

WELL ASSISTANCE AGREEMENT

**BRAZOS VALLEY GROUNDWATER
CONSERVATION DISTRICT**

9/22/22
Draft
BVGCD

Water Well Assistance Agreement

Introduction

The Brazos Valley Groundwater Conservation District (**District**) and UW Brazos Valley Farm, LLC or its assigns (**Permittee or Goodland Farms**) enter into this Water Well Assistance Agreement (**Agreement**) effective _____, 2022. This Agreement is being entered into for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the District and Permittee.

Permittee is a private landowner with existing Historic Use Permits issued in 2009 (**Historic Use Permits**), three drilling and operating permits issued in 2019 (**Existing Production Permits**), and pending applications for thirteen drilling and operating permits (**Pending Production Permits**) to produce groundwater, consistent with District Rules and permit provisions, from properties commonly known as Goodland Farms in Robertson County, Texas. Permittee will continue to use a portion of its Historic Use water supply, as defined by District Rule 1.1(21), to support on-site agricultural operations. Permittee intends to complete a project to produce Simsboro Aquifer groundwater under non-Historic Use, District-issued, drilling and operating permits (**Production Permits**) and deliver water (under future transport permits) from Robertson County to customers to meet significant water supply demands (the **Project**). Goodland Farms enters into this Agreement in consideration of the District's implementation of the Well Assistance Program (defined below), which supports the utilization of the Production Permits for operation of the Project through a proactive, forward-looking approach, considering good stewardship of the groundwater resource and localized community engagement, given potential Simsboro Aquifer responses to the Project.

This Agreement is designed to facilitate early, proactive, and voluntary mitigation measures to support community relations. Well mitigation associated with the Project will be conducted by the District in phases after certain events occur in the development of the Project that trigger funding under Section 7.0 (the **Well Assistance Program**). The first phase (pre-mitigation) will begin shortly after the Pending Production Permits are issued and will involve investigation and planning. The District will work to identify Potentially Eligible Wells (as defined in Section 1.0 below) and conduct diagnostics and evaluations to determine—on the basis of hydrologic modeling, Project proximity, and well data collection—which Potentially Eligible Wells the District believes are reasonably likely to be eligible for mitigation under the Well Assistance Program. The District, in its discretion, may deem mitigation to be warranted if it preserves the ability of well owner to continue to access groundwater through its existing well system, commensurate with the well's production capacity (estimated from information in the well's driller log filed with the District or from District-conducted diagnostics), given both the existing well conditions and the estimated Simsboro Aquifer responses to the Project (**AP Wells**, which are Assistance Program Wells). The second phase (mitigation) will involve mitigating AP Wells. The mitigation phase will begin once there is either a firm timeline for Permittee exporting at least 10,000 acre-feet per year or once Permittee actually produces over 15,000 acre-feet in a calendar year from the Simsboro Aquifer for on-site use or in aggregate for

on-site and export uses. The District will apply its technical expertise to create appropriate prioritizations for the Well Assistance Program, based on the details of Project development, including how production and export volumes may change over time. A substantial portion of mitigation under the Well Assistance Program is expected to occur in the two years before the Project pumping to export at least 10,000 acre-feet/year begins. The mitigation phase will also involve responding to well owner concerns, consistent with the procedures set out herein.

The Well Assistance Program will take into consideration wells that are identified as having pre-existing construction deficiencies. Program dollars will not be utilized to correct such deficiencies or water quality issues. In general, mitigation options will be limited to lowering a pump, replacing pumping equipment, drilling a new well, or providing a connection to an existing public water supply. It is anticipated that nearly all mitigation cases will be unique and will depend on the construction and condition of the AP Well and pumping equipment and proximity to the Project.

Objectives of the Well Assistance Program

The primary objectives of the Well Assistance Program are:

- to assist existing owners/operators of AP Wells;
- to mitigate AP Wells in a manner that will address the ability of well owners to continue to access groundwater through, or in a manner comparable to, their existing well system, considering anticipated Simsboro Aquifer responses to the Project, while minimizing, to the extent reasonable, any subsequent mitigation of the same well in the future (**Mitigation Standard**);
- to conduct well mitigation activities in a consistent manner that is fair to proximate well owners and builds consensus and support in the community;
- to respond to concerns/complaints of well owners through the sound technical evaluations and approaches in the mitigation procedures outline below in a timely manner; and
- to protect the Simsboro Aquifer as a resource by conducting mitigation of wells consistent with current state regulatory standards.

Mitigation Procedures

The following procedures will outline the general work flow, support services, and the outside services the District believes will be required to address mitigation of AP Wells pursuant to this Agreement. The District shall implement the Well Assistance Program consistent with these procedures.

Section 1.0 Mitigation Criteria

To be eligible for the Well Assistance Program, and subject to further evaluation by the District for potential mitigation, the well must meet the following criteria (**Potentially Eligible Well**):

- A. The well must currently screen sands of the Simsboro Aquifer.

- B. The well must be registered/permitted with the District. If the well is not currently registered/permitted with the District, a landowner could immediately file the necessary registration paperwork and then the well would be eligible for mitigation.
- C. The well must be active or have been active prior to October 20, 2022 with operational equipment capable of pumping Simsboro water to the land surface; or well owner must have submitted to the District an administratively complete application for an exempt or a nonexempt well prior to October 20, 2022. The District staff will determine if the well has been active.
- D. The well must be located in the District.
- E. The legal well and property owner(s) must provide the District with written consent for mitigation activities.

Baseline water levels of the Potentially Eligible Wells and/or AP Wells, as determined by the District, shall be measured by the District periodically and recorded in the District's Well Assistance Database.

2.0 Phase 1 Well Investigation

2.1 The District staff will conduct an initial well investigation, either by desktop review or in the field, as appropriate, to determine if a well is a Potentially Eligible Well and, if so, is an AP Well. District staff will collect the following information in an initial well investigation:

- A. Basic data:
 - 1) Legal Well Owner's Name
 - 2) Contact Information (Address, phone number, cell phone number)
 - 3) Primary Well Use
 - 4) Secondary Well Use (if any)
 - 5) Well ID (State and/or Water District)
 - 6) Latitude and Longitude
 - 7) Casing Diameter, Screen Diameter, Casing Depth Setting and Screen Depth Setting
 - 8) Year Drilled
 - 9) Pressurized Storage Tank Volume
 - 10) Number of facilities provided water by well
 - 11) Contractor that constructed the well
 - 12) Any known well deficiencies (producing sand, producing colored or turbid water, screen issues, casing issues, etc.)
- B. Distance from the nearest Project well.
- C. Digital photographs of the wellhead and associated appurtenances. If possible, these photos will also document any unusual conditions associated with the well or well site.
- D. Latitude and Longitude coordinates of the wellhead, via the use of Global Position System (GPS) equipment.

- E. Copies of any owner-provided well information such as drilling reports, geophysical logs, invoices, etc.
- F. The well owner's preferred route for the contractors to take in order to get to the well site to minimize the potential of damage to underground pipes, septic systems, overhead electrical lines, and/or telephone lines.
- G. Thorough documentation (digital photography) of the condition of the well owner's property, the area surrounding the well site, and the route that service equipment will utilize to service the well prior to entering the property with the well service contractor or any equipment.

2.2 The goal of the initial well investigation is to gather as much information as possible regarding the well and the conditions of the system to aid in determining if the well is a Potentially Eligible Well and, if so, is an AP Well, and to support future diagnostic or mitigation efforts. After the initial well investigation, the District staff will enter the data collected during the initial investigation into the well mitigation database. The District staff will create and enter the data into a hard-copy file and will try to correlate the well information with the state and district databases. The District staff may enter into a landowner/well owner agreement to periodically monitor the water level in Potentially Eligible Well or an AP Well.

2.3 Once the District determines that a Potentially Eligible Well is an AP Well, District staff will identify to the well owner and/or landowner the location of the well and communicate with the well owner regarding the District's data and evaluations, recommendations, and potential mitigation options. The District staff will work with the well owner and/or landowner, after the initial well investigation, to schedule an agreed upon time to have an authorized contractor perform any additional water well diagnostics needed before mitigation.

3.0 Phase 1 Water Well Diagnostics

- 3.1 Well diagnostics are an important step in the mitigation process. At times, well owners may not have sufficient well information or records (for instance, records documenting the method of construction) to allow the District to perform well mitigation without a diagnostics phase. Even if the well owner provides documentation (e.g., driller's log or construction and equipping invoices), diagnostics may still be needed prior to mitigation because water levels and well conditions change over the life of a well. The information gathered during the diagnostics phase will be the basis for mitigation decisions.
- 3.2 The District will make good faith efforts to diagnose and return Potentially Eligible and/or AP Wells to service as quickly as possible and will coordinate with the well owner to bring domestic wells back to service so as to minimize the disruption of well use.
- 3.3 Prior to the actual diagnostics being performed, the District staff member will ensure that the District has:

- A. Received a signed copy of a diagnostic form signed by the legal owner of the well and property on which the well is located, if required.
- B. Processed a work estimate for diagnostics and provided it to the District's contractor.
- C. Scheduled the appropriate contractor based on work required for the well.
- D. Met with the well service contractor and the well owner or designee, prior to entering the property, to determine if there are any safety hazards along the access route between the entrance to the property and the well site prior to heavy equipment entering the property. In addition, the well owner and landowner will be asked to identify the location of any underground water, septic tank and lateral line drain field, telephone, cable, electrical lines (underground or overhead) or other utilities that could be inadvertently damaged while mitigating the well. All discussions will be documented completely. Depending on the location, underground electrical, water, or cable utilities may need to be marked if they will interfere with access to the well.

3.4 The actual diagnostics will involve an appropriate licensed drilling/well service contractor performing the following steps, as needed, with a District staff member present:

- A. Inspect and test control box / pump electrical.
- B. Measure the static water level in the well from the land surface.
- C. Run the pump and measure the water level drawdown from the land surface.
- D. Measure the pumping rate in gallons per minute (GPM).
- E. Remove the pump column and pump, if needed, in order to determine where the pump is set and the condition of the pump and pump assembly equipment.
- F. Take digital photos of the equipment to document condition.
- G. Televiser the well, if needed, in order to determine the location of the screened intervals and if there are any unusual conditions or deficiencies associated with the well.
- H. Provide an opinion on whether the well is within TCEQ and Texas Department of Licensing and Regulation (TDLR) well construction standards. If the well does not appear to meet standards, then the District staff member will inform the landowner of what was observed that does not meet state requirements.

3.5 In some cases, enough information may be obtained during the diagnostics phase to make a sound mitigation decision at that time. If time allows and if authorized by the well owner, the District staff member will authorize the contractor to make the adjustments in order to complete mitigation based on the Mitigation Standard and return the well to service.

- 3.6 If a mitigation determination cannot be made during the diagnostics phase, and the owner needs the use of the well, the contractor will re-install the equipment and ensure the well is functioning properly.
- 3.7 After the completion of the diagnostics phase, the contractor will provide the District with a detailed diagnostic report. Copies will be retained in the hard copy file, as well as entered into the District's Well Assistance Database. Copies of the diagnostic report and any televising video will also be provided to the well owner.
- 3.8 After the diagnostics phase, the District staff will evaluate the following well diagnostic information and determine the appropriate mitigation actions under the Mitigation Standard:
- A. Static Water Level
 - B. Water Level Drawdown While Pumping at a Measured Rate
 - C. Gallons Per Minute Flow Rate – Pump Capacity
 - D. Pump Setting
 - E. Total Well Depth
 - F. Televised Inspection of Well
 - G. Overall System Evaluation, Identification of State Standard Deficiencies
 - H. Electrical Equipment Evaluation

4.0 Phase 1 Diagnostics Evaluation

- 4.1 Diagnostics evaluation will involve verifying that the well is a Potentially Eligible Well and an AP Well, and if so, determining what form of mitigation, if any, is appropriate under the Mitigation Standard. Based on the characteristics of the Potentially Eligible Well, the evaluation may be performed by District staff or by the District hydrogeologist.
- 4.2 District staff will review the well diagnostics report described in Section 3.7 and compare this information to the District's hydrologic monitoring program and groundwater flow modeling.

5.0 Phase 2 Well Mitigation

- 5.1 Based on all of the information gathered during the initial or subsequent investigation(s) in the diagnostics phase, the District staff will determine the mitigation actions appropriate for each AP Well. Some Potentially Eligible Wells will require no action and will not be considered AP Wells. Mitigation options may include:
- A. No Mitigation- If the Potentially Eligible Well and the pump are deep enough to accommodate the anticipated drawdown and an adequate pumping rate can be maintained for that location, no mitigation will be performed.
 - B. Lowering of Pump - If the well is deep enough, and the pump can be lowered to a level that will accommodate the anticipated drawdown for that location, then the pump will be lowered.

- 1) Prior to lowering of the pump, if it is determined that the current pump and/or motor will not be sufficient to maintain the prior output at the proposed drawdown level, then the District will replace the pump and/or motor, to restore to the rate of production measured and recorded during the diagnostics phase.
- C. Drilling of New Well - If the well is not deep enough and will not accommodate the lowering of the pump to accommodate the anticipated drawdown for that location, then the District will have a replacement well drilled and equipped. In most locations, the District will plug the existing well(s) unless the District views it prudent to utilize the existing well as a water level monitoring well. The contractor performing the work will be required to obtain necessary permits and/or approvals from the local governing entities.
 - D. Cost Effective Alternative Water Supply – if a physical connection to an existing water supply line is cost-effective and appropriate to the uses, putting the connection in place can be considered for possible mitigation action, in the District’s discretion, with the well owner’s authorization.

5.3 In all cases, the District will communicate proposed mitigation actions to the well owner prior to any work being performed and the well owner will be required to enter into an agreement with the District to allow the District to mitigate the well, which may include a waiver of liability. The District shall not pay any ongoing operational costs for the AP Wells.

5.4 The District may elect to repair/replace other AP Well components that have the potential to fail or cause future problems if the District determines such repair or replacement is necessary to the successful implementation of a particular AP Well mitigation. This might include the installation of a one-inch diameter water level measuring port or repairing/replacing the following components:

- A. Inferior electrical cable;
- B. Electrical equipment system deficiencies;
- C. Deteriorated pump column/drop pipe; or
- D. Associated appurtenances

5.5 All well mitigation activities shall be conducted in accordance with State and local requirements and regulations and adhere to the guidelines outlined in District-provided well mitigation contracts. These contracts and guidelines will be developed to ensure that proper well construction methods are utilized. The District staff will coordinate all mitigation activities.

5.6 Warranty. Under the mitigation contracts, the individual contractors will be responsible for the warranty of their work regarding defective workmanship or materials, or both, and the contractor’s warranty will be provided to, or assigned to, the well owner after the District’s evaluation of the work. Contractor provided bonds will be required for

certain mitigation projects, all as deemed appropriate by the District. The District will ensure in its mitigation contracts that if within 3 days after the receipt of a notice in writing to the Contractor or his agent of defective workmanship or materials, the Contractor shall neglect to make or to undertake with due diligence the necessary repairs, District staff will have the authority to engage another contractor to make such repairs at the Contractor's expense.

6.0 Well Owner Complaint Response

If a well owner in the District experiences a water well outage and contacts the District, the District will evaluate if the well is a Potentially Eligible Well and, if so, if it is an AP Well consistent with the procedures in this Well Assistance Program. The District will make good faith efforts to do so in a timely manner. If determined by the District to be necessary, the District will arrange for water for in-home domestic uses to be provided in a 1,000 gallon bulk tank to well owners temporarily until the District completes its evaluation. If the District determines that the well is an AP Well, the District intends to continue to arrange for the temporary water supply until the AP Well can be restored to full operation.

7.0 Well Assistance Program Funding

7.1. Funds Overview

- A. Permittee's obligation under this Agreement to fund the District's Well Assistance Program follows a structure for six (6) Permittee funding stages, collectively subject to Section 7.8:
 - 1. Advance Funding;
 - 2. Administrative Funding;
 - 3. Well Assistance Early Funding;
 - 4. Well Assistance Initial Funding;
 - 5. Well Assistance Second Funding; and
 - 6. Well Assistance Additional Funding

Permittee's funding under this Agreement is independent of and separate from any production and/or export fees that are obligated by the District under Texas law and the District's Rules and Fee Schedule.

- B. The Well Assistance Program and related funding are solely administered by the District.
- C. The District shall use reasonable efforts to minimize costs, including using competitive processes where possible and maintaining reasonable oversight of contractors.
- D. All funding provided by Permittee to the District pursuant to this Agreement, other than production and export fees, shall be deposited into a separate District

bank account to administer the Well Assistance Program (**AP Funds Account**). The District will use the AP Funds Account solely to pay for annual District expenses to support the Well Assistance Program. District use of funds from the AP Funds Account for the Well Assistance Program shall be based on actual costs thereof. The District shall keep records of all actual costs of administrative and technical support and well mitigation under the Well Assistance Program and shall include the information in the financial reports at the Board of Director's meetings.

7.2. Advance Funding

- A. Advance Funding begins when Permittee's final and effective Pending Production Permits are issued by the District (**Production Permit Issuance Date**).
- B. Advance Funding ends at the beginning of Administrative Funding.
- C. Permittee shall provide to the District \$200,000 of Advance Funding within ninety (90) days of the Production Permit Issuance Date.
 - 1. The District shall provide wiring or other funding instructions to Permittee for the AP Funds Account in writing within thirty (30) days of the Production Permit Issuance Date, which instructions it may change only upon written notice.
 - 2. This initial \$200,000 of Advance Funding provided by Permittee is granted to the District to assist in the expenses related to the first approximately two (2) years of administration of the Well Assistance Program.
 - 3. District use of Advance Funding will be limited to services, supplies, and equipment that are necessary to create the dedicated Well Assistance Program database and collect relevant information about groundwater wells in the District that are believed to be Potentially Eligible Wells and are reasonably appropriate to evaluate as potential AP Wells. Funding may also be used for equipment such as a borehole video camera system, employee and consultant time measuring and recording groundwater well conditions and water levels, and hydrological analysis and modeling.
- D. Starting year three (3) after the Production Permit Issuance Date and continuing every year during Advance Funding, Permittee shall pay to the AP Funds Account \$30,000 of Advance Funding by February 1.
- E. The Advance Funding amounts listed herein are only estimates of the actual costs of the services, supplies, and equipment that the District will use to develop and administer the Well Assistance Program. The Advance Funding amount will be revised based on actual costs, for example of the Well Assistance Program database, technical and administrative support, hydrological analysis, and well evaluation equipment, subject to the following:

1. The actual amount of Advance Funding provided by Permittee to the District for the Well Assistance Program shall not exceed \$ 400,000 for the initial five-year permit term, which is the first five (5) years after final and effective Pending Production Permit issuance. If actual costs for a period of Advance Funding are determined to be higher than the amounts provided in Section 7.2(C) and (D) above and can reasonably be addressed in the next scheduled Advance Funding payment, the District shall provide written notice of the adjusted payment and reasonable supporting documentation to Permittee at least sixty (60) days before the payment due date and, if requested by Permittee, meet with the Permittee to discuss the costs. If such actual costs reasonably require an interim payment adjustment, the District shall provide a written request for specified additional funds along with reasonable supporting documentation to the Permittee no more frequently than once per calendar year and meet with Permittee to discuss such cost adjustment at Permittee's request. Such interim cost adjustment payments shall be made by Permittee to the District within sixty (60) days of the written request or the meeting, whichever is later.
 2. For each five-year permit term thereafter, which is when the Pending Production Permits have been renewed by the District, Advance Funding provided by Permittee to the District for the Well Assistance Program, if any, shall be a yearly payment of \$30,000 (as may be adjusted for actual cost under 7.2(E)(1), above) due by February 1 of each relevant year; provided that, in total over each such five-year term, the Advance Funding shall not exceed \$300,000.
- F. Advance Funding is considered a grant of funds to the District to operate the Well Assistance Program and will not be reimbursed, refunded, or credited back to Permittee.

7.3. Administrative Funding

- A. Administrative Funding begins when:
1. Permittee has been issued final and effective transport permits, as defined in District Rule 1.1(44) (**Transport Permits**), and
 2. The earlier of:
 - a. Permittee gives the District written notice two and one-half (2.5) years ahead of Permittee's first year of pumping in excess of 10,000 acre-feet per year of groundwater from the Simsboro Aquifer that will be exported outside of the District's boundaries (**2.5YR Export Trigger**), or
 - b. Permittee's total aggregate groundwater production under the Historic Use Permits, Existing Production Permits, and/or Pending Production Permits exceeds 15,000 acre-feet in a calendar year for the first time, regardless of place of use (**Actual Pumping Trigger**).

- B. Administrative Funding ends when Well Assistance Additional Funding begins as set out in 7.7(A).
- C. Permittee shall give the District written notice two and one-half (2.5) years ahead of Permittee's first year of pumping in excess of 10,000 acre-feet per year of groundwater from the Simsboro Aquifer that will be exported outside of the District's boundaries. Permittee shall not export water out of District boundaries in excess of 10,000 acre-feet/year until the requisite two and one-half (2.5) years have passed since the notice of export is given in writing to the District, unless approved in writing by the District considering the status and progress of the Well Assistance Program.
- D. During Administrative Funding, Permittee will pay to the AP Funds Account \$65,000 every year by February 1.
 - 1. If the transition from Advance Funding to Administrative Funding occurs after February 1 of a calendar year, Permittee shall owe a total for that calendar year that is prorated to the days that calendar year attributable to each funding stage; payment of the portion of the prorated total not yet paid shall be invoiced to the Permittee by the District and paid to the AP Funds Account within sixty (60) days of Permittee's receipt of such invoice.
- E. Fifty percent (50%) of Permittee's Administrative Funding is considered a grant of funds to the District to operate the Well Assistance Program and will not be reimbursed, refunded, or credited back to Permittee.
- F. The remaining fifty percent (50%) of Permittee's Administrative Funding will be accounted for and credited back to Permittee against future export fees owed by Permittee pursuant to the District's adopted Fee Schedule for each export production year.
 - 1. When export fees become due, 50% of the export fees due in any one payment period will be payable to the AP Funds Account and 50% will be accounted for against Permittee's available credits, until such credits are exhausted.
- G. The District shall schedule a meeting(s) with Permittee during Administrative Funding to discuss the Well Assistance Program and the projected costs to mitigate all known AP Wells.
 - 1. The District shall provide Permittee a written list of the known AP Wells to be mitigated and the envisioned adjustments, repairs, and or pump or well replacement work, as developed through the mitigation procedures set forth in this Agreement.
 - 2. The District shall also provide Permittee with a written estimate and reasonable supporting documentation for the associated costs for the known AP Wells to be mitigated, including envisioned adjustments, repairs, and/or pump or well replacement work. The list of mitigation costs given to Permittee shall (a) be adjusted to account for the actual costs paid to the District, if any, to mitigate AP Wells during Well Assistance Early Funding

(defined below) and (b) serve as the notice of the amount of funds to be given by Permittee at the advent of Well Assistance Initial Funding (**Initial AP Mitigation Costs**).

7.4. Well Assistance Early Funding

- A. Well Assistance Early Funding begins when:
 - 1. Permittee has been issued Transport Permits, and
 - 2. Permittee reaches the Actual Pumping Trigger.

- B. Well Assistance Early Funding ends when the Well Assistance Initial Funding is triggered as set out in Section 7.5(A) below. If the Well Assistance Initial Funding occurs first, the Well Assistance Early Funding is never triggered and is deemed complete.

- C. During Well Assistance Early Funding, the District may request funds on an as-needed basis, and Permittee shall fund such requests, consistent with the below:
 - 1. The District shall base its requests on actual or estimated costs to mitigate AP Wells under the Mitigation Standard, as prioritized by the District based on the District's assessment of Simsboro Aquifer responses to Permittee's actual pumping, not its permitted authorizations.
 - 2. The District shall request as-needed funding no more frequently than once per calendar quarter by written notice to Permittee, with reasonable supporting documentation of actually incurred expenses and/or up to five (5) months of reasonably projected funding for work the District deems likely to be warranted and accomplished in such period (**As-Needed Request**). A true-up to actual costs shall be provided in the next As-Needed Request, or, if no further As-Needed Request is made, at the start of Well Assistance Initial Funding.
 - 3. Permittee shall remit payment to the AP Funds Account within thirty (30) days of Permittee's receipt of the As-Needed Request. Permittee may request written clarification or a meeting regarding such costs; adjustments to costs, if any, will be addressed in the required true-up.
 - 4. For example, a February 1 As-Needed Request may include actual January expenditures and reasonably projected funding needs through the end of May; the next funding request could be submitted as early as April 1, would include any true-up for known differences between actual versus projected costs since February 1, and could include projected costs through the end of August; the next funding request could be submitted as soon as July 1 with true up since April 1 and projection through the end of November; and the next funding request could be submitted as soon as October 1 with true up since July 1 and projection through the end of February of the next year; and so forth.

- D. Fifty percent (50%) of Permittee's Well Assistance Early Funding is considered a grant of funds to the District to operate the Well Assistance Program and will not be reimbursed, refunded, or credited back to Permittee.
- E. The remaining fifty percent (50%) of Permittee's Well Assistance Early Funding will be accounted for and credited back to Permittee against future export fees owed by Permittee pursuant to the District's adopted Fee Schedule for each export production year.
 - 1. When export fees become due, 50% of the export fees due in any one payment period will be payable to the AP Funds Account and 50% will be accounted for against Permittee's available credits until such credits are exhausted.

7.5. Well Assistance Initial Funding

- A. Well Assistance Initial Funding begins when:
 - 1. Permittee has been issued Transport Permits, and
 - 2. Permittee gives the District written notice two (2) years ahead of Permittee's first year of pumping in excess of 10,000 acre-feet per year of groundwater from the Simsboro Aquifer that will be exported outside of the District's boundaries (**2YR Export Trigger**).
- B. Well Assistance Initial Funding ends when Well Assistance Second Funding is triggered as set out in Section 7.6(A) below.
- C. Permittee gives the District written notice two (2) years ahead of Permittee's first year of pumping in excess of 10,000 acre-feet per year of groundwater from the Simsboro Aquifer that will be exported outside of the District's boundaries. Permittee shall not export water out of District boundaries in excess of the 10,000 acre-feet/year until the requisite two (2) years have passed since the written notice of export is given to the District, unless approved in writing by the District considering the status and progress of the Well Assistance Program.
- D. Within fifteen (15) days of the beginning of Well Assistance Initial Funding, Permittee shall pay to the AP Funds Account fifty percent (50%) of the Initial AP Mitigation Costs.
- E. Fifty percent (50%) of Permittee's Well Assistance Initial Funding will be a grant to the District to operate the Well Assistance Program and will not be reimbursed, refunded, or credited back to Permittee.
- F. The remaining fifty percent (50%) of Permittee's Well Assistance Initial Funding will be accounted for and credited back to Permittee against future export fees owed by Permittee pursuant to the District's Fee Schedule adopted and in place for each export production year.

1. When export fees become due, 50% of the export fees due in any one payment period will be payable to the AP Funds Account and 50% will be accounted for against Permittee's available credits, until such credits are exhausted.
- G. The District shall schedule a meeting(s) with Permittee during Well Assistance Initial Funding to discuss the Well Assistance Program and any changes to the estimated costs to mitigate all known AP Wells.
1. The District shall provide Permittee a written list of the known AP Wells to be mitigated and the envisioned adjustments, repairs, and or pump or well replacement work.
 2. The District shall also provide Permittee with a written total of the actual costs to date and a written estimate for the further associated costs for the known AP Wells to be mitigated, including envisioned adjustments, repairs, and/or pump or well replacement work and reasonable supporting documentation. The list of mitigation costs given to Permittee shall serve as the notice of the amount of funds to be given by Permittee at the advent of Well Assistance Second Funding (**Revised AP Mitigation Costs**).

7.6. Well Assistance Second Funding

- A. Well Assistance Second Funding begins when:
1. Permittee has been issued Transport Permits; and
 2. Permittee gives the District written notice one (1) year ahead of Permittee's first year of pumping in excess of 10,000 acre-feet per year of groundwater from the Simsboro Aquifer that will be exported outside of the District's boundaries (**1YR Export Trigger**).
- B. Well Assistance Second Funding ends when Well Assistance Additional Funding is triggered as set out in Section 7.7(A) below.
- C. Permittee gives the District written notice one (1) year ahead of Permittee's first year of pumping in excess of 10,000 acre-feet per year of groundwater from the Simsboro Aquifer that will be exported outside of the District's boundaries. Permittee shall not export water out of District boundaries in excess of the 10,000 acre-feet/year until the requisite one (1) year has passed since the written notice of export is given to the District, unless approved in writing by the District considering the status and progress of the Well Assistance Program.
- D. Within fifteen (15) days of the initiation of Well Assistance Second Funding, Permittee shall pay to the District the amount that would, in addition to what Permittee paid as Well Assistance Initial Funding, result in Permittee having paid seventy-five percent (75%) of the Revised AP Mitigation Costs.
- E. Fifty percent (50%) of Permittee's Well Assistance Second Funding will be a grant to the District to operate the Well Assistance Program and will not be reimbursed, refunded, or credited back to Permittee.

- F. The remaining fifty percent (50%) of Permittee's Well Assistance Second Funding will be accounted for and credited back to Permittee against future export fees owed by Permittee pursuant to the District's Fee Schedule adopted and in place for each export production year.
 - 1. When export fees become due, 50% of the export fees due in any one payment period will be payable to the AP Funds Account and 50% will be accounted for against Permittee's available credits, until such credits are exhausted.

7.7. Well Assistance Additional Funding

- A. Well Assistance Additional Funding begins one (1) year after the end of the first year that Permittee pumps 10,000 acre-feet per year of groundwater from the Simsboro Aquifer that is exported outside of the District's boundaries.
- B. Well Assistance Additional Funding ends (**Funding End Points**) at the earliest of:
 - 1. Permittee has used all of its credits against export fees and the District has received \$2,000,000 in export fees above and beyond any export fees not paid due to said credits; or
 - 2. Ten years have passed since the start of Permittee pumping of at least 10,000 acre-feet/year of groundwater from the Simsboro Aquifer for export; or
 - 3. Permittee's remittance of funding to the AP Funds Account has reached the Funding Cap (defined in Section 7.8 below).
- C. During Well Assistance Additional Funding, after the Well Assistance Early Funding, Well Assistance Initial Funding, and Well Assistance Second Funding have been fully utilized by the District for the Well Assistance Program, Permittee shall fund actual mitigation of AP Wells on an as-needed basis.
- D. Well Assistance Additional Funding is designed to be a pass-through framework for actual expenses incurred by District in mitigating AP Wells after prior funding has been utilized.
 - 1. District as-needed funding requests made to the Permittee shall be based on actual costs of mitigating AP Wells, including direct reference to the well driller/pump installer bills. The District shall keep records of all actual costs of AP Well mitigation under the Well Assistance Program.
 - 2. The District may request Well Assistance Additional Funding at the end of each calendar quarter, based on actual invoices, by written notice to Permittee with reasonable supporting documentation. Permittee shall remit payment within thirty (30) days of Permittee's receipt of the Well Assistance Additional Funding request. Permittee may request written clarification or a meeting regarding such costs, and needed adjustments to costs, if any, would be addressed through the subsequent funding request.

- E. Fifty percent (50%) of Permittee's Well Assistance Additional Funding will be a grant to the District to operate the Well Assistance Program and will not be reimbursed, refunded, or credited back to Permittee.
- F. The remaining fifty percent (50%) of Permittee's Well Assistance Additional Funding will be accounted for and credited back to Permittee against future export fees owed by Permittee that are required pursuant to the District's Fee Schedule adopted and in place for each export production year.
 - 1. When export fees become due, 50% of the export fees due in any one payment period will be payable to the AP Funds Account and 50% will be accounted for against Permittee's available credits, until such credits are exhausted.

7.8. Permittee's Funding Conditions

- A. Permittee's aggregate commitment to provide funding to the District's Well Assistance Program, as prescribed herein, is capped at seven million, five-hundred thousand dollars (\$7,500,000) (**Funding Cap**), inclusive of the six funding stages: the Advance Funding, Administrative Funding, Well Assistance Initial Funding; Well Assistance Second Funding; and Well Assistance Program Additional Funding, but exclusive of production and export fees.
- B. Permittee's commitment under this Agreement is separate and apart from Permittee's legal obligation to pay the District's production and export fees as adopted in the District's fee schedule.
- C. Permittee's funding obligations under this Agreement and any permit condition referencing compliance with this Agreement terminate at the earliest Funding End Point. Permittee's allocation of accrued credits shall continue to be applied against export fees due until fully exhausted.

8.0 Additional Terms of Agreement

- 8.1. The District shall act on Permittee's application(s) within 60 days after the date of the final hearing on the application(s) is concluded.
- 8.2. The District is solely responsible for making AP Well determinations and selecting appropriate action under the Mitigation Procedures, as a matter of community engagement and pursuant to the District's exercise of what it deems appropriate under its legal authorities.
- 8.3. Permittee has neither obligations nor liabilities for any decision, action, or inaction by the District or its contractors or other District representatives or agents in the implementation of the Well Assistance Program. Permittee's sole obligations under this Agreement are set forth in Section 7.0.

- 8.4. This Agreement and the rights and obligations contained herein shall be binding on all Pending Production Permits, future Production Permits, and Production Permit renewals issued by the District to Permittee for the Project and is a special provision thereof. For the avoidance of doubt, this excludes Permittee's Historic Use Permits, despite the inclusion of pumping under the Permittee's Historic Use Permits in the total pumping from the Simsboro Aquifer used to establish the Actual Pumping Trigger for the purpose of funding described in Section 7.0, above.
- 8.5. This Agreement and the rights and obligations contained herein shall be binding on all future amendments to Production Permits issued by the District to Permittee for the Project. For the avoidance of doubt, this excludes Permittee's Historic Use Permits, despite the inclusion of pumping under the Permittee's Historic Use Permits in the total pumping from the Simsboro Aquifer used to establish the Actual Pumping Trigger for the purpose of funding described in Section 7.0, above.
- 8.6. This Agreement and the rights and obligations contained herein shall be binding on all transferees and assigns, whether person or entity, of Permittee's Production Permits for the Project, as approved by the District as an Amendment to Transfer Ownership of a Permit pursuant to District Rules. For the avoidance of doubt, this excludes Permittee's Historic Use Permits, despite the inclusion of pumping under the Permittee's Historic Use Permits in the total pumping from the Simsboro Aquifer used to establish the Actual Pumping Trigger for the purpose of funding described in Section 7.0, above.
- 8.7. Under Section 9 of the District's Rules and the District's duly adopted fee schedule order, as of the effective date of this Agreement, production and export fees are based on actual production and transported amounts, not permitted amounts. The District is authorized to impose fees by its enabling legislation, Special District Local Law Code Chapter 8835. If the District ever takes action to revise such fee implementation and cause production and/or export fees to be due based on authorized or anticipated amount of water to be withdrawn from the wells or exported (**Accelerated Fees**), this Agreement shall be deemed modified on the effective date of such District action in the following manner:
 - A. Permittee's remaining funding obligations under Section 7.0 immediately terminate;
 - B. All funds that Permittee has already paid to the District under any funding stage set out in Section 7.0 shall be deemed to have generated 100% credits against any Accelerated Fees, and no portion of Permittee's funding shall be deemed a grant to the District. When Accelerated Fees become due, the credits will be applied such that Permittee will owe no Accelerated Fees until all credits are exhausted; and

- C. This Agreement and the rights and obligations contained herein shall no longer be binding on any Permittee Production Permits or amendments, renewals, transfers, or assignments thereof; any special provision in any District-issued permit incorporating Permittee's obligations under this Agreement shall be deemed deleted.

Permittee reserves all rights to participate in any rulemaking or public process undertaken by the District and to pursue judicial review of any District action.

- 8.8. Permittee accepts that the structure of the Agreement relies, in part, on anticipating Simsboro Aquifer responses to the Project based on modeling and field-verified conditions of the wells that are documented in the District's Well Assistance Database. The District agrees to promptly share and discuss such modeling and data with Permittee upon request.
- 8.9. This Agreement does not affect the District's ability to amend Permittee's permits to the extent authorized by the District's Rules and as subject to other applicable law. If the District finalizes an amendment pursuant to District Rules in any manner than reduces the ability of Permittee to exercise the full annual withdrawal and maximum rate of production authorized under Production Permits or limits the intended transport of such volumes, the parties acknowledge that the foundation of this Agreement could be materially altered. Accordingly, on the effective date of such District action, this Agreement shall be deemed modified to decrease Permittee's remaining funding obligations under Section 7.0 of this Agreement and to increase the ratio of credits generated to grant funding from prior funding, in each case proportionately to the reduction in annual production or production rate or transport rate, whichever is greater.
- 8.10. Failure of Permittee to comply with any term of this Agreement may result in an amendment and/or revocation to Permittee's permits under District Rules, subject to notice of violation and opportunity to cure, consistent with District Rules.
- 8.11. No well owned/operated or separately mitigated by Permittee or its tenant is eligible for mitigation by the District's Well Assistance Program.
- 8.12. The District and the Permittee shall meet at least every six (6) months, if requested by either party, to discuss and review the Well Assistance Program and the related accounting of funding and credits, as applicable.
- 8.13. If the Project does not develop for any reason, at any time, Permittee can give written notice to the District of termination of this Agreement and have no obligation to continue funding. All funding under this Agreement prior to the time that Permittee gives such notice to the District will be considered a grant of funds to the District to operate the Well Assistance Program and will not be reimbursed to Permittee.

- 8.14. Notices and Payments. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by: (a) United States certified or registered mail, addressed to the Party to be notified, postage prepaid; (b) depositing it with an overnight delivery service such as Federal Express or United Parcel Service; or (c) delivery in person to such party. Notice given in accordance with this provision shall be effective upon receipt or on the next business day in the case of overnight delivery service. All notices shall be sent and provided to the parties at the addresses listed below. Change of notice address/contact shall be given prior to change. Telephone numbers and email addresses are provided to facilitate confirmation of receipt.

For the District:

Brazos Valley Groundwater Conservation District
Attention: General Manager
112 West 3rd Street
Hearne, Texas 77859
Phone: (979) 279-9350

For Permittee:

Goodland Farm Office
Attention: David Lynch
4026 FM 1644
Hearne, Texas 77859
Phone: (979) 969-0244

With a copy to:

Paulina Williams
Baker Botts, LLP
401 South 1st Street, Suite 1300
Austin, TX 78704-1296
Phone: (512) 322-2543
paulina.williams@bakerbotts.com

- 8.15. No Debt or Additional Liability of the District. This Agreement shall not be interpreted as creating any debt by or on behalf of the District, and all obligations of the District are subject to the availability of funds. To the extent the performance of this Agreement extends beyond the District's fiscal year in which this Agreement is entered into, this Agreement is specifically contingent upon such funds being encumbered for the following fiscal year or the continued funding of the Well Assistance Program for the following fiscal year of the District.
- 8.16. No Admission of Liability by Permittee. Permittee enters this Agreement voluntarily and denies any legal obligation to enter this Agreement. The District and Permittee expressly understand and agree that neither the execution of this Agreement nor Permittee's willingness to fund the District's Well Assistance

Program will constitute or be construed as an admission of any wrongdoing, fault, or liability whatsoever by Permittee. By entering this Agreement, Permittee makes no admission about the actual responses of the Simsboro Aquifer or any other source of water to the Project. Permittee makes no admission about the projected impacts of the Project on any particular well, including but not limited to Potentially Eligible Wells. Permittee does not concede or waive any legal position or authority under Texas law protecting Permittee's private property rights or Permittee's right to produce groundwater from beneath its property.

- 8.17. No Third-Party Beneficiaries. This Agreement is intended only to create rights and obligations between the District and Permittee and is not intended to confer rights on any other person or to constitute such person a third-party beneficiary hereunder.
- 8.18. Invalidity. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
- 8.19. Entire Agreement. 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. This Agreement is a condition of Permittee's Pending Production Permits.
- 8.20. Texas Law. This Agreement has been made under and shall be governed by the laws of the State of Texas.
- 8.21. Place of Performance and Venue. Performance and all matters related thereto shall be in Brazos County or Robertson County, Texas, United States of America, and venue shall lie in a court of competent jurisdiction in Brazos County or Robertson County, Texas.
- 8.22. Authority to Enter Contract. Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective entities.
- 8.23. Construction. The District and Permittee acknowledge and agree that both parties have participated in the drafting of this Agreement and neither shall be considered the drafter of this Agreement and, therefore, no presumptions shall

be made for or against either District or Permittee on the basis that either was the drafter of this Agreement.

- 8.24. Multiple Counterparts. This Agreement may be executed in counterparts or with detachable signature pages and shall constitute one agreement, binding upon both District and Permittee as if both signed the same document.