



## GROUNDWATER TRUST TRANSFER CONTRACT NO. 07-20

*JE* *JANUARY, 2020* This Groundwater Trust Transfer Contract ("Contract") is made and entered into this *30* *JE* ~~12th~~ day of ~~March, 2019~~, by and between the EDWARDS AQUIFER AUTHORITY ("EAA"), a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy, San Antonio, Texas 78215, and Los Patios, the holder and transferor ("Transferor") of Initial Regular Permit No. P-100-591 ("Permit"), located at 2015 NE Loop 410, San Antonio, TX 78217.

### RECITALS

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

WHEREAS, the EAA is authorized by Section 1.22 of the Act to administer a groundwater trust for certain purposes; and

WHEREAS, the EAA has implemented Section 1.22 through rulemaking at Subchapter N of its rules and has established a Groundwater Trust thereby; and

WHEREAS, Transferor desires to transfer 60 acre-feet of the Permit under the terms and conditions of this Contract into the EAA's Groundwater Trust; and

WHEREAS, on February 11th, 2020, the Board of Directors ("Board") of the EAA approved this Contract; and

WHEREAS, it is in the public interest that the EAA authorize this transfer into the Groundwater Trust.

**NOW THEREFORE**, for and in consideration of the mutual promises and agreements set forth in this Contract, the EAA and Transferor agree as follows:

**1.0 Representations of Transferor.** Transferor represents and warrants that it has the legal authority to transfer the Permit and enter into this Contract. Transferor also represents and warrants that it has good and clear title to the Permit, free and clear of liens or other encumbrances, and no challenges have been made or threatened by third parties to Transferor's claimed ownership of the Permit.

**2.0 Permit Transfer.** Transferor agrees to, and does hereby transfer 60 acre-feet of the Permit to the Groundwater Trust, and the EAA agrees to, and does hereby accept the transfer thereof, in trust, under the terms and conditions of this Contract.

**3.0 Purpose of Transfer.** The purpose of this transfer is (1) to provide a water supply to the EAA to make transfers of such water to third-parties that in the sole judgment of the EAA it deems reasonable, appropriate, and necessary, or (2) to manage the overall demand on the Edwards Aquifer.

**4.0 Term.** The Permit shall remain in the Groundwater Trust beginning on January 1<sup>st</sup>, 2020 and shall continue through December 31<sup>st</sup>, 2020, unless sooner removed by order of the Board.

**5.0 Rights and Obligations of Transferor.** Upon transfer of the Permit into the Groundwater Trust, Transferor shall have the following rights, restrictions, duties, and obligations:

(a) Transferor shall have no right to withdraw groundwater from the Edwards Aquifer pursuant to the portion of the Permit transferred into the Groundwater Trust.

(b) Transferor shall remain responsible for taking all action, and paying all expenses, required to maintain, defend, preserve, and protect the Permit.

(c) Transferor shall not undertake any action which could lead to the invalidation of the Permit and Transferor shall immediately notify the EAA if Transferor learns of any facts or circumstances suggesting that the Permit could be called into question.

(d) Transferor may not, voluntarily or involuntarily, anticipate, sell, pledge, encumber, license, lease, transfer, assign, convey, give, devise, bequeath, or otherwise dispose of, either directly or indirectly, any right to use the Permit without the prior written approval of the EAA. Further, the Permit shall not be subject to any debt contracted by Transferor, either prior to or after the transfer, or any judicial process for the satisfaction of any claim against Transferor. Notwithstanding the above, EAA shall provide its approval to any proposed transfer of some or all of Transferor's groundwater rights if the transfer expressly recognizes and is subject to the terms of this Groundwater Trust. Further, the Transferor may create and retain for its benefit a purchase money lien to secure payment of the groundwater rights transferred. Nothing in this section shall exempt Transferor from compliance with any other valid rules and regulations regarding sale, assignment or transfer of any portion of Transferor's groundwater rights.

(e) Transferor shall not be assessed any aquifer management fees by the EAA for the portion of the Permit held in trust. However, Transferor shall remain liable for any aquifer management fees already assessed against the Permit prior to transfer into the Groundwater Trust.

**6.0 Rights and Obligations of the EAA.** Upon transfer of the Permit into the Groundwater Trust, the EAA shall have the following rights, restrictions, duties, and obligations:

- (a) As long as consistent with the terms and conditions of this Contract and Subchapter N of the EAA's rules, the EAA may, in its discretion, hold the Permit, lease, or otherwise transfer the Permit to a third-party for use under the terms and conditions it, in its sole judgment, deems reasonable, appropriate, and necessary
- (b) The EAA may not take any action that would result in the permanent reduction in the groundwater withdrawal amount of the Permit.
- (c) The EAA is not responsible for taking any action, or paying any expense, required to maintain, defend, preserve, or protect the Permit.
- (d) The Permit shall not be subject to any debt contracted by the EAA, either prior to or after the transfer, or any judicial process for the satisfaction of any claim against the EAA.
- (e) The EAA shall not assess Transferor any aquifer management fees for the portion of the Permit held in trust.

**7.0 Miscellaneous Provisions.**

- (a) In all other respects, this transfer to, and the holding of the Permit in the Groundwater Trust, shall be in accordance and consistent with the Act and the EAA's Rules.
- (b) This Contract shall be binding upon the EAA and Transferor and their respective heirs, successors, and assigns.
- (c) This Contract may be amended only by a subsequent written amendment executed by both the EAA and Transferor.
- (d) This Contract shall be governed by and construed in accordance with the laws of the State of Texas, and specifically with the Act and the EAA's Rules.
- (e) The EAA may, in its sole discretion, record of public record a memorandum of this Contract with the County Clerk of the county in which the Transferor's property identified as the place of use in the Permit and on which the points of withdrawal identified in the Permit are located.

**NOW, THEREFORE, THIS GROUNDWATER TRUST TRANSFER CONTRACT  
IS EXECUTED AND EFFECTIVE THIS \_\_\_\_\_ day of \_\_\_\_\_ 2020, at San  
Antonio, Bexar County, Texas.**

**EDWARDS AQUIFER AUTHORITY**

By: \_\_\_\_\_  
Luana Buckner  
Chairman, Board of Directors

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

**ACKNOWLEDGEMENT**

**STATE OF TEXAS        §  
                                 §  
COUNTY OF BEXAR   §**

This instrument was acknowledged before me on \_\_\_\_\_, 2020, by Luana Buckner,  
Chairman of the Board of Directors 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

**TRANSFEROR(S)**

By: John McClung

John McClung  
Los Patios  
Permit Holder

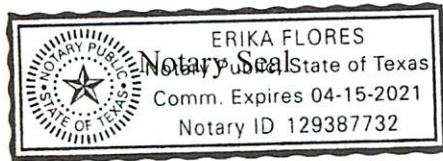
Date: January 30, 2020

**ACKNOWLEDGEMENT**

STATE OF TEXAS §

COUNTY OF Bexar §

This instrument was acknowledged before me on 30<sup>th</sup> of January, 2020, by John McClung, the Transferor, known personally to me to be the persons who subscribed to this instrument, on behalf of the Permittees.



Erika Flores  
Notary Public, State of Texas

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Darcy Alan Frownfelter  
General Counsel