of municipal utility service.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIESEL, TEXAS, that the property described in Exhibit "A" attached hereto, which is incorporated herein by reference, is hereby authorized to be PURCHASED, and that:


1. the Contract of Sale on the terms attached hereto as Exhibit "A" is hereby APPROVED;
2. the Mayor or the Mayor Pro Tem is authorized to execute all documents necessary to acquire the property, including the Contract of Sale in the form and terms attached hereto;
3. the Purchase Price of \$21,025 is hereby authorized to be paid to acquire the property from the fund established for land purchases received from Dynegy; and
4. City Staff are authorized to take such actions as are lawfully necessary to consummate the purchase of the property.

PASSED THIS 16th DAY OF December, 2008, on the MOTION OF Dave Ross, AND SECOND OF Rodney Dieterich, BY A VOTE OF (5) five AYES TO (0) zero NAYS WITH (0) zero ABSTENTIONS. THE MEETING AT WHICH THIS ORDINANCE WAS ADOPTED WAS NOTICED AND HELD IN ACCORDANCE WITH CHAPTER 551 OF THE GOVERNMENT CODE.

ATTEST:



Bookkeeper



Mayor
City of Riesel

CONTRACT OF SALE

This CONTRACT OF SALE is made by and between Henrietta Mormino, hereafter referred to as "Seller" and the City of Riesel, Texas, hereinafter referred to as "Buyer" upon the terms, provisions and conditions set forth herein.

1. **PURCHASE AND SALE.** Seller agrees to sell and convey to Buyer and buyer agrees to buy from seller 3.15 acres of land out of the J.D. Sanchez Survey in McLennan County, Texas, more fully described in Exhibit "A" which is attached hereto and incorporated herein for all purposes, together with any improvements situated thereon, hereinafter referred to as the "Property", and together with all and singular the rights and appurtenances thereto.
2. **CONSIDERATION.** In exchange for the property described in Exhibit "A" attached hereto, Buyer agrees to pay to Seller the Contract Sum of \$11,025 for the Property and \$10,000 for any damage to the remainder of the Seller's land, for a total Contract Sum of \$21,025, to be paid in cash at closing, subject to the terms and conditions herein.
3. **PROPERTY CONDITION / INVESTIGATION.** Buyer is purchasing the Property in an "as is" condition with all faults. Seller, will, however, make warranty as to title as set forth in the deed. Seller warrants that she is lawfully seized with full title to the Property, is the sole owner thereof, and that she is fully authorized to sell the Property. Seller warrants that the Property is not part of a trust estate.
4. **CONDITIONS OF SALE.** Buyer's duty to purchase under this Contract is subject to the following conditions to be undertaken or satisfied in the Buyer's sole discretion on or before the closing date:
 - (a) Buyer, at its own expense and at its sole discretion, may procure a title commitment (title binder) covering the Property binding the title company to issue a Texas Owner's Title Policy of Title Insurance on the standard form of policy prescribed by the Texas State Board of Insurance at the closing in the full amount of the purchase price. In lieu of the foregoing, Buyer may obtain the issuance of an attorney opinion letter. After receipt and review of the title binder or opinion letter, Buyer shall inform Seller of any objections that Buyer has to anything contained therein. If there are objections by Buyer, Seller shall in good faith attempt to satisfy the same prior to closing, but Seller shall not be required to incur any costs to do so. If Seller cannot cure or satisfy such objections to the satisfaction of the Buyer prior to closing, or Seller for any reason, is unable to convey title in accordance with (b) below, Buyer may either waive such objections and accept such title as Seller is able to convey, or terminate this Contract.
 - (b) Seller represents and warrants to Buyer that, at the closing, Seller will have and will convey to Buyer good and marketable title by a warranty deed subject to no liens or debts other than ad valorem taxes for the current year, and any other reservations, easements, discrepancies in boundaries, encroachments, restrictions or exceptions previously approved by Buyer in accordance with (a) above.
 - (c) Seller will reserve and retain a royalty interest in the production of water by the Buyer from the Property on the terms and conditions set forth in Exhibit "B" attached hereto.

5. **CLOSING.**

(a) The closing of the sale shall be on or before January 10, 2009.

(b) At the closing, Seller shall deliver to Buyer a warranty deed conveying the Property, subject to no liens or debts other than ad valorem taxes for the current year, and any other reservations or exceptions previously approved by Buyer in accordance with this Contract.

(c) All closing costs and expenses incurred in connection with this Contract shall be the obligation of Buyer.

6. **CASUALTY LOSS.** If, prior to closing, any part of the real property is damaged or destroyed by fire or other casualty loss, Buyer or Seller, in its sole discretion, shall have the option to terminate this Contract. The risk of loss remains with the Seller until closing.

7. **BINDING NATURE OF CONTRACT.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, representatives, successors and assigns where permitted by this Contract. The effective date of this Contract shall be the date upon which the last party signs.

8. **TEXAS LAW TO APPLY.** This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are deemed performable in Waco, McLennan County, Texas, and Waco, McLennan County, Texas, shall be the venue of all disputes hereunder or relating to the Property.

9. **LEGAL CONSTRUCTION.** In the case of one or more of the provisions contained in this Contract being held, for any reason, to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained therein to the extent that such would not result in the purpose and intent of the Contract being unattainable.

10. **COMMISSION.** The Buyer and Seller acknowledge and represent that no third party is due any type of commission or fee in connection with the sale and purchase contemplated hereunder.

11. **ENTIRE AGREEMENT.** This Contract embodies the entire agreement between the parties and cannot be varied except by written agreement of the parties.

12. **NOTICE.** Any notice, request, demand or other communication required or permitted to be delivered herein shall be given in writing by delivery of the same in person to the intended addressee or by United States mail, postage prepaid, registered or certified mail, return receipt requested, or by courier to the intended addressee at the address set forth opposite the signature of such party hereto. Such notice shall be deemed to be delivered on the third business day following the time the same was deposited in the United States mail or in the manner described above.

13. **AUTHORITY.** The undersigned expressly warrant and represent that they are authorized on behalf of the respective parties to sign this Contract and to bind the respective parties. The undersigned warrant and represent that all required actions have been taken in order for this agreement to be entered into by their respective principals.

EXECUTED by Seller this 9th day of December, 2008.

SELLER:

By: Henrietta Mormino
HENRIETTA MORMINO

CITY OF RIESEL
WELL SITE

EXHIBIT "A"

FIELD NOTES

BEING 3.15 ACRES OF LAND OUT OF THE J. D. SANCHEZ GRANT IN McLENNAN COUNTY, TEXAS, AND BEING PART OF THAT CERTAIN 259.75 ACRE TRACT OF LAND DESCRIBED IN A DEED FROM EUGENE F. JUD AND ESTER MILLER JUD TO E. F. DIETERICH AND HELEN DIETERICH RECORDED IN VOLUME 695, PAGE 105, DEED RECORDS OF McLENNAN COUNTY, TEXAS, SUBSEQUENTLY BEQUEATHED AND DEVEISED TO HENRIETTA MORMINO, NEE KRUEGER, ADMITTED TO PROBATE, AND FILED FOR RECORD UNDER DOCUMENT NO. 24773 IN THE PROBATE RECORDS OF McLENNAN COUNTY, TEXAS, SAID 3.15 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO WIT:

COMMENCING at the intersection of the north line of Rattlesnake Road and the west line of Little Rattler Road as shown on the plat of Oak Hills subdivision recorded in Volume 462, Page 518, Deed Records of McLennan County, Texas;

THENCE with the west line of said Little Rattler Road, the following two (2) courses and distances:

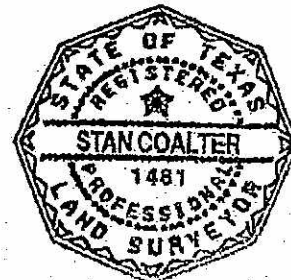
- 1) N 27° 14' 02" W a distance of 582.21 feet to a 4" dia. steel post, and;
- 2) N 17° 42' 14" E a distance of 35.76 feet to an iron rod set at the TRUE PLACE OF BEGINNING of the hereinafter described 3.15 acre tract;

THENCE traversing the interior of said 259.75 acre tract, the following described seven (7) courses and distances:

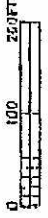
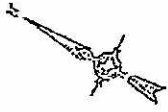
- 1) N 72° 17' 46" W a distance of 220.54 feet to an iron rod set;
- 2) S 17° 42' 14" W a distance of 301.50 feet to an iron rod set;
- 3) N 72° 17' 46" W a distance of 361.50 feet to an iron rod set;
- 4) N 17° 42' 14" E a distance of 361.50 feet to an iron rod set;
- 5) S 72° 17' 46" E a distance of 361.50 feet to an iron rod set;
- 6) S 17° 42' 14" W a distance of 30.00 feet to an iron rod set, and;
- 7) S 72° 17' 46" E a distance of 220.54' to an iron rod set in the westerly line of Little Rattlesnake Road;

THENCE S 17° 42' 14" W a distance of 30.00 feet with the westerly line of Little Rattlesnake Road to the Place of Beginning, containing 3.15 acres of land.

Stan Coalter
Stan Coalter, RPLS, LSLs
9-24-08



SKETCH TO ACCOMPANY FIELD NOTES



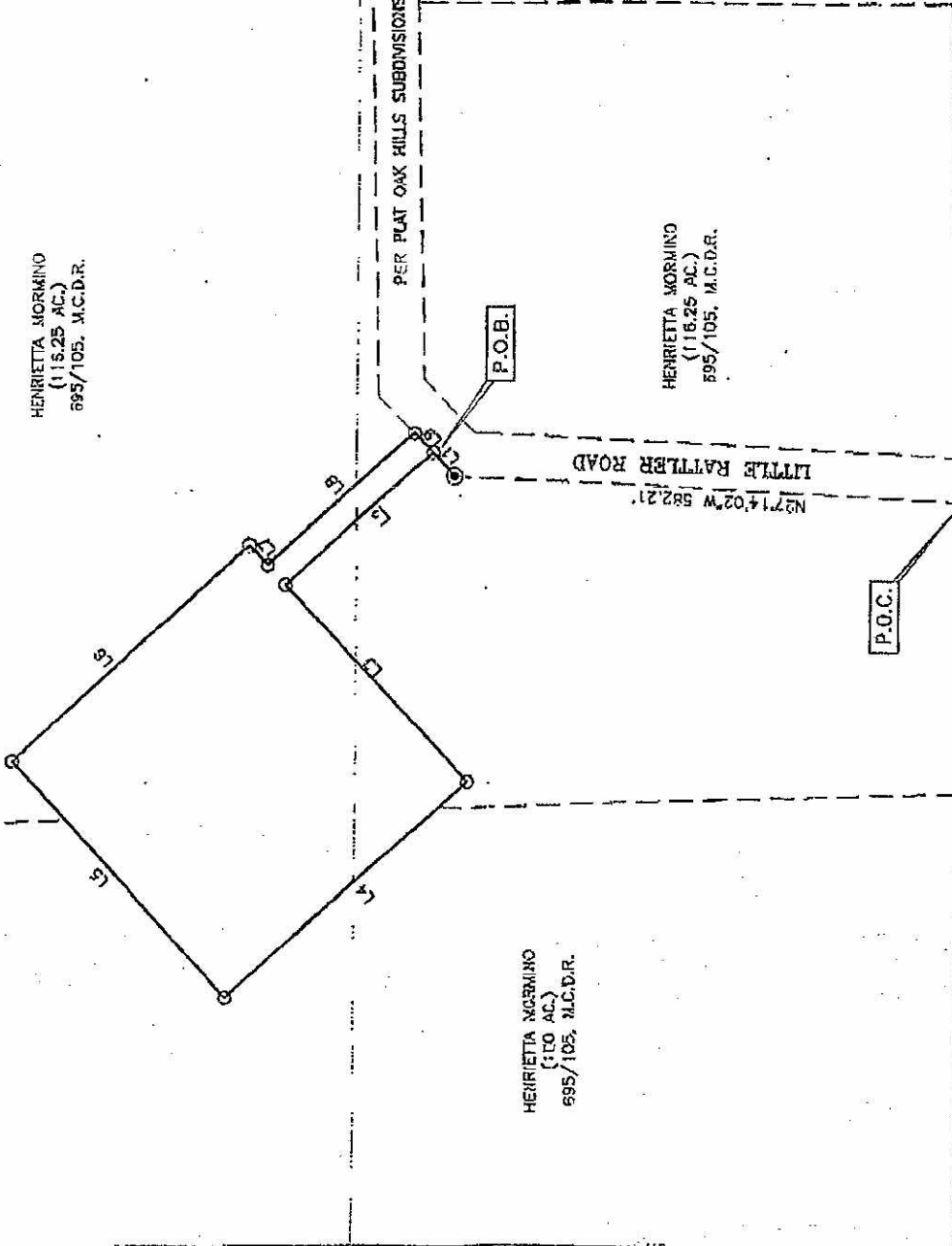
LEGEND

- ⊙ 4-INCH STEEL POST FOUND
- SET IRON ROD
- PROPERTY LINE
- P.D.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- 482/518 VOLUME/PAGE
- M.C.D.R. MCLENNAN COUNTY DEED RECORDS

HENRIETTA MORNING
(118.25 AC.)
695/105, M.C.D.R.

HENRIETTA MORNING
(110 AC.)
695/105, M.C.D.R.

HENRIETTA MORNING
(118.25 AC.)
695/105, M.C.D.R.



PER PLAT OAK HILLS SUBDIVISIONS, 482/518 M.C.D.R.

LITTLE RATTLER

LINE	BEARING	DIST
L1	N17°42'14"E	35.76'
L2	N72°17'46"W	220.54'
L3	S17°42'14"W	301.50'
L4	N72°17'46"W	361.50'
L5	N17°42'14"E	361.50'
L6	S72°17'46"E	361.50'
L7	S17°42'14"W	30.00'
L8	S72°17'46"E	220.54'
L9	S17°42'14"W	30.00'

3.15 ACRES OF LAND OUT OF
THE J.D. SANCHEZ GRANT
MCLENNAN COUNTY, TEXAS

EXHIBIT "B"

WATER PRODUCTION ROYALTY TERMS AND CONDITIONS

Seller is selling the 3.15 acres of land referenced in the Contract of Sale ("Property") to which this document is an Exhibit to the Buyer for the purpose of the Buyer's construction and operation of a new water well to serve the Buyer's water and sewer customers.

Seller is retaining and reserving a royalty interest in water produced from the Property. In consideration of this royalty, Seller is hereby agreeing to certain restrictions on the production of water on her remaining adjacent land.

1. Definitions.

"Commercial Production of Water" means the operation of a well or wells to serve water and/or sewer customers other than the owner of the well; operation of a well or wells for business operations other than agriculture; production of ground water for large scale agricultural irrigation; and any production of water as a business or as a major aspect of a business. A well serving a single household shall not be considered a Commercial Production of Water as long as the water is used by the household and not sold. However, the operation of a well or wells to serve a single household will be considered a Commercial Production of Water if the household/residence is located within the Buyer's certificated area for water service, and Buyer service is actually available.

"Property" means the 3.15 acres being sold by Seller to the Buyer, that is more specifically described in Exhibit "A" attached to the foregoing Contract of Sale, which is incorporated by reference herein.

"Remainder Property" means Seller's land other than the Property which is adjacent to the Property, and specifically includes the remainder of the 116.25 acre tract and the 100 acre tract as shown in Volume 695, Page 105 of the McLennan County Deed Records, and as identified in the "Sketch to Accompany Field Notes" attached as part of Exhibit "A" to the foregoing Contract of Sale, which is incorporated by reference herein.

2. Covenant Running with the Land

2.1. Seller covenants, agrees, and warrants that neither she or her successors in title shall:

a) conduct, allow, or in any way grant the right to conduct upon the Remainder Property any Commercial Production of Water;

b) take any action that would adversely affect the Buyer's well on the Property or divert groundwater away from the Buyer's well;

c) create, maintain or allow to be created or maintained any hazardous conditions or dumpsites on the Remainder Property which could adversely affect the quality of groundwater being produced by the Buyer at the Property.

2.2. This is a covenant running with the land, and shall specifically bind any successors in title to the Remainder Property as defined herein. These conditions shall be set forth in the deed which will be filed of record in the official Public Records of McLennan County, Texas.

3. Water Production Royalty

3.1. The Buyer agrees to pay unto Seller, or her successors in interest, on a monthly basis a Water Production Royalty based on the water produced by the Buyer from the well(s) on the Property.

3.2. The royalty will only be paid on water actually produced as will be documented by a meter, excluding any water lost in creating the well, bringing it on-line or re-working it in the future; or water lost due to equipment/pipe failure at the Property.

3.3. The royalty paid under this Agreement shall be fifteen cents (\$0.15) per 1,000 gallons of water produced.

3.4. Royalty payments will be made to Seller monthly by the Buyer, to be paid on or before the 15th day of the month succeeding the month for which the payment is being made. A statement showing the calculation of the payment, including the number of gallons produced, will be provided with the payment.

4. Term

4.1. The term of this Agreement shall begin on the date that the Buyer receives title to the Property and be in effect for as long as the Buyer produces water from the Property.

4.2. Due to the Buyer's substantial investment on the Property, it is agreed that no termination of this Agreement shall affect the Buyer's title to the Property or the Buyer's right to produce water therefrom.

4.3. Seller's sole remedy for a breach of this Agreement by the Buyer shall be an action for specific performance or breach of contract. Seller shall have no equitable remedies with regard to the Property or the Buyer's operations thereon.

4.4. In addition to an action for specific performance or breach of contract, the Buyer shall have the right to pursue equitable relief to stop or prevent Seller from violating any of the covenants contained in Section 2.1 above.

5. Water Meter

Buyer agrees to provide the Seller with one water meter on her land free of charge. However, Buyer shall be responsible for the cost of any piping or other items necessary to connect to the Buyer's water system except to the extent of any extensions provided by ordinances of the Buyer, and shall be obligated to pay the Buyer for water service received through the meter on the same terms as any other water customer of the Buyer.

Seller's Initials H.M. Buyer's Initials _____