



## EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM

### VOLUNTARY IRRIGATION SUSPENSION PROGRAM OPTION FORBEARANCE AGREEMENT (five-year term)

This Voluntary Irrigation Suspension Program Option Forbearance Agreement (“Agreement”) is entered into by and between the **EDWARDS AQUIFER AUTHORITY** (“EAA”), a conservation and reclamation district and political subdivision of the State of Texas, and \_\_\_\_\_ (“Permittee”, whether one or more), the person or entity that is shown by the official permitting records of the EAA as the owner of record of Permit No. \_\_\_\_\_ (“Permit”), attached hereto as Exhibit A. Each of these entities is, at times, referred to individually as a “Party,” and both are referred to collectively as “Parties.”

#### AGREEMENT

**NOW, THEREFORE**, for the mutual consideration expressed in this Agreement, the Parties agree as follows:

#### 1. PURPOSE

(a) The purpose of this Agreement is to implement and administer the Voluntary Irrigation Suspension Program Option (“VISPO”) wherein irrigators will be compensated to forbear exercising their right under permits issued by the EAA to make withdrawals from the Aquifer during times of certain droughts as defined in this Agreement. On March 18, 2013, the U.S. Fish and Wildlife Service issued Incidental Take Permit No. TE63663A-O (“ITP”) to the EAA, among others, under Section 10(a) (16 U.S.C.A. § 1539(a)) of the federal Endangered Species Act. The ITP authorizes the take of certain threatened and endangered species associated with the Aquifer incidental to the making of withdrawals from the Aquifer, and the management of such withdrawals, which are otherwise lawful activities under State law. A Habitat Conservation Plan (“HCP”) was filed with and supports the ITP. The HCP provides for, among other things, the implementation of various Conservation Measures identified in Chapter 5 of the HCP which are intended to minimize or mitigate the impact of the use and management of the Aquifer on the authorized taking of protected species under the ITP, or contribute to the recovery of such species. The VISPO is such a Conservation Measure, and under Subsection 5.1.2 of the HCP provides that the EAA will implement the VISPO.

(b) As used in this Agreement, the following terms have the following meanings:

(1) “Aquifer” means the Southern (or San Antonio) Segment of the Edwards Aquifer as defined in Subsection 1.03(1) of the Edwards Aquifer Authority Act (“EAA Act”) (Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended) within the boundaries of the EAA.

(2) “Forbear,” “forborne,” or “forbearance” means the complete curtailment of all or part of the right to make withdrawals of the pledged amount under Section 3(a) during a Forbearance Year under the Permit under the terms of this Agreement.

(3) “Withdraw,” “withdrawn,” or “withdrawal” means an act or a failure to act that results in taking groundwater from the Aquifer by or through man-made facilities, including pumping, withdrawing, or diversion.

## **2. TERM**

### **2.1 In General**

This Agreement is effective and commences on \_\_\_\_\_ (the Effective Date) and terminates on December 31, \_\_\_\_\_, subject only to the provisions of Section 2.2.

### **2.2 Early Termination**

(a) This Agreement may be terminated prior to the termination date stated in Section 2.1 due to decisions made pursuant to the Adaptive Management Process of the FMA as follows:

(1) if it is determined that the VISPO be discontinued as a Conservation Measure by the Implementing Committee of the Edwards Aquifer Habitat Conservation Plan Program under Subsection 7.12.4.f. of the FMA, the EAA may terminate this Agreement, in its sole discretion, by providing advance written notice of termination to the Permittee by July 1<sup>st</sup> of any year during the term of this Agreement, in which case this Agreement terminates on December 31<sup>st</sup> of the same year in which the notice is timely given; or

(2) if the VISPO is modified and such modification results in a material conflict with this Agreement, and the Parties are unable in good faith to renegotiate a modification to this Agreement to be consistent with the modified VISPO within 60 days from the date the EAA gives notice to the Permittee that the VISPO has been modified, either Party may terminate this Agreement by providing advance written notice of termination to the other Party by July 1<sup>st</sup> of any year during the term of this Agreement, in which case this Agreement terminates on December 31<sup>st</sup> of the same year in which timely notice is given.

(b) As used in this section and this Agreement, the following terms have the following meanings:

(1) “Adaptive Management Process” means the iterative process, as defined in Subsection 1.1.1 of the FMA, designed to develop information through monitoring and research, and the review and use of the results to confirm the efficacy of or to adjust the Conservation

Measures, all as described in Article Seven of the FMA and in Chapter 6 of the HCP.

(2) “FMA” means the Funding and Management Agreement by and among the Edwards Aquifer Authority, the City of New Braunfels, the City of San Marcos, the City of San Antonio, acting by and through its San Antonio Water System Board of Trustees, and Texas State University – San Marcos to fund and manage the Habitat Conservation Plan for the Edwards Aquifer Recovery Implementation Program (eff. Jan. 1, 2012).

### **3. PERMIT AMOUNT PLEDGED FOR FORBEARANCE**

(a) Under the terms of this Agreement, the Permittee hereby agrees to forbear making withdrawals from the Aquifer under the Permit during a Forbearance Year in the total amount of \_\_\_\_\_ acre feet per annum (“AF/annum”) distributed as \_\_\_\_\_ AF/annum of Base Irrigation Groundwater (“BIG”) and \_\_\_\_\_ AF/annum of Unrestricted Irrigation Groundwater (“UIG”), as defined in Section 702.1 of the EAA’s rules. The Permittee agrees and acknowledges that this amount of groundwater is authorized and available to the Permittee under the Permit for withdrawal from the Aquifer, and by virtue of the Permittee’s decision to enter into this Agreement, the Permittee will be unable to withdraw this amount from the Aquifer during a Forbearance Year.

(b) The forbearance of the right to make withdrawals of groundwater from the Aquifer under the Permit in the amount stated in Subsection (a) will be administered by the EAA as provided in Section 6.

(c) Unless the Permittee opts out under Section 5(e), while a Forbearance Year is in effect, the Permittee agrees to and shall:

(1) forbear the right to make withdrawals of groundwater from the Aquifer under the Permit in the amount stated in Subsection (a); and

(2) authorize the EAA to require and enforce the forbearance of the right to make such withdrawals.

(d) Except as provided in this section, no rights under the Permit shall be subject to any duty to forbear under the terms of this Agreement. All withdrawal rights remaining under the Permit, if any, that are not pledged for forbearance under Subsection (a), will be subject to the requirements of the EAA Act and the applicable EAA rules. Additionally, during a year other than a Forbearance Year, all rights under the Permit, whether or not pledged for forbearance, likewise will be subject to the requirements of the EAA Act and the applicable EAA rules.

### **4. STANDBY FEE AND FORBEARANCE PAYMENTS**

#### **4.1 Standby Fees**

(a) Subject to the terms of this Agreement, the EAA agrees to pay to the Permittee the sum of \_\_\_\_\_ and \_\_\_/100 Dollars

(\$ \_\_\_\_\_) per year during the term of this Agreement (“Standby Fees”), which Standby Fees shall be payable in accordance with this section. The Standby Fees are based on FIFTY and No/100 Dollars (\$50.00) per AF/annum of the permitted rights pledged for forbearance under Subsection 3(a). The EAA will make all payments under this section only to the Permittee regardless of the well level at Well J-17 (State well number AY-68-37-203 located in Bexar County). The first Standby Fees payment shall be made no later than March 1<sup>st</sup> of the Initial Payment Year. Subsequent Standby Fees payments shall be made no later than March 1<sup>st</sup> of each calendar year during the term of this Agreement, beginning with the March 1<sup>st</sup> of the year immediately following the Initial Payment Year. Standby Fees shall be adjusted for a 1.50 percent (%) increase, compounded annually for the years that have elapsed since the Initial Payment Year.

(b) As used in this section, “Initial Payment Year” means the first year immediately following the year in which this Agreement becomes effective.

#### **4.2 Forbearance Payments**

Subject to the terms of this Agreement, if a Forbearance Year is declared pursuant to Section 5, the EAA agrees to pay to the Permittee the sum of \_\_\_\_\_ and \_\_\_/100 Dollars (\$ \_\_\_\_\_) for each Forbearance Year during the term of this Agreement (“Forbearance Payments”), which Forbearance Payments shall be payable in accordance with this section. The Forbearance Payments are based on ONE HUNDRED FIFTY and No/100 Dollars (\$150.00) per AF/annum of the permitted rights pledged for forbearance under Subsection 3(a). The EAA will make all payments under this section only to the Permittee and only in a Forbearance Year. Forbearance Payments shall be made no later than March 1<sup>st</sup> of a Forbearance Year. Forbearance Payments shall be adjusted for a 1.50 percent (%) increase, compounded annually for the years that have elapsed since the Initial Payment Year.

#### **5. FORBEARANCE YEARS**

(a) As used in this Agreement, “Forbearance Year” means a calendar year during which all or part of the right to make withdrawals of groundwater from the Aquifer under the Permit is suspended as provided in Section 3, and as administered under Section 6.

(b) On October 1<sup>st</sup> of each calendar year during the term of this Agreement, the EAA shall calculate the maximum daily well level at Well J-17. If the maximum daily well level at Well J-17 is equal to or less than 635 feet mean sea level (“msl”), the General Manager of the EAA shall promptly issue a notice of commencement of a Forbearance Year. A Forbearance Year commences on January 1<sup>st</sup> of the year immediately following the year in which the General Manager issues the notice of commencement.

(c) If, on October 1<sup>st</sup> of a Forbearance Year, the maximum daily well level at Well J-17 is greater than 635 feet msl, the General Manager shall promptly issue a notice of expiration of a Forbearance Year. A Forbearance Year expires on December 31<sup>st</sup> of the year in which the General Manager issues the notice of expiration.

(d) Notice of the issuance of notices of commencement and expiration shall be promptly given to the Permittee by email, if available, U.S. certified mail, postage prepaid, return receipt requested, and by posting on the EAA's internet site.

(e) The Permittee may opt out of a Forbearance Year if:

(1) the maximum daily water level at Well J-17 is equal to or greater than 660 feet msl on January 1<sup>st</sup> of the Forbearance Year; and

(2) on or before January 15<sup>th</sup>, the Permittee gives written notice to the EAA of his or her intent to opt out of the Forbearance Year. If the Permittee elects to opt out of a Forbearance Year, the Permittee shall have no right to receive from the EAA any Forbearance Payments under Section 4.2 for that Forbearance Year.

## **6. ADMINISTRATION OF RIGHTS UNDER THE PERMIT**

### **6.1 Transfers**

(a) The Permittee warrants and represents that:

(1) the Permittee has not previously transferred to a third-party, including by sale, lease, or other assignment, any rights under the Permit that continue to remain in full force and effect as of the Effective Date of this Agreement for which the Permittee has not previously filed with the EAA a transfer application that has been approved by the EAA under Subchapter L of Chapter 711 of the EAA's rules; and

(2) a third-party has not previously transferred to the Permittee, including by sale, lease, or other assignment, any rights to make withdrawals from the Aquifer under another permit issued by the EAA at a point of withdrawal authorized under the Permit that continue to remain in full force and effect as of the Effective Date of this Agreement for which the third-party has not previously filed with the EAA a transfer application that has been approved by the EAA under Subchapter L of Chapter 711 of the EAA's rules.

(b) Rights pledged under Section 3(a) of this Agreement may be sold, leased, or otherwise assigned by the Permittee to a third-party. Any such transfer shall be processed as provided by the applicable provisions of Subchapter L of Chapter 711 of the EAA's rules. The EAA may not withhold approval except as is provided by those rules. However, in its approval of the transfer of the pledged rights, the EAA may condition the approval upon the Permittee's lessee or other transferee or assign taking subject to the terms of this Agreement. The EAA will promptly give written notice to the Permittee's lessee or other transferee or assign that they take subject to the terms of this Agreement. Failure to give such notice does not waive any duty by the Permittee's lessee or other transferee or assign to comply with the terms of this Agreement.

(c) Rights to make withdrawals from the Aquifer under another permit issued by the EAA at a point of withdrawal authorized under the Permit may be sold, leased, or otherwise assigned by a third-party to the Permittee without regard to the fact that this Agreement is in

effect. Any such transfer shall be processed as provided by the applicable provisions of Subchapter L of Chapter 711 of the EAA's rules. The EAA may not withhold approval except as is provided by those rules.

(d) The Permittee, and his or her lessees or other transferees or assigns, and the EAA shall take all further actions and shall execute and deliver to the other any document which is necessary or useful to fully carry out the transfers referenced in this section, including any amendments to this Agreement, the Permit, or other permits issued by the EAA.

## **6.2 Groundwater Trust**

(a) Unless the Permittee opts out under Section 5(e), upon the commencement of a Forbearance Year under Section 5(b), the Parties agree that the amount of the Permit pledged for forbearance in Section 3(a) will be transferred into the Groundwater Trust of the EAA. However, this will not result in a transfer of any right, title, or interest to the EAA, and all right, title and interest in the portion of the Permit transferred will remain in the Permittee. The unpledged portion of the Permit, if any, as provided in Section 3(d) shall not be affected in any manner by the terms of this Agreement. The EAA will promptly give written notice to the Permittee, and his or her lessees or other transferees or assigns, if any, of any rights transferred into the Trust under this subsection. Failure to give such notice does not waive any duty by the Permittee or any transferee to comply with the terms of this Agreement.

(b) The portion of the Permit transferred into the Groundwater Trust under Subsection (a) shall remain in the Trust beginning on January 1<sup>st</sup> of any Forbearance Year and shall continue in trust through December 31<sup>st</sup> of the same Forbearance Year.

(c) Upon transfer of the portion of the Permit transferred under Subsection (a) into the Groundwater Trust, and while a Forbearance Year remains in effect, neither the Permittee, nor his or her lessees or other transferees or assigns, shall have any right to withdraw groundwater from the Aquifer pursuant to the portion of the Permit transferred into the Trust.

(d) Upon transfer of the portion of the Permit transferred under Subsection (a) into the Groundwater Trust, and while a Forbearance Year remains in effect, the EAA:

(1) may not authorize the Permittee or any other person to withdraw groundwater from the Aquifer under the portion of the Permit transferred into the Trust;

(2) may not on its own accord sell, lease, transfer, or otherwise assign the portion of the Permit in trust to a third-party;

(3) may, at the request of the Permittee, process and approve a transfer of the portion of the Permit in trust to a third-party in accordance with Subchapter L of Chapter 711 of the EAA's rules, and give the written notice required under Section 6.1(b); and

(4) shall exclude the portion of the Permit in the Trust when calculating the Permittee's authorized groundwater withdrawal amounts under the Permit for purposes of

Section 715.218 of the EAA's critical period management rules.

(e) Upon the expiration of a Forbearance Year under Section 5(d), the Parties agree that the amount of the Permit pledged for forbearance in Section 3(a) will be transferred from the Groundwater Trust to the Permittee. Upon transfer from the Trust, as provided in Subsection 3(d) the Permittee, or his or her lessees or other transferees or assigns, may make withdrawals from the Aquifer under the Permit of the amount pledged for forbearance in Section (3)(a) during a year other than a Forbearance Year without regard to the duty to forbear under this Agreement and subject to administration by the EAA only under the EAA Act and the applicable EAA rules. The EAA will promptly give written notice to the Permittee, and his or her lessees or other transferees or assigns, if any, of any rights transferred from the Trust under this subsection.

(f) As used in this section, "Groundwater Trust" means the trust established and administered by the EAA under Subchapter N of Chapter 711 of the EAA's rules.

### **6.3 Groundwater Accounting**

The EAA shall account for all withdrawals of groundwater from the Aquifer under the Permit regardless of whether made by the Permittee, his or her lessees or other transferees or assigns, or any other person, and whether or not authorized by the Permittee. The EAA shall prepare and maintain annual groundwater withdrawal accounting records as necessary to determine the amounts of Aquifer groundwater withdrawn and forborne from withdrawal under the Permit during each calendar year during the term of this Agreement. The Permittee, and his or her lessees or other transferees or assigns, shall fully cooperate in the gathering and furnishing to the EAA of any information pertinent to the preparation of such records. Upon reasonable notice of the Permittee, the EAA will make available for inspection and copying by the Permittee or his or her representative all records developed under this section.

### **6.4 Metering and Reporting**

(a) If the amount of the Permit pledged for forbearance in Section 3(a) is less than the total authorized groundwater withdrawal amount of the Permit, the determination of the amount of groundwater withdrawn from the Aquifer under the Permit during any calendar year during the term of this Agreement may be based on the withdrawals recorded by real time automated meters installed by the EAA, at its sole discretion, on the points of withdrawals authorized under the Permit. In the event the EAA chooses to install such automated meters, it will own, design, purchase, install, operate, and maintain the meters at its sole expense. Once installed, the EAA will make meter readings at any time during each year during the term of this Agreement, whether or not a Forbearance Year, as may, in its discretion, be necessary and appropriate to determine and ensure the accuracy of the amount of groundwater that has been withdrawn from the points of withdrawal authorized under the Permit during the calendar year. The Parties agree that the EAA will, from time to time, provide quality assurance/quality control techniques for the withdrawal measurements as may, in its discretion, be necessary and appropriate to ensure the accuracy of the readings and reporting. Until the EAA has installed the real time automated meters, the provisions of Subsection (b) will be used to determine the amount of groundwater withdrawn from the Aquifer under the Permit.

(b) If the amount of the Permit pledged for forbearance in Section 3(a) is equal to the total authorized groundwater withdrawal amount of the Permit, during a year other than a Forbearance Year, the determination of the amount of groundwater withdrawn from the Aquifer under the Permit during any calendar year during the term of this Agreement will be made by the EAA based on meter readings from EAA-owned meters installed on the points of withdrawal authorized under the Permit and reported in accordance with the provisions of Subchapter M of Chapter 711 of the EAA's rules. During a Forbearance Year, the Permittee shall continue to report use in accordance with the provisions of Subchapter M of Chapter 711 of the EAA's rules, however, meter readings may also be made by the EAA on the frequency as, in the sole discretion of the EAA, may be determined to be appropriate to ensure compliance with this Agreement.

(c) If the Permittee has no points of withdrawal authorized under the Permit as of the Effective Date of this Agreement the amount of groundwater withdrawn from the Aquifer under the Permit during a calendar year shall be deemed to be zero. However, if during the term of this Agreement the Permittee installs points of withdrawal that are authorized under the Permit, or leases or otherwise transfers or assigns all or part of the right to withdraw groundwater from the Aquifer under the Permit to a third-party who has authorized points of withdrawal under another permit issued by the EAA, the provisions of Subsections (a) and (b) begin to apply to the Permittee, or his or her lessee or other assign, immediately upon the effective date of the lease or other assignment as determined by the EAA.

## **7. GENERAL PROVISIONS**

### **7.1 To Whom the Duty to Forbear Applies**

The terms of this Agreement apply to the following persons or entities:

- (A) the Permittee;
- (B) the Permittee's lessees or other transferees or assigns of any rights under the Permit after the Effective Date of this Agreement;
- (C) the Permittee's lessees or other transferees or assigns of any rights under the Permit before the Effective Date of this Agreement, if the lessee, transferee or other assign acknowledges in writing on a form prescribed by the EAA that he or she is subject to the terms of this Agreement; and
- (D) any other person or entity who makes withdrawals under the Permit, whether or not authorized by the Permittee, and whether the withdrawals are made by, for, or on behalf of the Permittee.

### **7.2 Legal Authority to Enter into Agreement**

The Parties warrant and represent that each Party has all requisite legal authority to enter into and to perform its obligations under this Agreement without the consent or joinder of any



other person or entity; that it is authorized by law to execute this Agreement; that its execution of this Agreement has been duly authorized by appropriate action of its governing body or other appropriate official; and that it has taken all necessary official action to approve this Agreement.

### **7.3 Binding Effect**

This Agreement is binding on and inures to the benefit of the Parties and their respective successors, representatives, transferees, and other assigns.

### **7.4 Access to Property**

The Permittee authorizes the EAA, through any of its authorized officers, agents, employees, or representatives, to enter upon the Permittee's property identified as the place of use in the Permit for the purposes of installing, operating, maintaining, reading, repairing, rehabilitating, or replacing its meters, and to ensure compliance with this Agreement. The entry may be at any reasonable time for this purpose. The persons conducting such entry shall notify the Permittee, or his or her representative, of their presence, present proper identification, and conduct such entry with due regard for the safety of the premises and its occupants. The employees or representatives of the EAA that enter the Permittee's property shall remain on established roads, paths, and well sites at all times and are prohibited from hunting or removing any artifacts, or any plant or animal species from the Permittee's property. No third-party riders are allowed to accompany EAA employees or representatives.

### **7.5 Remedies**

Each Party shall have those remedies that may be provided by applicable law, except that termination or rescission of this Agreement shall not be a remedy as long as the ITP is in effect. Moreover, if the Permittee fails to meet its forbearance obligations under this Agreement, then the Permittee acknowledges that a breach of this Agreement has occurred and that the EAA will consider this breach to be an unauthorized withdrawal of groundwater from the Aquifer. In such an event, the EAA may choose to process the unauthorized withdrawal under its enforcement procedures. If the EAA chooses to process the breach as an enforcement matter, the Permittee acknowledges that the EAA is not waiving any other rights or remedies it may have under applicable law or this Agreement to enforce the terms of this Agreement.

### **7.6 Payment Default – Notice and Opportunity to Cure**

If the EAA fails to make any payment in the required amount when due under this Agreement, the Permittee may, without prejudice to any other right or remedy it may have under this Agreement, provide written notice of default to the EAA. The EAA has sixty (60) days from receipt of the notice within which to remedy the default.

### **7.7 Waiver**

The failure on the part of either Party to require the performance by the other of any portion of this Agreement shall not be deemed a waiver of, or in any way affect that Party's

rights to enforce such provision. Any waiver by either Party of any provision of this Agreement shall not be a waiver of any other provision hereof.

### **7.8 Payments from EAA Revenue**

The Parties agree that the cost of funding this Agreement will be paid solely from Program Aquifer Management Fees of the EAA, or other contributions, as provided in Article 5 of the FMA. The Permittee does not have the right to demand payment by the EAA of any obligations imposed upon the EAA under this Agreement from any funds raised or to be raised by taxation unless otherwise authorized by law. The EAA's obligation under this Agreement will never be construed to be a debt of the EAA of such kind as to require it under the Constitution and laws of the State to levy and collect an ad valorem tax to discharge such obligation.

### **7.9 Rights Regarding Books and Records**

The EAA will authorize the Permittee upon reasonable notice to examine and copy at the Permittee's sole expense, in accordance with the EAA's standard copy fee schedule, all the books and records kept by the EAA regarding this Agreement. In addition, upon reasonable prior written notice to the EAA, the Permittee may conduct a complete audit of the books and records. Any such audit will be at the Permittee's sole expense and will be prepared by a certified public accounting firm. If the audit report discloses actual errors in the books and records of the EAA such that the payments made to the Permittee are in error, then such error will be corrected for the period up to four years after the erroneous payment was paid and all payments reconciled over the subsequent twelve month period beginning with the EAA's fiscal year. If the error identified in the audit is greater than the cost of the audit, the EAA will reimburse the Permittee's cost of the audit.

### **7.10 Modification**

This Agreement may be amended only by written agreement of the Parties. No change, amendment, or modification of this Agreement will be made or be effective that will: (a) cause this Agreement to diverge from or create an inconsistency with the HCP; or (b) affect adversely the prompt payment when due of all money required to be paid by the EAA under the terms of this Agreement.

### **7.11 Administration of this Agreement; Addresses and Notice**

(a) The EAA and the Permittee hereby appoint the persons below as their Agreement Administrators to coordinate their respective activities hereunder. The EAA and the Permittee each agree to fully cooperate and to meet as needed for the purpose of sharing information and coordinating administration and implementation of this Agreement. The Agreement Administrators and their addresses are as follows:

**For the EAA:**

Executive Director – Threatened and Endangered Species  
Edwards Aquifer Authority  
900 E. Quincy  
San Antonio, Texas 78215

**For the Permittee:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If a Party changes its address or Agreement Administrator it will provide at least five days’ written notice to the other Party.

(b) Any notices to be given hereunder shall be given by placing the notice in the United States mail, certified or registered, properly stamped and addressed to the address shown below or such other addresses as the respective Party may direct in writing to the other, by overnight delivery service, or by personal delivery to such address. Notice shall be deemed effective upon such placing in the mail, on the next business day following delivery and acceptance for next day delivery by any overnight delivery service, or upon actual delivery if by personal delivery. Notice may also be given by electronic communication or in any other manner and will be effective only if and when receipt is acknowledged by the Party to be notified.

**7.12 Severability**

The Parties agree that in case any one or more of the sections, clauses, or words of this Agreement, or their application to any situation, is held to be, for any reason, invalid, such invalidity will not affect any other sections, clauses, or words of this Agreement or their application. It is intended that this Agreement will be severable and will be construed and applied as if any such invalidity had not been included herein, and the rights and obligations of the Parties hereto will be construed and remain in force accordingly.

**7.13 Entire Agreement**

This Agreement constitutes the entire agreement among the Parties with respect to the matters described herein.

**7.14 Record Notice**

The EAA may, in its sole discretion, record of public record a memorandum of this Agreement with the County Clerk of the county in which the Permittee’s property identified as the place of use in the Permit and on which the points of withdrawal subject to forbearance under this Agreement is located.

**7.15 Applicable Law; Venue**

This Agreement will be governed by and construed in accordance with the laws of the State of Texas, and the obligations, rights, and remedies of the Parties hereunder will be determined in accordance with such laws, and this Agreement as provided in Section 7.5, without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations. The Parties also specifically agree that in the event that any legal proceeding is brought to enforce this Agreement, the same will be brought in Bexar County, or the county in which the Permittee’s property identified as the place of use in the Permit and on which the points of withdrawal subject to forbearance under this Agreement is located.

**7.16 No Third Party Beneficiary**

This Agreement is not intended to confer any rights, privileges or causes of action upon any third party other than the Parties.

**7.17 Counterparts**

This Agreement may be executed by the Parties in any number of counterparts, each of which when so executed and delivered shall be deemed an original instrument, but all such counterparts together shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date first set forth hereinabove.

**EDWARDS AQUIFER AUTHORITY**

By: \_\_\_\_\_  
Roland Ruiz  
General Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Jennifer Wong-Esparza  
Assistant to Board Secretary

Date: \_\_\_\_\_

*[additional signatures on next page]*

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

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

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

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGEMENT**

**STATE OF TEXAS**

**COUNTY OF BEXAR**

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_, by Roland Ruiz, General Manager of the Edwards Aquifer Authority, known personally to me to be the person who subscribed to this instrument, on behalf of the Edwards Aquifer Authority.

Notary Seal

\_\_\_\_\_  
Notary Public, State of Texas

**STATE OF TEXAS**

**COUNTY OF \_\_\_\_\_**

This instrument was acknowledged before me on \_\_\_\_\_, 201\_\_, by \_\_\_\_\_, the Permittee, known personally to me to be the person who subscribed to this instrument, on behalf of the Permittee.

Notary Seal

\_\_\_\_\_  
Notary Public, State of Texas

*[additional signatures on next page]*

**NOTICE TO PERMITTEE**

**AS A PERMITTEE OF THE EDWARDS AQUIFER AUTHORITY, YOU ARE ADVISED TO SEEK THE ADVICE AND GUIDANCE OF A QUALIFIED ATTORNEY BEFORE AGREEING TO THE TERMS OF THIS VOLUNTARY IRRIGATION SUSPENSION PROGRAM OPTION FORBEARANCE AGREEMENT. IF YOU ENGAGE AN ATTORNEY, THERE IS A PLACE BELOW FOR YOUR ATTORNEY TO SIGN THIS AGREEMENT APPROVING IT AS TO FORM, OTHERWISE PLEASE WRITE "NONE" ON THE SIGNATURE LINE.**

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Darcy Alan Frownfelter  
General Counsel  
For the Edwards Aquifer Authority

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

\_\_\_\_\_  
For the Permittee

**EXHIBIT A**

Permit No. \_\_\_\_\_

*[attach permit]*