

**EDWARDS AQUIFER RECOVERY IMPLEMENTATION PROGRAM
HABITAT CONSERVATION PLAN
FUNDING AND MANAGEMENT AGREEMENT**

This Funding and Management Agreement (“Agreement”), effective on the Effective Date, is an interlocal cooperation contract made pursuant to Texas Government Code Chapter 791 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), Texas State University – San Marcos (the University), and the Texas Parks and Wildlife Department (Department) (collectively, Parties, and individually, Party).

RECITALS

Recital A. Purpose. The purpose of this Agreement is to provide the terms of the mutual rights and duties agreed to by the Parties for managing and funding the Edwards Aquifer Recovery Implementation Program (EARIP) Habitat Conservation Plan (HCP) and the Implementing Agreement entered into by the Parties and the United States Fish and Wildlife Service (the Service), effective _____, to support the Parties’ request for issuance of an incidental take permit (Permit) by the Service.

Recital B. Legislative directives. By Act of May 28, 2007, the 80th Legislature of the State of Texas directed the EAA to develop a recovery implementation program (the Program) for threatened or endangered species associated with the Edwards Aquifer (the Species) through a facilitated, consensus-based process that includes input from the Service and other appropriate federal agencies and participation by interested Aquifer stakeholders under the oversight of a stakeholder steering committee having as members the representatives of certain state agencies and local and regional political subdivisions and entities (collectively, Stakeholders). The EAA, and participating Stakeholders were further directed to jointly prepare a program document that may be in the form of a habitat conservation plan used in the issuance of an incidental take permit by the United States Secretary of the Interior, through the Service, under Section 10 of the federal Endangered Species Act of 1973, based on the program developed through the facilitated, consensus-based process.

Recital C. Cooperative development. The EAA and the Stakeholders, in compliance with the legislative directives, have worked cooperatively since May 28, 2007, to develop the Program and have determined that in the interest of protecting the Species, the Parties will submit, on behalf of Stakeholders, the HCP.

Recital D. Independent Determinations. Each of the Parties has independently found and determined that such Party is authorized under applicable law to individually seek an incidental take permit from the Service for activities associated with the Edwards Aquifer; and further, acknowledges and agrees (i) that implementation of the HCP will require independent action by such Party at varying times during the term of the Permit; and (ii) that such Party will be both individually and, with the other Parties, collectively responsible to the Service for the successful implementation of the HCP.

Recital E. Adaptive Management Program. The rights and duties of the Parties as described in this Agreement are parts of the adaptive management program designed to achieve the desired biological goals described in Section 7.1 of the HCP (the Biological Goals). The adaptive management program consists of two phases: (i) Phase One is the initial seven-year program phase that will begin on the Effective Date and end on December 31, 2020, and (ii) Phase Two is the second eight-year program phase that will begin on January 1, 2021, and end on December 31, 2029 with the expiration of the Permit. The Parties have determined that the respective actions and activities to be performed by each Party individually, as described in the HCP, are mutually interdependent for the successful recovery of the Species; and have further determined that in addition to such individual actions and activities, the HCP requires ongoing adaptive management program decisions and actions that will require continuing cooperation and adaptive actions by the Parties.

Recital F. Joint Permit Application. The Parties have further determined that a joint application for a single Permit will increase the efficiency and effectiveness of each Party and most effectively discharge the Legislature's direction to cooperatively develop a recovery implementation program for threatened or endangered species associated with the Edwards Aquifer.

Recital G. Terms of this Agreement. The Parties desire to enter into this Agreement in order to define the terms of agreement their respective and mutual rights and duties for the administration, management, funding and performance of the activities and actions they have agreed to in their respective capacities as parties to the Implementing Agreement and the HCP during the term of the Permit. by providing, in Article One, for the application for the Permit and the administration of the Implementing Agreement, HCP, the Permit, and this Agreement; in Article Two, for the respective activities and actions of the Parties; **Recital** in Article Three, for the _____; in Article Four, for the _____; and in Article Five, for general terms relating to this Agreement.

Therefore, for the mutual consideration expressed in this Agreement, the Parties agree as follows:

ARTICLE ONE

APPLICATION AND PROGRAM MANAGEMENT AND ADMINISTRATION

Section 1.1. Application for Permit. No later than November 1, 2011, the Parties, other than the Department, will jointly sign and submit an application to the Service for the Permit. The application will be substantially in the form attached hereto as *Exhibit A*. The application will be accompanied by an executed Implementing Agreement, including the Adaptive Management Program, substantially in the form attached to this Agreement as *Exhibit B* and the HCP substantially in the form attached to this Agreement as *Exhibit C*. A copy of this Agreement will be attached to the Implementing Agreement

Section 1.2. Program Management. Except as otherwise specifically provided in this Agreement or other Program Documents, the EAA will discharge on behalf of the Parties all management functions associated with the Implementing Agreement, the HCP, the Permit, and this Agreement. The EAA will be the Parties' primary point of contact with the Service and will be responsible for discharging all reporting requirements to the Service subject to timely receipt of required information from the Parties.

Section 1.3. Duties of the Parties With Regard to Adaptive Management. The EAA will administer the adaptive management program in consultation with the Parties and, when appropriate, after considering the recommendations of the EARIP Adaptive Management Advisory Committee (the Advisory Committee) and EARIP Adaptive Management Science Committee (the Science Committee) as described in Section 11.1.3 and *Appendix A* of the Implementing Agreement. Pursuant to research results and additional information developed during Phase One, the EAA may recommend that the Parties undertake, during the term of this Agreement, activities and actions in addition to or different from those described in this Agreement to more effectively or efficiently achieve the Biological Goals. If necessary to achieve the Biological Goals, the additional or alternative actions may include funding, development, and implementation by the EAA or one or more other Parties of the Phase Two adaptive management action described in Section _____ of the HCP. In no event will any Party be required to provide any funding under this Agreement other than the funding described in Article _____ of this Agreement.

ARTICLE TWO

PROGRAM RESPONSIBILITIES OF THE PARTIES

Section 2.1. Duties of EAA.

In addition to its program management and administrative responsibilities provided in Article One, the EAA will perform the activities and actions described in this Section 2.1 in its capacity as a Party to the Implementing Agreement, the HCP and the Permit:

2.1.1 Continue to regulate the withdrawal of groundwater from the Edwards Aquifer consistent with the Edwards Aquifer Authority Act (EAA Act), Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended, as generally described in Section 2.1.1 of the HCP.

2.1.2. Not later than April 30, 2012, adopt rules to implement the final critical period management plan pursuant to Section 1.26(a) of the EAA Act, as described in Sections 2.1.2.2 and 5.1.1, of the HCP.

2.1.3. Not later than April 30, 2012, adopt rules to implement a new Critical Period Management Stage V groundwater withdrawal reduction level as described in Sections 2.1.2.3 and 5.1.1.1 of the HCP.

2.1.4. Not later than December 31, 2012, adopt rules to implement a program to provide for mitigation of the effects of Critical Period Management Stage V groundwater withdrawal reductions on small municipalities as described in Sections 2.1.2.4 and 5.1.1.2 of the HCP.

2.1.5. Not later than December 31, 2012, adopt rules to implement a program to encourage water conservation by municipal governments as described in Sections 2.1.3 and 5.1.3 of the HCP.

2.1.6. Not later than December 31, 2012, implement a voluntary irrigation suspension program as described in Sections 2.1.1.10 and 5.1.2 of the HCP.

2.1.7. Not later than December 31, 2012, use good-faith effort to enter into an agreement with the Service for program-related activities at the Service's San Marcos National Fish Hatchery and Technology Center as described in Section ___ of the HCP.

2.1.8. No later than December 31, 2012, enter into an agreement with San Antonio establishing the terms and conditions for the operation of the San Antonio's Twin Oaks Aquifer Storage and Recovery Facility for the benefit of the Program in accordance with the schedule, terms and operational protocol set forth in Sections 2.1.1.11 and 5.1.4 of the HCP, including the (1) lease at the EAA's expense and assign to San Antonio without charge, along with all necessary regulatory approvals, Unrestricted Irrigation Groundwater, or municipal or industrial groundwater withdrawal permits issued by the EAA, and related rights issued by the EAA, or (2) the authority to make withdrawals under Section 1.14(h) of the EAA Act for the purpose of ensuring the protection of springflows at Comal Springs and San Marcos Springs as provided by that section, and authorizing San Antonio to withdraw 50,000 acre-feet of Edwards Aquifer groundwater from San Antonio's municipal wells in Bexar County for storage in and recovery from San Antonio's Twin Oaks Aquifer Storage and Recovery Facility, and use by San Antonio for municipal and industrial purposes in addition to the inventory of Edwards Aquifer groundwater withdrawal permits and related rights otherwise acquired and held by San Antonio.

2.1.9 Throughout the term of the Permit, perform general biological monitoring and research for the Comal Springs and San Marcos Springs systems as described in Sections 2.1.4 and 7.3.4 of the HCP.

2.1.10 In cooperation with the other Parties and the Program stakeholders as provided in the AMP, manage and oversee the biological adaptive management program described in Section Chapter 7, and Sections 2.1.4, 10.5 and 10.8 of the HCP.

2.1.11 In cooperation with the other Parties and Program stakeholders as provided in the AMP, manage and oversee the refinement of ecological modeling as described in Section 7.2 of the HCP.

2.1.12 In cooperation with the other Parties and Program stakeholders as provided in the AMP, undertake any necessary studies related to future phases of the adaptive management process as described in Section ___ of the HCP.

2.1.13 Unless otherwise described herein or jointly agreed by the Parties in the future, undertake any new adaptive management action that may result from future phases of the adaptive management process as described in Section ___ of the HCP.

2.1.14 Provide for the funding and the management of the funds as provided in Chapter 9.2 of the HCP and Section 9 of this FMA.

Section 2.2. Duties of New Braunfels.

New Braunfels will perform the activities and actions described in this Section 2.2 in its capacity as a Party to the Implementing Agreement, the HCP and the Permit:

2.2.1. New Braunfels will undertake a program of native aquatic vegetation restoration and maintenance in the Comal River as described in Section 6.1.1 of the HCP.

2.2.2. New Braunfels will undertake flow-split management in the Old Channel and New Channel of the Comal River as described in Section 6.1.2 of the HCP.

2.2.3. New Braunfels will undertake a program to remove decaying vegetation from the Comal River as described in Section 6.1.3 of the HCP.

2.2.4. New Braunfels will establish an Old Channel Environmental Restoration and Protection Area as described in Section 6.1.4 of the HCP.

2.2.5. New Braunfels will conduct exotic and predator species control in the Comal River as described in Section 6.1.5 of the HCP.

- 2.2.6.** New Braunfels will undertake a program of exotic snail removal and gill parasite monitoring in the Comal River as described in Section 6.1.6 of the HCP.
- 2.2.7.** New Braunfels will create new native habitat riparian zones on the Comal River as described in Section 6.1.7 of the HCP.
- 2.2.8.** New Braunfels will undertake expanded monitoring of water quality in the Comal River as described in Section 6.1.8 of the HCP.
- 2.2.9.** New Braunfels will, in cooperation with the Texas Department of Public Transportation, take steps to prohibit hazardous materials transportation from crossing the Comal River and its tributaries as described in Section 6.3.1 of the HCP.
- 2.2.10.** New Braunfels will develop a program to include private landowners in Comal River riparian restoration as described in Section 6.3.2 of the HCP.
- 2.2.11.** New Braunfels will undertake a program to restore Comal River riparian zones controlled by public entities in New Braunfels with native vegetation as described in Section 6.3.3 of the HCP.
- 2.2.12.** New Braunfels will initiate a hazardous household waste disposal program within New Braunfels as described in Section 6.3.4 of the HCP.
- 2.2.13.** New Braunfels will initiate an aerobic and anaerobic septic system registration, evaluation and permitting program within New Braunfels as described in Section 6.3.5 of the HCP.
- 2.2.14.** New Braunfels will establish an impervious cover reduction incentive program within New Braunfels as described in Section 6.3.6 of the HCP.
- 2.2.15.** New Braunfels will establish a program to restrict aquarium dumps in the Comal River as described in Section 6.3.7 of the HCP.
- 2.2.16.** New Braunfels will establish a program to restrict the introduction of non-native species into the Comal River as described in Section 6.3.8 of the HCP.

Section 2.3. Duties of San Marcos.

San Marcos will perform the activities and actions described in this Section 2.3 in its capacity as a Party to the Implementing Agreement, the HCP and the Permit:

2.3.1. San Marcos will undertake a program of Texas Wild-Rice Enhancement and Restoration in the San Marcos River within San Marcos as described in Section 6.2.1 of the HCP.

2.3.2. San Marcos will undertake and enforce recreation control in high-quality habitat areas of the San Marcos River within San Marcos as described in Section 6.2.2 of the HCP.

2.3.3. San Marcos will undertake a program to remove decaying vegetation and vegetative mats in the San Marcos River within San Marcos as described in Section 6.2.3 of the HCP.

2.3.4. San Marcos will undertake expanded monitoring of water quality in the San Marcos River within San Marcos as described in Section 6.2.4 of the HCP.

2.3.5. San Marcos will undertake a program to control harmful exotic and predator species in the San Marcos River within San Marcos as described in Section 6.2.5 of the HCP.

2.3.6. San Marcos will, in cooperation with the Texas Department of Public Transportation, take steps to prohibit hazardous materials transportation from crossing the San Marcos River and its tributaries as described in Section 6.3.1 of the HCP.

2.3.7. San Marcos will develop a program to include private landowners in San Marcos River riparian restoration as described in Section 6.3.2 of the HCP.

2.3.8. San Marcos will undertake a program to restore San Marcos River riparian zones controlled by public entities in San Marcos with native vegetation as described in Section 6.3.3 of the HCP.

2.1.9. San Marcos will initiate a hazardous household waste disposal program within San Marcos as described in Section 6.3.4 of the HCP.

2.3.10. San Marcos will initiate an aerobic and anaerobic septic system registration, evaluation and permitting program within San Marcos as described in Section 6.3.5 of the HCP.

2.3.11. San Marcos will establish an impervious cover reduction incentive program within the City of San Marcos as described in Section 6.3.6 of the HCP.

2.3.12. San Marcos will establish a program to restrict aquarium dumps in the San Marcos River within San Marcos as described in Section 6.3.7 of the HCP.

2.3.13. San Marcos will establish a program to restrict the introduction of non-native species into the San Marcos River within San Marcos as described in Section 6.3.8 of the HCP.

Section 2.4. Duties of the University.

The University shall perform the activities and actions described in this Section 2.4 in its capacity as a Party to the Implementing Agreement, the HCP and the Permit.

2.4.1. The University will undertake a program of Texas Wild-Rice Enhancement and Restoration in the San Marcos River within the University's campus boundaries as described in Section 6.2.1 of the HCP.

2.4.2. The University will undertake and enforce recreation control in high-quality habitat areas of the San Marcos River within the University's campus boundaries as described in Section 6.2.2 of the HCP.

2.4.3. The University will undertake a program to remove decaying vegetation and vegetative mats in the San Marcos River within the University's campus boundaries as described in Section 6.2.3 of the HCP.

2.4.4. The University will undertake expanded monitoring of water quality in the San Marcos River within the University's campus boundaries as described in Section 6.2.4 of the HCP.

2.4.5. The University will undertake a program to control harmful exotic and predator species in the San Marcos River within the University's campus boundaries as described in Section 6.2.5 of the HCP.

Section 2.5. Duties of San Antonio.

San Antonio will perform the activities and actions described in this Section 2.5 in its capacity as a Party to the Implementing Agreement, the HCP and the Permit.

2.5.1. San Antonio will provide advice and assistance in support of a regional conservation program as described in Section 2.3.1.2 of the HCP.

2.5.2. No later than December 31, 2012, San Antonio will enter into an agreement with the EAA establishing the terms and conditions for the operation of its Twin Oaks

Aquifer Storage and Recovery Facility in accordance with the schedule, terms and protocol described in Sections 2.1.1.11 and 5.1.4 of the HCP.

**ARTICLE THREE.
PROGRAM FUNDING.**

Section 3.1. Parties' responsibilities and financial assistance.

Subject to the adoption and implementation of a regional sales tax or other alternative funding mechanism, and further subject to the terms and limitations described in this Agreement, the cost of undertaking each activity or action described in this Agreement will be the responsibility of the Party whose obligation it is to undertaking the activity or action, with financial assistance provided to the funding Party by the EAA as described in this Article Three.

Section 3.2. The HCP Account.

Not later than June 30, 2013, the EAA will by rule create within the EAA a restricted account known as the Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan Implementing Fund (the HCP Account). The EAA will deposit funds and amounts in the HCP Account and will distribute amounts from the HCP Account in accordance with this Article Three.

Section 3.3. Sources of Funds in the HCP Account.

Amounts deposited in the HCP Account will include the revenue and funds described in this Section 3.3.

3.3.1. All revenue generated by the EAA through the imposition of special aquifer management fees on municipal and industrial Edwards Aquifer groundwater withdrawal permits in an amount required to fund the reasonably expected and planned for costs of implementation of the HCP (Program Aquifer Management Fees) will be deposited in the HCP Account.

3.3.2. Such contributions, grants, and other sources of revenue as the EAA may receive and credit to the Fund during the term of the Permit will be deposited in the HCP Account.

3.3.3. Earnings on the investment of money credited to the Fund will be deposited in the HCP Account.

Section 3.4. Uses of Funds in the HCP Account.

Funds in the HCP Account may be used by the EAA only as provided in this Section 3.4.

3.4.1. The Funds may be used for the implementation of the Conservation Measures for the Program.

3.4.2. The Funds may be used for the implementation of the adaptive management program.

3.4.3. The Funds may be used for research and planning costs associated with the implementation of Conservation Measures or the adaptive management program, including planning, engineering, architectural, legal, title, fiscal, economic, and any other study, survey, design, or research and investigation.

3.4.4. The Funds may be used for qualification for participation in any federal program that may provide funding for the Program.

3.4.5. The Funds may be used to provide financial assistance in certain cases, as provided in this subsection 3.4.5. Unless delegated pursuant to subsection __, the EAA Board of Directors may take action on applications for financial assistance under subsection __ of this section. The EAA may use money in the Fund to provide financial assistance through a contract for the work to be performed by the applicant. If the EAA approves an application for financial assistance under subsection __ of this section, it shall enter into a contract not later than 30 days after it takes final action on the application and promptly remit the amount of the approved financial assistance under the terms and conditions in the contract.

3.4.6. The Funds may be used by the EAA for the EAA's Program activities, including for the management of the Program.

ARTICLE FOUR
EARIP ADAPTIVE MANAGEMENT STEERING COMMITTEE.

Section 4.1. Creation of Steering Committee.

In accordance with the Implementing Agreement, the Parties have created and, within thirty (30) days of the Effective Date, will convene an Edwards Aquifer Recovery Implementation Agreement Adaptive Management Steering Committee (the Steering Committee) consisting of one representative of each Party as designated in writing to the EAA.

Section 4.2. Duties of Steering Committee.

The Steering Committee will provide assistance to the Parties relating to the implementation of the HCP as provided in this Section 4.2.

4.2.1. Prior to June 30, 2013, the Steering Committee will jointly develop recommendations to the EAA for a Phase One Work Plan and Budget for the scheduling and cost of work to be performed by the Parties before December 31, 2020, pursuant to this Agreement, the Implementing Agreement, and the HCP. The Parties shall seek to develop consensus on the Phase One Work Plan and Budget and any subsequent amendment to the Phase One Work Plan and Budget consistent with the HCP and the duties of the Parties as described in this Agreement. If the Parties are unable to develop consensus, the initial Phase One Work Plan and Budget and any subsequent amendment may be approved by a vote of four members of the Steering Committee, but in no event may the initial Phase One Work Plan and Budget or any subsequent amendment be approved with the approval of the EAA. The EAA may assess and begin collecting Program Aquifer Management Fees prior to the adoption by the Parties of an initial Phase One Work Plan and Budget in order to endure that sufficient funding will be available for Program management, the work to be performed during the early stages of the Phase One Work Plan and Budget, and other start up costs.

4.2.2. Prior to January 15 of each year during the term of this Agreement, each Party will submit to the Steering Committee an updated Work Plan and Budget for activities to be performed by that Party during the following calendar year in discharge of its duties under this Agreement. Each Party's updated Work Plan and Budget will either be

approved by the Steering Committee or returned to the submitting Party for further revision. If an updated Work Plan and Budget has not been approved by the Steering Committee within sixty (60) days of initial submittal, the initial Work Plan and Budget shall remain in effect as it relates to that Party. The EAA shall incorporate each Party's updated Work Plan and Budget into an annual Updated Phase One Work Plan and Budget no later than June 30th of each calendar year.

ARTICLE FIVE.
APPLICATIONS FOR FINANCIAL ASSISTANCE.

Section 5.1. Applications from a Party for financial assistance.

An application to the EAA for financial assistance for the Program from a Party may be made and will be considered for approval by the EAA only as provided in this Article Five.

5.1.1. The application must be filed in writing in affidavit form and include the information listed and items filed in writing in affidavit form below:

- 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 financial assistance is applied for under subsection __ of this section;
- d. a statement that the Implementing Agreement, HCP, the Permit or other appropriate regulatory document authorizes the proposed activity to be performed;
- e. citations to all appropriate documents demonstrating that the proposed activity is authorized to be performed;
- f. the action plan for the proposed activity for the period for which financial assistance is sought, including the project budget;

- g. a description of the competitive bid process utilized by the applicant to secure bids and a demonstration that the bid selected is reasonable and the lowest responsible bidder;
- h. the amount of financial assistance requested; and
- i. the proposed schedule of payments.

5.1.2. An application for financial assistance must be filed with the EAA no later than September 30th of the calendar year preceding the calendar year for which financial assistance is sought.

5.1.3. If the applicant demonstrates the following considerations, the EAA will approve the application as filed:

- a. The applicant is a Party to the Implementing Agreement;
- b. The applicant is authorized to file the application;
- c. The proposed activity is authorized for financial assistance in subsection __ of this section;
- d. The proposed activity is required by the Implementing Agreement, this Agreement, and the HCP to be performed by the Party to the Implementing Agreement;
- e. The approved Phase One Work Plan and Budget describes the proposed activity for the period for which financial assistance is sought;
- f. The approved Phase One Work Plan and Budget states the estimated total costs of the proposed activities and the amount anticipated to be expended for the period for which financial assistance is sought;
- g. The applicant's action plan and proposed project budget suitably describes the proposed activities to be performed, the project schedule, and the proposed project cost;
- h. The recommended project cost based on the competitive bid process used by the applicant is reasonable; and
- g. The Fund balance is sufficient to provide financial assistance in the applied-for amount.

5.1.4. The EAA may withhold action on an application if it identifies a consideration in subsection (f) of this section 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 Fund, the EAA shall advise the applicant and withhold action on the application until sufficient money is available.

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

5.1.6. 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.

5.1.7. An application for financial assistance may be amended in writing with a request to the EAA to take action on the application as amended. The EAA shall take action on the amended application in the same manner as provided for the original application.

Section 5.2. Budgets and Payments.

Each Party shall invoice the EAA quarterly and the EAA shall pay each Party quarterly for the EAA's financial assistance for work performed by that Party in accordance with the Phase One Work Plan and Budget. All invoices shall be accompanied by appropriate documentation reflecting all costs incurred and paid by the Party and such other documentation as may be required by the EAA as a condition of the financial assistance. The EAA shall not make any payment to any Party for any work that is not included in the Phase One Work Plan and Budget as amended from time to time.

Section 5.3. Termination of HCP Account.

The HCP Account will be terminated by the EAA on December 31, 2029, or sooner if a regional sales tax or other alternative funding mechanism is instituted, and the EAA shall have no further obligation under this Agreement to generate revenue to the credit of the HCP Account except as specified in this Section (m). In the event that the Phase Two action described in Section _____ of the HCP is determined by the Service to be necessary in order to achieve the Biological Goals, and it is necessary to continue the Fund beyond December 31, 2029, in order to fully implement the Phase Two action, the EAA General Manager shall recommend to the EAA Board of Directors that the Fund continue and that the EAA continue to generate revenue to the Fund's credit for the Phase Two action in an amount not to exceed \$__ million per year for a term of __

years beginning on January 1, 2030, and ending on December 31, 20__, on which date the Fund shall terminate.

Section 5.5. Alternative Funding.

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. In that event, the funding obligations of the Parties as described in this Agreement will shall terminate on the effective date of any such tax or other funding source, and funding responsibilities for the Program and activities described in this Agreement will be the responsibility of the administrator of the tax as provided by the legislation establishing such a tax, or the documents establishing another funding source. The Parties acknowledge and agree that, to the maximum extent possible, the sales tax or other funding source revenues will be used first to discharge the obligations of the EAA hereunder for funding of Phase One actions and any Phase Two actions required by the Service consistent with the HCP. To the extent that additional funds are available, they will be used to reimburse the Parties for their individual funding obligations hereunder on a pro-rata basis.

**ARTICLE SIX.
GENERAL PROVISIONS.**

Section 6.1. Term. This Agreement shall be effective on January 1, 2013 (the “Effective Date”), and shall continue in effect for a period of fifteen years from the Effective Date.

Section 6.2. Remedies. The Parties recognize that failure in the performance of any Party’s obligations hereunder cannot be measured in money damages. Each Party therefore agrees in the event of any default on its part that each Party shall have available to it only the equitable remedy of mandamus and/or specific performance, but not termination as long as the Permit is outstanding. It is the intent of the Parties to this Agreement that any default shall be subject to the remedy of specific performance and/or mandamus to the extent that specific performance and/or mandamus is possible under the existing circumstances. It is the further intent of the Parties that money damages shall not be available to any Party under any circumstances. If any

Party shall fail to appropriate funds necessary to discharge that Party's obligations under this Agreement and a court of competent jurisdiction shall fail to enforce that obligation, then this Agreement shall terminate with regard to that Party, and the other Parties shall have the right to petition the Service to terminate the Permit with regard to the defaulting Party.

Section 6.3. Default –Notice and Opportunity to Cure. If any Party fails to perform any obligation or make any payment in the required amount when due under this Agreement, any other Party may, without prejudice to any other right or remedy it may have under this Agreement, provide written notice of default to the non-performing Party. If written notice of default is provided to a non-performing Party, a copy of said notice shall also be provided to every other Party. The non-performing Party has sixty (60) days from receipt of the notice within which to remedy the default.

Section 6.4. Pledge of Gross Revenue. Each Party to this Agreement represents and covenants to the other Parties that all payments to be made by it for the performance of governmental functions or services under this Agreement shall constitute reasonable and necessary "operating expenses" of the Party, and that all such payment will be made from the gross current revenues of the Party. Each Party represents and has determined that the activity to be performed by each Party is absolutely necessary and essential to the present and future operation of the Party, and, accordingly all payments required by this Agreement to be made by the Party shall constitute reasonable and necessary operating expenses of the Party with the effect that the obligation to make such payment from gross revenues of the Party shall have priority over any obligation to make any payments from such revenues, whether of principal, interest or otherwise, with respect to all bonds heretofore or hereafter issued by the Party. Each Party agrees throughout the term of this Agreement to fix and collect such rates and charges for its services as will produce gross revenues in an amount equal to at least all of its payments under this Agreement. A Party to this Agreement shall never have the right to demand payment by another Party of any obligations assumed by or imposed upon that Party under or by virtue of this Agreement from any funds raised or to be raised by taxation, and a Party's obligation under this Agreement shall never be construed to be a debt of the Party of such kind as to require it

under the Constitution and laws of the State to levy and collect an ad valorem tax to discharge such obligation.

Section 6.5. Rights Regarding Books and Records. Each Party shall permit any other Party upon reasonable notice to examine and copy all the books and records kept by the Party regarding this Agreement. In addition, upon reasonable prior written notice to the Party, any other Party may conduct a complete audit of the books and records kept by the Party regarding this Agreement as well as upon the information and documentation used to prepare the books and records. Any such audit shall be at the requesting Party's sole expense and shall be prepared by a certified public accounting firm. If the audit report discloses actual errors in the books and records such that the charges assessed to another Party are in error then such error shall be corrected for the period up to four years after the erroneous charge was paid and all payments reconciled over the subsequent twelve month period beginning with the audited Party's fiscal year. If the error identified in the audit is greater than the cost of the audit, the audited Party shall reimburse the requesting Party the cost of the audit.

Section 6.6. Mediation. In the event any controversy arising under this Agreement is not resolved by informal negotiations between the Parties within thirty (30) days after any Party requests negotiations, then, upon the request of any Party, the controversy shall be referred to the voluntary settlement procedure known as mediation, which process shall be governed by the Texas Civil Practice and Remedies Code, Section 154.002, et seq., or its successor statute. The Parties shall attempt to select a mutually acceptable mediator. Failing identification of a mutually acceptable mediator, the mediation shall be conducted by the University of Texas School of Law Center for Public Policy Dispute Resolution. The mediation process shall continue until the controversy is resolved, the mediator makes a finding that there is no possibility of settlement through mediation, or either Party chooses not to continue further. All costs and expenses of the mediation (including the mediator's fees) shall be shared equally by the Parties involved in the mediation; provided however, that costs incurred by each Party shall be costs solely of such Party.

Section 6.7. Interpretation. The caption headings of this Agreement are for reference purposes only and shall not affect its interpretation in any respect. Unless the context otherwise requires, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa. This Agreement and all the terms and provisions shall be liberally construed to effectuate the purpose set forth herein and to sustain the validity of this Agreement.

Section 6.8. Participation by the Parties. Each Party to this Agreement represents to the others that it is empowered by law to execute this Agreement and other agreements and documents as are or may hereafter be required to accomplish the same; and that its execution of this Agreement has been duly authorized by action of its governing body.

Section 6.9. Force Majeure. If by reason of Force Majeure any Party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such Party shall give notice and full particulars of such Force Majeure in writing to the other Parties within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, including without limitation involuntary expansion of utility service obligations imposed by statute, vote of the electorate, or state or federal judicial or administrative order, or regulatory restrictions by a groundwater district, any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, tornados, blue northers, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes not reasonably within the control of the party claiming such inability.

Section 6.10. Indemnification. To the fullest extent allowed by law, each Party agrees on behalf of itself and its successors and assigns to defend, save and hold harmless the other Parties and their officers, directors, and employees from and against any and all claims, losses, expenses, costs, demands, judgments, causes of action, suits, and liability in tort, Agreement or any other basis and of every kind and character whatsoever (including but not limited to all costs of defense, such as fees and charges of attorneys, expert witnesses, and other professionals and all court or other dispute resolution costs) arising out of or incident to the failure by the Party to perform its obligations under this Agreement.

Section 6.11. Modification. No change, amendment, or modification of this Agreement shall be made or be effective that will affect adversely the prompt payment when due of all money required to be paid by a Party under the terms of this Agreement.

Section 6.12. Addresses and Notice. Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") provided or permitted in this Agreement to be given, made, or accepted by any Party to the other Parties must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, or by prepaid telegram when appropriate, addressed to the Party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given by electronic communication or in any other manner shall be effective only if and when receipt is acknowledged by the Party to be notified. For the purposes of notice, the addresses of the Parties will, until changed as provided in the last sentence of this Section 6.12, be as follows:

If to the EAA:

General Manager
Edwards Aquifer Authority
1615 N. St. Mary's
San Antonio, Texas 78215

If to New Braunfels:

City Manager
City of New Braunfels
424 South Castelle Avenue
New Braunfels, Texas 78130

If to San Marcos:

City Manager
City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

If to the University:

President
Texas State University – San Marcos
601 University Drive
San Marcos, Texas 78666

If to San Antonio:

President/Chief Executive Officer
San Antonio Water System
P.O. Box 2449/2800 U.S. Hwy. 281 North
San Antonio, Texas 78298

The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least five (5) days' written notice to the other Parties.

Section 6.13. State or Federal Laws, Rules, Orders, or Regulations. This Agreement is subject to all applicable federal and State laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction. Each Party represents that, to the best of its knowledge, no provisions of any applicable federal or State law, nor any permit, ordinance, rule, order, or regulation of any Party will limit or

restrict the ability of such Party to carry out its respective obligations under or contemplated by this Agreement.

Section 6.14. Severability. The Parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Agreement or the application of such actions, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Agreement shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the Parties hereto shall be construed and remain in force accordingly.

Section 6.15. Waiver. Notwithstanding anything to the contrary contained in this Agreement, any right or remedy or any default under this Agreement, except the right of a Party to receive the payments from another Party, which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within four (4) years after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any Party hereto or of the performance by any other Party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 6.16. Venue. It is specifically agreed among the Parties to this Agreement that in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same shall be brought in the County in which the principal administrative offices of the Defendant or any one Defendant are located.

Section 6.17. Succession and Assignment. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors, representatives, and assigns. This Agreement may not be assigned by any Party hereto without prior written notice to and approval by the other Parties, which consent may be withheld without cause.

Section 6.18. Entire Agreement. This Agreement constitutes the entire agreement among the Parties with respect to the matters described herein.

Section 6.19. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State, and the obligations, rights, and remedies of the Parties hereunder shall be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations.

Section 6.19. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 6.20. Officers and Agents. No officer or agent of the Parties is authorized to waive or modify any provision of the Agreement. No modifications to or rescission of this Agreement may be made except by a written documents signed by the Parties' authorized representatives.

Section 6.21. Recitals. The Parties agree that the recitals in this Agreement are true and correct and are incorporated into the terms of this Agreement.

Section 6.22. Approval by Parties. Attached as Exhibit E are the official actions of the Parties evidencing approval of and consent to this Agreement.

Section 6.23. Condition Precedent. The Parties' obligations under this Agreement are contingent upon approval of the Implementing Agreement and issuance of the Permit by the Service.

Section 6.24. Goods and Services. The Parties agree that the mutual commitments stated in this Agreement to provide operational, regulatory and implementation services in execution of the HCP and mutual discharge of the Implementing Agreement constitute an agreement by each Party for providing goods and services to the other Parties, that payments due from the EAA and the mutual provision of goods and services are amounts due and owing under the Agreement, and that this Agreement is subject to Chapter 271, Subchapter I, of the Texas Local Government Code.

Section 6.25. No Third Party Beneficiary; No Partnership. This Agreement is not intended to confer any rights, privileges or causes of action upon any third Party other than the Parties to this Agreement. The relationship of the Parties under this Agreement is not and shall not be construed or interpreted to be a partnership, joint venture or agency. The relationship of the Parties shall be an independent contractor relationship. No Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action, which shall be binding on another Party.

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

Edwards Aquifer Authority

By: _____
Karl Dreher
General Manager

ATTEST:

By: _____
Enrique P. Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:

By: _____
Darcy Alan Frownfelter
General Counsel

City of New Braunfels

By: _____
Michael Morrison
City Manager

City of San Marcos

By: _____
City Manager

**City of San Antonio Acting by and Through its
San Antonio Water System**

By: _____
President/CEO

Texas State University – San Marcos

By: _____
President