

**MEMORANDUM OF UNDERSTANDING BETWEEN THE TEXAS A&M UNIVERSITY SYSTEM, THE CITY OF BRYAN, THE CITY OF COLLEGE STATION, AND THE BRAZOS VALLEY GROUNDWATER CONSERVATION DISTRICT**

This Memorandum of Understanding (“MOU”) is made and entered into by and between The Texas A&M University System (“TAMUS”), an agency of the State of Texas, the City of Bryan (“Bryan”), a Texas home rule municipality, the City of College Station (“College Station”), a Texas home rule municipality, and the Brazos Valley Groundwater Conservation District (“BVGCD”), a political subdivision of the State of Texas, (each individually a “Party” and collectively, the “Parties”).

**WHEREAS**, BVGCD has been entrusted by the State and the public with the conservation of the State’s groundwater resources located in Robertson and Brazos Counties;

**WHEREAS**, UW Brazos Valley Farm LLC (“UWBVF”), is developing a groundwater export project within the jurisdiction of the BVGCD in collaboration with Cula d’Brazos LLC, RH2O LLC, L. Wiese Moore LLC, Clifford A. Skiles III, James C. Brien, Ely Family Partnership L.P., and Fazzino Investments LP (collectively with UWBVF, the “Landowners”) to produce and export Simsboro groundwater (the “Project”);

**WHEREAS**, to facilitate the Project, Landowners applied with the BVGCD for eight transport permits, along with certain associated operating permits;

**WHEREAS**, in June 2024, TAMUS, Bryan, and College Station filed contested case hearing requests on seven of the transport permits, which are currently pending at SOAH (the “SOAH Proceeding”);

**WHEREAS**, on September 12, 2024, TAMUS filed an Original Petition for Writ of Mandamus against BVGCD and its General Manager Alan Day in Cause No. 24-002626-CV-472, styled as *Texas A&M University System v. Brazos Valley Groundwater Conservation District and Alan Day, General Manager of Brazos Valley Groundwater Conservation District*, in the 472nd District Court of Brazos County, Texas (the “Lawsuit”), seeking mandamus and injunctive relief claiming the operating permits/applications and one of the transport permits/applications should be sent to the State Office of Administrative Hearings (“SOAH”) for contested case hearings, all as more fully set forth in the pleadings, and said pleadings are incorporated herein by reference for explanation of the claims asserted;

**WHEREAS**, the Landowners intervened in the Lawsuit to defend BVGCD’s prior action on the above-referenced permits/applications;

**WHEREAS**, Bryan and College Station intervened in the Lawsuit to support TAMUS’s position;

**WHEREAS**, of even date herewith, the parties to the Lawsuit entered into the Full and Final Settlement and Release Agreement (“Settlement Agreement”), which settled the Lawsuit and SOAH Proceeding;

**WHEREAS**, the Settlement Agreement provides for, among other things, Landowners' payment of export fees to be charged on the Project Transport Permits in accordance with Texas Water Code § 36.122(e)(1), which allows groundwater conservation districts to impose an export fee or surcharge using a fee negotiated between the district and an exporter;

**WHEREAS**, the Settlement Agreement provides at Section 2.C.ii that BVGCD is committed to working with TAMUS, Bryan, and College Station on one or more well assistance agreements, and this MOU is the manifestation of that commitment;

**WHEREAS**, TAMUS, Bryan, and College Station (collectively "Well Owners") and, individually, "Well Owner") own and operate groundwater wells, listed in **Attachment "A"** (the "AP Wells"), that are eligible for well assistance funding under BVGCD's Well Assistance Program based on the predicted response of the Simsboro Aquifer to pumping associated with the Project Transport Permits;

**WHEREAS**, some of the provisions in BVGCD's Well Assistance Program require elucidation;

**WHEREAS**, the Parties agree that as part of the well assistance agreements contemplated by the Settlement Agreement, BVGCD will provide well assistance funding to Well Owners from BVGCD's Well Assistance Fund to preserve the ability of Well Owners to continue to access groundwater through their AP Wells, commensurate with existing production capacity, pursuant to BVGCD Rules and this MOU;

**WHEREAS**, the Parties agree that any retail public utility, as defined by Texas Water Code § 13.002, other than the Well Owners (an "RPU") with a well or wells producing from the Simsboro Aquifer, shall be a third-party beneficiary to this MOU for purposes of its provisions pertaining to RPUs, and that, in addition to the commitments herein to the Well Owners, BVGCD will provide well assistance funding to RPUs from BVGCD's Well Assistance Fund to preserve RPUs' ability to continue to access groundwater through their well(s) existing within BVGCD's boundaries as of the Effective Date (an "RPU AP Well"), commensurate with existing production capacity, pursuant to BVGCD Rules and this MOU; and

**WHEREAS**, the Parties wish to memorialize their agreement concerning the manner in which export fees will be allocated to TAMUS, Bryan, and College Station as part of BVGCD's Well Assistance Program.

**NOW THEREFORE**, in consideration of the mutual covenants, agreements, and undertakings herein set forth, the recitals set forth above, and other good and valuable consideration, the Parties agree as follows:

## **ARTICLE ONE**

### **Incorporation of Recitals**

The Recitals set forth above are hereby approved and incorporated into the body of this MOU as if copied in their entirety.

**ARTICLE TWO**  
**Effective Date**

This MOU shall be effective upon execution by the Parties' respective duly authorized representatives. The effective date will be same as the effective date of the Settlement Agreement (the "Effective Date").

**ARTICLE THREE**  
**Well Assistance Agreement**

Well assistance funding for TAMUS, Bryan, and College Station will be subject to the provisions of Section 16 of BVGCD's Rules, except as modified herein.

1. BVGCD shall use export fees consistent with §§ 36.122 and 36.207 of the Texas Water Code and deposit a sufficient amount of export fees received from the transport permits issued pursuant to the Settlement Agreement (the "Project Transport Permits") into BVGCD's Well Assistance Fund for use by BVGCD to, among other things, mitigate wells affected by pumping from wells associated with the Project Transport Permit as provided for in this MOU.
2. BVGCD shall also deposit production fees received from the Project Transport Permits, which are not used by BVGCD for other purposes, into the Well Assistance Fund.
3. BVGCD shall deposit the fees specified in Paragraphs 1 and 2 above in the cumulative amount of at least \$30 million (thirty million dollars) into the Well Assistance Fund not later than 2043, which \$30 million shall be earmarked solely to fund the Well Owners' Well Assistance Reimbursement Agreements. As soon as BVGCD has met its commitment to reimburse all of the Well Owners' AP Wells, BVGCD may use any remaining balance of the \$30 million commitment for any other lawful purpose. BVGCD may fund mitigation of RPU AP Wells from its Well Assistance Fund prior to fully meeting its commitments in this MOU to the Well Owners.
4. BVGCD shall fully commit to the mitigation of the wells associated with Well Owners' AP Wells and the RPU AP Wells at the funding level described in this MOU using funds from the Well Assistance Fund.
5. BVGCD deems the AP Wells and the RPU AP Wells to be wells for which mitigation is warranted under Section 16 of BVGCD's Rules and eligible to receive well assistance funds under BVGCD's existing Well Assistance Program. BVGCD Rule Section 16.4 shall not apply to AP Wells and the RPU AP Wells except as incorporated into a Well Assistance Reimbursement Agreement described below.
6. BVGCD agrees that the following costs associated with mitigation of the AP Wells and RPU AP Wells will be eligible for reimbursement from the Well Assistance Fund ("Eligible Costs"):

- a. Lowering of Pump. Lowering/replacement of pump/motors to restore the baseline rate of production from the well, including upgrading electrical equipment at the well site exclusive of power supplier facilities if necessary to restore production.
  - b. New Well. If the AP Well or RPU AP Well is not deep enough or constructed in such a manner which will not accommodate the anticipated drawdown for that location, then a replacement well may be drilled and equipped, including the following items:
    - i. the cost of the well construction and well yard;
    - ii. the cost of the well pump and motor sufficient to replace the baseline rate of production from the replaced well, including upgrading electrical supply equipment at the well site exclusive of power supplier facilities if necessary to restore production;
    - iii. the cost of discharge piping in the well yard leading to the well collection line;
    - iv. the cost of the electrical starting equipment (the motor control center or “MCC”);
    - v. reasonable engineering fees not to exceed 11% (eleven percent) of the construction costs; and
    - vi. additional items allowed by BVGCD rules, as amended.
7. The Parties agree that funding from the Well Assistance Fund for mitigation of AP Wells and RPU AP Wells will be not less than 30% (thirty percent) of Eligible Costs. The Parties agree that this percentage represents the anticipated response of the Simsboro Aquifer in the location of the AP Wells and RPUs’ AP Wells to the pumping associated with the UW Transport Project, and reflects the Well Owners’ agreement to be reimbursed over time. In a request for well assistance funding, however, a Well Owner or RPU may seek a higher percentage if the Well Owner or RPU can justify the higher percentage using a scientifically reasonable methodology, subject to review by the District’s hydrogeologist or engineer, and agreed to by the Parties. If BVGCD amends Section 16 of its rules to allow a higher percentage of funding for mitigation of wells from the Well Assistance Fund, then funding allowed by this provision shall change correspondingly.
8. Annual Report of Mitigation Status. By the end of each calendar year, each Well Owner shall provide BVGCD and each other with a report of the likelihood that any of its AP Wells will need mitigation during the next five (5) years, with estimated schedules of design and construction. In the event more than one of the Well Owners or RPUs will need mitigation during the same five-year period, the Well Owners shall work with each other and BVGCD in good faith using reasonable best efforts to coordinate on the development of Well Assistance Reimbursement Agreements (as addressed below) that work to their individual and mutual benefit. The Well Owners acknowledge that they may not receive funding until after they have completed construction and sufficient funds are available for reimbursement.

9. Well Assistance Reimbursement Agreements. Upon a request for well assistance funding for an AP Well or group of AP Wells, BVGCD and the Well Owner shall enter into a Well Assistance Reimbursement Agreement that identifies the (i) estimated total Eligible Costs based on the Well Owner's Engineering Estimate of Probable Construction Costs, actual construction bids, or actual construction costs (depending on when the request is made), and (ii) a payment schedule that accounts for the available funding from the Well Assistance Fund, expected additions to the Well Assistance Fund, and existing and anticipated requests for mitigation by others. Final payment to the Well Owner shall be based on actual construction costs as limited by Paragraphs 6 and 7 above. Each Well Assistance Reimbursement Agreement shall include provisions allowing BVGCD to restructure payment schedules based on actual collections of Well Assistance Funds and additional requests for mitigation.
10. BVGCD agrees that the Well Owners will perform their own diagnostic and mitigation work without needing the approval of BVGCD. The District reserves the right to review the mitigation plans proposed and provide input without obstructing the mitigation of the well(s).

#### **ARTICLE FOUR Successors and Assigns**

This MOU shall be binding upon the Parties hereto, their successors and assigns. No Party may assign or transfer an interest in this MOU without the written consent of the other Parties.

#### **ARTICLE FIVE Venue**

This MOU, including the validity, interpretation, and enforcement, shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any disputes between the Parties relating in any way to this MOU shall lie exclusively in state District Court in Brazos County, Texas, and each Party submits to the jurisdiction of that court relating to this MOU or any breach thereof.

#### **ARTICLE SIX Miscellaneous**

**Severability.** The provisions of this MOU are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this MOU is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation having the force and effect of the law, the remaining portions of the MOU shall be enforced as if the invalid provision had never been included.

**Enforceability.** Each of the Parties represents and warrants that it has the authority to execute the document in the capacity shown below. Each of the Parties further represents and warrants that this MOU constitutes a valid and binding contract, enforceable in accordance with its terms.

**Force Majeure.** In the event that the performance by any Party shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act or

conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.

**Notice.** Any notice given hereunder by either Party to the other shall be in writing and may be effected by personal delivery or by registered or certified mail, return receipt requested, when mailed to the proper Party, at the following addresses:

**BVGCD:**

Attn.: General Manager  
112 West 3<sup>rd</sup> Street  
Hearne, Texas 77859  
[aday@brazosvalleygcd.org](mailto:aday@brazosvalleygcd.org)

**Bryan:**

Attn: Kean Register, City Manager  
P.O. Box 1000  
Bryan, Texas 77805-1000  
[executiveservices@bryantx.gov](mailto:executiveservices@bryantx.gov)

cc: City Attorney  
P.O. Box 1000  
Bryan, Texas 77805-1000  
[cityattorney@bryantx.gov](mailto:cityattorney@bryantx.gov)

**College Station:**

Attn: Bryan Woods, City Manager  
City Manager's Office  
P.O. Box 9960  
College Station, Texas 77842  
[bwoods@cstx.gov](mailto:bwoods@cstx.gov)

cc: City Attorney  
City Attorney's Office  
P.O. Box 9960  
College Station, Texas 77842  
[afalco@cstx.gov](mailto:afalco@cstx.gov)

**TAMUS:**

Attn.: System Land Management Office  
The Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845  
[energy@tamus.edu](mailto:energy@tamus.edu)

cc: Office of General Counsel  
Attn: Managing Counsel, Property  
& Construction  
The Texas A&M University System  
301 Tarrow St., 6<sup>th</sup> Floor  
College Station, Texas 77840-7896  
[property@tamus.edu](mailto:property@tamus.edu)

A courtesy copy by email shall be provided at the same time as the formal notice using the above-stated email addresses. A Party may modify its contact information by written notice.

**No Third-Party Beneficiaries.** Nothing in this MOU shall be construed to give any rights or benefits under this MOU to anyone other than the Parties, and all duties and responsibilities undertaken pursuant to this MOU shall be for the sole and exclusive benefit of the Parties, and not for the benefit of any other party, with the exception of the funding commitments for RPU's specifically provided for herein.

**Counterparts.** This MOU may be executed by the Parties in one or more counterparts, which may be exchanged by electronic means, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**No Waiver of Sovereign Immunity.** Nothing in this MOU shall be deemed or construed to waive the sovereign or governmental immunity of any Party having sovereign or governmental immunity; notwithstanding the foregoing, any Party may seek mandamus or other equitable relief in order to enforce the terms of this MOU.

**No Partnership/Joint Venture.** Nothing in this MOU, or the performance of the Parties contemplated hereby, shall be deemed to create a partnership, agency, joint venture, or joint enterprise. In no event shall any Party incur liability on behalf of or obligate another Party without that Party's written consent and all requisite approvals required by law or the governing bodies of the Party.

**Remedies.** No right or remedy granted herein or reserved to the Parties is exclusive of any right or remedy granted by law or equity, but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this MOU may be waived without the express written consent of the Parties. It is further agreed that one or more instances of forbearance by either Party in the exercise of its respective rights under this MOU shall in no way constitute a waiver thereof.

**Paragraph Headings.** The paragraph headings in this MOU are provided for convenience of reference, and are not intended to limit, restrict, or modify the rights and obligations of the Parties as set forth in the paragraphs of this MOU. In the event of any conflict between a heading and the text of this MOU, the text of this MOU will control.

**Interpretation.** This MOU has been negotiated by and between the Parties, and any presumption that an ambiguity contained in this MOU shall be construed against the Party that caused this MOU to be drafted shall not apply to the interpretation of this MOU.

[Signature Pages Follow]


**IN WITNESS WHEREOF**, the Parties hereto have caused this Memorandum of Understanding to be executed as of the Effective Date. Each individual signing below represents and warrants that he or she has authority to sign for and enter into this Memorandum of Understanding on behalf of his or her respective Party.

WITNESS MY HAND to this instrument on this the 7<sup>th</sup> day of July 2025.

**THE TEXAS A&M UNIVERSITY SYSTEM**

  
\_\_\_\_\_  
**GLENN HEGAR**  
Chancellor

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**JOSEPH A. BROWN**  
Assistant General Counsel (Oil & Gas)  
Office of General Counsel  
The Texas A&M University System

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WITNESS MY HAND to this instrument on this the 2<sup>nd</sup> day of ~~June~~ July 2025.

**The City of Bryan:**

Kean Register  
Kean Register, City Manager

**Approved as to Form:**

Thomas A. Leeper  
Thomas A. Leeper, City Attorney

**Attest:**

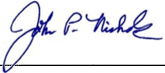
Melissa Brunner  
Melissa Brunner, City Secretary





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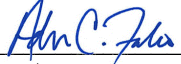
WITNESS MY HAND to this instrument on this the 26<sup>th</sup> day of June 2025.

**CITY OF COLLEGE STATION**

By:   
**Mayor**  
Date: 6/26/2025

**ATTEST:**  
  
**City Secretary**  
Date: 6/27/2025


**APPROVED:**  
  
**City Manager**  
Date: 6/27/2025

  
**City Attorney**  
Date: 6/26/2025

  
**Assistant City Manager/CFO**  
Date: 6/26/2025

**IN WITNESS WHEREOF**, the Parties hereto have caused this Memorandum of Understanding to be executed as of the Effective Date. Each individual signing below represents and warrants that he or she has authority to sign for and enter into this Memorandum of Understanding on behalf of his or her respective Party.

WITNESS MY HAND to this instrument on this the 27<sup>th</sup> day of June 2025.

By:   
\_\_\_\_\_  
Jayson Barfknecht, President  
Board of Directors  
Brazos Valley Groundwater Conservation District

By:   
\_\_\_\_\_  
Jeff Kennedy, Secretary  
Board of Directors  
Brazos Valley Groundwater Conservation District

**ATTACHMENT "A"**  
List of TAMUS, Bryan, and College Station AP Wells

<b>Permit Holder</b>	<b>Permit #</b>	<b>Well Name</b>	<b>Ac-ft Permitted</b>	<b>Aquifer</b>
City of Bryan	BVHU-0003	Well 10	2286.54	Simsboro
City of Bryan	BVHU-0004	Well 11	1413.53	Simsboro
City of Bryan	BVHU-0005	Well 12	3020.04	Simsboro
City of Bryan	BVHU-0006	Well 13	3784.56	Simsboro
City of Bryan	BVHU-0007	Well 14	3492.51	Simsboro
City of Bryan	BVHU-0008	Well 15	3841.55	Simsboro
City of Bryan	BVHU-0009	Well 16	3297.04	Simsboro
City of Bryan	BVHU-0010	Well 17	3460.72	Simsboro
City of Bryan	BVDO-0003	Well 18	4838.00	Simsboro
City of Bryan	BVHU-0041	Well 19	2703.70	Simsboro
City of College Station	BVHU-0038	Well 1	2423.00	Simsboro
City of College Station	BVHU-0039	Well 2	2386.00	Simsboro
City of College Station	BVHU-0040	Well 3	2381.00	Simsboro
City of College Station	BVHU-0042	Well 5	2726.00	Simsboro
City of College Station	BVHU-0043	Well 6	2792.00	Simsboro
City of College Station	BVDO-0013	Well 7	4839.00	Simsboro
City of College Station	BVDO-0053	Well 8	2390.00	Simsboro
City of College Station	BVDO-0152	Well 9	2855.00	Simsboro
Texas A&M University	BVHU-0454	Well 6	2337.14	Simsboro
Texas A&M University	BVHU-0455	Well 7	2864.00	Simsboro
Texas A&M University	BVHU-0456	Well 8	2444.77	Simsboro