

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE EDWARDS AQUIFER AUTHORITY  
AND  
HERITAGE COMMODITY, LLC  
FOR THE DEVELOPMENT OF METHODOLOGIES TO ADDRESS UNCERTAINTIES  
ASSOCIATED WITH THE POTENTIAL DEVELOPMENT OF AN AQUIFER  
STORAGE AND RECOVERY PROJECT ORIGINATING IN VAL VERDE COUNTY,  
TEXAS.**

This Memorandum of Understanding (“MOU”) is made by and between Heritage Commodity, LLC (“Heritage”) and the Edwards Aquifer Authority (“EAA”) (individually each a “Party”, and collectively the “Parties”). Heritage is a domestic limited liability company with its principal offices located at 6 River Crossing, Boerne, Texas 78006. The EAA is a political subdivision of the State of Texas that was created to, among other things, manage withdrawals from and injection into the Edwards Aquifer (“Aquifer”), and provide for the protection of the federally-listed endangered and threatened species associated with the Aquifer and the springs and river ecosystems associated therewith, and has its principal offices located at 900 E. Quincy, San Antonio, Texas 78215.

**1. Background.**

The EAA was created to manage, conserve, preserve, and protect the Aquifer and to increase the recharge of, and prevent the waste or pollution of water in the Aquifer. Heritage was formed for the purpose of developing a groundwater resource underlying property owned or controlled by it within Val Verde County, Texas.

The EAA Act, EAA rules, and other applicable law, allow the EAA to enter into contracts that authorize the increase and management of waters recharged into, stored in, and recovered from the Aquifer. Heritage is exploring a potential project that would produce groundwater from the Edwards-Trinity Aquifer in Val Verde County, and transport such water for artificial recharge into the Aquifer through a natural recharge feature east of the Knippa Gap in the San Antonio Pool and within the boundaries of the EAA for storage in the Aquifer and subsequent recovery for a beneficial use (“Potential Project”). The ultimate goal of Heritage associated with the Potential Project would be to obtain legal authorization from the EAA to artificially recharge and store the transported groundwater in the Aquifer for subsequent recovery of a portion of the groundwater for application to a beneficial use within the EAA’s jurisdictional boundaries.<sup>1</sup>

**2. Purpose**

The purpose of this MOU is to: (1) identify currently known uncertainties associated with the Potential Project; and (2) define the technical methodologies that will be necessary to address and

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<sup>1</sup> While this MOU and other descriptions of the Proposed Project utilize the terms “storage” and “recovery” of the artificially recharged groundwater, it is understood that in actuality, due to the transient nature of the Aquifer, operation of the Proposed Project would essentially be a transfer of recharged water via natural aquifer pathways, including natural losses to springs, other aquifers, and other users.

resolve such uncertainties in order for the EAA to be able to further evaluate the technical suitability of the Potential Project in light of the EAA's duties, responsibilities, and interests under the EAA Act, EAA rules, and other applicable law.

### **3. Costs.**

Heritage will be responsible for any and all costs associated with the development of the proposed technical methodologies to be identified and developed under this MOU.

### **4. Addressing Uncertainties.**

The EAA has identified the following uncertainties that must be addressed at this time to the satisfaction of the EAA, in its sole discretion, before the EAA may proceed further with an evaluation of the technical suitability of the Potential Project:

- A. The fate of the injected water, including movement, storage, retention, losses, and recoverability;
- B. The location of the point(s) of withdrawal from the Aquifer, and the availability of injected water for recovery at the location of the point(s) of withdrawal;
- C. The use schedule for any injected water that may be recovered, including a correlation with the uncertainties associated with fate of the injected water discussed in subsection A;
- D. The impacts, negative or positive, on existing Aquifer users;
- E. The impacts, negative or positive, to the EAA's springflow protection programs included in the Edwards Aquifer Habitat Conservation Plan; and
- F. The environmental impacts that may result from implementation of the Potential Project within both the region of the source water and within the EAA's jurisdictional region.

Due to the fact that the Proposed Project is in early stages and Heritage does not have sufficient site-specific and use-specific information necessary to begin addressing the above uncertainties, it is understood by the Parties that the purpose of this MOU is to identify and develop the appropriate methodologies that should be utilized, in addition to the EAA's current MODFLOW model or other existing peer-reviewed groundwater models, to address the uncertainties listed above in a manner deemed sufficient by the EAA to fully inform a technical evaluation of the Potential Project. The uncertainties listed above are not understood by the Parties to be the exclusive list of all uncertainties, but rather are the currently known uncertainties. If during the term of this MOU, or during the course of the development of the Potential Project should it proceed, it becomes apparent to the EAA that other material uncertainties arise, the EAA may by written memorandum add to the list of uncertainties that are required to be addressed by Heritage.

### **5. Responsibilities of EAA.**

The EAA expresses its intent to participate in the identification and development of the appropriate methodologies to address and resolve the uncertainties identified in Section 4 relative to the Potential Project.

## **6. Responsibilities of Heritage.**

Heritage expresses its intent to identify and develop, with the advice of the EAA, the appropriate methodologies to address and resolve the uncertainties identified in Section 4 relative to the Potential Project, whether they be research specific or formulaic, and to allow for review and comment by the EAA during such development.

## **7. Joint Responsibilities of EAA and Heritage.**

The Parties express the intent to use good faith efforts to cooperatively participate in the identification and development of the appropriate methodologies designed to adequately address the uncertainties listed in Section 4.

## **8. General Terms.**

8.1 This MOU will take effect on the date of the signature of the General Manager of the EAA and the legally authorized representative for Heritage, whichever signs last. The term of this MOU commences on the date it becomes effective and terminates on December 31, 2018. This MOU may be terminated sooner by either Party for any reason with 30 days' written notice to the other Party.

8.2 This MOU may be amended or extended in writing at any time upon the mutual written agreement of the Parties.

8.3 This MOU does not constitute an express or implied endorsement or approval of the Proposed Project by the EAA or the products or services of either Party. Neither Party will be bound by the acts or conduct of the other Party. By entering into this MOU, it is expressly understood by Heritage that the EAA is not binding itself in any manner to recommend or otherwise approve the Potential Project. It is also understood by Heritage that the decision to enter into any contractual relationship with Heritage relative to the implementation of the Potential Project will be made by the Board of Directors of the EAA at its sole discretion.

8.4 Heritage understands that this MOU is only for the purpose of developing appropriate methodologies as described herein, and that it does not confer any legal authority to recharge, store, or recover or withdraw water from the Aquifer. Heritage additionally understands that such legal authority may only be provided, if at all, by entering into a further contract with the EAA that authorizes such activities pursuant to and in compliance with applicable law and in accordance with the terms and conditions stated in such contract, and when the EAA's Board of Directors has previously duly made, in its sole discretion, a final decision to approve such contract and authorize the EAA's General Manager to execute such contract on behalf of the EAA. The Parties understand that the terms of this MOU are not intended to create any agreement or

obligation by either Party to negotiate a definitive aquifer recharge, storage, and recovery project contract, or any other type of agreement related to the matters addressed herein, and imposes no duty whatsoever on either Party to continue negotiations, including without limitation any obligation to negotiate in good faith or in any way other than at arm's length. The expenditure of funds by a Party in reliance on this MOU, or part performance of any provision of this MOU by either Party, shall not alter the foregoing provisions of this paragraph.

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Roland Ruiz  
General Manager  
Edwards Aquifer Authority

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Brady N. Kimble  
Manager  
Heritage Commodity, LLC

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Date

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Date