

**POST OAK SAVANNAH GROUNDWATER CONSERVATION DISTRICT
INTERLOCAL AGREEMENT
FOR WATER CONSERVATION PROGRAMS, MEASURES AND/OR SERVICES
PERFORMED BY _____ COUNTY**

This Agreement is entered into by the following Parties: Post Oak Savannah Groundwater Conservation District, a political subdivision located wholly in Milam and Burleson counties of Texas, ("District"), and the _____ County, a political subdivision located in Texas ("County").

RECITALS

This Agreement is for performance of certain water conservation measures and/or services, as identified in Section 6 (Scope of Services) under authority of Texas Government Code, Chapter 791. District has the authority under Chapter 791 to contract with other local governments for government functions and services. Both District and County are "local governments" as defined by Texas Government Code § 791.003(4)(A) and both desire to enter into this Agreement pursuant to Chapter 791.

District is in receipt of funds from permitting of operating and transportation permits and is authorized to undertake programs and tasks in order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section [59](#), Article XVI, Texas Constitution.

County, as the functional arm of state government and delivering many state services at the local level, including but not limited to providing public safety and justice, providing emergency management services and providing health and safety services; these functions of the County translate into various programs that can be facilitated and/or enhanced through working with the District on water preservation and protection of the natural resources that all of Texas is dependent upon.

District desires to contract with County for undertaking certain additional programs, measures and/or services to improve and/or provide additional information related to groundwater conservation, preservation and protection of groundwater and related natural resources.

County is capable of adding and/or receiving additional training to provide the additional programs, measures and/or services and providing reports supporting such information.

District has set aside funding for Conservation and Preservation Grants for the counties it overlays to provide for the appropriate reimbursement for the services supplementing and/or being performed by the County as set forth herein. District finds that the expenditure of public funds in support of these additional programs, measures, training, and/or services provided by the County, accomplishes a valid public purpose of protecting the _____ County's health,

safety, welfare, natural resources and the economic welfare of the residents of _____ County, as well as provide assistance in securing monitor wells or other means of measuring depth and impacts of activities on the area's aquifers.

The Parties desire to enter into this Agreement for these purposes.

AGREEMENT

PART 1- TRANSACTIONAL REQUIREMENTS

1. TERM:

Although expenditures made on and after January 1, 2022 are reimbursable under this Agreement, the term begins on the day this Agreement is last executed by the Parties and continues until December 31, 2022 or until all services in process on December 31, 2022 have been rendered, unless terminated earlier under any provision of it.

2. DEFINITIONS:

2.1 "Conservation Funding" means funds up to the Not to Exceed Amount under this Agreement and set aside under Conservation and Preservation Grants and provided to County by District from the funding District has received from current permits authorized under Chapter 36, Texas Water Code and the District's Rules.

2.3 "Eligible Expenditures For District Conservation Programs" means necessary expenditures incurred for public protection and conservation of the aquifers through specific programs identified by the parties, so long as the District's purposes and mission statement are met with such programs. Specific District Conservation Programs, expenditures and/or projects or reports that shall qualify for being funded are set out in Exhibit "A" attached hereto and incorporated herein and:

2.3.1 Are necessary expenditures incurred due to the safety of, promotion of the protection of and/or in support of conservation of the various aquifers under stewardship and control of the District,

2.3.2 Were not accounted for in the County's budget most recently approved as of the beginning of the then current fiscal year; and

2.3.3 Will be incurred during the period that begins on January 1, 2022 and ends on December 31, 2022.

2.4 "Expense Documentation" means itemized invoices, receipts for services or benefits, documentation of additional personnel expenses and programs, including training program and

monthly reports which County will provide of their activities which address the tasks set out in the specific District Conservation Programs.

2.5 “Fiscal Year” means the District’s fiscal year which runs from January 1 through December 31.

2.6 “Proposed County Program” means any specific projects, programs, initiatives, purchases, or disbursements of funds which will address and support the specific District Conservation Programs. An outline of such Proposed County Program shall be set out in Exhibit “B” attached hereto and incorporated herein.

2.7 “Public Information Act” means Texas Government Code, Chapter 552.

2.8 “Records” means any invoices, receipts, and other appropriate supporting documentation, papers, reports, records, books, data, and other documents that are reasonably pertinent to the fulfillment of the requirements of this Agreement.

2.9 “Working Day” means Monday through Friday except for days that District or County have designated as holidays and listed at the appropriate District or County calendar.

3. INCORPORATED DOCUMENTS:

3.1 The following documents or sections of state law are incorporated by reference as if fully reproduced in this Agreement:

3.1.1 Chapter 36, Texas Water Code- Exhibit C

3.1.2 Rules of Post Oak Savannah Groundwater Conservation District – Exhibit D and

3.1.3 District’s enabling legislation- Exhibit E

3.1.4 Texas Administrative Code, Chapter 76 Water Well Drillers and Water Well Pump Installers- Exhibit F

3.1.5 Texas Local Government Code, Title 4, Subtitle 4- Exhibit G; Title 5, Subtitle B; and other pertinent statutes set out therein

4. ORDER OF PRECEDENCE:

If there is any conflict or inconsistency between the provisions of this Agreement or any incorporated or referenced document, that conflict or inconsistency shall be resolved in the following order of precedence:

4.1 This Agreement and any subsequent amendments;

- 4.2 Exhibit A. District Eligible Conservation Expenditures;
- 4.3 Exhibit C. Chapter 36, Texas Water Code;
- 4.4 Exhibit D. District's Rules;
- 4.5 Exhibit E. District's enabling legislation;
- 4.6 Exhibit B. Proposed County Program;
- 4.7 Exhibit F. Texas Administrative Code, Chapter 76 Water Well Drillers and Water Well Pump Installers;
- 4.8 Exhibit G. Various statutes set out in Texas Local Government Code.

5. REPRESENTATIONS AND WARRANTIES OF COUNTY:

5.1 County represents and warrants that County will use all of the Conservation Funding for the additional necessary expenditures incurred for public health, safety, welfare and conservation in the area of groundwater protection and conservation which would be eligible for Conservation Funding. District's Exhibit "A" describes the areas allowed for services, programs and assistance. Further, the County's expenditures:

- 5.1.1 Are necessary expenditures incurred in order to perform the District Conservation Programs
- 5.1.2 Were not accounted for in the County budget most recently approved as of September 2021, and
- 5.1.3 Were incurred during the period that begins on January 1, 2022 and ends on December 31, 2022.

5.2 County represents and warrants that County does not intend to and will not use the Conservation Funding being paid to it to fill shortfalls in County's revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.

6. COUNTY'S SCOPE OF SERVICES AND OBLIGATIONS:

6.1 Nature of Funding.

6.1.1 County acknowledges and recognizes that the source of the Conservation Funding is District funding from permits.

6.1.2 County receives the Conservation Funding from District as a sub-recipient. As a sub-recipient of Conservation Funding, County acknowledges that its use of the funds is subject to the same terms and conditions as District's use of these such funds and the terms and conditions of this Agreement. County agrees to strictly comply with all terms and conditions of the Conservation Funding, and to pay District for any repayments, penalties, or interest incurred as a result of County's failure to comply with all terms and conditions of the Conservation Funding. Funds spent in non-compliance with this Section 6.1 are subject to recapture by District.

6.2 Deposit of Conservation Funding.

6.2.1 Separate Account County shall create a separate, segregated account solely for holding and disbursing the Conservation Funding and deposit both an advance of not more than twelve percent (12%) of the Not to Exceed Amount and the reimbursements based on Eligible Expenditures from the Conservation Funding into that account.

6.2.2 Interest Used as Principle. If Conservation Funding is deposited into an interest-bearing account or invested, County must treat all interest earned and all proceeds of investment as if it were Conservation Funding received from District and use it exclusively for Eligible Conservation Expenditures paid and incurred on or after January 1, 2022, and on or before December 31, 2022. Conservation Funding is not subject to the Cash Management Improvement Act of 1990, as amended.

6.2.3 Taxpayer Identification. Before any Conservation Funding is payable, District shall provide the _____ County Auditor with an Internal Revenue W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code, its rules and regulations.

6.2.4 Payment by Direct Deposit. District must email the County to obtain an electronic form to set up direct deposit into District's segregated Conservation Funding account through electronic ACH deposit.

6.2.5 County must send requests for reimbursement with all necessary Expense Documentation to:

6.3 Request for Conservation Funding.

6.3.1 Advance. County must submit its Proposed County Programs to District for approval based on the eligibility criteria in 7.4 to ensure compliance with the requirements set out herein. After District has approved the Proposed County Programs, it shall be attached to this Agreement as Exhibit "B." County may request an advance of Conservation Funding through the District that covers actual costs incurred after January 1, 2022 with the Expense Documentation for reimbursement of up to twelve percent

(12%) of their “Not to Exceed” Amount, whichever is larger. No Expense Documentation is required to receive the advance; however, County must repay the District for any amount of the advance and/or reimbursements for which County has not submitted Expense Documentation for Eligible Conservation Expenditures to the District on or before December 31, 2022.

6.3.2 Reimbursements of the Remainder. County must have written approval for its Proposed Conservation Program (“Exhibit B”) from the District to receive reimbursements from the remaining **eighty-eight percent (88%)** of the Not to Exceed Amount of the Conservation Funding. County may request monthly reimbursement of Eligible Conservation Expenditures from the District for the remaining reimbursable **eighty-eight percent (88%)** of the Not to Exceed Amount under this Agreement through December 31, 2022.

6.4 Use of Conservation Funding.

6.4.1 County shall use all Conservation Funding exclusively for Eligible Conservation Expenditures paid and incurred on or after January 1, 2022, and on or before December 31, 2022 (“District’s Fiscal Year”) in compliance with this Agreement.

6.4.2 County may use its Conservation Funding to reimburse itself for Eligible Conservation Expenditures paid and incurred during the District’s Fiscal Year.

6.5 County’s Obligations relating to its Use of the Conservation Funding.

6.5.1 County shall coordinate with the District and review Exhibit A to ensure that any public programs or initiatives undertaken by County are not duplicated services, initiatives, or programs.

6.5.2 County shall reimburse and return to the Conservation Funding account within thirty (30) days of notice by District that any portion of the Conservation Funding that the District deems was not used for Eligible Expenditures, or not used pursuant to the terms of this Agreement. If District’s Conservation Funding account is already closed out, County shall reimburse and return to District any portion of the Conservation Funding that District or their designees deem was not used for Eligible Conservation Expenditures, or not used pursuant to the terms of this Agreement within thirty (30) days of notice by District.

6.5.3 County shall document through the reports filed with the District that each expenditure/reimbursement from the Conservation Funding was an Eligible Conservation Expenditure in compliance with Exhibit “B” and sections 8 and 13 herein. County shall keep Records sufficient to demonstrate that the Conservation Funding has been used in accordance with the terms of this Agreement. County shall deliver a copy of all Expense Documentation and the [requested reports](#) to the District by the end of each month and shall keep the Expense Documentation for a minimum of seven (7) years after the close of this program.

6.5.4 County shall allow inspection of all Expense Documentation and Records related to its expenditure of its Conservation Funding by District upon reasonable request in compliance with sections 8 and 13.

6.5.5 County shall return and re-pay any Conservation Funding that has not been and will not be expended by 11:59 p.m., December 31, 2022.

6.5.6 County shall provide District with monthly reports of the use of all Conservation Funding in a form acceptable to District and return any Conservation Funding that was not used for Eligible Conservation Expenditures. Any and all Conservation Funding may be collected and redistributed at District's discretion.

6.6 County's Obligations for Use of the Conservation Funding Received as Reimbursements.

6.6.1 County may choose to set up programs that are in compliance with the eligibility criteria in subsection 7.5 of this Agreement. County shall coordinate with District any public programs or initiatives so that no duplication of services, initiatives, or programs occurs.

6.6.2 County shall only request reimbursement from the Conservation Funding for Eligible Conservation Expenditures. If the County is not sure that an expenditure is an Eligible Conservation Expenditure, it should seek an opinion from the District before making the expenditure.

6.6.3 County shall only disburse the advance of the Conservation Funding or claim reimbursements from the Conservation Funding for Eligible Conservation Expenditures solely for the County's programs, educational, and operational needs addressing the District's Conservation Programs within its County lines as determined by District.

6.6.4 County shall report authorized expenditures made under this Agreement through its monthly reports submitted to District in any report format as determined by District in District's sole discretion.

6.7 Attorney's Fees and Costs. County shall pay District's reasonable and necessary attorney's fees and costs if District is required to undertake litigation against County to enforce the terms of this Agreement to the extent allowed by law.

7. Proposed County Programs

7.1 Eligibility for Advance and/or Reimbursement. The Proposed County Program must comply with the following criteria:

7.1.1 County has presented a documented need for the Proposed County Program, in the format requested by District;

7.1.2 The Proposed County Program only addresses needs of the County and the County's residents within the boundaries of District, and does not provide direct benefits to those in adjacent districts;

7.1.3 If approved, County will be able to use or distribute all of the funds provided for the Proposed County Program before December 31, 2022 to ensure full expenditure of the funding received by County;

7.1.4 The Proposed County Program was not included in County's most recent fiscal year budget approved as certified by the appropriate official of County;

7.2 Requirements for Reimbursement. District shall reimburse County in an aggregate amount up to District's Not to Exceed Amount which is **One hundred twenty-five thousand dollars (\$125,000)** for District Conservation Programs if County:

7.2.1 Has obtained written pre-approval from District staff concerning the District Conservation Programs it intends to facilitate, operate and/or support;

7.2.2 Complies with the reporting requirements in this Agreement on a timely basis;

7.2.3 Complies with District's requirements placed on approval of the Proposed County Program; and

7.2.4 Certifies that none of the amounts submitted for reimbursement were:

7.2.4.1 Included in County's most recent budget approved September 2021 or

7.2.4.2 Used directly or indirectly (such as assistance with payment of ad valorem taxes) to replace County revenue lost.

8. REPORTING REQUIREMENTS AND ACCOUNTABILITY:

8.1 Required Documentation. County must submit complete, accurate documentation as required by the District or its Auditor, following the monthly completion of the services or activity and disbursement of the funds related to them. Within the Expense Documentation, County must include invoices from subcontractors and suppliers, if any, as well as provide generally the hours spent on the programs authorized.

8.2 Timing of Submission. County understands and acknowledges that all Expense Documentation must be submitted to District on a rolling monthly basis before December 31, 2022. On or before the tenth day of each month, County must submit all required Expense Documentation as Eligible Conservation Expenditures are incurred and County disburses funds. County must submit only Expense Documentation that relates to services rendered and funds disbursed during the previous month.

8.3 Penalties. If County fails to comply with District's reporting requirements, performance objectives, or other requirements relating to County's performance of work, deliverables, and services under this Agreement, District may either withhold reimbursements until County complies with all reporting and other requirements or terminate this Agreement with no obligation to reimburse for undocumented or ineligible services, or both.

8.4 Maintenance and Retention of Records. County shall keep and maintain its Records that are reasonably pertinent to the fulfillment of the requirements of this Agreement in standard accounting form. County shall make these Records available in County for inspection by District upon request. County must keep and maintain these Records for at least seven (7) years after termination or expiration of this Agreement. If any litigation, claim, or audit involving these Records begins before that specified time period expires, County must keep these Records after the seven (7) years and until all litigation, claims, or audit findings are resolved. **County is strictly prohibited from destroying or discarding any Records reasonably pertinent to the fulfillment of the requirements of this Agreement, unless the time period for maintaining them under this subsection 8.4 has lapsed. Destruction is deemed non-compliance.**

8.5 Access to Records and Audit. County grants District, any of its duly authorized representatives the right to timely and unrestricted access to any County Records that are pertinent to the fulfillment of the requirements of this Agreement, to perform audits, examinations, excerpts, transcripts, and to substantiate the provision of services under this Agreement. County shall furnish all Records to authorized District personnel in _____ County, Texas, at reasonable times and within reasonable periods. This right also includes the right to timely and reasonable access to County's personnel for the purpose of reviewing, interviewing, evaluating, monitoring and making copies of Records related to these audits and examinations. The County Auditor, her delegates or assigns, and those of any other governmental entity approved by County have the unrestricted right to audit all Records that are reasonably pertinent to the fulfillment of the requirements of this Agreement.

8.6 Requirement to Address Audit Findings.

8.6.1 If any audit, monitoring, investigations, review of awards, or other compliance review reveals any discrepancies, inadequacies, or deficiencies which are necessary to correct in order to maintain compliance with this Interlocal Agreement, applicable laws, regulations, or the County's obligations hereunder, County agrees to propose and submit to District a corrective action plan to correct such discrepancies or inadequacies within thirty (30) calendar days after the County's receipt of the findings. County's corrective action plan is subject to the approval of District.

8.6.2. County understands and agrees that County must make every effort to address and resolve all outstanding issues, findings, or actions identified by the District's Auditor or County through the corrective action plan or any other corrective plan. Failure to promptly and adequately address these findings may result in Conservation Funding being

withheld, other related requirements being imposed, or other sanctions and penalties. County agrees to complete any corrective action approved by District within the time period specified by District and to the satisfaction of District, at the sole cost of County. County shall provide to District periodic status reports regarding County's resolution of any audit, corrective action plan, or other compliance activity for which County is responsible.

9. CONFIDENTIALITY:

9.1 County shall not disclose privileged or confidential communications or information acquired during performance under this Agreement, unless authorized by law. County shall adhere to all applicable confidentiality requirements, as required by law, for performance under this Agreement.

9.2 Public Information Act. The Parties acknowledge that County and District are subject to the Texas Public Information Act. Despite any other provision, the Parties agree that if any provision of this Agreement, or other documents related to this Agreement, including any exhibit, attachment, amendment, addendum, or other incorporated document, is in conflict with the Public Information Act, that provision shall not have any force or effect. The Parties expressly acknowledge and agree that both parties may request advice, decisions and opinions of the Attorney General of Texas about the application of the Public Information Act to any item, data or information, or any software, hardware, firmware, or any part of them, or any other equipment or thing or item furnished to or in the possession or knowledge of either party. The Parties further acknowledge and agree that Requestors have the right and obligation by law to rely on the advice, decisions and opinions of the Attorney General of Texas. Each party releases the other from any liability or obligation of any type, kind or nature regarding any disclosure of any software, hardware, firmware, or any part of them, or other equipment or item, data or information, or any other thing or item furnished by either of them or in the possession or knowledge of either of them that is determined by a party in reliance on any advice, decision or opinion of the Attorney General of Texas to be available to the public or any persons.

9.3 The Party that receives a Public Information Act request for documents related to this Agreement or any program undertaken pursuant to this Agreement shall handle that request but shall also notify the other party that a request has been made.

10. ALLOCATION OF RISK:

THE PARTIES AGREE TO BE RESPONSIBLE EACH FOR THEIR OWN NEGLIGENT ACTS OR OMISSIONS, OR OTHER TORTIOUS CONDUCT IN THE COURSE OF PERFORMANCE OF THIS AGREEMENT. THE PARTIES AGREE THAT ANY LIABILITY OR DAMAGES OCCURRING DURING THE PERFORMANCE OF THIS AGREEMENT CAUSED BY THE JOINT OR COMPARATIVE NEGLIGENCE OF THE PARTIES, OR THEIR EMPLOYEES, AGENTS OR OFFICERS, SHALL BE DETERMINED IN ACCORDANCE WITH COMPARATIVE RESPONSIBILITY LAWS OF TEXAS. THIS PARAGRAPH SHALL

NOT BE INTERPRETED TO CREATE OR GRANT ANY RIGHTS, OR WAIVE ANY IMMUNITY, CONTRACTUAL OR OTHERWISE, IN OR TO ANY PERSONS OR ENTITIES NOT A PARTY TO THIS AGREEMENT.

11. INSURANCE:

At all times during this Agreement, District and County shall maintain insurance coverage commensurate with that Party's obligations under this Agreement in full force or, to the extent permitted by applicable laws, maintain self-funded insurance reserves commensurate with that Party's obligations under this Agreement and in accordance with sound risk management practices. District and County are responsible for the respective costs of this insurance, including any deductible amounts in any policy and any denials of coverage made by their own respective insurers.

12. EXPENSES AND TAX

12.1 Unless prior written approval by District is obtained or otherwise detailed in this Agreement, County shall be responsible for all mileage and other miscellaneous expenses related to the fulfillment of the requirements of this Agreement. Mileage and other miscellaneous expenses shall not be reimbursable or included in the Not to Exceed Amount.

12.2 District, as a political subdivision of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Loc. Gov't Code § 151.309, and, therefore, shall not be liable to the County for the payment of these taxes under this Agreement. District shall not reimburse County for any sales, use, personal property or other taxes attributable to periods on or after the effective date of this Agreement or based upon County's cost in its performance or acquiring products or services or materials or supplies furnished or used by County under this Agreement.

13. GENERAL FISCAL TERMS AND CONDITIONS:

13.1 Not to Exceed Amount. County understands and agrees that the maximum total amount reimbursable for the services and funds distributed through programs approved and set out in Exhibit "B" under this Agreement shall not exceed the **Not to Exceed Amount as determined by Section 7.1 and 7.2 and Exhibit "B."** District shall not pay for any services nor distribute any funds that would cause the amounts paid under this Agreement to exceed the Not to Exceed Amount.

13.2 Transparency to Avoid Duplication of Funding. County understands and agrees that it is necessary for County to be completely transparent with District about its funding submissions for and use of other types of grant funding to avoid duplication of reimbursements of expenditures eligible from more than one grant source.

13.3 Monitoring. The District is responsible for monitoring reporting compliance and fiscal compliance with the Not to Exceed Amount and shall resolve any dispute between the Parties related to District's reimbursements to County under this Agreement.

13.4 Refund provision. District has the right to demand repayment of any funds paid to County that did not comply with the terms of this Agreement or that were determined by the District to be ineligible expenditures unless these were offset against a subsequent reimbursement. Upon notice by District, County shall promptly pay back any monies previously reimbursed by District that District, in its sole discretion, determines were ineligible expenditures by County or were not in compliance with this Agreement.

13.5 Prior Debts. District shall not be liable for costs incurred or performances rendered by County before January 1, 2022 or after December 31, 2022; for expenditures that County has not submitted a request for reimbursement to District within the applicable time frame stated in this Agreement; or for any reimbursement for services or activities not provided in compliance with this Agreement.

13.6 Prevention of Fraud and Abuse. District shall establish, maintain and use internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. District shall report any known or suspected incident of fraud or program abuse involving District's employees or agents immediately to the County in writing. District and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds reimbursed pursuant to this Agreement does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds.

13.7 Prompt Payment Act. County agrees that a temporary delay in making payments due to the District's accounting and disbursement procedures shall not place the District in default of this Agreement and shall not render the District liable for interest or penalties, provided the delay does not exceed thirty (30) days after its due date. Any payment not made within thirty (30) days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.

13.8 Fiscal Funding Clause. Despite any provision in this Agreement, the obligations of District under it are expressly contingent upon the availability of funding for each obligation in it for the duration of the Agreement. County has no right of action against District if District is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for obligation from any source used to fund this Agreement or failure to budget funding for this Agreement during the current or future fiscal years. If District is unable to fulfill its obligations under this Agreement due to a lack of sufficient funding, or if funds become unavailable, District, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to County at the earliest possible time.

14. AMENDMENTS AND CHANGES IN THE LAW:

14.1 A modification, amendment, novation or other alteration of this Agreement shall not be effective unless mutually agreed upon in writing, approved by County Commissioners Court, and the District's Board of Directors and executed by the Parties.

14.2 Any alteration, addition or deletion to this Agreement which is required by changes in federal law, federal guidance, or state law are automatically incorporated into this Agreement without written amendment to it and are effective on the date designated by that law or guidance.

15. ASSIGNMENT:

Neither party may assign its rights and duties under this Agreement. Any assignment attempted shall be null and void.

16. SUBCONTRACTING:

The costs of any subcontracted services related to County's performance of this Agreement are included in the Not to Exceed Amount in this Agreement. If County enters into subcontracts related to its performance of this Agreement, the subcontracts must be in writing and subject to all requirements in this Agreement. County acknowledges that it is solely responsible to District for the performance of this Agreement. County shall pay all subcontractors in a timely manner. District has the right to prohibit County from using any subcontractor.

17. REMEDIES AND WAIVER OF BREACH:

17.1 The Parties both have a duty to mitigate damages.

17.2 The rights and remedies in this Agreement are cumulative, and either Party's use of any right or remedy does not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the Parties may have by law or statute or in equity, including injunctive relief. Pursuit of any remedy is not a forfeiture or waiver of any obligation of a defaulting Party under this Agreement or of any damages accruing by reason of the default.

17.3 Any waiver of any breach or any provision of this Agreement must be in writing.

17.4 It is not a waiver of default if the non-defaulting Party does not declare a default immediately or delays in taking any action. The waiver of any provision or any breach of this Agreement shall not be deemed or interpreted to be a waiver of any other provision or any other breach of this Agreement.

18. REMEDIES FOR NON-COMPLIANCE AND TERMINATION:

18.1 If District determines that County materially fails to comply with any term of this Interlocal Agreement, whether stated in a federal or state statute or regulation, an assurance, certification, or any other applicable requirement, District, in its sole discretion may take actions including:

- 18.1.1 Temporarily withholding cash payments pending correction of the deficiency or more severe enforcement action by District;
- 18.1.2 Disallowing or denying use of funds for all or part of the cost of the activity or action not in compliance;
- 18.1.3 Disallowing claims for reimbursement;
- 18.1.4 Wholly or partially suspending or terminating this Interlocal Agreement;
- 18.1.5 Requiring return or offset of previous reimbursements;
- 18.1.6 Prohibiting the County from applying for or receiving additional funds for other grant programs administered by District until repayment to District is made and any other compliance or audit finding is satisfactorily resolved;
- 18.1.7 Reducing the grant award maximum liability of District;
- 18.1.8 Terminating this Interlocal Agreement;
- 18.1.9 Imposing a corrective action plan;
- 18.1.10. Withholding further awards; or
- 18.1.11 Taking other remedies or appropriate actions.

County costs resulting from obligations incurred during a suspension or after termination of this Interlocal Agreement are not allowable unless District expressly authorizes them in the notice of suspension or termination or subsequently.

District, at its sole discretion, may impose sanctions without first requiring a corrective action plan.

18.2 Suspension. If District desires to suspend the reimbursements or services under this Agreement, but not terminate it, District may issue a written order to stop work. The written order shall set out the terms of the suspension. County shall stop all services pursuant to this Agreement and will cease to incur costs or disburse funds during the suspension. County may resume services and disbursements when notified by District in a written authorization that the suspension is lifted. If a change in the terms and conditions of reimbursement under this Agreement is necessary because of a suspension, the Parties will approve and execute a mutually agreed amendment.

18.3 Termination. At its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere in this Agreement, District may terminate this Agreement, in whole or part, with or without cause, by giving thirty (30) days prior written notice to County and County shall cease all performances and disbursement of Conservation funding under this Agreement to the extent specified in the notice of termination and on the date specified in the notice or on the date of termination. Upon receipt of the notice, County shall not incur any new obligations or perform any additional services and shall cancel any outstanding obligations related to services or benefits to be provided. District's termination of this Agreement shall not subject District to liability for any reason.

18.3.1 Without Cause: Each Party may terminate this Agreement, in whole or in part, without cause, upon thirty (30) days prior written notice to the other Party.

18.3.2 With Cause: District has the right to terminate this Agreement immediately, in whole or in part, at its sole discretion, by giving written notice to County and County shall cease all performances and disbursements of Conservation funding under this Agreement on the date specified in the notice for the following reasons:

18.3.2.1 Non-performance by County or County's failure or inability to perform or substantially perform under this Agreement within the time specified, for whatever reason, including due to judicial order, injunction or any other court proceeding;

18.3.2.2 County's improper use, misuse, or inept use of Conservation Funding under this Agreement;

18.3.2.3 County's submission of Expense Documentation and/or reports that are incorrect, incomplete, or false in any way; or

18.3.2.4 County's failure to comply with the reporting requirements, the specifications of the Proposed County Programs approved by the District under this Agreement, applicable federal, state, or local laws, rules, regulations and ordinances, or any other provision stated in this Agreement.

19. NOTICE:

19.1 Method. Any notice to be given under this Agreement is deemed to have been given if given in writing and delivered in person or mailed by overnight or Registered Mail, postage pre-paid, to the party who is to receive the notice at the addresses stated in 19.2. Such notice is deemed to have been given three (3) Working Days after the date it was delivered or mailed.

19.2 Addresses for Notice.

TO DISTRICT:

TO COUNTY:

With a copy to:

19.3 Change of Address. Each Party may change its address for notice by giving Notice of the new address. County and District shall give notice to each other of any change in its address, including a change in the person to whom attention is directed, within fifteen (15) Days of the change.

20. IMMUNITY:

20.1 District Immunity. This Agreement is expressly made subject to District's Sovereign/Governmental Immunity, Title 5 of the Texas Civil Practices and Remedies Code and all applicable federal and state law. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the District has by operation of law.

20.2 County Immunity. This Agreement is expressly made subject to County's Sovereign/Governmental Immunity, Title 5 of the Texas Civil Practices and Remedies Code and all applicable federal and state law. The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver of any immunities from suit or from liability that the County has by operation of law.

21. COMPLIANCE WITH LAWS:

County shall comply with all federal, state, and local statutes, ordinances, rules, regulations and federal Executive Orders applicable to the performance of this Agreement. County is responsible for ensuring this compliance.

22. BINDING AGREEMENT:

This Agreement is binding upon County and District and their respective heirs, successors, executors, administrators and assigns.

23. INTERPRETATIONAL GUIDELINES:

23.1 Contra Proferentum. The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, the Agreement shall not be interpreted against the Party that drafted the Agreement and that Party is not responsible for the language used.

23.2 Law and Venue. The laws of the State of Texas govern the interpretation of this Agreement. All obligations under this Agreement are performable in ____ County, Texas. The state or federal courts in ____ County shall be the sole and exclusive venue for any litigation between the Parties based on this Agreement.

23.3 Severability. If any portion of this Agreement is ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement remains valid and enforceable.

23.4 Interpretation of Time. All times stated in this Contract, are stated in Central Time. Standard and Daylight Savings are applied based on the time in Milano, Texas on the stated date. In computing periods of time under this Contract, exclude the first Day and include the last Day. If the last Day is not a Working Day, extend the period until the next Working Day.

23.5 Number and Gender. The singular includes the plural and the plural includes the singular. Words of one gender include the other genders.

23.6 Headings. The headings and titles in this Agreement are for convenience only and are not to be used in interpreting this Contract.

24. PERSONS NOT A PARTY NOT TO BENEFIT:

The obligations of each Party to this Agreement shall inure solely to the benefit of the other Party, and no other person or entity may be a third person beneficiary of this Agreement or have any right to enforce any obligation created or established under it.

25. ENTIRE AGREEMENT:

This Agreement including the Exhibits incorporated as a part of it are the entire agreement relating to the subject matter of it between the Parties and supersedes any other agreement about the subject matter of this transaction, whether oral or written, and except as provided in Section 13, this Agreement may not be modified. Each Party acknowledges that the other Party, or anyone acting on behalf of the other Party has not made any representations, inducements, promises or agreements, orally or otherwise, unless those representations, inducements, promises or agreements are stated in this Agreement, expressly or by incorporation.

26. INDEPENDENT CONTRACTOR:

County, including its employees, agents and licensees, is an independent contractor and not an agent, servant, joint venture or employee of District. County is responsible for its own acts, omissions, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of services or disbursement of funds under this Agreement. County is specifically responsible for sufficient supervision and inspection to ensure compliance in every respect with the requirements of this Agreement. There shall be no contractual relationship between County and any subcontractor, agent, employee or supplier of County by virtue of this Agreement.

Part 3 – APPLICABLE STATE STATUTES

1. PUBLIC INFORMATION AND MEETINGS

1.1 District acknowledges that the County, a political subdivision of the State of Texas, and this Interlocal Agreement are subject to the Texas Public Information Act, Texas Government Code Chapter 552 (the “PIA”).

1.2 District acknowledges that County will comply with the PIA, as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas.

1.3 County acknowledges that information created or exchanged in connection with this Interlocal Agreement, including all reimbursement Expense Documentation submitted to District, is subject to the PIA, whether created or produced by the County or any third party, and the County agrees that information not otherwise excepted from disclosure under the PIA, will be available in a format that is accessible by the public at no additional charge to County or United States Department of the Treasury.

1.4 County will cooperate with District in the production of documents or information responsive to a request for information.

2 E-VERIFY

By entering into this Interlocal Agreement, County certifies and ensures that it utilizes and will continue to utilize, for the term of this Interlocal Agreement, the U.S. Department of Homeland Security's e-Verify system to determine the eligibility of (a) all persons employed during the contract term to perform duties within Texas; and (b) all persons (including subcontractors) assigned by the County pursuant to the Interlocal Agreement.

3 ENERGY CONSERVATION

If applicable, County agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

4 NEPOTISM

County shall comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of the County's governing body or of the County's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

5 CHILD PROTECTION

5.1 County shall comply with Section 231.006, Texas Family Code, which prohibits payments to a person who is in arrears on child support payments.

5.2 County shall comply with the Texas Family Code, Section 261.101, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. County shall also ensure that all program personnel are properly trained and aware of this requirement.

6 WORKPLACE PROTECTION

6.1 County shall adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code, Ann., Sec. 85.001, et seq.

6.2 County shall comply with the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991.

Part 4 - SIGNATURES AND EXHIBITS

1. DUPLICATE ORIGINALS:

This Agreement may be executed in duplicate originals and is effective when executed by both Parties.

2. SIGNATORY WARRANTY

The persons signing this Agreement for the Parties represent and warrant that they are officers of entity for which they have executed this Agreement and that they have full and complete authority to enter into this Agreement on behalf of their respective entity and that their executions are the acts of the Parties involved and have been delivered and constitute legal, valid and binding obligations of the respective Parties.

3. ACCEPTANCES

By their signatures below, the duly authorized representatives of County and County accept the terms of this Agreement in full.

**POST OAK SAVANNAH GROUNDWATER,
CONSERVATION DISTRICT**

COUNTY OF _____

BY:
Board President

BY: _____

Date: _____

Date: _____

EXHIBIT “A”

ELIGIBLE EXPENDITURES FOR DISTRICT CONSERVATION PROGRAMS

- 1. Ascertain locations of wells that County personnel may locate as they perform any and all of the services outlined under their program. Provide monthly report to the District as expressed in Exhibit A to ensure that such well is appropriately noted in the District’s records.**
- 2. Septic Systems – District desires to ensure that all septic systems and sanitary control areas/easements are safe and not entering into the groundwater. A County program under which County personnel are able to ascertain whether any leaching, leaking or breach of the septic system has occurred and if able, to notify the landowner and the District as soon as possible in order for testing and monitor wells to possibly be instituted and/or installed.**
- 3. Ascertain locations of any and all illegal dumping throughout the County; programs that provide disposal of all hazardous materials or tires, as well as corrective action. County programs that support such efforts will be considered.**
- 4. Flooding. District wishes to be apprised of flood prone areas and possible flooding that may occur in various areas of the County to ascertain whether protective steps should be taken to protect environmentally sensitive areas and/or aquifers. County programs that support such efforts will be considered.**
- 5. Wells associated with Oil and gas activities. District desires to be informed of locations of oil and gas associated wells including Salt Water Disposal Wells (SWD), especially new wells, to ensure whether such wells are using groundwater and/or are appropriate for monitor wells.**
- 6. Educational Programs. District will review County programs that train and educate County personnel as well as provide County residents with educational materials about the ways in which aquifers may be able to be better protected and/or harmed by the actions of landowners and activities.**

The District reserves the right to amend this list as warranted, with mutual understanding from the County.

EXHIBIT “B”

PROPOSED COUNTY PROGRAM

1. County personnel shall provide a monthly report of inspections to District Board and staff to include the following information:
 - a) Name and address
 - b) Contact information
 - c) Presence or Absence of Water Well
 - d) District Id of well
 - e) Spacing from property
 - f) Spacing from sources of contamination
 - g) Condition of Well (i.e., Active, Abandoned, Capped, Deteriorated, Unused)
2. County personnel shall be familiar with State and District rules and regulations for water well spacing and construction. See Exhibit F for state rules (Texas Administrative Code, Title 16, Part 4, Chapter 76) and Exhibit D “District Rules”, specifically section 4 and section 12.
3. County personnel shall attend and participate in no less than one District approved training. Examples of such training include but are not limited to; TDLR Well Investigation training, District staff orientation, TGWA Drillers continuing education course.
4. County personnel shall be familiar with District well database
5. County personnel shall be familiar with obtaining and recording location coordinates
6. County personnel shall be familiar with the District grant program for Plugging Assistance