

CONTRACT _____
BETWEEN TEXAS AGRILIFE EXTENSION of the TEXAS A&M UNIVERSITY
SYSTEM
AND
COLLABORATIVE PROCESSES LLC
FOR FACILITATION SERVICES FOR THE EDWARDS AQUIFER RECOVERY
IMPLEMENTATION PROGRAM

This Contract (“Contract”) is made and entered into this ___ day of September, 2009 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 Collaborative Processes LLC, a Colorado corporation (the “Consultant” or “Collaborative Processes”), located at 617 Steele Street, Denver, Colorado 80206. TAE or Consultant/Collaborative Processes may be referred to in this Contract as “party” or collectively as “parties.”

RECITALS

- A. The 80th Texas Legislature adopted Senate Bill 3 in 2007, requiring the Edwards Aquifer Authority (“EAA”) in cooperation the United States Fish and Wildlife Service (“FWS”) 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 manager for the EARIP;
- E. The Texas Legislature required the Edwards Aquifer Authority, Texas Commission on Environmental Quality (“TCEQ”), the Texas Parks and Wildlife Department (“TPWD”), the Texas Department of Agriculture (“TDA”), the Texas Water Development Board (“TWDB”), and other stakeholders to prepare a program document (“Program Document”) that may be in the form of a habitat conservation plan used in the issuance of an incidental take permit;
- F. The Texas Legislature requires that the program document be approved and executed by the EAA, TCEQ, TPWD, TDA, TWDB, and the FWS not later than September 1, 2012;

- G. The EARIP has elected to prepare and include an Incidental Take Permit (“ITP”) application, Habitat Conservation Plan (“HCP”) Implementing Agreement, and other supporting documentation in the program document.
- H. The EARIP desires to have the decision-making process for the development of the HCP facilitated;
- I. Collaborative Processes provides facilitation services and is experience in facilitating water-related disputes involving highly technical issues such as those that the EARIP will have to resolve;
- J. The EARIP wishes to engage Collaborative Processes to facilitate the decision-making process; and,
- K. 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 following: (1) the Scope of Work which is attached hereto as Exhibit A (the "Scope of Work"); and (2) the Request for Proposal which is attached hereto as Exhibit B (“RFP”) (such work collectively referred to as the “Services”). 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 for Collaborative Processes in furtherance of its engagement hereby. Services do not include meeting facilities rental, printing/photocopying, EARIP participants’ food or transportation, or web hosting/technical services.

Section 1.2 Tasks. Although more fully described in Exhibits A and B, the following are summary descriptions of Tasks that comprise the Services:

Task	Description
Task 1	Working with the Project Manager and Steering Committee members, Collaborative Processes will conduct interviews and document reviews to develop project scoping and draft a situation assessment and work plan. The assessment will provide the Steering Committee members with a neutral assessment key issues involved.
Task 2.1	Facilitate the development of the program document: Sub task of facilitating in the Development of Goals and Objectives.

	Services will include meetings and other communications with the Steering Committee members to build agreement on the goals and scope of the EARIP including geographic scope and intended outcomes.
Task 2.2	Facilitate the development of the program document: Sub task of Evaluation of Technical Studies. Services include meetings and other communications to integrate technical studies (Science Subcommittee, Hardy work, USGS decision making, and other needed technical input) into the Steering Committee decision making.
Task 2.3	Facilitate the development of the program document: Sub task of Assist in the Development of Covered Activities. Services include facilitation of meetings and other communications that, within the agreed upon geographic scope, develop options for activities and projects which will advance the goals and objectives identified in Task 2.1. This may include facilitating activity groups and subgroups.

Section 1.3. Commencement and Completion Date. The Consultant will commence work hereunder immediately upon the execution of this Contract. All work covered hereby will be completed by June 30, 2010. Time is of the essence in the performance of this Contract.

Section 1.4 Professional guidelines and conduct. Collaborative Processes will approach the Services recognizing that in its work and that of its subcontractors, the facilitators must be accountable to all participants in the process. As such, the facilitators will be further guided by the *Statement of Values and Code of Ethics for Facilitators*, adopted by the International Association of Facilitators on 20 June 2004.

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. Consultant shall provide TAE with an estimate of the cost of the requested change. The fees for a requested change shall be at the Rate set out in Section 3.1. The parties to this Contract agree that 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. Fees and Expenses. Consultant will invoice TAE for the Services at the following rates (the “Rates”).

Rates	
J.McMahon	\$225/hr.
Subcontractors	
Patrick Field	\$185/hr.
Daisy Patterson	\$90/hr.
Matthew McKinney	\$160/hr.

TAE agrees to pay the Consultant for its services rendered, costs, and expenses (including airline travel, automobile mileage, lodging, meeting room rental and copy costs) incurred under this Contract which are reasonably consistent with the Scope of Work, and Rates, within 30 days of receipt and approval of each invoice but in no event shall the total compensation to the Consultant for work under this Contract exceed USD 150,000 (the “Contract Amount”) without the prior written consent of TAE. The Consultant will be responsible for the payment of all of its other and additional costs and expenses, including but not limited to the cost of the subcontractors. The Consultant may not exceed the Contract Amount. The Consultant is not authorized to spend any additional funds without prior written approval from TAE. TAE will not be held accountable for any unauthorized work performed or funds spent by the Consultant. The parties acknowledge that the sum of USD 150,000 described above may not be sufficient to cover the full amount of work necessary to complete the proposed Scope of Work and that the maximum amount payable to Consultant under this Contract may need to be increased pursuant to Section 2.2 of this Contract.

Section 3.2. Invoicing and payment. All invoices from the Consultant for the Services shall be sent monthly to the Project Manager 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 and expenses. Any necessary travel time shall be charged at 50% of the applicable Rate. Invoices will include an assessment of the percentage completion on each Task or subtask described in § 1.2 above, including percentage complete substantially in the form of Exhibit C. Invoicing will include hourly charges and expenses for Messrs McMahon and Field. Subcontractor invoicing by CNREP to Consultant for Ms. Patterson’s and Dr.

McKinney's work may be submitted using fixed monthly payments to CNREP together with specific description of work undertaken by Ms. Patterson during the invoice period. The terms of each invoice shall be net thirty (30) days upon the Project Manager's receipt and approval of that invoice. A copy of each invoice shall be sent to:

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

ARTICLE IV LEGAL RELATIONSHIPS

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 venture, 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.

Section 4.2 No legal services or attorney client relationship. TAE agrees that, although discussions included in the Services may from time to time touch on legal issues, neither Consultant nor Joseph McMahan, its manager, is providing legal services to either TAE or EARIP participants, and that no attorney client relationship is created by the Services.

ARTICLE V CONSULTANT PERSONNEL, SUBCONTRACTORS, NO ASSIGNMENT

Section 5.1. Personnel. The Consultant will provide any and all personnel necessary for its performance of the Services hereunder. Consultant shall provide Joseph McMahan to facilitate the development of the program document. 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 Patrick Field of CBI, and Daisy

Patterson and Matthew McKinney of CNREP. 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. The Services are personal in nature and no changes shall be made in the identity of the subcontractors without the written agreement of TAE.

Section 5.3 No assignment. The Services to be rendered by Consultant pursuant to this Agreement are personal in nature, and, except for subcontracting under Section 5.2 above, Consultant may not assign any rights and obligations under this Agreement without written consent of TAE.

ARTICLE VI TERMINATION

Section 6.1. Termination by TAE. 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, and Consultant shall submit a "Final Invoice" to TAE. Insofar as possible, all work in progress will be brought to a logical termination point. Within 30 days of receipt of the Final Invoice, 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.

Section 6.2 Termination by Consultant. Consultant may terminate this Contract by giving written notice if serious, unavoidable and unforeseen causes (for example a serious health problem or automobile accident) prevent Consultant's completion of the Services. Consultant will then follow the termination procedures set forth in Section 6.1 above.

ARTICLE VII OWNERSHIP OF MATERIALS, INTELLECTUAL PROPERTY

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, and, subject to the terms of Section 7.4 below, Consultant will not use any such information except in the course of performing this Contract, without the prior written approval of 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 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.

Section 7.3 Intellectual property. With respect to such Intellectual Property held by, or to which TAE has rights, that is (i) incorporated in the Services, or (ii) produced by Consultant or its employees, subcontractors, or subcontractors' employees during the course of performing the Services, Consultant hereby grants to TAE a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish, and modify such Intellectual Property, and allow others to do so for TAE purposes. Consultant shall secure any necessary intellectual property licenses from third parties and warrants that the Services and the intended use of the Services will not infringe any property rights of any third party. Consultant agrees to indemnify and hold harmless TAE from damages arising from or related to any infringement of rights in intellectual property, and agrees to require its contractors to indemnify and hold harmless TAE from damages arising from or related to any infringement of rights in intellectual property.

Section 7.4. Information concerning Services. Subject to the protection to Intellectual or Proprietary Property as described in Section 7.3 above, TAE agrees that Consultant and its subcontractors may present descriptions of the activities or results under this Contract in journals, theses, dissertations or other documents or at training sessions, symposia, or professional meetings.

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 TAE. 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 (and those described in Section 9.2) shall be sent to:

Robert L. Gulley
Program Manager
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:

Joseph McMahan
Collaborative Processes
617 Steele Street
Denver, Colorado 80206

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.

Section 9.4. Electronic Notice. The Parties may, with regard to certain routine communications relating to program activities, agree to accept electronic delivery, by fax or email, provided that such receipt of such delivery is confirmed to the sending Party by the receiving Party. The effective date of any communication sent electronically shall be the date transmission is completed.

ARTICLE X

MISCELLANEOUS

Section 10.1. Entire Agreement. This Contract and the attached Exhibits constitutes 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 nonprevailing party.

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

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

TEXAS AGRILIFE EXTENSION

COLLABORATIVE PROCESSES LLC

By: _____
Dr. Edward G. Smith, Director

By: _____
Joseph McMahan, Manager

EXHIBIT A

SCOPE OF WORK FOR FACILITATION SERVICES FOR THE EDWARDS AQUIFER RECOVERY IMPLEMENTATION PROGRAM

Collaborative Processes (“Consultant”) will facilitate the decision-making process for the Edwards Aquifer Recovery Implementation Program’s (“EARIP’s”) development of the Program Document described in the Request for Proposal in conformance with this Statement of Work (“SOW”). To the extent that there is a conflict between the RFP and this SOW, the SOW will govern the conduct of the work.

The following describes the specific tasks that will be used to facilitate the decision-making process for the EARIP.

Task 1: Development of Project Scoping, Situation Assessment and Work Plan

Consultant shall meet with the Program Manager, EARIP Chair, and the Field Supervisor for the United States Fish and Wildlife Service to learn in more detail about the background of the EARIP and the issues facing the EARIP and to understand better the activities that the EARIP has completed to date. Consultant shall meet with the EARIP Participants to learn about their interests and concerns related to the EARIP. Within 60 days of the execution of this Contract, Consultant shall prepare and submit to the Program Manager a menu of options about how to address these various issues, and to explore how people want to be involved in the development of the HCP and other elements of the program document. The Consultant shall meet with the EARIP Participants to discuss the menu. After the meeting, Consultant shall prepare and submit to the Program Manager a situation assessment and a work plan and schedule for the completion of Task 2. In preparing the work plan, Consultant shall consider that the EARIP needs to have identified the Covered Activities as soon as possible but no later than June 30, 2010. The Program Manager will assist Consultants in setting up all interviews.

Task 2: Facilitation of the EARIP’s Development of the Program Document

Contractor shall prepare for and conduct facilitated sessions to assist the EARIP in the development of goals and objectives for the HCP and the development of activities to be covered by the Incidental Take Permit (“Covered Activities”). Following each session, Consultant shall promptly prepare and send to the Program Manager a summary of the facilitated session. The Program Manager will distribute all materials, schedule and arrange the logistics for all facilitation sessions.

Subtask 1: Assist in the Development of Goals and Objectives. Services will include meetings and other communications with the Steering Committee members to build agreement on the goals and scope of the EARIP including geographic scope and intended outcomes.

Subtask 2: Evaluation of Technical Studies Sub task of Evaluation of Technical Studies. Services include meetings and other communications to integrate technical studies (Science Subcommittee, Hardy work, USGS decision making, and other needed technical input) into the Steering Committee decision making.

Subtask 3. Assist in the Development of Covered Activities. Services include facilitation of meetings and other communications that, within the agreed upon geographic scope, develop options for activities and projects which will advance the goals and objectives identified in Task 2.1. This may include facilitating activity groups and subgroups.

Estimated Budget

FEES BUDGET						
	Hourly Rate	Estimated Hours				TOTAL FEES
		Task 1	Task 2			
			Subtask 1	Subtask 2	Subtask 3	
Joseph McMahon	\$225/hr.	52	26	39	142	\$58,290
Subcontractors						
Patrick Field	\$185/hr.	48	24	36	132	\$44,400
Daisy Patterson	\$90/hr.	63	32	48	174	\$28,530
Matthew McKinney	\$160/hr.		6	6	6	\$2,880
TOTAL						\$134,100

TRAVEL BUDGET					
	Task 1	Task 2			Total Travel
		Subtask 1	Subtask 2	Subtask 3	

Joseph McMahon	\$787	\$394	\$ 1,323	\$2,165	\$ 4,669
Subcontractors					
Patrick Fields	\$771	\$386	\$ 1,309	\$2,121	\$ 4,586
Daisy Patterson	\$1,329	\$664	\$997	\$3,654	\$6,644
M. McKinney	\$0	\$0	\$0	\$0	\$0
TOTAL					\$15,900

Exhibit B (RFP)

Exhibit C (Percentage complete/sample invoice format, excluding samples of the individual invoices)



Facilitation, Collaboration & Conflict Management
 www.jpmmahon.com jpmmahon@jpmmahon.com
 617 Steele Street, Denver, CO 80206-3941 USA
 303-333-1960

To: Robert Gulley, EARIP
 Date: xxxx, 2009
 Subject: **DRAFT** Status report to accompany Invoice # xxxx

Task #	Contract description of the task	% Complete	Description of work accomplished and status as of the date of the invoice
1	Task 1: Development of Project Scoping, Situation Assessment and Work Plan		•
2.1	Task 2: Facilitation of the EARIP's Development of the Program Document; Subtask: Assist in the Development of Goals and Objectives		•
2.2	Task 2: Facilitation of the EARIP's Development of the Program Document; Subtask: Evaluation of Technical Studies		

Task #	Contract description of the task	% Complete	Description of work accomplished and status as of the date of the invoice
2.3	Task 2: Facilitation of the EARIP's Development of the Program Document; Subtask: Assist in the Development of Covered Activities		•