

ALTERNATIVE WATER CONNECTION AGREEMENT

This Alternative Water Connection Agreement (Agreement) is entered into by and between the Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and _____, the owner(s) of certain real property and/or associated water wells described herein (Owner).

In conjunction with the U.S. Environmental Protection Agency (EPA), the TCEQ is addressing the Jones Road Ground Water Plume (Site), located approximately one half mile north of the intersection of the Jones Road and FM 1960 in Harris County, Texas. The Site is a groundwater plume contaminated with tetrachloroethylene, also known as perchloroethylene or PCE. Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601-9675), the Site was listed on the National Priorities List on September 29, 2003.

As an interim measure to prevent exposure to groundwater contaminated with PCE at the Site, the TCEQ and the EPA have been supplying and regularly maintaining granular activated carbon filtration systems for water wells with certain PCE levels. The TCEQ and the EPA plan to end supply and maintenance of these systems in favor of a more efficient solution. Through this agreement, the TCEQ intends to provide residential and commercial well owners an alternative water source in conjunction with the EPA.

The TCEQ and the Owner, for and in consideration of the foregoing and the mutual covenants and agreements recited herein, hereby agree on the stated terms and conditions as set forth below.

1. **DEFINITIONS.** As used herein, the following terms shall have the following meanings:
 - a. "Notice" shall mean a written communication by the TCEQ that will be deemed duly given when received by the Owner as evidenced by a signed acknowledgment.
 - b. "Owner(s)" shall mean as of the date of this Agreement the person or entity that holds legal title to the certain land described more particularly on the Signature Page and located in Harris County, Texas within the area designated by the TCEQ and the EPA as eligible for the Alternative Water Connection Agreement.
 - c. "Property" shall mean the certain land described more particularly on the Signature Page and located in Harris County, Texas within the area designated by the TCEQ and the EPA as eligible for the Alternative Water Connection Agreement.
 - d. "Texas Commission on Environmental Quality" or "TCEQ" shall mean the Texas Commission on Environmental Quality and its successor agencies, commissioners, agents, attorneys, servants and employees.
 - e. "Water Line" shall mean the infrastructure for the public water supply system funded and constructed through the efforts of the TCEQ and the EPA.
 - f. "Water Well" shall mean any or all wells located on the Property or used by the Owner in connection with the Property.

2. RIGHTS AND OBLIGATIONS OF THE TCEQ.

- a. *Water Line Connection:* If the TCEQ determines that the arrangement for the delivery of water and the maintenance of the proposed Water Line and service have been successfully established, the TCEQ shall work under the terms of an agreement between the TCEQ and the EPA to fund, design, and construct a Water Line. The Water Line shall be constructed and connected to the Property, including the infrastructure necessary to reach the comparable prior location. The TCEQ shall provide Notice to the Owner once the Property is connected to and receiving water from the Water Line. So long as the Owner

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fully complies with the terms of this Agreement, these actions will be provided at no expense to the Owner. The TCEQ has no obligation to maintain the Water Line or the infrastructure on the Property.

b. *Filters and Sampling.* No sooner than ten days after the TCEQ has provided the above-referenced Notice to the Owner, the TCEQ may discontinue maintenance of any filtration systems and sampling events.

c. *Water Wells.* The TCEQ may access and use the Water Well for any investigation and remediation purposes. When the TCEQ determines it is necessary and no later than three years after the Notice to the Owner that the Property is connected to and receiving water from the Water Line, the TCEQ shall plug and abandon the Water Well at no expense to the Owner.

3. RIGHTS AND OBLIGATIONS OF THE OWNER.

a. *Connection.* The Owner agrees to allow the Property to be connected to the Water Line in accordance with the TCEQ's schedule. The Owner shall be responsible for maintaining the water system infrastructure on the Property and paying the water utility bill in accordance with the terms of the water provider.

b. *Relinquishment of the Water Well.* Ten days after Notice to the Owner that the Water Line is operational and the Owner is connected to the Water Line and receiving water, the Owner agrees that all use and access to the Water Well is fully relinquished to the TCEQ. After relinquishment of all use and access to the TCEQ, the Owner shall not use or access the Water Well for any purpose. The Owner agrees that the TCEQ may use the Water Well for any investigation and remediation purposes and that the Water Well shall be plugged and abandoned at no expense to the Owner no later than three years after the Notice to the Owner that the Property is connected to and receiving water from the Water Line. After the Owner relinquishes the Water Well, the Owner shall not be responsible for the cost of maintenance of the Water Well. Provided the Owner allows the TCEQ to install a separate meter for the Water Well, the Owner shall not be responsible for the cost of the Water Well's electric power.

c. *No Additional Wells.* The Owner agrees that no additional water wells may be drilled or enabled on the Property for any purpose, including irrigation, until such time as the TCEQ determines that the remediation goals have been achieved and provides Notice to the Owner.

d. *Property Access:* As of the effective date of this Agreement, the Owner grants the TCEQ and the EPA (including the agents, contractors, subcontractors, officers, designees, and employees of both the TCEQ and the EPA) continued access to the Property for the following purposes: taking such soil, water, and air samples as may be necessary; taking other actions related to the investigation of surface or subsurface conditions; plugging and abandoning water wells; and taking response actions necessary to mitigate any threat to human health or the environment. The TCEQ contractually requires contractors accessing the Property to carry liability insurance coverage. The Owner agrees not to interfere with such access. The TCEQ shall inform the Owner of planned access 24 hours prior to entering the Property and shall endeavor to conduct planned access between the hours of 7AM and 8PM. If the Property is damaged by the access granted herein, the TCEQ shall, to the extent reasonably possible, restore the Property to the same condition in which it exists as of the date the Owner relinquishes use and access of the Water Well. Plugging and Abandoning the Water Well shall not be considered to be damage to the Property.

e. *Notice to Potential Purchasers.* The Owner agrees to provide a copy of this Agreement to any potential purchaser of the Property prior to any transaction conveying the Property. The Owner agrees to provide written notice to the TCEQ forty-five days before any final transaction conveying the Property. Owner shall direct written notice to the TCEQ as follows: Texas Commission on Environmental Quality, Remediation Division, Superfund Cleanup Section (MC 142), P.O. Box 13087, Austin, TX 78711-3087, Attention: Project Manager/Jones Road Ground Water Plume.

4. **MISCELLANEOUS PROVISIONS.**

a. *No Limitation on Authority.* Nothing in this Agreement shall be construed as limiting in any way the authority of the TCEQ to exercise statutory access rights, to respond to the release or threatened release of any hazardous substance, pollutant or contaminant, to abate an imminent and substantial endangerment to the public health or welfare or the environment due to an actual or threatened release of a hazardous substance, pollutant or contaminant, or the improper disposal of any solid or hazardous waste, or to take any other action authorized by law.

b. *Consideration.* The TCEQ and the Owner acknowledge that the covenants and provisions under this Agreement constitute adequate and sufficient consideration.

c. *Signatures.* This Agreement may be signed in multiple counterparts, which together shall constitute a single original instrument. Any signed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

d. *Available Funding.* This Agreement is subject to and limited to the availability of funds appropriated by the state or federal government for the purposes of this Agreement. In the event the appropriation of funds for this Agreement is insufficient or funding is withdrawn, TCEQ may terminate the Agreement without further obligation.

e. *Complete Agreement of Parties.* The terms contained in this Agreement constitute the entire integrated agreement between the Owner and the TCEQ regarding the subject. This Agreement supercedes all prior and written communications, agreements, and understandings between the parties.

f. *Modifications.* This Agreement may not be modified or otherwise changed in any respect or particular whatsoever, unless in a writing signed by the authorized representatives of the parties.

g. *Authorized Representatives.* Each undersigned representative of the parties certifies that he or she is fully authorized to enter into this Agreement and legally bind the party that is represented.

h. *Uncontrollable Delay.* If a delay in performance is caused (in whole or in part) by events beyond the reasonable control of the EPA or the TCEQ, that delay shall not be construed as a violation of this Agreement.

5. **ACKNOWLEDGMENTS.** The parties to this Agreement acknowledge that they are entering into this Agreement of their own free will and that no representations have been made to them to induce them to enter into this Agreement, other than as set forth herein. The parties acknowledge that they fully understand the duties placed on them by the Agreement and find them to be described with sufficient definiteness, and are ready, willing and able to carry them out in full.

The parties hereto have agreed to and signed this Alternative Water Connection Agreement, which shall be effective as of the date of the last signature on the attached Agreement Signature Page.

AGREEMENT SIGNATURE PAGE

AGREED:

Owner #1 Typed or Printed Name

Typed or Printed Name of TCEQ Representative

Authorized Signature

Authorized Signature

Date: _____

Date: _____

Owner #2 Typed or Printed Name

Title

Authorized Signature

(TCEQ mailing Address)

Date: _____

(City/Town) (Zip Code)

(Street Number and Street Name of Property)

(City/Town of Property) (Zip Code)