

CONTRACT \_\_\_\_\_  
BETWEEN TEXAS AGRILIFE EXTENSION of the TEXAS A&M UNIVERSITY  
SYSTEM  
AND  
ANNEAR ASSOCIATES, LLC  
FOR PEER REVIEW OF THE EDWARDS AQUIFER RECOVERY  
IMPLEMENTATION PROGRAM'S SCIENCE SUBCOMMITTEE  
RECOMMENDATIONS AND THE HARDY STUDY

This Contract is made and entered into this \_\_ day of April, 2010 by and between the TEXAS AGRILIFE EXTENSION (“TAE”) of the TEXAS A&M UNIVERSITY SYSTEM, located at 2147 TAMU, College Station, Texas 77843-2147, and Annear Associates, LLC, a Wyoming limited liability corporation (the “Consultant”), located at 1127 Hereford Ranch Road, Cheyenne, Wyoming 82007.

RECITALS

- A. The 80<sup>th</sup> Texas Legislature adopted Senate Bill 3 in 2007, requiring the Edwards Aquifer Authority in cooperation the United States Fish and Wildlife Service and stakeholders to establish a recovery implementation program (the “EARIP”), overseen by a Steering Committee comprised of representatives of stakeholders and charged with accomplishing certain required program activities;
- B. Senate Bill 3 provides that Texas A&M University (“TAMU”) will, among other things, provide assistance to the EARIP and hire and maintain a Project Manager for the EARIP;
- C. TAMU has designated the TAE, acting through its Institute of Renewable Natural Resources (“IRNR”), as the arm of TAMU responsible for performing the TAMU responsibilities related to Senate Bill 3 and the EARIP;
- D. TAMU has hired a Program Director for the EARIP;
- E. The Texas Legislature required the EARIP to establish a Science Subcommittee of individuals “with technical expertise regarding the Edwards Aquifer system, the threatened and endangered species that inhabit that system, springflows, or the development of withdrawal limitations.” The Legislature required the Science Subcommittee to make recommendations regarding withdrawal adjustments during critical periods (*i.e.*, droughts) that ensure that federally-listed species associated with the Edwards Aquifer will be protected. These recommendations are referred to herein as the “j charges;”
- F. The Science Subcommittee considered papers by Dr. Thomas Hardy and scientists from Texas Parks and Wildlife regarding modeling of the in-stream flow impacts on the Comal and San Marcos Springs systems. Dr. Hardy has recently updated

the results of those studies to include data collected since those reports were prepared (the "Hardy Study"). <http://earip.tamu.edu/Subcommittees.aspx>

G. The EARIP desires to have the recommendations regarding the "j" charges and the Hardy Study reviewed by a panel of independent scientists;

H. The EARIP wishes to engage Annear Associates, LLC to conduct an independent peer review of its Scientific Subcommittee's recommendations regarding the "j" charges and the Hardy Study;

I. The Steering Committee for the EARIP has requested TAE to serve as the contracting agent for this Contract;

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth in this Contract, TAE and the Consultant agree as follows:

## ARTICLE I DESCRIPTION OF WORK

Section 1.1. Services. Subject to the terms and conditions of this Contract, TAE hereby engages the Consultant to perform the work set forth and described in this Contract and in the Scope of Work which is attached hereto as Exhibit A (the "Scope of Work). To the extent that there is a conflict between this Contract and the SOW, this Contract will govern the conduct of the work. The Consultant hereby accepts such engagement and agrees to devote its best efforts and abilities, and furnish all necessary labor, machinery, equipment, tools, and transportation necessary in furtherance of its engagement hereby.

Section 1.2. Commencement and Completion Date. The Consultant will commence work hereunder immediately upon receipt of written notice issued by the EARIP's Project Manager. All work covered hereby will be completed and delivered to the Project Manager by May 31, 2010 in accordance with the schedule included in the Scope of Work. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS CONTRACT.**

## ARTICLE II ALTERATIONS TO CONTRACT AND SCOPE OF WORK

Section 2.1. Notice of Changes. TAE may, at its own option, or upon the recommendation of the Consultant, request changes or additions to the Scope of Work during the progress of the work by delivering change orders to the Consultant.

Section 2.2. Change Orders. The Consultant agrees to honor any change or additions to the Scope of Work requested by TAE or mutually agreed to by TAE and Consultant. Consultant shall provide TAE with an estimate of the cost of the requested change. The fees for a requested change shall be for no more than the Rates set out in Section 3.2. The parties

to this Contract agree that all such changes must be the subject of either a written amendment to this Contract or a supplemental agreement approved by the Consultant and by TAE in accordance with its procedures for approving such a contract.

ARTICLE III  
COMPENSATION

Section 3.1 TAE Obligations. TAE agrees to pay the Consultant for the Services at the Rates set out in Sections 3.2, and actual costs, including the cost of the reviewers, and expenses (including airline travel, automobile mileage, and lodging, and copy costs) incurred under this Contract which are reasonably consistent with the Scope of Work, but in no event shall the total compensation to the Consultant for work under this Contract exceed \$46,600 (the “Contract Amount”) without the prior written consent of TAE. The Consultant will be responsible for the payment of all of its other additional costs and expenses, including but not limited to the cost of the reviewers. TAE will not be held accountable for any unauthorized work performed, commitments made, or funds spent by the Consultant.

Section 3.2. Fees and Expenses. Consultant will invoice TAE for the Services at the following hourly rates (the “Rates”).

Tom Annear	\$ 200
Reviewers	\$ 200

Expense and task budgets are attached as Exhibit B.

Section 3.3. Invoicing and payment. All invoices from the Consultant for the Services shall be sent to the Program Director and shall provide: (1) an itemization of the Services rendered by Task, including the date of the services, the hours involved (rounded to the nearest quarter hour) and a description of the Services rendered; and, (2) costs and expenses incurred including supporting documentation for all travel expenses. Invoices will include an assessment of the percentage completion of each Task described in the Scope of Work completed. The terms of each invoice shall be net thirty (30) days upon the Program Director’s receipt and approval of that invoice. Invoices shall be sent to:

Robert L. Gulley  
Program Director  
Edwards Aquifer Recovery Implementation Program  
2632 Broadway, South Bldg., Suite 301  
San Antonio, Texas 78215

ARTICLE IV  
INDEPENDENT CONTRACTOR

Section 4.1. No Employment Contract. The Parties understand and agree that this Contract does not create a fiduciary relationship between them, they are separate entities, the Consultant is an independent contractor with respect to the performance of the Services hereunder and is not subject to the direct or continuous control and supervision of TAE Authority, and nothing in this Contract is intended to make either party a subsidiary, joint venturer, partner, employee, agent, servant or representative of the other for any purpose whatsoever. TAE shall have no right of direction or control of Consultant, or its employees and agents, except in the results to be obtained, and in a general right to order the work to start or stop as agreed to herein, to inspect the progress of the Services, and to receive reports.

## ARTICLE V CONSULTANT PERSONNEL AND SUBCONTRACTORS

Section 5.1. Personnel. The Consultant will provide any and all personnel necessary for its performance of the Services hereunder. The Consultant will be responsible for its employees in all respects, including, without limitation, their compliance with applicable laws and their safety, including without limitation, all Occupational Safety and Health Administration (OSHA) standards, requirements, and regulations. The Consultant hereby indemnifies and holds harmless TAE, its officers, employees and directors, from and against any claims brought by any employee, subcontractor or other agent of the Consultant relating in any way to the work performed under this Contract.

Section 5.2. Subcontractors. In performing the Services under this Contract, the Consultant shall retain and utilize as its subcontractors reviewers in the number and with the expertise identified in the Scope of Work unless authorization is obtained from the Program Director. The Consultant will be responsible for its subcontractors in all respects including their compliance with applicable laws and their safety, including without limitation, all Occupational Safety and Health Administration (OSHA) standards, requirements, and regulations.

## ARTICLE VI TERMINATION

Section 6.1. Termination. TAE may terminate this Contract at any time, including the expiration of each budget or payment period, with or without cause, upon ten (10) days prior written notice to the Consultant. Upon receipt of such termination notice, the Consultant shall immediately stop all work in progress, including, without limitation, all work performed by subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point. Within 30 days of termination, TAE shall pay the Consultant all moneys then due and owing for the Services rendered, costs and expenses reasonably incurred up to the time of termination. Upon receipt of a termination notice, the Consultant shall, within sixty (60) days, deliver or make available to TAE all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Contract, whether completed or in process.

ARTICLE VII  
OWNERSHIP OF MATERIALS

Section 7.1. Ownership. All information, documents, property and materials produced, created or supplied under this Contract, whether by the EARIP, the Consultant, its employees, agents or subcontractors or anyone else, and whether finished or unfinished or in draft or final form, will be the property of the EARIP. Upon termination of this Contract, all such information, property and materials not already in the possession of the Authority will be promptly delivered to the EARIP.

Section 7.2. Record Copies. The Consultant shall retain, for a period of five years, a record or copies of all materials developed in the course of performing the Services hereunder and said materials will be supplied to the Project Manager upon request, including after expiration or termination of the Contract. TAE will reimburse the Consultant for actual cost of time and expenses of reproduction of materials requested.

ARTICLE VIII  
NON-PERFORMANCE

Section 8.1. The Consultant warrants that it will perform all Services hereunder in a good and workmanlike manner, strictly in accordance with the standards of the Consultant's profession, the Scope of Work, and as otherwise provided in this Contract. Failure to timely perform the Services as warranted and agreed shall constitute a breach of contract and shall be subject to all applicable remedies of law. Judgment of nonperformance shall rest solely with TAE.

ARTICLE IX  
NOTICES

Section 9.1. Notices to the Authority. All notices or communications under this Contract to be mailed or delivered to TAE shall be in writing and shall be sent to TAE at the following address, unless and until the Consultant is otherwise notified:

Texas Agrilife Extension  
Contracts and Grants  
2147 TAMU  
College Station, Texas 77843-2147  
ATTENTION: Diane Gilliland

A copy of the notice or communication shall be sent to:

Robert L. Gulley

Program Director  
Edwards Aquifer Recovery Implementation Program  
2632 Broadway, South Bldg., Suite 301  
San Antonio, Texas 78215

Section 9.2. Notices to the Consultant. All notices or communications under this Contract to be mailed or delivered to the Consultant shall be in writing and shall be sent to the address of the Consultant as follows, unless and until TAE is otherwise notified:

Thomas C. Annear  
1127 Hereford Ranch Road  
Cheyenne, Wyoming 82007

Section 9.3. Effective Date of Notice. Any notices or communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice of communication is posted by the sending party.

## ARTICLE XII

### MISCELLANEOUS

Section 10.1. Entire Agreement. This Contract and the attached Exhibits constitute the entire agreement between the parties regarding the work to be performed by the Consultant and there are no representations, warranties, agreements or commitments between the parties hereto except as set forth herein. Unless otherwise authorized herein, no amendments or additions to this Contract shall be binding on the parties hereto unless in writing and signed by the parties.

Section 10.2. Non-Waiver. No delay or failure by either party hereto to exercise any right under this Contract, nor any partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Section 10.3. Headings. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

Section 10.4. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Texas.

Section 10.5. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 10.6. Binding Effect. The provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns;

provided, however, that the Consultant may not assign any of its rights nor delegate any of its duties hereunder without TAE's prior written consent.

Section 10.7. Validity. The invalidity of any provision or provisions of this Contract shall not affect any other provision of this Contract, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Contract affect the balance of such provision.

Section 10.8. Non-Waiver of Immunity. Nothing in this Contract is intended as any waiver by TAE of any immunity from suit to which it is entitled under Texas law.

Section 10.9. Survival. Termination of this Contract for breach shall not constitute a waiver of any rights or remedies available at law or in equity to a party to redress such breach. All remedies, either under this Contract or at law or in equity or otherwise available to a party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination. In addition, to these provisions, applicable provisions of this Contract shall survive any termination of this Contract.

Section 10.10. Attachments. The Exhibits, schedules and/or other documents attached hereto or referred to herein are incorporated herein and made a part hereof for all purposes. As used herein, the expression "Contract" means the body of this Contract and such attachments, Exhibits, schedules and/or other documents, and the expressions "herein," "hereof," and "hereunder" and other words of similar import refer to this Contract and such attachments, exhibits, schedules and/or other documents as a whole and not to any particular part or subdivision thereof.

Section 10.11. Costs. If any legal action, arbitration or other proceeding is brought for the enforcement of this Contract or because of an alleged breach or default relating to this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable costs incurred, including but not limited to attorney's fees, in such action or proceeding in addition to any other relief to which it or they may be entitled as such costs may be determined under applicable Texas law provided, however, that the costs and fees so awarded may not exceed the total costs and fees incurred by the non-prevailing party.

Section 10.12. Includes. The verb "to include", in all its forms, tenses, and variations, is always used in the nonexclusive sense.

Section 10.13 State Audit. By executing this Contract, the Consultant accepts the authority of the State Auditor's Office, under direction of the legislative audit committee, to conduct audits and investigations in connection with any and all state funds received pursuant to this contract. The Consultant shall comply with and cooperate in any such investigation or audit. The Contractor agrees to provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The Consultant also agrees to include a provision in any subcontract related to this contract that requires the Subcontractors to submit to audits and investigation by the State Auditor's Office in connection with any and all state funds received

pursuant to the subcontract.

Section 10.14 No Debt Against the State. This Contract shall not be construed as creating any debt by or on behalf of the State of Texas and the Texas Water Development Board (“TWDB”), and all obligations of the State of Texas are subject to the availability of funds. To the extent the performance of this Contract transcends the biennium in which this CONTRACT is entered into, this Contract is specifically contingent upon the continued authority of the TWDB and appropriations therefore.

IN WITNESS WHEREOF, this Contract is executed as of the day and date first written above.

TEXAS AGRILIFE EXTENSION

Annear Associates, LLC

By: \_\_\_\_\_  
Dr. Edward G. Smith  
Director

By: \_\_\_\_\_  
Thomas C. Annear



**Scope of Work For Peer Review of the Edward Aquifer  
Recovery Implementation Program’s Science Subcommittee’s  
“j” Charge Recommendations and Hardy Study**

**SCOPE OF WORK**

**Task 1: Selection of Reviewers**

1. Contractor will contact potential candidates to conduct a peer review of the Hardy Study and the EARIP’s Scientific Subcommittee’s recommendations regarding the “j” charges and determine their interest and ability to participate in the review. Contractor will conduct the selection process independent of any input from the EARIP members or others affiliated with the program.
2. Contractor and review team members will sign statements attesting to no conflicts of interest per National Academy guidelines and submit signed forms to the Program Manager prior to initiating any work on the project.

**Task 2: Preparation of Reviewers.**

1. Program Manager will provide reviewers with the Hardy Study and the EARIP’s Scientific Subcommittee’s recommendations regarding the “j” charges, and identify other background information as appropriate.
2. The Chair of the EARIP Science Subcommittee may contact the Contractor by phone or provide specific written input before the review begins related to the charge of the Science Subcommittee and address any general questions about the process for producing recommendations.
3. Contractor will conduct a conference call with the reviewers before they begin working on the review to affirm the scope of the review; develop a preliminary set of standardized, technical criteria for reviewing provided materials; and facilitate discussions to guide their independent reviews and set the stage for the collaborative meeting for developing the final review document (*see* Task 5).
4. Contractor will instruct all reviewers to conduct a preliminary assessment of review materials independent of each other to identify issues of concern and topics for discussion at the collaborative team meeting (Task 4).
5. Contractor will coordinate with individual reviewers as needed during this period to ensure they understand the materials, review requirements, and their individual tasks.
6. Upon completion of each reviewer's initial assessment, they will provide their preliminary findings to all other reviewers and the Contractor.

**Task 3: Preparation of the Administrative Record**

1. After the scope of work and budget have been agreed upon, Contractor will

- maintain a record of all materials disseminated to the reviewers, key written communications among the reviewers, pertinent hand-written notes of key phone conversations between the Contractor and review team members, and individual reviewer responses.
2. These materials will be provided to the Program Manager at the completion of the review process (Task 6).

#### **Task 4: Preparation of the Review**

1. Contractor will convene a collaborative, face-to-face meeting of all reviewers in a location of his choosing. This meeting will be held over three-to-four consecutive days including travel.
2. Reviewers will work through all the documents they have been asked to review and assemble a draft report that reflects their collective opinions. The majority of the review document will be completed at the meeting. The final draft report will be completed within two-to-three days thereafter to allow time for additional edits or analyses that cannot be finished at the meeting. At that time, the final draft report will be provided to the Program Manager. The review team's work will consider and include the following:
  - (a) Collective treatment of each reviewer's comments and concerns as expressed in Task 2. Reviewers will discuss their responses among themselves and may modify their initial opinions and comments developed during Task 2 in light of discussions at this meeting.
  - (b) Other concerns or issues raised at the meeting,
  - (c) The synthesis report will include all dissenting opinions as well as explanations for divergent opinions.
  - (d) Responses will be substantive and not address any editorial aspects of provided material.

#### **Task 5: Science Subcommittee Review**

1. Following completion of the final draft report, the EARIP Science Subcommittee may provide the Contractor written questions regarding the draft report or additional material that may be requested by the reviewers. Contractor will coordinate a response from the entire review team members including full documentation of all pertinent input and exchanges by all team members.
2. If additional materials are requested by the review team for finalizing their report, such materials must be provided as quickly as possible and the reviewers will address the material within 5-7 days of its receipt.
3. Any email exchanges or written comments among reviewers in response to follow-up questions and materials will be included in the final report.

#### **Task 6: Final Review and Deliverables**

1. After the interactive process in Task 5, the review team will address all additional input from the Science Subcommittee and finalize the review.
2. Deliverables will include draft and final review reports as well as a full

administrative record including individual reviewers' initial assessments from Task 2, all e-mails, and appropriate ancillary materials. One hard copy and an electronic copy of the final report will be submitted to the Program Director.

**SCHEDULE**

The following is a schedule of the dates in which specific milestones in the review process will be completed

Task 1:	April 1, 2010
Task 2:	April 30, 2010
Task 3:	May 1, 2010
Task 4:	May 15, 2010
Task 5:	May 31, 2010

**EXHIBIT B**

**Task and Expense Budget For Peer Review of the Edward  
Aquifer Recovery Implementation Program’s Science  
Subcommittee’s “j” Charge Recommendations and Hardy  
Study**

<b>TASK BUDGET</b>	
Task 1: Select Reviewers	\$ 600
Task 2: Preparation of the Reviewers	\$15,200
Task 3: Preparation of the Administrative Record	\$800
Task 4: Collaborative meeting	\$24,000
Task 5: Final Review	\$ 6,000
<b>TOTAL</b>	<b>\$46,600</b>

<b>EXPENSE BUDGET</b>	
Fees	\$13,100
Subcontractors	\$26,500
Overhead	\$3,000
Travel	\$4,000
<b>Total</b>	<b>\$46,600</b>

With the prior approval of the Program Director, the Consultant shall have budget flexibility among task budgets and expense category budgets as contained herein to the extent that the resulting changes associated with a single task or expense category do not exceed thirty-five percent (35%) of the total amount authorized by the Contract or subcontract for the task or expense category to be changed.