

**EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM****AMENDMENT NO. 1****TO THE FUNDING AND MANAGEMENT AGREEMENT****by and among****The Edwards Aquifer Authority, The City of New Braunfels,  
The City of San Marcos,  
The City of San Antonio, acting by and through its  
San Antonio Water System Board of Trustees, and  
Texas State University – San Marcos****to fund and manage the Habitat Conservation Plan  
for the Edwards Aquifer Recovery Implementation Program**

This Amendment No. 1 to the Funding and Management Agreement (Amendment Agreement) is entered into to be effective on the date of execution by the last signing Party as indicated below (“Effective Date”), by and among the Edwards Aquifer Authority (“EAA”), the City of New Braunfels (“New Braunfels”), the City of San Marcos (“San Marcos”), the City of San Antonio acting by and through its San Antonio Water System (“San Antonio”), and Texas State University – San Marcos (“University”) (collectively, the “Parties,” and individually, “Party”).

**RECITALS**

**WHEREAS**, the Parties entered into that certain Funding and Management Agreement (“FMA”) with an Effective Date of January 1, 2012; and

**WHEREAS**, the Parties now desire to amend the FMA.

**AGREEMENT**

**NOW, THEREFORE**, for the mutual consideration expressed in this Amendment Agreement, the Parties agree as follows:

**1. Amendment.** As of the Effective Date, the Parties hereby amend the FMA as follows:

**SUBSECTION 5.6.5 IS AMENDED TO READ AS FOLLOWS:**

**5.6.5.1 Limitation on Use of Funds – Employees and Administrative Costs.**

With the exception of Program Administration Costs of EAA, funds may not be used for: (a) costs of any Party's employees; or (b) any Party's administrative costs, such as costs of overhead, management, administration, research, planning, engineering, or legal services, or any other ancillary costs that are not directly required for the Program.

**5.6.5.2 Special Exception.**

Notwithstanding anything in Section 5.6.5.1(a), an employee of Texas State University may submit a proposal for consideration and may be awarded a contract for work associated with the implementation of a Conservation Measure or Program activity in Section 6 of the HCP assigned to any Party in an approved Work Plan and Funding Application as long as each of the following conditions are met:

(a) The costs for the measures are not used to fund an increase in Texas State's permanent Staff or for work that is historically operational in nature;

(b) The contract for the project has been awarded through a competitive procurement process that considers cost, contractor qualifications, and merits of the contractor's proposal, and through which the selected contractor's proposal was determined to be competitive with respect to each of these criteria; and

(c) After the contractor has been selected, the EAA will issue those contracts for which Texas State or the City of San Marcos is responsible under which a Texas State Employee will be paid, and the HCP Program Manager will

manage those contracts.

### **5.6.5.3 Conduct of Texas State Contractor/Employees.**

Any employee of Texas State who is paid from HCP Funds shall:

(a) Give first priority to the purposes and goals of the HCP as reflected by the entire Implementing Committee over the individual purposes and goals of the employee's employer;

(b) Conduct his or her work and communications in an open and transparent manner and in a manner that avoids a conflict of interest or the appearance of a conflict of interest;

(c) Not use the employee's Party's status as a member of the Implementing Committee or information that is not publicly available to obtain an advantage in the procurement process; and

(d) Not advocate, directly or indirectly, a particular decision or participate in discussions of policy matters unless expressly requested to participate by the Program Manager and the Implementing Committee. Nothing herein precludes the employee, when requested by the Implementing Committee, from discussing scientific data and conclusions with the Science Review Panel and Science Committee.

Failure to strictly comply with the requirements of Section 5.6.5.3 may be the basis for the termination of the Special Exception with respect to future contracts involving that employee or, if the non-compliance warrants, a recommendation to terminate the employee's participation in an existing contract. In any vote of the Implementing Committee with regard to such a recommendation of termination, Texas State shall abstain, and a decision to terminate must be unanimous among the remaining four voting members of the Implementing Committee.

**2. No Effect on Remainder of the FMA.** Except as provided in this Amendment Agreement, the FMA shall remain in full force and effect in all respects. This Amendment Agreement shall be governed by and construed under the terms of the FMA.

**IN WITNESS WHEREOF**, the Parties hereto acting under authority of their respective governing bodies have caused this Amendment Agreement to be duly executed as of the Effective Date.

**EDWARDS AQUIFER AUTHORITY**

By: \_\_\_\_\_  
Roland Ruiz, General Manager

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

ATTEST:

By: \_\_\_\_\_  
Jennifer Wong-Esparza, Assistant to Board Secretary

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Darcy Alan Frownfelter, General Counsel

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

**CITY OF NEW BRAUNFELS**

By: \_\_\_\_\_  
Robert Camareno, Interim City Manager

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

ATTEST:

By: \_\_\_\_\_  
Patrick Aten, City Secretary

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Paul Isham, City Attorney

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

*[additional signatures on next page]*

**CITY OF SAN MARCOS**

By: \_\_\_\_\_  
James R. Nuse, P.E., City Manager

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

ATTEST:

By: \_\_\_\_\_  
Jamie Lee Pettijohn, City Clerk

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Cosentino, City Attorney

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

**CITY OF SAN ANTONIO,  
ACTING BY AND THROUGH ITS SAN ANTONIO WATER SYSTEM**

By: \_\_\_\_\_  
Robert R. Puente, President/CEO

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

ATTEST:

By: \_\_\_\_\_  
Becky Gonzalez, Executive Administrative Assistant

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Phil Steven Kosub, Senior Water Resources Counsel

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

*Signatures continue on next page*

**TEXAS STATE UNIVERSITY – SAN MARCOS**

By: \_\_\_\_\_  
Denise M. Trauth, President

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

**ATTEST:**

By: \_\_\_\_\_  
William Nance, Vice President for Finance and  
Support Services, Texas State University-San Marcos

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Diane Corley, Associate General Counsel, Texas  
State University System

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