



INTERLOCAL COOPERATION CONTRACT No. 20-031-PPEA  
BETWEEN  
EDWARDS AQUIFER AUTHORITY  
AND  
EVERGREEN UNDERGROUND WATER CONSERVATION DISTRICT  
TO CONDUCT A PRECIPITATION ENHANCEMENT PROGRAM

This INTERLOCAL COOPERATION CONTRACT (Contract) is made and entered into under the Texas Interlocal Cooperation Act (ICA), Chapter 791, Texas Government Code, by and between the EDWARDS AQUIFER AUTHORITY (EAA), a conservation and reclamation district and a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy, San Antonio, Texas 78215, and the EVERGREEN UNDERGROUND WATER CONSERVATION DISTRICT (EVERGREEN), a conservation and reclamation district and a political subdivision of the State of Texas, with its principal place of business located at 110 Wyoming Blvd., Pleasanton, Texas 78064. 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 in 1993 by the Edwards Aquifer Authority Act, Act of May 30, 1993, 73<sup>rd</sup> 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

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 (Aquifer) and to increase the recharge of, and prevent the waste or pollution of water in, the Aquifer; and

WHEREAS, under Section 1.11(d)(2) of the Act, and other applicable law, the EAA may enter into contracts; and

WHEREAS, this Contract is an interlocal contract entered into under the authority of the Interlocal Cooperation Act (ICA), Chapter 791, Texas Government Code; and

WHEREAS, under Section 791.003(4)(A) and (5) of the ICA, the EAA and EVERGREEN are “local governments”; and

WHEREAS, under Section 791.003(3) of the ICA, the activities that are the subject of this Contract are governmental functions and services in that they involve the public health and welfare, planning, administrative functions, and/or other governmental functions in which the Parties are mutually interested; and

WHEREAS, the EAA Board has elected to pursue a precipitation enhancement program, the primary objectives of which are to, in a safe and efficient manner, increase rainfall over portions of the Aquifer and its Contributing Zone and Recharge Zone in order to both reduce water demands upon the Aquifer and increase its recharge; and

WHEREAS, the Parties acknowledge and agree that the EAA: (1) has currently elected not to conduct a precipitation enhancement program of its own and currently the EAA lacks the expertise to conduct such a program; and (2) the EAA is relying solely and completely upon the expertise of EVERGREEN to conduct such a program in a safe and efficient manner; and

WHEREAS, EVERGREEN is part of the South Texas Weather Modification Association (“Association,” and sometimes also referred to as “Subcontractor”), which currently holds a valid weather modification license issued by the State of Texas; and

WHEREAS, the EAA and EVERGREEN have been authorized by their respective governing bodies to enter into this Contract; and

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

## AGREEMENT

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

### ARTICLE I – TERM; DESCRIPTION OF WORK

Section 1.1. Term. This Contract is effective and commences on October 1, 2020 (Effective Date), and terminates on September 30, 2021 (Expiration Date).

Section 1.2. Services. Subject to the terms and conditions of this Contract, the EAA engages EVERGREEN to perform, for the benefit of the EAA, the work set forth and described in this Contract and in the following documents which are attached hereto: (1) the Scope of Work, which is attached hereto as Exhibit A (Services). EVERGREEN accepts such engagement and agrees to devote its best efforts and abilities, and furnish all necessary labor, machinery, equipment, tools, and transportation necessary in furtherance of its engagement under this Contract. In exchange, the EAA agrees to fund a portion of the costs incurred by EVERGREEN in its performance of the Services, as set forth in more detail in Article III below.

Section 1.3. Commencement and Completion of Services. EVERGREEN will commence performing the Services immediately upon the date of receipt of the written notice to proceed

issued by the EAA's General Manager. All Services will be completed and delivered to the EAA by the Expiration Date, and shall be completed in compliance with the schedules, budgets, descriptions, and specifications contained in the Exhibits attached hereto. It shall be EVERGREEN's responsibility to ensure that the completion times for the Services are met. At the sole option of the EAA, this Contract may be renewed and extended for up to four (4) periods of one additional calendar year each, with such election made by the EAA giving the Contractor written notice to renew and extend this Contract on or before September 30<sup>th</sup>, prior to the end of the then Contract period. Time is of the essence in the performance of this Contract.

## ARTICLE II – AMENDMENTS

Section 2.1. Amendments. The EAA may request changes or additions to the Scope of Work during the progress of the Services. Upon mutual agreement, the EAA and EVERGREEN will make the necessary written revisions to the Scope of Work to reflect such changes or additions. Upon such request by the EAA, EVERGREEN may propose the necessary revisions to specific tasks in the Scope of Work, associated schedules and costs. This Contract, including any changes to the Scope of Work, may be amended only by written agreement of the Parties.

Section 2.2. Delegation to 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 – COST SHARING

Section 3.1. Fees and Expenses. EVERGREEN agrees to be directly responsible for the payment of any invoices, costs or expenses incurred by it or its Subcontractor in the performance of the Services. The EAA agrees to reimburse EVERGREEN an amount up to \$135,000<sup>1</sup> for a portion of the fixed costs or expenses which are incurred by EVERGREEN in the performance of the Services. In addition, the EAA agrees to reimburse EVERGREEN for airplane fuel, lubricant costs, and flare costs associated with seeding activities that are intended to impact the EAA Target Area. As used in this Agreement, "EAA Target Area" shall mean: Bexar, Bandera, Medina, and Uvalde counties. Total reimbursable costs shall be paid as incurred and shall not exceed \$37,000 for the term of the Contract. If additional analysis is required to provide enhanced rainfall estimates for the required post-program report, as described in Section 2.1 in the Scope of Work, hourly data analysis costs may be charged in an amount not to exceed \$3,000. Therefore, the EAA's maximum obligation under this Contract shall not exceed \$175,000. EVERGREEN acknowledges the EAA's total possible maximum contribution under this section and agrees to fund the remainder of the costs necessary to carry out EVERGREEN's overall precipitation enhancement program (Program).

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<sup>1</sup> \$135,000 is approximately 45% percent of the South Texas Weather Modification Association's annual budget associated with EVERGREEN's Program fixed costs. Such a percentage was chosen for this Contract because the acreage within the EAA's Target Area amounts to approximately 45% of EVERGREEN's Program overall target area for seeding activities.

Section 3.2. Payment. In order to receive payments associated with fixed costs, EVERGREEN shall provide five separate invoices to the EAA in accordance with the following table:

(1) a first payment of \$27,000 shall be made by May 15 <sup>th</sup> of the Contract year.
(2) a second payment of \$27,000 shall be made by June 15 <sup>th</sup> of the Contract year.
(3) a third payment of \$27,000 shall be made by July 15 <sup>th</sup> of the Contract year.
(4) a fourth payment of \$27,000 shall be made by August 15 <sup>th</sup> of the Contract year.
(5) a fifth & final payment of \$27,000 shall be made by September 15 <sup>th</sup> of the Contract year.

In order to receive payments associated with reimbursable costs, EVERGREEN shall provide the EAA with invoices itemizing the Services rendered, and costs and expenses incurred. The terms of each invoice shall be net sixty (60) days upon EAA receipt and approval of that invoice. The EAA may refuse to pay for any Services, and costs and expenditures incurred within the term of this Contract by EVERGREEN which are not billed to the EAA within ninety (90) days after the termination of this Contract.

#### ARTICLE IV – INDEPENDENT CONTRACTOR

Section 4.1. No Employment Relationship. The Parties understand and agree that this Contract does not create a fiduciary relationship between them, that they are separate entities, that EVERGREEN is an independent contractor with respect to the performance of the Services and is not subject to the direct or continuous control and 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. EVERGREEN shall provide any and all equipment, materials, and personnel necessary for the performance of the Services. The EAA shall have no right of direction or control of EVERGREEN, or its employees, agents, or subcontractors except in the results to be obtained, and in a general right to order the performance of the Services to start or stop as agreed to herein, to inspect the progress of the Services, and to receive reports. EVERGREEN shall accommodate reasonable requests from the EAA to allow EAA employees, agents, or representatives to accompany and observe EVERGREEN's personnel, agents, and subcontractors, in carrying out the Services.

#### ARTICLE V – CONTRACTOR PERSONNEL AND SUBCONTRACTORS

Section 5.1. Personnel. EVERGREEN will provide any and all personnel necessary for its performance of the Services described in the Scope of Work in Exhibit A. EVERGREEN 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 Occupational Safety and Health Administration (OSHA) standards, requirements, and regulations. To the extent authorized by law, each Party indemnifies and holds harmless the other Party, as well as the other Party's officers, employees, and directors from and against any claims brought by any employee, subcontractor, or other agent of the indemnifying Party relating in any way to the Services performed under this Contract.

Section 5.2. Subcontractors. In performing the Services, EVERGREEN may retain and utilize as its subcontractors, to the extent that they are not already employees of EVERGREEN, those individuals identified to and approved in writing by the EAA in advance. The EAA, in

consultation with EVERGREEN, shall have the right to terminate, limit, or alter, at any time, the participation of any approved subcontractor utilized by EVERGREEN. No additional subcontractors may be retained by EVERGREEN to perform any Services under this Contract without the prior written consent of the EAA. EVERGREEN will be responsible for its subcontractors in all respects including their compliance with applicable laws and their safety, including without limitation, all OSHA standards, requirements, and regulations. Subcontracting any portion of the Services does not relieve EVERGREEN of its obligations or duties under this Contract. The EAA approves the following subcontractor to perform the Services for EVERGREEN:

- South Texas Weather Modification Association.

## ARTICLE VI – TERMINATION

Section 6.1. Termination for Convenience. Notwithstanding Section 6.2, 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 ten (30) days' prior written notice to EVERGREEN.

Section 6.2. Termination for Cause. If the Services are not being carried out in a manner satisfactory to the EAA, the EAA may terminate this Contract upon the failure of EVERGREEN to cure the unsatisfactory condition to the satisfaction of the EAA within ten (10) days after receipt of written notice from the EAA.

Section 6.3. Actions in the Event of Early Termination. Upon receipt of a notice of termination under this Article, EVERGREEN shall immediately stop all work in progress, including all work performed by its employees, agents, or subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point. Within 30 days of the final invoice following termination, the EAA shall pay EVERGREEN all moneys then due and owing for the Services rendered, and costs and expenses reasonably incurred up to the time of termination. EVERGREEN will deliver to the EAA copies of all finished and unfinished documents, data, studies, surveys, drawings, maps, reports, photographs, and other materials prepared by EVERGREEN, and each Party shall be free to utilize such documents, data, studies, surveys, drawings, maps, reports, photographs, and other materials as it sees fit.

## ARTICLE VII – OWNERSHIP OF MATERIALS

Section 7.1. Ownership. All information, documents, property, or materials produced, created, or supplied under this Contract by EVERGREEN, its employees, agents, or subcontractors or anyone else, for the Service for the EAA Target Area, and whether finished or unfinished or in draft or final form, will be the jointly owned property of the EAA and EVERGREEN. Each Party shall have unlimited rights to technical and other data resulting directly from the performance of the Services under this Contract.

Section 7.2. Delivery of Documents upon Termination. Upon expiration or termination of this Contract under Sections 1.1, 6.1, or 6.2, all such information, property, or materials not already in the possession of the EAA will delivered to the EAA within 30 days of termination.

Section 7.3. Nondisclosure of Documents. Both Parties recognize that each Party is subject to the provisions of Chapter 552, Texas Government Code. If a request for public information is filed with one of the Parties under Chapter 552, any information, property, or materials produced, created, or supplied under this Contract that is subject to disclosure under Chapter 552 may be disclosed by the Party to any third party without the prior written consent of the other Party. If such a request is filed, the Party receiving the request shall promptly give notice to the other Party of the request, and provide a schedule of the documents provided.

Section 7.4. Record Copies. EVERGREEN shall retain a record copy of all information, documents, property, or materials developed in the course of performing the Services for a minimum of three (3) years. Upon request of the EAA, such information, documents, property, or materials will be promptly supplied to the EAA, including after the Expiration Date or the termination of this Contract under Section 6.1 or Section 6.2. The EAA will reimburse EVERGREEN for actual costs of time and expense of reproduction of such materials when requested.

Section 7.5. Sharing Program Information. EVERGREEN agrees to freely share with the EAA copies of all data and reports generated from the performance of EVERGREEN's Program.

Section 7.6. Publications. For publications, the publishing Party shall provide the other Party a thirty-day (30) period in which to review proposed publications, identify proprietary or confidential information, and to submit comments. The publishing Party will give full consideration to all comments before publication. All publications created by Participant pertaining to this Contract shall acknowledge that research performed by Participant was funded in part by the EAA.

Section 7.7. Errors. The EAA may require EVERGREEN to correct or revise any errors, omissions or other deficiencies in any reports or services provided by EVERGREEN to ensure that such reports and services fulfill the purposes of this Contract. EVERGREEN shall make the required corrections or revisions without additional cost to the EAA to ensure that such reports and services fulfill the purposes of this Contract.

## ARTICLE VIII –PERFORMANCE

Section 8.1. Performance of Services. EVERGREEN agrees that it will perform all Services in a good and workmanlike manner, strictly in accordance with the standards of EVERGREEN's profession, the Scope of Work, and as otherwise provided in this Contract and the Exhibits hereto. To the extent permitted by law, EVERGREEN's failure to timely perform the Services as agreed shall constitute a breach of this Contract and shall be subject to all applicable remedies at law or equity. Judgment of performance rests solely with the EAA.

## ARTICLE IX – LIQUIDATED DAMAGES

*[THIS ARTICLE LEFT BLANK]*

## ARTICLE X – BOND COVERAGE

*[THIS ARTICLE LEFT BLANK]*

## ARTICLE XI – INSURANCE

Section 11.1. Insurance Coverages. During the term of this Contract, EVERGREEN shall obtain and maintain in effect, at EVERGREEN's expense, appropriate insurance policies protecting EVERGREEN and the EAA, and their respective officers, directors and employees, against any loss, liability, personal injury, death, property damage, or any expense arising out of the performance of the Services, including, without limitation: (1) worker's compensation insurance in compliance with applicable state law; (2) comprehensive general liability insurance, insuring against property damage, personal injury and death, in an amount of no less than \$1,000,000.00 per occurrence; (3) automobile liability insurance in an amount no less than \$1,000,000.00; (4) umbrella liability insurance in an amount of no less than \$1,000,000.00. Said insurance policies shall be with insurance carriers licensed to do business in Texas. EVERGREEN shall be responsible for requiring that its subcontractors carry and maintain adequate insurance coverage.

Section 11.2. Additional Insureds. EVERGREEN shall name the EAA and its officers, directors, and employees as "additional insureds" on all of the insurance policies specified in Subsection 11.1, or with respect to the worker's compensation insurance, contain waivers of subrogation by EVERGREEN and the insurance carrier in favor of the EAA. Not later than the date of receipt of the written notice to proceed under Section 1.3, EVERGREEN must provide the EAA with certificates of insurance to be issued directly to the EAA by EVERGREEN's insurance agent, identifying the specified coverage. EVERGREEN, through its agent of record, shall notify the EAA of any changes in coverages within thirty (30) days prior to any effective date of change.

Section 11.3. No limitations. EVERGREEN's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by the EAA, nor shall EVERGREEN's performance of this obligation relieve it of liability under the indemnity provisions set forth in Section 12.2.

## ARTICLE XII – ASSUMPTION OF RISK AND INDEMNIFICATION

Section 12.1. Risk. EVERGREEN shall assume all risks associated with EVERGREEN's or its subcontractors' performance under this Contract and shall waive any claim against the EAA and other participants for damages arising out of the performance of the Services.

Section 12.2. Indemnification. To the extent permitted by Texas law, EVERGREEN shall defend, indemnify, and hold harmless the EAA, its directors, employees, and agents from any and all damages, loss, or liability of any kind whatsoever, including the costs of litigation and

attorneys' fees arising from: (a) contracts or other arrangements between EVERGREEN and any subcontractors or other third-parties entered into to perform the Services; (b) any claims brought by any person relating to this Contract, the Scope of Work, or the Services, or (c) the quality or the performance of the Services.

#### ARTICLE XIII – NOTICES

Section 13.1. 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 EVERGREEN is otherwise notified:

EDWARDS AQUIFER AUTHORITY  
Attention: Javier Hernandez  
900 E. Quincy  
San Antonio, Texas 78215

Section 13.2. Notices to EVERGREEN. All notices or communications under this Contract to be mailed or delivered to EVERGREEN shall be in writing and shall be sent to the address of EVERGREEN as follows, unless and until the EAA is otherwise notified:

EVERGREEN UNDERGROUND WATER CONSERVATION DISTRICT  
Attention: Russel Labus, General Manager  
110 Wyoming Blvd.  
Pleasanton, Texas 78064

Section 13.3. 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. Electronic notices shall be deemed delivered as of the stamp date generated by the receiving Party's system.

#### ARTICLE XIV – MISCELLANEOUS

Section 14.1. Entire Agreement. This Contract and the attached Exhibits constitute the entire agreement between the Parties regarding the Services to be performed by EVERGREEN 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 14.2. 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 14.3. Headings. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.



Section 14.4. 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 14.5. 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 14.6. Binding Effect; Assignment. 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 neither Party may assign any of its rights nor delegate any of its duties under this Contract without the other Party's prior written consent.

Section 14.7. 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 14.8. 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 14.9. Attachments. The Exhibits, schedules, and/or other documents attached or referred to, 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 attachments, Exhibits, schedules, and/or other documents, and the expressions "herein," "hereof," and "hereunder" and other words of similar import refer to this Contract and such attachments, exhibits, schedules, and/or other documents as a whole and not to any particular part or subdivision thereof.

Section 14.10. Costs. If any legal action, arbitration, or other proceeding is brought by a Party 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 attorney's fees, in such action or proceeding in addition to any other relief to which it or they may be entitled.

Section 14.11. 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 14.12. 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.

Section 14.13. Payment from Current Revenues. The Parties acknowledge that pursuant to Subsection 791.011(d)(3), Texas Government Code, the payments by the EAA to EVERGREEN for the Services shall be made from current revenues available to EAA. The Parties agree that the payments by the EAA are in an amount that fairly compensates EVERGREEN for the Services. Each Party represents and agrees that it has budgeted funds in its respective current fiscal year budget sufficient for payment of its share of the anticipated costs of EVERGREEN'S Program.

Section 14.14. Inspection. During the term of this Contract, all operations of EVERGREEN pertaining to the Services shall be open to the inspection of the EAA.

Section 14.16. Funding Condition. This Contract is conditioned on a best efforts attempt by the EAA to obtain and appropriate funds for payment of the amounts due hereunder.

Section 14.17. Licenses. EVERGREEN, by and through the Subcontractor, shall be solely responsible for obtaining and maintaining any necessary licenses and permits in order to perform the Services.

Section 14.18. Compliance with Federal, State and Local Law. (a) This Contract is subject to all applicable federal, state, and local laws and any applicable permits, ordinances, rules, regulations, and orders of any federal, state, or local governmental authority having jurisdiction.

(b) EVERGREEN represents that, to the best of its knowledge, no provisions of any applicable federal, state, or local law, nor any applicable permit, ordinance, rule, regulation, or order of any federal, state, or local governmental authority having jurisdiction will limit or restrict the ability of EVERGREEN to carry out the Services.

(c) EVERGREEN warrants and represents that it will comply with all applicable federal, state, and local law when performing the Services, including, but not limited to the requirements of the Texas Department of Licensing and Regulation, and the Association's current Weather Modification Permit issued by the Texas Commission on Environmental Quality. Moreover, in its performance of the Services, EVERGREEN warrants and represents that, to the best of its knowledge, it is or will be in compliance with all applicable federal, state, or local law, including any applicable permit, ordinance, rule, regulation, or order, and that it has obtained any and all permits, licenses, or other approvals as may be required by law to perform such activities to accomplish the objectives of this Contract.

IN WITNESS WHEREOF, this Contract is executed as of the day and date first written above in Section 1.1.

EDWARDS AQUIFER AUTHORITY

EVERGREEN UNDERGROUND WATER  
CONSERVATION DISTRICT

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

By: \_\_\_\_\_  
Russel Labus  
General Manager

ATTEST:

ATTEST:

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

By: \_\_\_\_\_  
(Name) \_\_\_\_\_  
(Title) \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Darcy Alan Frownfelter  
General Counsel  
Edwards Aquifer Authority

## EXHIBIT A SCOPE OF WORK

All references in this Exhibit to EVERGREEN shall also include the Association, as EVERGREEN's Subcontractor. EVERGREEN shall comply with the following:

### 1. Seeding Operations.

- 1.1. Cloud seeding shall be conducted as often as EVERGREEN's program meteorologist determines that cloud conditions are suitable such that the goals and objectives of the EAA would be served by seeding. Seeding may occur at anytime, day or night, during the term of this Contract. Seeding operations shall be conducted in a way so as to ensure that they will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area.
- 1.2. EVERGREEN shall provide a licensed program meteorologist who shall monitor weather conditions to ascertain when and where seeding activities should be conducted.
- 1.3. All flight safety considerations and decisions during operations will ultimately rest with EVERGREEN's meteorologists and pilots.
- 1.4. Pilot availability for cloud seeding operations will be maintained in both Pleasanton and Uvalde, Texas.

### 2. Data and Record-Keeping, Reporting Requirements.

- 2.1. EVERGREEN will collect, archive, study, and make available all relevant weather data, flight-track records, and other data that will be useful in documenting the conduct of all cloud-seeding missions, including a post-program assessment of the efficacy of the cloud-seeding activities.
- 2.2. Records of cloud-seeding operations, denoting the precise time(s), place(s), and method(s) of all seeding missions, will be furnished to the EAA, no later than fifty (50) days following the conclusion of cloud-seeding activities for the season.
- 2.3. A summary report will be written by EVERGREEN that describes EVERGREEN's cloud-seeding activities and provides a meteorological perspective of the impact of the cloud-seeding program on the weather and climate of the EAA Target Area during the period when the Program was active; and two (2) copies of that report will be submitted to the EAA within a period of no more than ninety (90) days after the conclusion of cloud-seeding activities for the season.

- 2.4. EVERGREEN shall maintain a detailed schedule that documents the number of flights, hours flown, and amount of seeding material (grams) dispersed during cloud-seeding operations. A written copy of that schedule shall be provided to the EAA at the end of each month during which seeding operations take place.
- 2.5. EVERGREEN's Program Representative shall, on a regular basis during the effective duration of the program, confer with the EAA's Program Representative about the status of meteorological conditions and the seeding operations taking place within the previous 24 hours.
- 2.6. EVERGREEN is to provide a weekly report to the EAA that summarizes the previous weeks' operations (total number of missions flown, total number of aircraft hours as per Hobbs meter, number and type of flares used, gallons of acetone discharged, meteorological characteristics associated with the seeding events and any incidents affecting equipment).
- 2.7. EVERGREEN is to provide a monthly report to the EAA that summarizes and documents all activities related to this Contract that occurred during the previous month's operations (the numbers and types of flares utilized, the number of hours flown as per the Hobbs meter for each aircraft, a discussion of meteorological characteristics associated with each seeding event, and a summary of incidents or situations affecting the operations of the program).

### 3. Precipitation Enhancement Efficacy Analysis

- 3.1. EVERGREEN will gather data collected by other entities (such as the National Weather Service) and rain-gauge data useful in a post-program analysis or to support statistical evaluations to determine the Program's effectiveness in distributing rainfall within the cloud-seeding operations overall target area and the EAA Target Area.
- 3.2. EVERGREEN will collect official weather records from the National Weather Service cooperative weather observers from within each county composing the program's target and operational areas, and will furnish copies of those records to the EAA no later than March 31<sup>st</sup> of the year following the year during which seeding occurred.
- 3.3. EVERGREEN acknowledges that the EAA may wish to retain the services of an independent third party to study the efficacy of the EAA's portion of the Program. EVERGREEN further acknowledges that such a study may examine the EAA's portion of the Program over a period of several years. EVERGREEN agrees to share with any such independent third party any and all data generated in this Program and provide any other reasonable assistance as may be necessary for the furtherance of such study.

#### 4. Equipment

- 4.1. EVERGREEN shall properly license each radar with the Federal Communication Commission.

#### 5. Safety

- 5.1. The EAA's primary concern is that the Program be conducted safely. EVERGREEN acknowledges and agrees that the EAA is relying on the expertise of EVERGREEN to conduct the Program in a safe manner.
- 5.2. On an ongoing basis during the term of this Contract, EVERGREEN's meteorologist will familiarize himself/herself with relevant features of the Program's target and operational areas, as well as downstream areas, such as topography, population densities, flooding histories, etc.
- 5.3. The decision as to whether or not to conduct cloud seeding activities on any given day or time will rest solely with EVERGREEN. In addition, in determining whether to conduct cloud seeding at any given time, EVERGREEN's meteorologist shall be responsible for considering and evaluating the available, relevant data related to flood potential, such as data from the United States Geological Survey; rain-gauge data; information on river conditions, including data from the Nueces River Authority, the San Antonio River Authority, and the Guadalupe-Blanco River Authority; soil moisture conditions; and data on the flood-control capacity status of area reservoirs, including Canyon Reservoir, Medina Lake, Choke Canyon Reservoir and Lake Corpus Christi. The EAA may, from time to time, assist in gathering some of this data for EVERGREEN. However, EVERGREEN bears the sole and ultimate responsibility for reviewing and assessing data relevant to whether or not to engage in any given cloudseeding operation.
- 5.4. In addition to considering flooding potential and the other suspension criteria when deciding whether to conduct cloud seeding operations in any given county, EVERGREEN is encouraged to take into account whether significant crop harvesting activities are taking place in any county within the target area at the time and whether such cloud seeding may significantly disrupt those harvesting activities.