

## **AGREEMENT TO CONSERVE WATER UNDER THE AQUIFER CONSERVANCY PROGRAM**

This Agreement is by and between the Post Oak Savannah Groundwater District (“District”), whose address is 310 East Avenue C, Milano, Texas 76556 and the qualifying landowner(s) \_\_\_\_\_ (“Landowner”), whose address is: \_\_\_\_\_, \_\_\_\_\_, Texas \_\_\_\_\_. Only after being signed by the Landowner and an authorized representative of the District will this Agreement along with any supporting documentation required under this Agreement and the Aquifer Conservancy Program (“ACP”) be deemed a valid Aquifer Conservation Agreement for the purpose of the ACP established by the District. The Landowner and the District thereafter agree that the lands identified in this Agreement meet the intent of the ACP of conserving groundwater for the term specified.

### **I. PROPERTY**

A map of the property shall show the entirety of the acreage and clearly define all acreage included and any acreage that is excluded from this Agreement, as well as the Property ID number (“Property”). The map of the Property that is subject to this Agreement is attached hereto as Exhibit A. The Property must be within the District and must be above the Carrizo-Wilcox Aquifers.

### **II. OWNERSHIP**

- a. The Property must be owned in fee simple by the Landowner. Spouses or co-owners must all agree and sign the Agreement. If the Landowner is married but owns the Property as his/her sole and separate property, proof of such ownership is required and the spouse will need to affirm that ownership is held in such manner.
- b. Both the Property and the unencumbered groundwater rights must be owned by the Landowner.
- c. Ownership of the Property shall be required by providing a copy of the deed, Property ID or tax statement and verified by the District at the time of applying for the ACP.
- d. Under the terms and as a result of this Agreement, the District does not and shall not have any ownership interest in the Property.
- e. Not less than ten (10) days in advance of any transfer of the fee simple title or a possessory interest in all or a portion of the Property or divestiture of the surface and groundwater rights, Landowner agrees Landowner shall notify the District of such change in ownership and shall provide such documentation as soon as possible of such change in ownership.

### **III. CONSIDERATION**

- a. In consideration of the sum of \_\_\_\_ (\$\_\_\_\_) per acre committed as Property and paid by the District to the Landowner and in consideration of the covenants, terms, conditions and restrictions contained herein, the sufficiency of which is hereby acknowledged, and pursuant to the terms of the ACP adopted

by the District, the Landowner and the District hereby agree to these Covenants and Restrictions as set out in this Agreement, which shall run with the Property for the Term herein set forth.

b. The final amount of consideration based on the amount stated above, less any pro-rations due to terminations or changes in acreage shall be paid within thirty (30) days after December 31 for each year the Landowner agrees to below.

c. Additional compensation of Ten Dollars (\$10.00) per acre committed as Property shall be paid only for the initial year of the ACP and as a one-time incentive which shall be payable within sixty (60) days of commitment date in 2019.

#### **IV. TERM**

a. The Parties agree that the term of this Agreement shall be for a period of \_\_\_\_\_ years, beginning on January 1, 2020.

b. This Agreement may not be terminated prior to the end of the above-stated term, except as follows:

1. Death of the Landowner. If solely owned, it shall be terminated upon notification by the heirs. If jointly owned, it may be terminated by the remaining Landowner if desired.

2. Sale of the Property that is the subject of the ACP Agreement. The Landowner shall be required to notify the District of the sale of all or any portion of the Property that is under this Agreement. If all of the Property is sold, the Agreement shall be terminated upon such notification. If only a portion of the Property is sold, the Agreement shall be amended for the duration of the time previously agreed to and the consideration shall be adjusted accordingly.

3. Transfer to heir(s). If one or more heir(s) of the Landowner become joint owners of the Property that is under this Agreement and agrees to remain a part of the ACP, this Agreement shall be amended and re-signed by all the Landowners for the duration of the time previously agreed to. If all or a portion of the Property that is under this Agreement is transferred to the heirs of the Landowner, the heirs shall be given an opportunity to allow such Property transferred to continue to be a part of the ACP and enter into their own Agreement, or terminate such Agreement, with any remainder of such Property not transferred adjusted under this Agreement for the duration of the time previously agreed to.

#### **V. COVENANTS**

a. Landowner represents, covenants and warrants to the District that the groundwater on the portion of the Property identified in Exhibit A as being included in the acreage under this Agreement has not been leased or separated from the ownership of the Property owned by Landowner.

b. Landowner represents, covenants and warrants to the District that the Property identified in Exhibit A as the Property committed under this Agreement is accurately defined by acreage, described or shown, and that all such Property to be committed is in conformance with the ACP and this Agreement.

c. Landowner reserves to Landowner, and to its successors and assigns and any transferee therefrom, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and that are not inconsistent with the purpose and terms of this Agreement and the ACP.

d. Landowner further covenants and warrants to the District that the groundwater, Property and Ownership interest shall not change during the term of this Agreement except as allowed in IV. Term (b).

#### VI. DISTRICT OBLIGATIONS

District shall create and maintain files and records that support any final reports or payments under this Agreement. All files and records shall belong to the District and the District will maintain all files and records as required by law.

#### VII. ADDITIONAL TERMS

a. Landowner is still allowed to drill an exempt well, provided all other permitting requirements are met. An exempt well is defined as one that is for domestic or livestock purposes and incapable of producing 25,000 gallons per day (approximately 17.36 gallons per minute). Water wells used to supply water used for drilling oil and gas are also exempt (**this does not include allowance for water used for fracking.**)

b. Entering into this Agreement does not preclude Landowner from participating in any other program offered by the District that Landowner might qualify for, including but not limited to, Rainwater Harvesting, Abandoned Well Plugging Grants and Groundwater Well Assistance Program.

c. Landowner shall comply with all applicable federal and state laws and regulations, as well as the rules and regulations of the District, as may be amended. Landowner shall further obtain all permits and licenses that may be required for any use outside the parameters of this Agreement but dealing with the Property and/or groundwater.

d. Any notice required or desired to be given under this Agreement shall be in writing and shall be personally delivered or given by mail to the address set forth in the first paragraph or via email as stated below. Any notice given shall be deemed to have been given when hand delivered or emailed or, if mailed, as of seventy-two hours from the time when notice was deposited in the United States mails (certified or registered, return receipt requested, postage prepaid), addressed to the party to be served with a copy as indicated herein. Either party may change its address for purposes of notice by giving notice of such change of address to the other party. Email for the District is: [admin@posgcd.org](mailto:admin@posgcd.org). Email for the Landowner is: \_\_\_\_\_.

e. No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law).

f. Landowner and the District each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Agreements.

g. This Agreement is a commitment of the District's current revenues only. Notwithstanding any provision contained herein, the financial obligations of the District contained herein are subject to and contingent upon appropriations by the Board of Directors of such funds or other revenues being available, received and appropriated by the District in amounts sufficient to satisfy said obligations. In no event shall this instrument be construed to be a debt of the District.

- h. Should any dispute arise under this Agreement that culminates in litigation, venue of that suit shall be in a court of the county where the property is located. The court shall apply the laws of the State of Texas in construing and interpreting the terms of this Agreement.
- i. Nothing herein shall ever be construed to confer upon any third person any rights, benefits or remedies, contractual or otherwise, as a third party beneficiary by reason of this Agreement.
- j. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either the District or its officers and employees. Neither the District, nor its officers and employees waives, modifies or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.
- k. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the District, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.
- l. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
- m. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, unenforceability shall not affect any other provisions and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been included.
- n. The captions or headings of paragraphs in this Contract are inserted for convenience only and shall not be considered in constraining the provisions hereof if any question of intent should arise.

IN WITNESS WHEREOF, the parties of these presents have executed this Agreement in the year and date first above written.

**POST OAK SAVANNAH GROUNDWATER  
CONSERVATION DISTRICT**  
(DISTRICT)

\_\_\_\_\_  
(LANDOWNER)

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_