



CONTRACT No. 14-XXX-HCP

EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM

**BETWEEN THE EDWARDS AQUIFER AUTHORITY
AND THE CITY OF UNIVERSAL CITY FOR**

IMPLEMENTATION OF REGIONAL WATER CONSERVATION PROJECTS

This Interlocal Cooperation Contract ("Contract") is made and entered into 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 CITY OF UNIVERSAL CITY ("Permittee"), the entity that is shown by the official permitting records of the EAA as the owner of record of Permit No. E100- 155 ("Permit"), and a Municipal Incorporation with its principal place of business located at 2150 Universal City Blvd., Universal City, Texas 78148. 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 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

WHEREAS, Section 5.1.3 of the Edwards Aquifer Habitat Conservation Plan ("EAHCP" or "HCP") sets forth a Regional Water Conservation Program ("RWCP", the goal of which is to conserve 20,000 acre-feet/year ("AF/yr") of permitted Edwards Aquifer ("Edwards" or "Aquifer") groundwater rights or withdrawals from Edwards exempt wells by exchanging technical assistance and economic incentives for the implementation of various conservation services, techniques, and measures identified in Section 5.1.3.2 of the HCP, such that 10,000 AF/yr will be committed to remain in the Aquifer unpumped, but still owned by a participating permittee, for the term of the ITP to benefit spring flow levels and contribute to species protection, while the other 10,000 AF/yr will remain available to a participating permittee for withdrawal from the Aquifer and beneficial

use; and

WHEREAS, the Permittee's participation in the RWCP will assist in achieving and maintaining the RWCP's stated objectives; and

WHEREAS, the EAA and the Permittee desire and are authorized to enter into this Contract pursuant to the Texas Interlocal Cooperation Act, Chapter 791, Texas Government Code; and

WHEREAS, under Section 1.11(d)(2) of the Act, the EAA has the authority to enter into contracts; and

WHEREAS, under Section 1.22 of the Act, the EAA is authorized to administer a groundwater trust ("Groundwater Trust"), and implemented rules in furtherance thereof at Chapter 711, Subchapter N of its rules; and

WHEREAS, it is in the public interest that the EAA and the Permittee implement the RWCP by entering into this Contract.

AGREEMENT

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

ARTICLE I – TERM; DESCRIPTION OF WATER CONSERVATION PROGRAM

Section 1.1. Term. This Contract is effective and commences on April 9, 2014 ("Effective Date"), and terminates on April 9, 2029 ("Expiration Date").

Section 1.2. Water Conservation Program. Subject to the terms and conditions of this Contract, the EAA engages the Permittee to perform, for the benefit of the EAA and the EAHCP, the work set forth and described in this Contract and in the following document ("Water Conservation Program"): (1) the Scope of Work which is attached hereto as Exhibit A ("Scope of Work "). The Permittee 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.

Section 1.3. Commencement and Completion of the Water Conservation Program. The Permittee will commence performing the Water Conservation Program immediately upon the execution of this Contract. The Water Conservation Program will be completed and the written notice of completion will be delivered to the EAA by the Permittee no later than April 9, 2015. It shall be the Permittee's responsibility to ensure that the completion times for the tasks required under this Contract are met. 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. Fees and Expenses. The EAA agrees to pay the Permittee for the Water Conservation Program rendered under this Contract in accordance with the Scope of Work, but in no event shall payments to the Permittee exceed \$311,000.00.

Section 3.2. Payment. Upon execution of this Contract by both Parties, and the transfer to the Groundwater Trust as set forth in Section 11.3, the EAA shall pay the Permittee the full amount of the Contract price as set forth in Section 3.1.

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 the Permittee is an independent contractor with respect to the performance of the Water Conservation Program 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. The Permittee shall provide any and all equipment and materials necessary for the performance of the Water Conservation Program under this Contract. The EAA shall have no right of direction or control of the Permittee, or its employees and agents, except in the results to be obtained, to inspect the progress of the Water Conservation Program, and to receive reports. The Permittee shall accommodate reasonable requests from the EAA to allow EAA employees, agents, or representatives to accompany and observe the Permittee's personnel, or subcontractors, in carrying out the Water Conservation Program under this Contract.

ARTICLE V – PERMITTEE PERSONNEL AND SUBCONTRACTORS

Section 5.1. Personnel. The Permittee will provide any and all personnel necessary for its performance of the Water Conservation Program. The Permittee 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. The Permittee indemnifies and holds harmless the EAA, its officers, employees, and directors from and against any claims brought by any employee, subcontractor, or other agent of the Permittee relating in any way to the Water Conservation Program performed under this Contract.

Section 5.2. Subcontractors. In performing the Water Conservation Program under this Contract, the Permittee may retain and utilize subcontractors, to the extent that they are not already employees of the Permittee. The Permittee 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.

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 ten (10) days prior written notice to the Permittee. Upon receipt of such termination notice, the Permittee shall immediately stop all work in progress, including all work performed by subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point.

ARTICLE VII – OWNERSHIP OF MATERIALS

Section 7.1. Ownership. All information, documents, property, or materials produced, created, or supplied under this Contract by the Permittee, its employees, agents, or subcontractors, or anyone else, and whether finished or unfinished or in draft or final form, will be the property of the Permittee; provided that the EAA shall have unlimited rights to technical and other data resulting directly from the performance of the Permittee's Water Conservation Program under this Contract.

Section 7.2. Record Copies. The Permittee shall retain a record copy of all information, documents, property, or materials developed in the course of performing the Water Conservation Program. Upon request of the EAA, such information, documents, property, or materials will be promptly supplied to the EAA, including after the Expiration Date under Section 1.1, or termination of this Contract for convenience by the EAA under Section 6.1. The EAA will reimburse the Permittee for actual cost of time and expenses of reproduction of such materials when requested.

ARTICLE VIII – NON-PERFORMANCE

Section 8.1. The Permittee warrants that it will perform the Water Conservation Program in a good and workmanlike manner, strictly in accordance with the standards of the water conservation industry for the installation, operation, and maintenance of the services, techniques, and measures which are included in the Water Conservation Program,. The Permittee's failure to timely perform the Water Conservation Program as warranted and agreed shall constitute a breach of this Contract and shall be subject to all applicable remedies at law or equity. Judgment of nonperformance shall rest solely with the EAA.

ARTICLE IX. – ASSUMPTION OF RISK AND INDEMNIFICATION

Section 9.1. Risk. The Permittee shall assume all risks associated with the Permittee's or its subcontractors' performance under this Contract and shall waive any claim against the EAA for damages arising out of the performance of the Water Conservation Program under this Contract.

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 Permittee is otherwise notified:

EDWARDS AQUIFER AUTHORITY
900 E. Quincy
San Antonio, Texas 78215
ATTENTION: ROLAND RUIZ, GENERAL MANAGER

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

CITY OF UNIVERSAL CITY
2150 Universal City Blvd.
Universal City, TX 78148
ATTENTION: RANDY LUENSMANN, DIRECTOR OF PUBLIC WORKS

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, or actually delivered if otherwise delivered.

ARTICLE XI – MANAGEMENT OF CONSERVED WATER

Section 11.1. Conserved Water. The Parties agree that the implementation of the Water Conservation Program by the Permittee will result in 163.684 AF/yr of groundwater from the Aquifer that will be conserved by the Permittee ("Conserved Water"), and that the Permittee will not withdraw the Conserved Water from the Aquifer under the Permit for any reason during the term of this Contract.

Section 11.2. Representations of the Permittee. The Permittee represents and warrants that it has the legal authority to transfer the Conserved Water portion of the Permit identified in Section 11.3 and enter into this Contract. The Permittee also represents and warrants that it has good and clear legal title to the Conserved Water portion of the Permit, free and clear of liens or other encumbrances, and no challenges have been made or threatened by third parties to the Permittee's

claimed ownership of or rights in the Conserved Water portion of the Permit.

Section 11.3. Transfer of the Conserved Water Portion of the Permit. Upon execution of this Contract, the Permittee agrees to, and does hereby transfer 163.684 AF/yr of the Permit to the Groundwater Trust, and the EAA agrees to, and does hereby accept the transfer of this Conserved Water portion of the Permit, in trust, under the terms and conditions of this Contract. This transfer is intended by the Parties to be self-implementing under the terms and conditions of this Contract without the need of the Parties having to execute any other documents to effectuate this transfer. Any untransferred portion of the Permit is not affected in any manner by the terms or conditions of this Contract.

Section 11.4. Term of Transfer. The Conserved Water portion of the Permit shall remain in the Groundwater Trust during the term of this Contract as provided in Section 1.1, until released pursuant to Section 11.7.

Section 11.5. Rights and Obligations of the Permittee. Upon transfer of the Conserved Water portion of the Permit into the Groundwater Trust upon execution of this Contract pursuant to Section 11.3, the Permittee shall have the following rights, restrictions, duties, and obligations:

(1) The Permittee shall have no right to withdraw the Conserved Water portion of the Permit.

(2) The Permittee shall not undertake any action which could lead to the invalidation of the Conserved Water portion of the Permit and the Permittee shall immediately notify the EAA if the Permittee learns of any facts or circumstances suggesting that the Conserved Water portion of the Permit could be called into question.

(3) The Permittee 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, the Conserved Water portion of the Permit without the prior written approval of the EAA. Further, the Conserved Water portion of the Permit shall not be subject to any debt contracted by the Permittee, either prior to or after the transfer, or any judicial process for the satisfaction of any claim against the Permittee.

(4) The Permittee shall have no obligation to pay any aquifer management fees that may be assessed for the Conserved Water portion of the Permit while it remains in the Groundwater Trust, or in arrears after release of the Conserved Water portion of the Permit for the period of time the Conserved Water portion of the Permit was held in the Trust. However, the Permittee shall remain liable for any aquifer management fees already assessed against the Conserved Water portion of the Permit prior to the Effective Date of this Contract.

(5) The Conserved Water portion of the Permit shall not be considered to be part of the Permittee's authorized groundwater withdrawal amounts for purposes of Section 715.218 of the EAA's critical period management rules, and the Permittee shall not otherwise be required to interrupt its withdrawals from the Aquifer based on rights held in trust by the EAA pursuant to this Contract.

(6) Any exceedance of the amount of groundwater authorized to be withdrawn under the Permit that has not been transferred to the Groundwater Trust under this Contract is a violation of the Permit and a breach of this Contract.

(7) The Permittee shall be entitled to have the Conserved Water portion of the Permit released from this Contract as provided in Section 11.7.

(8) If the EAA terminates this Contract for convenience under Section 6.1, within 30 days of the EAA's notice of termination, the Permittee shall the duty to and agrees to reimburse the EAA a pro rata portion of the amount paid to the Permittee by the EAA as stated in Section 3.1 based on the remaining term of this Contract compared to the original contract term as set forth in Section 1.1. In its notice of termination, the EAA shall state the amount of reimbursement to which it is entitled to receive.

Section 11.6. Rights and Obligations of the EAA. Upon transfer of the Conserved Water portion of the Permit into the Groundwater Trust upon execution of this Contract pursuant to Section 11.3, the EAA shall have the following rights, restrictions, duties, and obligations:

(1) The EAA must hold the Conserved Water portion of the Permit in the Groundwater Trust, and may not sell, lease, or transfer the Conserved Water portion of the Permit to a third-party for any purposes, nor otherwise withdraw or authorize the withdrawal of any groundwater pursuant to the Conserved Water portion of the Permit during the term of this Contract.

(2) The EAA may not retire the Conserved Water portion of the Permit, nor take any other action that would result in the permanent reduction in the groundwater withdrawal amount of the Permit.

(3) The Conserved Water portion of 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.

(4) The EAA shall not assess any aquifer management fees for the Conserved Water portion of the Permit while it remains in the Groundwater Trust.

(5) The EAA shall exclude the Conserved Water portion of the Permit when calculating the Permittee's authorized groundwater withdrawal amounts for purposes of Section 715.218 of the EAA's critical period management rules.

(6) If the EAA terminates this Contract for convenience under Section 6.1, the EAA shall have the right to be reimbursed as provided in Section 11.5(8).

Section 11.7. Release of Conserved Water Portion of the Permit Held in Trust.

(a) Upon termination of this Contract as provided for in Section 1.1, the Conserved Water portion of the Permit is hereby released from the Groundwater Trust and returned to the

Permittee without any further action of the EAA to accomplish the release and return. This release and return is intended by the Parties to be self-implementing under the terms and conditions of this Contract without the need of the Parties having to execute any other documents to effectuate this transfer. Such release and return shall be free from any and all of the provisions of this Contract and the Groundwater Trust.

(b) Upon termination of this Contract by the EAA for convenience as provided for in Section 6.1, the Conserved Water portion of the Permit will be released from the Groundwater Trust and returned to the Permittee within thirty (30) days after the EAA has received from the Permittee the reimbursement to which the EAA is entitled under Sections 11.5(8) and 11.6(6). After reimbursement has been received, the EAA shall promptly take all appropriate administrative actions to accomplish the release and return.

(c) This section shall survive termination of this Contract.

ARTICLE XII – MISCELLANEOUS

Section 12.1. Entire Agreement. This Contract and the attached Exhibits constitute the entire agreement between the Parties regarding the Water Conservation Program to be performed by the Permittee 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 12.2. 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 12.3. Headings. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

Section 12.4. 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 12.5. 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 12.6. 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 Permittee may not assign any of its rights nor delegate any of its duties under this Contract without the EAA's prior written consent.

Section 12.7. 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 12.8. 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 12.9. 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 12.10. Attachments. The Exhibits, schedules, and/or other documents attached hereto or referred to herein are incorporated herein 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 12.11. 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 12.12. 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 12.13. 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.

Section 12.14. Recordation. The EAA shall have the right to record this Contract of public record, or a memorandum thereof.

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

EDWARDS AQUIFER AUTHORITY

CITY OF UNIVERSAL CITY

By:_____

Roland Ruiz
General Manager

By:_____

Randy Luensmann
Director of Public Works

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

ACKNOWLEDGEMENT

STATE OF TEXAS

COUNTY OF _____

This instrument was acknowledged before me on _____, 2014, Randy Luensmann of the City of Universal City, known personally to me to be the person who subscribed to this instrument, on behalf of Transferor.

Notary Seal

Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on _____, 2014, by Roland Ruiz, General Manager 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

AFTER RECORDING RETURN TO:

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

EXHIBIT A

SCOPE OF WORK

The purpose of this Contract is for the Permittee to implement a Water Conservation Program and to commit a portion of the associated conserved water to the EAA's Groundwater Trust.

Specifically, the Permittee will install and maintain 375 Permalog Advanced Leak Detection (PALD) units according to the manufacturer specifications throughout the Permittee's water distribution system. These PALD units attach magnetically to pipelines and detect noise caused by leaking water. The PALD then analyze the data to approximate a leak's location.

All PALD units shall be installed by April 9, 2015.

As shown in the table below, the Permittee's Water Conservation Program is expected to conserve an estimated **327.368** acre feet of Edwards Aquifer groundwater. The Permittee agrees to commit 50% of the conserved water to the Groundwater Trust program for a term of 15 years, as described in the Contract..

Total Conserved Water (acre feet)	Groundwater Trust Amount (acre feet)	Cost/Acre-Foot of Conserved Water	Total Cost
327.368	163.684	\$950.00	\$311,000

The total amount to be paid to the Permittee shall not exceed \$311,000.