

services, or any other ancillary costs that are not directly required for the Program.

5.6.6. Limitations on Use of Funds – MS4 Permit Costs.

Funds may not be used for the cost of measures required to be undertaken by any Party in order to obtain a Small Municipal Separate Storm Sewer System (MS4) permit under the Texas Pollution Discharge Elimination System Program as required by the Texas Commission on Environmental Quality (TCEQ) or the laws of the State of Texas. However, funds may be used for the cost of measures and activities included in a MS4 program to the extent that they implement Conservation Measures which exceed minimum requirements for obtaining the MS4 permit.

Article Six – Applications for Program Funding

Section 6.1. Applications from a Party for Program Funding.

A Program Funding Application from a Party to the EAA to implement a Conservation Measure or other Program activity which it is the duty of the Party to implement may be made and will be considered for approval by the EAA only as provided in this Article.

6.1.1. Required Contents.

The Program Funding Application will be filed in writing in affidavit form and include the following information:

- a. the name and contact information of the applicant and its principal offices;
- b. a resolution of the applicant representing that the filing of the application has been duly authorized by the governing body or other appropriate official of the applicant;

- c. a description of the purposes for which Program Funding is sought;
- d. a statement that the Implementing Agreement, HCP, the Permit or other appropriate regulatory document authorizes the proposed Conservation Measure or other Program activity to be performed;
- e. citations to all appropriate Program Documents demonstrating that the proposed Conservation Measure or other Program activity is authorized to be performed;
- f. the approved Annual Party Work Plan and Cost Estimate for the period for which Program Funding is sought, including the project schedule, budget, and contractors or subcontractors who will be performing the work;
- g. a description of the procurement process utilized by the applicant to secure bids or proposals and a demonstration that the bid or proposal selected is lawful and reasonable;
- h. the amount of Program Funding requested; and
- i. the proposed schedule of payments.

6.1.2. Application Deadline.

Except under extenuating circumstances as approved by the Implementing Committee, a Program Funding Application will be filed with the EAA not later than October 1 of the year preceding the year for which Program Funding is sought.

6.1.3. Application Approval Criteria.

No later than 30 days after the EAA Board of Directors approves the Annual Program

Budget for the next year, the EAA will approve a party's Program Funding Application if the applicant demonstrates the following considerations:

- a. the applicant is a Permittee under the Implementing Agreement;
- b. the applicant is authorized to file the application;
- c. each proposed Conservation Measure or other Program-related activity is authorized for Program Funding pursuant to Article Five and Chapters 5 and 6 of the HCP;
- d. each proposed Conservation Measure or other Program-related activity is identified by the Implementing Agreement, this Agreement, the HCP, or other Program Document, to be performed by the applicant, or, the applicant, as authorized by the Implementing Committee, is acting to cure the failure of another Party to perform one or more Conservation Measures or other Program-related activities;
- e. the approved Comprehensive Phase I Work Plan or Phase II Work Plan and Annual Program Budget include each proposed Conservation Measure or other Program-related activity for the period for which Program Funding is sought;
- f. the approved applicable Comprehensive Phase I Work Plan or Phase II Work Plan and Annual Program Budget state the estimated total costs of each proposed Conservation Measure or other Program-related activity and the amount anticipated to be expended for the period for which Program Funding is sought;
- g. The applicant's Annual Party Work Plan and Cost Estimate suitably describes each proposed Conservation Measure or other Program-related activity to be performed, the project schedule, and the proposed project cost; and

- h. The recommended project cost based on the procurement process used by the applicant is reasonable.

6.1.4. Withholding Action on Application.

The EAA may withhold action on a Program Funding Application if the funds in the HCP Program Account are insufficient to provide Program Funding in the requested amount or if the EAA identifies a consideration in Subsection 6.1.3 that is deficient and allows reasonable time for the filing of additional information before the application is reconsidered for final action. If the reason for withholding action is the insufficiency of money in the HCP Program Account, the EAA will advise all applicants and withhold action on all applications until sufficient money is available. The EAA will promptly notify the Program Manager, and the Implementing Committee and Parties will take action in accordance with Section 4.7 and Subsection 5.2.2, and submit revised applications for EAA review and approval

6.1.5. Notice of Decision on Application.

The EAA will notify the applicant in writing of its decision on the application.

6.1.6. EAA Delegation of Action on Applications.

The EAA Board of Directors may delegate to the EAA General Manager or his designee its authority to take action on an application under this Section.

6.1.7. Amendments to Application.

A Program Funding Application may be amended in writing with a request to the EAA to take action on the application as amended. The EAA will take action on the amended application in the same manner as provided for the original application.

6.1.8. Program Funding Contracts.

Funds may be disbursed by the EAA from the HCP Program Account only in the form of a Program Funding contract for the work to be performed by the applicant. If the EAA approves a Program Funding Application, it will make reasonable efforts to enter into a contract not later than 30 days after it takes final action on the application and make available to the applicant the amount of the approved Program Funding according to the terms and conditions in the contract.

Section 6.2. Program Payments.

6.2.1. Submission of Invoices.

Each Party will submit invoices to the Program Manager monthly for Program Funding for work to be performed or overseen by that Party in accordance with the Annual Program Budget and that Party's applicable Program Funding contract and associated, approved Program Funding Application. Each invoice will be accompanied by appropriate documentation reflecting all costs to be incurred or paid by the Party and such other documentation as may be required by the EAA as a condition of the Program Funding. The EAA will not make any payment to any Party for any work that is not included in the Annual Program Budget, as it may be amended from time to time, and a Party's applicable Program Funding contract and associated, approved Program Funding Application. The Program Manager will coordinate with the EAA and each Party submitting an invoice to ensure that each invoice, if approved, is paid to the Party submitting the invoice within 30 days of invoice submission.

6.2.2. Documenting Expenditures.

Each Party will submit to the Program Manager receipts or other appropriate documentation reflecting actual expenditures in accordance with the Party's applicable

Program Funding contract.

6.2.3. Actual Costs at Variance with Budget.

In the event actual expenditures for an action item are less than the line-item amount for that action in the Annual Program Budget, the funds committed to that action item may be used for other authorized purposes approved in accordance with the Annual Program Budget. In the event actual expenditures for an action item in the Annual Program Budget exceed the line-item amount in the Annual Program Budget, the Party responsible for that action item will provide written notice to the Program Manager of the cost overrun with substantiation for the additional expenses. The Program Manager will review the notice and provide a recommendation to the Implementing Committee, after which the Implementing Committee members will consider recommending to EAA a line-item amendment to the Annual Program Budget. The Implementing Committee may recommend an amendment to the Annual Program Budget only if adequate funds are available in the Program Account and only with the approval of the Implementing Committee and the EAA.

Section 6.3. Reduction or Termination of Funding Obligations.

The Annual Funding Obligation of the EAA under this Agreement will be in effect only during the Permit Term and is subject to reduction or termination as provided in Subsection 6.4.1.

Section 6.4. Alternative Funding.

The Program Manager and the Implementing Committee will pursue cooperative and grant funding to the extent available from all state, federal, and other private sources for eligible activities included in the Program. The Parties acknowledge that action by the Texas Legislature or other efforts subsequent to the Effective Date may result in adoption of a regional sales tax or other alternative source to fund the Program.

6.4.1. Reduction or Termination of Funding Obligations.

In the event that a regional sales tax or other alternative funding source to fund Program costs is created or secured, the Annual Funding Obligation of the EAA will be reduced or terminated on the date, and to the extent, that the proceeds from the tax or other alternative funding source is determined to be remitted to the EAA in amounts sufficient to reduce or displace the Annual Funding Obligation of the EAA, or the need for the EAA to assess Program Aquifer Management Fees to fund all or a part of the Program Expenditures. Thereafter, funding responsibilities for the Program described in this Agreement, to the extent of funds available from any such alternative new funding source, will be the responsibility of the administrator of the tax as provided by the legislation establishing such a tax, or the terms of any agreement establishing the alternative funding source.

6.4.2. Use of Alternative Funding.

To the maximum extent possible, funds collected from a sales tax or other alternative funding source will be used to provide funding for Program Expenditures, including without limitation, the implementation of Phase I Conservation Measures and any Phase II Conservation Measures.

6.4.3. Use of Additional Funds.

To the extent that additional funds, greater than the amount required to comply with ongoing Program obligations, are available in the HCP Program Account upon reduction or termination of the Annual Funding Obligation of the EAA, the funds will be used only for approved purposes in accordance with the Program Documents.

Section 6.5. Refund Upon Termination of this Agreement.

Upon termination of this Agreement, any available Fund Balance held by the EAA will be

refunded pro rata to the permit holders and other funding parties from whom Program Aquifer Management Fees or funding contributions were collected during the immediate prior year, unless the Implementing Committee and EAA Board of Directors take action to transfer all or a portion of the Fund Balance to a successor program.

Article Seven – Adaptive Management Process

Section 7.1. Purpose.

The Parties will follow the AMP, as described in this Article, during the Permit Term to ensure the full implementation of species protection provided by the Program. This Article provides the procedural steps and responsibilities of the Parties for making AMP decisions, the respective roles of the Implementing Committee, the Stakeholder Committee, the Science Committee, and the Science Review Panel in relation to AMP decisions, and the actions that will be taken as a result of such decisions.

Section 7.2. EAA Responsibilities.

7.2.1. Management Responsibilities.

Management of the implementation of the AMP in accordance with the terms and conditions of the Program Documents is the overall responsibility of the EAA, except to the extent of the duties and responsibilities held solely or jointly by one or more Parties, or of the roles of the Department or the Service, as specifically provided in the Program Documents. The EAA will also:

- a. provide necessary staff support to the Implementing Committee, the Stakeholder Committee, the Science Committee, the Science Review Panel, and to the Program Manager;
- b. cooperate and coordinate its management and implementation activities