

WATER CONSERVATION GRANT
CONTRACT NO. XX-XXX-ERA
BETWEEN THE EDWARDS AQUIFER AUTHORITY
AND
LONESOME DOVE CORNER, LLC AND ROCKY RIDGE MOUNTAIN, LLC
FOR THE INSTALLATION OF EFFICIENT IRRIGATION EQUIPMENT

This Contract is made and entered into this 13th day of August, 2019, by and between the EDWARDS AQUIFER AUTHORITY, (the “EAA”), a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy, San Antonio, Texas 78215-1415, and LONESOME DOVE CORNER, LLC AND ROCKY RIDGE MOUNTAIN, LLC (the “Grantee”), P.O. Box 7, Columbus, Texas 78934. Each of these entities is, at times, referred to in this Contract individually as a “Party,” and both are referred to collectively as “Parties.”

RECITALS

WHEREAS, the EAA was created by the Edwards Aquifer Authority Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended (the “Act”); and

WHEREAS, under Section 1.02 of the Act, the EAA is a conservation and reclamation district created by virtue of Article XVI, Section 59, Texas Constitution, and is a governmental agency and body politic and corporate vested with the full authority to exercise the powers and to perform the functions specified in the Act, and other applicable law; and

WHEREAS, under Section 1.08(a) of the Act, the EAA has all the powers, rights and privileges necessary to manage, conserve, preserve, and protect the Edwards Aquifer (the “Aquifer”) and to increase the recharge of, and prevent the waste or pollution of water in, the Aquifer; and

WHEREAS, under Section 1.01 of the Act, the Legislature finds that all reasonable measures should be taken to be conservative in use of groundwater from the Aquifer; and

WHEREAS, under Section 1.11(d)(1) of the Act, the EAA is may issue or administer grants, or other financial assistance to water users for water conservation and water reuse; and

WHEREAS, under Section 1.24(c) of the Act, the EAA may issue grants to finance, among other things, water conservation or water management projects; and

WHEREAS, under Section 36.158, Texas Water Code, a groundwater conservation district, such as the EAA, may make grants in any form to or from any source approved by the

Board of Directors of the EAA (the “Board”), and may enter into contracts in connection with the grants that the Board considers appropriate; and

WHEREAS, under Section 49.213(b), Texas Water Code, the EAA may enter into contracts with any person or any public or private entity in the performance of any purpose or function permitted by the EAA; and

WHEREAS, under Section 49.213(c), Texas Water Code, the EAA may enter into contracts, with persons or any public or private entities on the terms and conditions the Board may consider desirable, fair, and advantageous for, among other things, the exercise of any rights, powers, and duties granted to the EAA; and

WHEREAS, the purpose of the EAA in contributing funding for the irrigation efficiency improvement of the Grantee is to foster the conservation of water from the Aquifer; and

WHEREAS, pursuant to this Contract, the Grantee has been awarded a Water Conservation Grant by the EAA and will install a center pivot sprinkler system to irrigate the Grantee’s land in lieu of flood irrigation for the conservation of Aquifer groundwater within the region, all pursuant to the EAA’s Water Conservation Grants Program under Subchapter D of Chapter 715 of the EAA’s rules; and

WHEREAS, on August 14, 2018, the Board authorized the General Manager to enter into water conservation grant contracts in a form substantially similar to this Contract and authorized the General Manager to execute this Contract; and

WHEREAS, it is in the public interest that the EAA and the Grantee enter into this Contract.

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth in this Contract, the sufficiency of which is hereby acknowledged, the EAA and the Grantee agree as follows:

ARTICLE I

TERM; DESCRIPTION OF WORK

Section 1.1. Term. This Contract is effective and commences on August 13, 2019 (“Effective Date”), and terminates on December 31, 2021 (“Expiration Date”).

Section 1.2. Project. Subject to the terms and conditions of this Contract, the EAA authorizes the Grantee to perform the work set forth and described in this Contract and in the following documents (the “Project”): (1) the Scope of Work which is attached hereto as Exhibit A (the “Scope of Work”); and (2) the Budget Estimate which is attached hereto as Exhibit B (the “Budget Estimate”); and (3) the *EAA Data Collecting and Reporting Worksheet* which is attached hereto as Exhibit C (the “Data/Reporting Worksheet”). The Grantee accepts such authorization

and agrees to furnish all labor, machinery, equipment, tools, and transportation necessary in furtherance of its authorization.

Section 1.3. Commencement and Completion Date. The Grantee will commence the Project immediately upon the execution of this Contract or as otherwise provided in Exhibits A and B. The Project will be completed by the Expiration Date and shall be completed in compliance with the schedules, budgets, descriptions and specifications contained herein and in the Exhibits attached hereto. It shall be the Grantee's responsibility to ensure that the completion times for the Project are met. In order to document water conservation as a result of the Project, the Grantee shall complete and submit water use and crop data by December 31 of the calendar years 2019-2021, on the Data/Reporting Worksheet. Time is of the essence in the performance of this Contract.

ARTICLE II

AMENDMENTS

Section 2.1. This Contract may be amended only by written agreement of the Parties.

Section 2.2. Amendments by the General Manager. The Board of Directors of the EAA delegates the authority to the General Manager to enter into amendments to this Contract without further authorization by the Board consistent with the General Manager's authority to enter into contracts under Section 4.01 of the EAA's Bylaws.

ARTICLE III

COMPENSATION

Section 3.1. Costs and Expenses. The EAA agrees to pay the Grantee for Project costs and expenses in accordance with the Scope of Work and Budget Estimate, but in no event shall the grant to the Grantee exceed \$73,037.39. The Grantee may not exceed this amount and will be responsible for the payment of all of its other additional costs and expenses. The Grantee may not exceed the contractual amount without prior written approval from the EAA. The Grantee is not authorized to expend any additional funds in excess of this amount without prior written approval from the EAA. The EAA will not be held accountable for any unauthorized work performed or funds spent by the Grantee in installing the Project.

Section 3.2. Payment. All payments made to the Grantee by the EAA for the Project costs and expenses shall be made on a reimbursement basis. During the course of the Project, the Grantee shall provide an itemization of the Project costs and expenses incurred, including copies of receipts, purchase orders, and invoices. An itemization of the costs and expenses incurred must be submitted to the EAA prior to grant funds being released to the Grantee by the EAA. All requests for reimbursement must be submitted by December 31, 2019. The terms of each itemization shall be net thirty (30) days upon EAA receipt and approval of the itemization.

Section 3.3. Conversion Restriction. By acceptance of the terms of this Contract, Grantee is prohibited from filing an application for a conversion of Base Irrigation Groundwater withdrawal rights under §§711.340-342 of the EAA rules for five years from the Effective Date of this Contract.

ARTICLE IV

INDEPENDENT CONTRACTOR

Section 4.1. No Employment Contract. The Parties understand and agree that this Contract does not create a fiduciary relationship between them, they are separate entities, that the Grantee is an independent contractor with respect to the installation of the Project and is not subject to the direct or continuous control or supervision of the EAA, and that nothing in this Contract is intended to make either Party a subsidiary, joint venturer, partner, employee, agent, servant, or representative of the other Party for any purpose whatsoever. The Grantee shall provide any and all equipment, materials, and personnel necessary for the installation of the Project. The EAA shall have no right of direction or control of the Grantee, or its employees and agents, except in the results to be obtained, and in a general right to order the Project to start or stop as agreed to herein, to inspect the progress of the Project, and to receive reports. The Contractor will be responsible for its subcontractors in all respects including their compliance with applicable laws and their safety, including without limitation, all Occupational Safety and Health Administration (“OSHA”) standards, requirements, and regulations. The Grantee shall accommodate reasonable requests from the EAA to allow EAA employees, agents, or representatives to accompany and observe the Grantee’s personnel, or subcontractors, in carrying out the Project, and the results and progress of the Project.

ARTICLE V

GRANTEE PERSONNEL AND SUBCONTRACTORS

Section 5.1. Personnel. The Grantee will provide any and all personnel necessary for its installation of the Project. The Grantee will be responsible for its employees and agents in all respects, including, without limitation, their compliance with applicable laws and their safety, including without limitation, all OSHA standards, requirements, and regulations. The Grantee indemnifies and holds harmless the EAA, and its directors, officers, employees, and agents from and against any claims brought by any employee, contractor, subcontractor, or other agent of the Grantee relating in any way to the Project.

Section 5.2. Subcontractors. In installing the Project, the Grantee may retain and utilize as its contractors or subcontractors, those individuals identified to and approved in writing by the EAA, in advance. The EAA, in consultation with the Grantee, shall have the right to terminate, limit, or alter, at any time, the participation of any subcontractor utilized by the Grantee. No additional subcontractors may be retained by the Grantee to install the Project without the prior written consent of the EAA, provided that no such consent shall be necessary for the retention of any subcontractor previously approved in writing by the EAA and identified by the Grantee on the Effective Date of this Contract. The Grantee will be responsible for its contractors and

subcontractors in all respects including their compliance with applicable laws and their safety, including without limitation, all OSHA standards, requirements, and regulations.

ARTICLE VI

TERMINATION

Section 6.1. Termination. The EAA may terminate this Contract at any time, including at the expiration of each budget or payment period during the term of this Contract, with or without cause, upon thirty (10) days prior written notice to the Grantee. Upon receipt of such termination notice, the Grantee shall immediately stop all work in progress, including all work performed by its employees, agents, contractors, or subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point. Within 30 days of termination, the EAA shall pay the Grantee all moneys then due and owing for the Project costs and expenses reasonably incurred up to the time of termination.

ARTICLE VII

OWNERSHIP OF MATERIALS

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ARTICLE VIII

NON-PERFORMANCE

Section 8.1. The Grantee warrants that it will install the Project in a good and workmanlike manner, strictly in accordance with the applicable industry standards, the Scope of Work, the Subchapter D of Chapter 715 of the EAA's rules, and as otherwise provided in this Contract and the Exhibits attached hereto. The Grantee's failure to timely install the Project as warranted and agreed shall constitute a breach of this Contract and shall be subject to all applicable remedies of law or equity.

ARTICLE IX

ASSUMPTION OF RISK AND INDEMNIFICATION

Section 9.1. Risk. The Grantee shall assume all risks associated with the Grantee's or its contractors and subcontractors' performance under this Contract and shall waive any claim against

the EAA, and its directors, officers, employees, and agents for damages arising out of the installation of the Project.

Section 9.2. Indemnification. The Grantee shall defend, indemnify, and hold harmless the EAA, and its directors, officers, employees, and agents, from any and all damages, loss, or liability of any kind whatsoever, including the costs and attorneys' fees of litigation or any other proceeding arising from: (a) contracts or any other arrangements between the Grantee and any third parties entered into to perform the Project, (b) any claims brought by any person relating to this Contract or the installation of the Project, or (c) the quality of the installation of the Project, or (d) any injury to person or property suffered by any person or Party during the course of the Project.

ARTICLE X

NOTICES

Section 10.1. Notices to the EAA. All notices or communications under this Contract to be mailed or delivered to the EAA shall be in writing and shall be sent to the EAA's principal place of business as follows, unless and until the Grantee is otherwise notified:

EDWARDS AQUIFER AUTHORITY
900 E. QUINCY
SAN ANTONIO, TEXAS 78215-1415
ATTENTION: ROLAND RUIZ, GENERAL MANAGER

Section 10.2. Notices to the Grantee. All notices or communications under this Contract to be mailed or delivered to the Grantee shall be in writing and shall be sent to the address of the Grantee as follows, unless and until the EAA is otherwise notified:

LONESOME DOVE CORNER, LLC AND ROCKY RIDGE MOUNTAIN, LLC
P.O. BOX 7
COLUMBUS, TEXAS 78934
ATTENTION: ROBERT HERNDON

Section 10.3. Effective Date of Notice. Any notices or communications required to be given in writing by one Party to the other shall be considered as having been given to the addressee on the date the notice of communication is posted by the sending Party.

ARTICLE XI

MISCELLANEOUS

Section 11.1. Entire Agreement. This Contract and the attached Exhibits constitutes the entire agreement between the Parties regarding the Project to be performed by the Grantee and there are no representations, warranties, agreements, or commitments between the Parties except

as set forth herein. Unless otherwise authorized herein, no amendments or additions to this Contract shall be binding on the Parties unless in writing and signed by the Parties.

Section 11.2. Non-Waiver. No delay or failure by either Party to exercise any right under this Contract, nor any partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Section 11.3. Headings. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

Section 11.4. Governing Law. This Contract shall be deemed to have been executed and performed in the State of Texas and shall be construed in accordance with and governed by the laws of the State of Texas. Venue for any disputes or claims arising from this Contract shall be exclusively in the proper courts in Bexar County, Texas.

Section 11.5. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 11.6. Binding Effect. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that the Grantee may not assign any of its rights nor delegate any of its duties under this Contract without the EAA's prior written consent.

Section 11.7. Validity. The invalidity of any provision or provisions of this Contract shall not affect any other provision of this Contract, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Contract affect the balance of such provision.

Section 11.8. Non-Waiver of Immunity. Nothing in this Contract is intended as any waiver by the EAA of any immunity from suit to which it is entitled under Texas law.

Section 11.9. Survival. Termination of this Contract for breach shall not constitute a waiver of any rights or remedies available at law or in equity to a Party to redress such breach. All remedies, either under this Contract or at law or in equity, or otherwise available to a Party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination. In addition, to these provisions, applicable provisions of this Contract shall survive any termination of this Contract.

Section 11.10. Attachments. The Exhibits, schedules and/or other documents attached or referred to in this Contract are incorporated in and made a part of this Contract for all purposes. As used herein, the expression "Contract" means the body of this Contract and such Exhibits, schedules and/or other documents attached, and the expressions "herein," "hereof," and "hereunder" and other words of similar import refer to this Contract and such exhibits, schedules and/or other documents as a whole and not to any particular part or subdivision thereof.

Section 11.11. Costs. If any legal action or any other proceeding is brought for the enforcement of this Contract or because of an alleged breach or default of this Contract, the prevailing Party shall be entitled to recover reasonable costs incurred, including but not limited to the attorneys' fees arising from such action or proceeding in addition to any other relief to which the prevailing Party may be entitled.

Section 11.12. Authority to Contract. Each Party represents and warrants for the benefit of the other Party that: (1) it has the legal authority to enter into this Contract; (2) this Contract has been duly approved and executed; (3) no other authorizations or approvals are or will be necessary in order to approve this Contract and to enable that Party to enter into and comply with the terms and conditions of this Contract; (4) the person executing this Contract on behalf of each Party has the authority to bind that Party; and (5) the Party is empowered by law to execute any other agreement or documents and to give such other approvals, in writing or otherwise, as are or may hereafter be required to implement and comply with this Contract.

Section 11.13. Officers or Agents. No officer or agent of the Parties is authorized to waive or modify any provision of this Contract. No amendment to or rescission of this Contract may be made except by a written document signed by the Parties' authorized representatives.

IN WITNESS WHEREOF, this Contract is executed as of the day and date first written above.

EDWARDS AQUIFER AUTHORITY

LONESOME DOVE CORNER, LLC AND
ROCKY RIDGE MOUNTAIN, LLC

By: _____
Roland Ruiz
General Manager

By: _____
Robert Herdon

ATTEST:

ATTEST:

By: _____
Jennifer Wong-Esparza
Assistant to the Secretary

By: _____

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel
Edwards Aquifer Authority

EXHIBIT A
SCOPE OF WORK
TO
BETWEEN THE EDWARDS AQUIFER AUTHORITY
AND
LONESOME DOVE CORNER, LLC AND ROCKY RIDGE MOUNTAIN, LLC

SCOPE OF WORK:

Lonesome Dove Corner, LLC and Rocky Ridge Mountain, LLC (the "Grantee") will install a center pivot sprinkler irrigation system to irrigate the Grantee's land in lieu of flood irrigation. The Grantee will notify the EAA, in writing, once installation of the equipment begins.

The Grantee will notify the EAA of installation completion and shall report to the EAA the itemization of grant money spent, including proof of system installation. The Grantee will also complete and submit an EAA Data Collecting and Reporting Worksheet documenting water use and crop data by December 31st of calendar years 2019-2021.

EXHIBIT B
BUDGET ESTIMATE
TO
CONTRACT
BETWEEN THE EDWARDS AQUIFER AUTHORITY
AND
LONESOME DOVE CORNER, LLC AND ROCKY RIDGE MOUNTAIN, LLC

Items	EAA's Contribution
Irrigation Equipment Purchase and Installation	\$73,037.39
Totals	\$73,037.39