

**LOWER COLORADO RIVER AUTHORITY  
HB 1437 AGRICULTURE WATER CONSERVATION PROGRAM  
COST-SHARING AGREEMENT**

This COST SHARING AGREEMENT (this “Agreement”) is entered into by and between the Lower Colorado River Authority (“LCRA”) and \_\_\_\_\_ (“Producer”). LCRA and Producer are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, reference is made to that certain HB 1437 Agriculture Water Conservation Program, Revision 2023 (the “Program”), which serves as a joint effort among individual producers and LCRA to implement water conservation projects to conserve surface water in the lower Colorado River basin;

WHEREAS, the Program may occur in conjunction with programs of local soil and water conservation districts (SWCDs), and the U.S. Department of Agriculture’s Natural Resources Conservation Service (NRCS) to implement water conservation projects to conserve surface water in the lower Colorado River basin;

WHEREAS, the Program provides grants to eligible producers to construct acceptable, on-farm, water conservation practices such as irrigation land leveling, multiple inlets, and internal levee structures in accordance with the Application Guidelines for the Program (the “Guidelines”);

WHEREAS, the Guidelines specify the cost-sharing and general requirements applicable to the Program;

WHEREAS, Producer has submitted its HB 1437 application (the “Application”) therein proposing to undertake a specific water conservation project within the parameters set by the Guidelines (the “Project”); and

WHEREAS, in accordance with the Guidelines, LCRA and Producer desire to enter into a cost sharing arrangement subject to the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LCRA and Producer hereby agree as follows:

**1. Eligibility**

- (a) Producer, by signing this Agreement, certifies its control of the field that is the subject of the Application (the “Field”) through the Service Life. A copy of the

Application is attached hereto as Exhibit A and is incorporated into this Agreement for all purposes. Upon demand, Producer shall provide LCRA evidence satisfactory to LCRA (e.g., deed, lease) demonstrating that Producer will control the Field through Service Life. The Field will not be eligible for the Program if it is subject to a deed or other restriction that prohibits conservation programs on the Field. By signing this Agreement, Producer represents, warrants and certifies to LCRA that there are no restrictions of this type on the Field.

(b) Producer, by signing this Agreement, represents, warrants and certifies to LCRA that:

1. The Field has been irrigated by an LCRA agricultural interruptible water service contract at least twice during the past ten (10) years;
2. Producer will complete the Project within two (2) years of the Effective Date;
3. Producer will place the Field in rice production within two (2) years of the Effective Date, or the earliest practicable date if LCRA has curtailed interruptible water supply to Producer's field consistent with the LCRA's state-approved Water Management Plan and other water rights, as may be amended from time to time;
4. The proposed Project is for an acceptable practice or conservation measure as described in Section 2 of the Guidelines (an "Acceptable Practice") and provides for the conservation of surface water;
5. If Producer previously received funding for a conservation practice from LCRA, Producer has maintained the conservation practice for the term specified in the previous funding contract;
6. Producer shall (i) maintain the land leveling practice for the Service Life as needed if Field settling occurs, and (ii) re-survey the Field at least once every six years; and
7. If Producer has an SWCD-District Cooperative Agreement or EQIP contract, that information must be promptly disclosed to LCRA.

## **2. Obligations of Producer and LCRA**

a. Producer agrees:

- i. To the extent reasonably practicable, the Field will be at least seventy percent (70%) irrigated by an LCRA agricultural interruptible water service contract whenever it is in production during the Service Life;
- ii. To place the Field into the Program for the duration of the service life ("Service Life") that is specified in the signature page of this Agreement; in the event of a conflict between the estimated Service Life provided in the Application and the Service Life specified on the

signature page of this Agreement, the terms of this Agreement shall control;

- iii.** To complete the Project within two (2) years from the Effective Date;
- iv.** To discontinue work in the general area of the site of the Project or conservation measure and immediately notify LCRA in writing if an archeological or historical site is found or reasonably suspected to exist;
- v.** When the Project is complete and certified by an LCRA approved contractor, to promptly submit a HB 1437 Payment Request to LCRA. The Producer must include in the notice a copy of the certification from an LCRA approved contractor, and, if applicable, any approved NRCS Practice Certification and Payment Application form (Form CCC-1245), or comparable SWCD certification.
- vi.** To maintain documents regarding design for the Project and receipts or other proof of payments for the Project for three (3) years after the end of the fiscal year in which the Project is completed, and to present this documentation to LCRA within thirty (30) days of request by LCRA; Producer shall make available to LCRA field production records within thirty (30) days of request by LCRA;
- vii.** To place the Field in rice production within two (2) years of the Effective Date, or the earliest practicable date if LCRA has curtailed interruptible water supply to Producer's Field consistent with LCRA's state-approved Water Management Plan and other water rights, as may be amended from time to time; or, if Producer fails to do so, to refund any payments made by LCRA to Producer, plus interest as provided in this Agreement for refunds, not later than Aug. 31 of the year three (3) years after the Effective Date;
- viii.** To maintain the Project for the duration of the Service Life; Producer acknowledges and agrees that the failure to do so will entitle LCRA to refunds as provided in this Agreement and disqualify Producer from eligibility for LCRA funds for future conservation practices;
- ix.** To allow LCRA access to the Field for monitoring progress toward and maintenance of the Project in accordance with this Agreement through the Service Life;
- x.** To the extent reasonably practicable, to irrigate the Field with LCRA system water no less than once every six (6) years during the Service Life, to the extent such water is made available by LCRA



- i. Producer has not completed work on the Project, as described in the Application, within two (2) years from the Effective Date of this Agreement;
  - ii. Producer is landlord of a Field that is operated by a tenant, and Producer requires its tenant to bear costs for the Project but does not allow its tenant to participate in the benefits of this Agreement; or
  - iii. The Project, as described in the Application, would cause adverse impacts to significant cultural and/or environmental resources discovered prior to or in the course of installation, as determined by LCRA in its sole discretion.
- b. Producer and LCRA otherwise may modify this Agreement in writing executed by both Parties.

#### **4. Refunding of Payments in Certain Events**

- a. If Producer fails to place the Field in rice production within two (2) years of the Effective Date, or if Producer fails to maintain the Project to qualify as an Acceptable Practice at all times for the duration of the Service Life, or if Producer fails to irrigate the Field with LCRA system water during the Service Life in accordance with this Agreement, to the extent such water is made available by LCRA consistent with the LCRA's state-approved Water Management Plan and other water rights, as may be amended from time to time, Producer shall refund to LCRA all or any part of the payments made under this Agreement, as determined by LCRA, with interest and other costs as provided in this Agreement and no further payments to Producer shall be made.
- b. If Producer is the landlord of land that is operated by a tenant, and Producer requires its tenant to bear costs for the Project, Producer must allow its tenant to recover its costs (up to the limits of this Agreement) from the benefits provided by this Agreement. If LCRA determines that Producer has failed to do so after payments have been made under this Agreement, all or any part of the payments made under this Agreement, as determined by LCRA, must be refunded by Producer with interest and other costs as provided in this Agreement and no further payments to Producer shall be made.
- c. If after complying with all terms and conditions of this Agreement, the Producer elects to sell or otherwise transfer all of his/her/its interest in the real property comprising the Field to an unaffiliated third party, then the Producer shall execute and cause the unaffiliated third-party purchaser to execute an Assignment and Assumption Agreement materially in the form

and substance as attached hereto as Exhibit B (an "Assignment"). In the event that an Assignment is not fully executed and delivered to LCRA prior to the transfer of interest of the Field, then Producer shall refund to LCRA all or any part of the payments made under this Agreement, as determined by LCRA, with interest and other costs as provided in this Agreement and no further payment to Producer shall be made.

- d. Interest for any refunds owed by Producer to LCRA in accordance with the terms of this Agreement shall be calculated from the date the funds were originally disbursed by LCRA and at the same rate of interest that was obtained by LCRA for its issuance of bonds that was closest in time prior to the refund.
- e. In the event Producer owes refunds to LCRA according to this Agreement, and LCRA incurs any costs (including, without limitation, litigation costs or attorney fees) in recovering those refunds, Producer shall be obligated to pay LCRA for its costs of enforcing this Agreement and recovering the refunds in accordance with section 271.159 of the Texas Local Government Code.
- f. LCRA's rights to seek refunds, including interest and other costs as provided in this Agreement, from Producer in accordance with the terms of this Agreement shall survive any termination of this Agreement.

## **5. Effective Date**

This Agreement is effective on the date it is signed by the latter to sign of Producer and an authorized representative of LCRA (the "Effective Date").

## **6. Miscellaneous**

- a. Any notices provided under this Agreement shall be provided to the address provided below the signature block for the respective Parties.
- b. Neither Party may assign this Agreement without the prior written approval of the other Party.
- c. Each of the undersigned Parties, by signing this Agreement, represents and warrants to the other Party that the undersigned has authority to sign for and bind to this Agreement the Party that he or she purports to represent. In the event Producer is a partnership, this Agreement must be signed by a general partner; in the event Producer is a corporate entity, this Agreement must be signed by an authorized representative.

- d. This Agreement may apply to more than one Application by Producer. In this event, words referring to the singular number shall be construed to apply to Producer's multiple Applications.
- e. A waiver by either Party related to a default of the other Party under this Agreement shall not be construed to constitute a waiver to any subsequent default of the other Party.
- f. The following defined terms shall have the following meanings:
  - i. "NRCS" shall mean the Natural Resources Conservation Service of the United States Department of Agriculture;
  - ii. "EQIP" shall mean the Environmental Quality Incentives Program of the NRCS;
  - iii. "SWCD" shall mean the soil and water conservation district within the Producer's county; and
  - iv. "Acceptable Practice" shall mean Producer's proposed practice or measure for the conservation of surface water that is approved by an LCRA certified contractor.

## **7. Service Life and Term**

The Service Life for the Approved Practice is fifteen (15) years from the year in which the Approved Practice is completed. Except as expressly provided otherwise in this Agreement, this Agreement shall expire upon the expiration of the Service Life.

[remainder of this page intentionally left blank]

This Agreement is signed by the parties below to be effective in accordance with the terms of this Agreement.

LOWER COLORADO RIVER AUTHORITY

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

Kelly Payne

Vice President, River Operations

P.O. Box 220, Mail Stop R 325

Austin, TX 78767-0220

PRODUCER

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

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

\_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

EXHIBIT A: APPLICATION

EXHIBIT B: COST SHARING CAPS

EXHIBIT C: FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT



EXHIBIT A  
APPLICATION

See attached.

EXHIBIT B  
COST SHARING CAPS

See attached.

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

See attached.

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (“Agreement”) dated as of \_\_\_\_\_ (“Effective Date”), is entered into by and among \_\_\_\_\_ a \_\_\_\_\_ with offices located at \_\_\_\_\_ (“Assigning Party”) and \_\_\_\_\_, a \_\_\_\_\_, with offices located at \_\_\_\_\_ (“Assuming Party”), and the Lower Colorado River Authority, a conservation and reclamation district of the State of Texas, with offices located at 3700 Lake Austin Boulevard, Austin, Texas 78703 (“LCRA”).

WHEREAS, Assigning Party desires to assign to Assuming Party all of its rights and delegate to Assuming Party all of its obligations under that certain Cost-Sharing Agreement dated \_\_\_\_\_ between Assigning Party and LCRA attached hereto (the “Assigned Contract”);

WHEREAS, Assuming Party desires to accept such assignment of rights and delegation of obligations under the Assigned Contract; and

WHEREAS, LCRA desires to release Assigning Party from its obligations under the Assigned Contract and substitute Assuming Party as a party to the Assigned Contract in Assigning Party’s place.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Assumption.

1.1 Assignment. Assigning Party irrevocably sells, assigns, grants, conveys, and transfers to Assuming Party all of Assigning Party’s right, title, and interest in and to the Assigned Contract.

1.2 Assumption. Assuming Party unconditionally accepts such assignment and assumes all of Assigning Party’s duties, liabilities, and obligations under the Assigned Contract, and agrees to pay, perform, and discharge, as and when due, all of the obligations of Assigning Party under the Assigned Contract accruing on and after the Effective Date.

2. Novation.

2.1 Release.

(a) Despite anything to the contrary in the Assigned Contract, LCRA releases and forever discharges Assigning Party from all further obligations arising under the Assigned Contract, and from all manner of actions, causes of action, suits, debts, damages, expenses, claims, and demands whatsoever that LCRA has or may have against any of the foregoing persons, arising out of or in any way connected to performance under the Assigned Contract on and after the Effective Date. For avoidance of doubt, nothing herein affects any rights,

liabilities, or obligations of LCRA or Assigning Party due to be performed before the Effective Date.

(b) Despite anything to the contrary in the Assigned Contract, Assigning Party releases and forever discharges LCRA, as well as its affiliates, directors, managers, officers, employees, agents, and representatives, from all further obligations arising under the Assigned Contract, and from all manner of actions, causes of action, suits, debts, damages, expenses, claims, and demands whatsoever that Assigning Party has or may have against any of the foregoing persons, arising out of or in any way connected to performance under the Assigned Contract on and after the Effective Date. For avoidance of doubt, nothing herein affects any rights, liabilities, or obligations of LCRA or Assigning Party due to be performed before the Effective Date.

2.2 Substitution. The parties intend that this Agreement is a novation and that the Assuming Party be substituted for the Assigning Party. LCRA recognizes Assuming Party as Assigning Party's successor-in-interest in and to the Assigned Contract. Assuming Party by this Agreement becomes entitled to all right, title, and interest of Assigning Party in and to the Assigned Contract in as much as Assuming Party is the substituted party to the Assigned Contract as of and after the Effective Date. LCRA and Assuming Party shall be bound by the terms of the Assigned Contract in every way as if Assuming Party is named in the novated Assigned Contract in place of Assigning Party as a party thereto.

### 3. Representations and Warranties.

3.1 Assigning Party's Representations and Warranties. Assigning Party represents and warrants as follows:

(a) It has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder.

(b) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assigning Party, enforceable against it in accordance with its terms and not subject to defenses.

(c) The Assigned Contract is in full force and effect on the Effective Date. No event or condition has occurred that is, or with notice or passage of time would be, an event of default or termination under of the Assigned Contract. There are no material disputes pending or threatened related to any rights or obligations transferred by this Agreement.

(d) It has performed all of its obligations under the Assigned Contract that are required to be performed on or before the Effective Date.

3.2 Assuming Party's Representations and Warranties. Assuming Party represents and warrants as follows:

(a) It has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder.

(b) When executed and delivered by it, this Agreement will constitute the legal, valid, and binding obligation of Assuming Party, enforceable against it in accordance with its terms.

4. Miscellaneous.

4.1 Further Assurances. On the other party's reasonable request, each party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

4.2 Survival. Subject to the limitations and other provisions of this Agreement: the representations and warranties of the parties contained herein will survive the expiration or earlier termination of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or earlier termination of this Agreement.

4.3 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability does not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

4.4 Entire Agreement. This Agreement, together with all related exhibits and schedules, is the sole and entire agreement of the parties to this Agreement regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

4.5 Amendment and Modification. No amendment to or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by each party to this Agreement.

4.6 Choice of Law. This Agreement shall be governed and construed in accordance with laws of the State of Texas without regard to its conflict of laws principles, Venue for any dispute arising out of this Agreement is proper only in Travis County, Texas.

4.7 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

[ASSIGNING PARTY NAME]

By \_\_\_\_\_

Name:

Title:

[ASSUMING PARTY NAME]

By \_\_\_\_\_

Name:

Title:

Lower Colorado River Authority

By \_\_\_\_\_

Name:

Title: