

**MONITORING WELL SYSTEM
CONSTRUCTION AND MAINTENANCE AGREEMENT**

THIS MONITORING WELL SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT (the “Agreement”) is entered into as of the ___ day of _____, 2016 (the “Effective Date”), by and between the LOST PINES GROUNDWATER CONSERVATION DISTRICT, a groundwater conservation district organized pursuant to the provisions of Article XVI, Section 59 of the Texas Constitution (the “District”), and END OP, L.P., a _____ limited partnership (“End Op”). The District and End Op are sometimes collectively referred to as the “Parties.”

RECITALS

A. The District has issued Operating Permits to End Op for the following fourteen groundwater wells located in Bastrop County and Lee County, Texas: Well No. 5855512 (Well No. 1), Well No. 5855513 (Well No. 2), Well No. 5855514 (Well No. 3), Well No. 5855216 (Well No. 4), Well No. 5855217 (Well No. 5), Well No. 5855323 (Well No. 6), Well No. 5847809 (Well No. 7), Well No. 5855218 (Well No. 8), Well No. 5847602 (Well No. 9), Well No. 5847303 (Well No. 10), Well No. 5847304 (Well No. 11), Well No. 5848212 (Well No. 12), Well No. 5848121 (Well No. 13), and Well No. 5848122 (the “Aggregated Wells”).

B. The Operating Permits require the construction, operation and maintenance of new monitoring wells designed to measure drawdown in the Simsboro aquifer.

C. The District and End Op desire to enter into this Agreement regarding the construction, operation and maintenance of the new monitoring wells.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement and the District’s issuance of the Operating Permits for the Aggregated Wells, the District and End Op agree as follows:

**ARTICLE I
CONSTRUCTION OF NEW MONITORING WELLS**

Section 1. The Project. The “Project” shall consist of six (6) new groundwater wells drilled at locations that are available and approved by the District General Manager (the “New Monitoring Wells”), together with equipment for monitoring the groundwater levels in those wells that is compatible with the District’s existing monitoring well system equipment (the “Monitoring Equipment”), and all easements as are necessary for the operation and maintenance of and access to the New Monitoring Wells and Monitoring Equipment (the “Monitoring Well Authorizations”).

Section 2. Monitoring Well System. Monitoring Well System has the meaning set out in the Operating Permits.

Section 3. Design of the Project. The plans and specifications for the Project shall be prepared by consultants selected by End Op and approved by the District. End Op shall pay all costs and expenses associated with the design of the Project. The design shall comply with all applicable state and federal requirements. End Op will submit the plans and specifications to the District General Manager for approval before it begins construction of the Project. The District General Manager agrees to review the plans and specifications and either approve them or provide written comments specifically identifying required changes within thirty (30) days of submittal. If the District General Manager fails to either approve the plans and specifications or provide written comments specifically identifying required changes within thirty (30) days of submittal, the plans and specifications will be deemed approved. If the District General Manager provides written comments to End Op, End Op will amend the plans and specifications to address the written comments and resubmit the plans and specifications to the District for approval. End Op shall obtain approval of the plans and specifications by all other governmental agencies with jurisdiction. End Op shall not begin construction of the Project until the District and all other agencies with jurisdiction have approved the plans and specifications.

Section 4. Completion of Project.

(a) The Project shall be completed by a contractor or contractors selected by End Op and approved by the District.

(b) No changes to the approved plans and specifications for the Project may be made without the approval of the District General Manager.

(c) The Project shall be constructed in a good and workmanlike manner and all material used in such construction shall be new, free from defects and fit for their intended purpose.

(d) End Op shall provide notice to the District General Manager at least five (5) days in advance of the drilling of any New Monitoring Well or the installation of the Monitoring Equipment at a New Monitoring Well. The notice shall include the location of the New Monitoring Well to be drilled or equipped.

(e) The District may inspect the construction or installation at any reasonable time.

(f) Upon completion of construction of a New Monitoring Well and installation of the Monitoring Equipment, End Op shall provide the District General Manager with applicable acceptance letters and a certificate of completion from End Op's consultants and contractors certifying that the New Monitoring Well and the Monitoring Equipment have been completed in accordance with the plans and specifications approved by the District.

Section 5. Cost of Project to be Funded by End Op. End Op will pay all costs of the Project, including without limitation: all reasonable costs of design, engineering, materials, labor, construction, and inspection arising in connection with the Project; all payments arising under any contracts entered into for the construction of the Project; and all reasonable costs incurred in

connection with obtaining governmental approvals, certificates, or permits required for the Project (collectively, the “Project Costs”). The District shall have no responsibility for Project Costs.

Section 6. Acceptance and Conveyance. Within sixty (60) days of the District’s receipt of the applicable acceptance letters and a certificate of completion, and provided that End Op has fully complied with all requirements and obligations set forth in this Agreement and the Operating Permits, (i) the District General Manager shall accept the Project and (ii) End Op shall convey all New Monitoring Wells, Monitoring Equipment, and Monitoring Well Authorizations to the District free and clear of any liens or encumbrances except such that may be agreed to by the District, by such instruments and documents required by the District. At any time during term of this Agreement, upon the request of the District, End Op will take reasonable steps to assist the District in maintaining access to the New Monitoring Wells and Monitoring Equipment.

Section 7. Use of Existing Wells. End Op may use an existing well as a New Monitoring Well under this Agreement. Any existing well used as a New Monitoring Well must comply with the requirements of Sections 4, 5 and 6 of this Article I.

ARTICLE II
OPERATION AND MAINTENANCE OF
NEW MONITORING WELLS

Section 1. Monitoring Equipment. The District shall be responsible for operating, maintaining, repairing and replacing the Monitoring Equipment, at the District’s sole cost. The District shall maintain the Monitoring Equipment in good condition and working order and in accordance with all applicable regulatory requirements and accepted operating practices. All data obtained shall be available to the District and End Op, and End Op shall have access to all Monitoring Wells and Monitoring Equipment upon reasonable notice to the District.

Section 2. Wells. End Op shall be responsible for repairing and replacing any part of the New Monitoring Wells except the Monitoring Equipment, at End Op’s sole cost. If repairs or replacement of any part of the New Monitoring Wells except the Monitoring Equipment are reasonably necessary or convenient for the continuous and adequate performance of the wells, the District shall provide notice to End Op and End Op shall make such repairs or replacement as soon as reasonably practical. In the event that End Op fails to adequately make such repairs or replacements, the District shall have the right, but not the obligation, to perform such repairs and replacements as are reasonably required to effect the continuous and adequate performance of the wells.

Section 3. Inaccurate Data. Data collected from a New Monitoring Well during a period in which the New Monitoring Well is not providing accurate water level data for that well shall not be used for any purpose under this Agreement or the Operating Permits. If the General Manager determines that any monitoring well is providing inaccurate data, it shall notify End Op, in writing, of the data that the General Manager has determined is inaccurate. End Op shall have 30 days to object to the exclusion of the data identified. If the Parties are unable to agree on the use of the data within 60 days of the date of the General Manager’s notice to End Op, then

the General Manager and End Op will mutually agree upon a registered professional engineer or a certified groundwater professional with expertise in hydrology, hydraulics and hydrogeology to mediate the dispute.

ARTICLE IV
INDEMNITY

Section 1. END OP AGREES TO INDEMNIFY THE DISTRICT, ITS SUCCESSORS AND ASSIGNS, AND HOLD IT FREE AND HARMLESS FROM AND AGAINST ANY AND ALL LIENS, CLAIMS, DEBTS, CHARGES, DAMAGES, LOSS, PENALTIES, AND EXPENSES, LIQUIDATED OR UNLIQUIDATED, EXECUTED OR EXECUTORY, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ACTUAL OR CONTINGENT, WHETHER OR NOT HEREBY EXPRESSLY LISTED OR DESCRIBED, BUT WHICH MAY BE ASSERTED NEVERTHELESS AGAINST THE DISTRICT, ITS SUCCESSORS OR ASSIGNS ARISING OUT OF OR RELATED TO THE DESIGN, CONSTRUCTION AND INSTALLATION OF ANY NEW MONITORING WELL, AND/OR ARISING OUT OF OR RELATED TO ANY REPAIR OR REPLACEMENT OF ANY NEW MONITORING WELLS PERFORMED BY END OP, BUT EXCLUDING (i) THE MONITORING EQUIPMENT AND/OR (ii) CLAIMS ARISING OUT OF THE NEGLIGENT AND/OR INTENTIONAL ACTS OF THE DISTRICT, ITS SUCCESSORS, OR ASSIGNS OUTSIDE OF THE DIRECT CONTROL OF END OP.

ARTICLE V
REMEDIES

Section 1. Default by Either Party. In the event of default by either Party, the other Party must give to the defaulting Party written notice of such default specifying the failure or default relied upon. If the defaulting Party fails to fully cure the default specified in such notice within thirty (30) days after receipt of such notice, the nondefaulting Party shall be entitled: (a) to a proper writ issued by a court of competent jurisdiction compelling and requiring the defaulting party to observe and perform the covenants, obligations and conditions described in this Agreement; or (b) to pursue all other legal or equitable remedies. The nondefaulting Party may employ attorneys to pursue its legal rights and if it prevails before any court or agency of competent jurisdiction, the defaulting party shall be obligated to pay all expenses incurred by the nondefaulting Party, including reasonable attorneys' fees.

Section 2. Default by End Op. A default by End Op that is not cured within thirty (30) days after End Op receives written notice of the default is a violation of the Operating Permits.

ARTICLE VI
MISCELLANEOUS

Section 1. Modification. This Agreement represents the entire Agreement between the Parties relating to construction and conveyance of the Project and supersedes all prior oral and

written agreements. This Agreement shall be subject to change or modification only with the mutual written consent of Developer and the District.

Section 2. Assignability. End Op may not assign this Agreement except in conjunction with the transfer of ownership of the Operating Permits.

Section 3. Monitoring Well System Data. End Op shall have the right to review all data obtained by the District from the monitoring well system owned or operated by the District and may request, at its expense, copies of all documents, data and information obtained by the District in the operation of the District's entire monitoring well system.

Section 4. Captions. The captions appearing at the first of each numbered section or paragraph in this Agreement shall never be considered or given any effect in construing this Agreement.

Section 5. Applicable Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Texas.

Section 6. Parties at Interest. This Agreement shall be for the sole and exclusive benefit of the parties hereto and shall never be construed to confer any benefit to any third party.

Section 7. Waiver. Each Party may specifically, but only in writing, waive any breach of this Agreement by the other party, but no such waiver shall be deemed to constitute a waiver of similar or other breaches by such other Party.

Section 8. Notices. All notices from End Op to the District shall be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

Lost Pines Groundwater Conservation District
Attn: General Manager
P.O. Box 1027
Smithville, Texas 78957

All notices from the District to End Op shall be in writing and mailed by Certified Mail, Return Receipt Requested, addressed to:

End Op, L.P

Either Party may change its address by giving written notice of such change to the other Party.

Section 9. Term. Except as otherwise provided herein, this Agreement shall be in force and effect from the Effective Date until the earlier of the expiration or revocation of all of the Operating Permits.

Section 10. Authority for Execution. The District certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its statutory authority and bylaws. End Op hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with its partnership documents.

Section 11. Multiple Originals. This Agreement shall be executed in a number of counterparts, each of which shall for all purposes, be deemed to be an original, and all such counterparts shall together constitute and be one and the same instrument.

IN WITNESS WHEREOF, End Op has caused its corporate names to be hereunto subscribed by its officers, thereunto duly authorized; and the President of the District has executed, and the Secretary of the District has attested this instrument on behalf of said District pursuant to an Order passed and approved by the Board of Directors of said District.

EXECUTED this _____ day of _____, 2016.

LOST PINES GROUNDWATER
CONSERVATION DISTRICT

By: _____
Michael H. Talbot, President

STATE OF TEXAS §
 §
COUNTY OF BASTROP §

This instrument was acknowledged before me on the ____ day of _____, 2016,
by MICHAEL H. TALBOT, as President of the LOST PINES GROUNDWATER
CONSERVATION DISTRICT, on behalf of said District.

NOTARY PUBLIC, State of Texas

(SEAL)

END OP, L.P.

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By: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2016, by _____, as _____ of END OP. L.P., on behalf of said limited partnership.

NOTARY PUBLIC, State of Texas

(SEAL)