



**EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM**

**LEASE OF PERMITTED EDWARDS GROUNDWATER RIGHTS**

(Beginning \_\_\_\_\_ (*post-January 1, 2013* \_\_-year lease))

This Lease of Permitted Edwards Groundwater Rights ("Lease") is entered into and is effective on the date set out in Paragraph 3, by and between \_\_\_\_\_, the person or entity that is shown by the official permitting records of the Edwards Aquifer Authority as the owner of record of Permit No. \_\_\_\_\_ ("Permit", attached hereto as Exhibit "A") (hereinafter referred to as "Lessor", whether one or more) and the Edwards Aquifer Authority, a conservation and reclamation district and political subdivision of the State of Texas, (hereinafter referred to as "Lessee"). Each of these entities is, at times, referred to individually as a "party," and both are referred to collectively as "parties." Lessor hereby leases to Lessee \_\_\_\_\_ acre feet per annum ("AF/annum") of \_\_\_\_\_ of the Permit, fully transferable permitted Edwards groundwater rights ("Groundwater Rights"), appurtenant to the Property described below, on the following terms and conditions:

1. **Property.** The Property consists of all property rights to and for the Edwards Aquifer groundwater which relates to the real property described as the place of use in Exhibit "A" ("Real Property"), including the right to withdraw and beneficially use \_\_\_\_\_ AF/annum of permitted Edwards groundwater rights pursuant to the Permit, and all real and personal property rights, appurtenances, permits, authorities, licenses, consents and contracts, if any, pertaining to all such property rights.
2. **Lease of Permitted Groundwater Rights.** The lease of the Groundwater Rights, as defined above, shall expressly include all or the portion of the Permit which has been leased under this Lease, and all modifications, transfers, amendments, conversions, consolidations, corrections, renewals, extensions or successor or substitute permits relating to the Permit, and the right of the Lessee to withdraw and beneficially use the Groundwater Rights pursuant to this Lease.
3. **Term.**
  - (a) Subject to subsection (b), the Term of this Lease shall be for a period of \_\_\_\_\_ ( ) years commencing on \_\_\_\_\_ ("Effective Date"), and continuing through December 31, \_\_\_\_\_. Each consecutive 12 month period from January 1, \_\_\_\_\_, is a Lease Year.
  - (b) This Lease may be terminated prior to the term stated in subsection (a) due to decisions made pursuant to the Adaptive

Management Process of the FMA<sup>1</sup> only as follows:

(1) if it is determined that the San Antonio Water System (“SAWS”) ASR for Springflow Protection Program (*see* HCP § 5.5) Program (“ASR Program”) be discontinued as a Conservation Measure by the Implementing Committee of the Edwards Aquifer Habitat Conservation Plan Program under Section 7.12.4.f of the FMA, Lessee may terminate this Lease, in its sole discretion, by providing advance written notice of termination to Lessor by July 1<sup>st</sup> of any year during the Term of this Lease, in which case this Lease terminates on December 31<sup>st</sup> of the same year in which the notice is timely given; or

(2) if the ASR Program is modified and such modification results in a material conflict with this Lease, and the parties are unable in good faith to renegotiate a modification to this Lease to be consistent with the modified ASR Program within 60 days from the date Lessee gives notice to Lessor that the ASR Program has been modified, either party may terminate this Lease 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 Lease, in which case this Lease terminates on December 31<sup>st</sup> of the same year in which the notice is timely given.

**4. Lease Payment.**

(a) Subject to the terms of this Lease and except as provided in subsection (b), Lessee agrees to pay to Lessor the sum of \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_\_) per year during the Term of this Lease (“Lease Payments”), which Lease Payments shall be payable in accordance with the following terms in subsections (b) and (c). The Lease Payments are based upon \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_\_) per AF/annum of the Groundwater Rights leased to Lessee.

(b) The first Lease Payment shall be determined based on the number of AF to be leased under the Permit that on the date Lessee approves the Transfer Application have not been previously withdrawn by the Lessor, or Lessor’s lessees or other assigns, during the initial calendar year as verified by meter readings taken by the Lessee. This calculation results in a first Lease Payment for \_\_\_\_\_ of (\$\_\_\_\_\_). The first Lease Payment shall be made within thirty (30) days following the

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<sup>1</sup> For purposes of this Lease, “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). “Adaptive Management Process” or “AMP” means the iterative process 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 Habitat Conservation Plan (“HCP”). *See* FMA § 1.1.1. The HCP that is in effect for purposes of this Lease is that which accompanies the application for an Incidental Take Permit (“ITP”) approved by the U.S. Fish and Wildlife Service on March 18, 2013, and assigned Permit No. TE63663A-O.

date Lessee approves the Transfer Application reflecting the terms set out herein.

(c) The subsequent Lease Payments shall be made no later than January 31<sup>st</sup> of each Lease Year during the Term of this Lease, beginning January 1<sup>st</sup> of the year immediately following the year in which Lessee made the first Lease Payment.

5. **Aquifer Management Fees.** During the Term of this Lease, Lessor shall have no duty to pay any aquifer management fees assessed by Lessee relative to the Groundwater Rights.
6. **Defense of Rights.** Lessee shall have the right to initiate and prosecute any proceedings relating to the Groundwater Rights and, at its election, the Property as may be necessary for the protection of the Groundwater Rights, including but not limited to protecting, defending, or preserving the rights to withdraw groundwater from the Edwards Aquifer and place it to beneficial use. If Lessee elects to act with respect to the Property, Lessee shall give Lessor written notice of such election; provided, however, in no event shall Lessee be required to give notice to Lessor of its actions with respect to the Groundwater Rights leased hereunder. If Lessee elects to act with regard to the Property or Groundwater Rights, Lessor shall cooperate with Lessee's efforts in connection therewith. Lessor shall not take any action or omit to take any actions which will adversely affect the Property or Groundwater Rights. If required by law, Lessee may take any such action in the name of Lessor. Unless otherwise required by law, Lessee shall not be required to take any such action with respect to the Property or Groundwater Rights on behalf of Lessor. Lessee shall in no event be deemed to be the agent of Lessor or as having any duty or responsibility to Lessor or to act on behalf of Lessor. To the extent Lessee elects to act in connection with the Property, Lessor appoints Lessee as Lessor's attorney-in-fact to take such action.
7. **Processing of Lease.** Lessor shall be responsible for filing with Lessee an original of this Lease executed by Lessor and a proposed memorandum of lease along with the Transfer Application. Lessor shall not be required to pay any application fees of Lessee to file the Transfer Application. Lessee shall process the Transfer Application in accordance with Lessee's rules. During Lessee's review and processing of the Transfer Application, Lessor shall furnish to Lessee copies of all documents related to the Property or Groundwater Rights as Lessee, in its discretion, may require to process the Transfer Application, including pending litigation or other matters which adversely affect the Property or Groundwater Rights. If the Transfer application is approved as filed, Lessee shall execute this Lease and return a fully executed copy to Lessor. If during the review of the Transfer Application, the Transfer Application cannot be approved as filed, Lessee will in

writing give notice to Lessor in accordance with Lessee's rules. This Lease shall not be effective until the Lessee has executed this Lease after it has approved the Transfer Application.

8. **Continued Operation.** From the date of execution of this Lease by Lessor and continuing thereafter during the Term of this Lease, Lessor shall not take any actions (or omit to take any actions) which will harm or diminish the Property or Groundwater Rights. During the Term of this Lease, Lessor shall have a continuing duty to furnish to Lessee notice of all matters or actions related to or affecting the Groundwater Rights, including, without limitation, actual or threatened litigation or administrative actions, within five (5) business days of the date Lessor becomes aware of such matters or actions. Lessor agrees to furnish to Lessee information concerning and copies of all documents pertaining to such matters or actions within five (5) business days of the date that Lessee requests such information or documents. Lessor additionally agrees and acknowledges that it has leased the Groundwater Rights to Lessee and that Lessor shall not transfer the Property or Groundwater Rights, nor shall Lessor make any withdrawals of any Groundwater Rights leased hereunder, nor otherwise authorize or allow any other third-party to withdraw such groundwater. Any such unauthorized withdrawals shall constitute a violation of this Lease, and the applicable rules of Lessee.
9. **Quiet Enjoyment.** Lessor does hereby warrant and represent to Lessee that it has good title to the Property and Groundwater Rights leased to Lessee hereunder and does hereby covenant to provide to Lessee quiet enjoyment, without restriction or limitation, of the Property and Groundwater Rights during the full Term of this Lease, subject only to any matters of record in the Official Public Records of \_\_\_\_\_ County, Texas, as of the Effective Date hereof.
10. **Proceeds From Awards.** Lessor assigns to Lessee all interest of Lessor in and to any condemnation awards or insurance proceeds which relate to Lessee's interest in the Groundwater Rights which are allocated to the value of Lessee's interest in this Lease.
11. **Cooperation.** Lessor will use its best efforts, take such actions, and execute and deliver such documents Lessee determines necessary to fully vest Lessee with the Groundwater Rights and make effective all of the terms of this Lease. In the event that the Property or the Groundwater Rights is burdened by a mortgage or deed of trust, and the holder of such mortgage and deed of trust has not previously released their lien on the Groundwater Rights, Lessor shall use best efforts to obtain and deliver to Lessee a Subordination, Nondisturbance and Attornment Agreement, in form and content acceptable to Lessee, executed by Lessee and the applicable holder of such mortgage or deed of trust.

12. **Assignability.** Lessee shall have the right to sublease or assign this Lease, and shall give to Lessor prompt written notice of such sublease or assignment.

13. **Notices.** 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:

Lessor:

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

Lessee:

Edwards Aquifer Authority  
900 E Quincy  
San Antonio, Texas 78215  
Attn: General Manager

14. **Taxes.** All taxes, charges, or assessments upon the Property and Groundwater Rights shall be the continuing responsibility of Lessor. Lessee shall not be liable for any taxes, charges, or assessments upon the Property or Groundwater Rights.

15. **Liens.** Lessor and Lessee shall promptly pay when due all items for which they are responsible which may result in the placement of a lien on the Property or Groundwater Rights. If Lessor or Lessee fails to pay any such item, including but not limited to any tax, charge or assessment, or any mechanic's or materialmen's expenses, or if a lien is placed upon the Property or Groundwater Rights, the non-defaulting party shall have the right to make such payment and the defaulting party hereby covenants to reimburse the non-defaulting party, upon demand, for any amount so expended or paid, with interest thereon at the highest legal rate per annum from the date of such payment until the date of such reimbursement.

16. **Default.** If for any reason Lessor fails to comply with any of the provisions of this Lease, Lessee, at its election, may exercise all rights which may be available to it at law or in equity, including termination of this Lease. If Lessee fails to comply with any provision of this Lease and such failure continues for a period of thirty (30) days after receiving written notice of such failure from Lessor, Lessor may, as its sole and exclusive remedy terminate this Lease and receive the Lease Payments which are due and

payable and have accrued through that date.

17. **Waiver.** The failure on the part of either party to require the performance by the other of any portion of this Lease 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 Lease shall not be a waiver of any other provision hereof.
18. **Severability.** The invalidity or unenforceability of any provision of this Lease shall not affect the validity or enforceability of any other provision of this Lease.
19. **Governing Law.** This Lease shall 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 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 Lease, the same will be brought in Bexar County, or the county in which Property is located.
20. **Binding Effect.** This Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
21. **Authority.** Each of the persons signing on behalf of Lessor and Lessee hereby confirm that they have the authority to execute this Lease on behalf of the party indicated by their signature and have the authority to bind such party thereto.
22. **Survival.** Except as set out herein, all agreements and representations in this Lease shall survive the end of the Term.
23. **Force Majeure.** If Lessee is denied its use of all or a part of the Groundwater Rights by reason of any laws, regulations, or governmental action or other acts outside of the control of Lessee, other than any limitation or prohibition on the use or withdrawal of any of the Groundwater Rights during any Critical Period Stage imposed by Lessee pursuant to its rules, then Lessee and Lessor shall be excused from their obligations hereunder for so long as these circumstances exist.
24. **Further Assurances.** Lessor and Lessee shall take all further actions and shall execute and deliver to the other any other document or instrument which Lessee determines to be necessary or useful to fully carry out the transactions evidenced by this Lease, including any amendments to the Permit, in conformance with applicable Lessee rules, or any documentation required by Lessor in order to evidence the termination of Lessee's interest in the Groundwater Rights upon the termination of this Lease. In addition,

Lessor agrees to amend this Lease in any manner necessary to cause this Lease to be in compliance with Lessee rules. Lessee shall have the authority to file a Memorandum of Lease of public record to reflect its interest in the Property and Groundwater Rights as set out under the terms of this Lease. Lessor agrees to execute any such form of Memorandum of Lease provided by Lessee.

25. **Attorneys Fees.** If any action at law or in equity is brought to enforce or interpret a provision of this Lease, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and other necessary litigation disbursements in addition to any relief to which it may be entitled.
26. **Entire Agreement.** This Lease contains all agreements between the parties and any agreement not contained herein shall not be recognized by the parties. The captions used herein are for convenience only and shall not be used to construe this Lease. Words of gender shall be construed to include any other gender, and words in the singular number shall include the plural and vice versa unless the context requires otherwise.
27. **Counterparts.** This Lease 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.

**Lessor:**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[additional signatures on next page]*

STATE OF TEXAS                                   §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by\_\_\_\_\_.

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

**Lessee:**

EDWARDS AQUIFER AUTHORITY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS                               §  
COUNTY OF BEXAR                         §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the General Manager of the Edwards Aquifer Authority.

Notary Public, State of Texas



**EXHIBIT “A”**

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