

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 4th 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 the Request for Proposal which is attached hereto as Exhibit A (“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. Consultant will conduct interviews and document reviews in anticipation of developing a project scoping, situation assessment and work plan for the subsequent facilitation of the decision-making process for the EARIP’s development of the Program Document. Consultant will attend and, as appropriate, participate in the Joint meeting of the Steering Committee and EARIP on September 10, 2009. The Parties acknowledge that the actual development of the project scoping, situation assessment and work plan and the facilitation of the decision-making process will be the subject of a separate contract contingent upon the approval of a grant pending before from the Texas Water Development Board. The EARIP anticipates that the Texas Water Development Board will act on the grant on September 17, 2009.

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 September 20, 2009.

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 25,000 (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 25,000 described above is not be sufficient to develop the project scoping, situation assessment and work plan and facilitate the decision-making process. The Parties agree that these tasks will be the subject of a separate contract contingent upon the approval of a grant pending before from the Texas Water Development Board. The EARIP anticipates that the Texas Water Development Board will act on the grant on September 17, 2009.

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. TAE agrees that invoicing under the Initial Contract Limitation may include Consultant's airline expenses for the trip now planned by Consultant for 20 through 22 September 2009. 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 CNREP 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 McMahon, 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 McMahon 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 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

**REQUEST FOR PROPOSALS
TO FACILITATE THE DECISION-MAKING PROCESS
FOR
THE EDWARDS AQUIFER RECOVERY IMPLEMENTATION PROGRAM**

The Edwards Aquifer Recovery Implementation Program (“EARIP”) is seeking proposals for a facilitator to assist in reaching decisions necessary to develop a plan that addresses protection of the Edwards Aquifer as a water supply and addresses protection of the threatened and endangered species associated with the San Marcos and Comal Springs. The EARIP is issuing this Request for Proposals (“RFP”) to obtain the services of a qualified individual, or team, to facilitate the EARIP’s decision-making process. The EARIP is specifically interested in identifying an individual or team with experience in facilitating the decision-making process of large stakeholder groups involving as many as possible of the following aspects: issues related to water allocation; working in a public, consensus-based process involving complex technical and scientific issues; and issues related to federally-listed species.

1. BACKGROUND INFORMATION

a. The Edwards Aquifer Recovery Implementation Program

The Edwards Aquifer Recovery Implementation Program (“EARIP”) is a collaborative, consensus-based stakeholder process to protect and contribute to the recovery of the federally listed species associated with the San Marcos and Comal Springs, while also protecting the Edwards Aquifer as a water supply source. The EARIP consists of a diverse group of regional stakeholders. The stakeholders that have executed a 2007 Memorandum of Agreement with the United States Fish and Wildlife Service (“FWS”) regarding participation in the EARIP are identified in Attachment 1. Additional information regarding the EARIP can be found at <http://irnr.tamu.edu/earip/> The Program Operational Rules governing the EARIP process can be found at <http://earip.tamu.edu/ProgramDocs.cfm>.

b. Senate Bill 3

The EARIP is undertaking this work as part of a process that was initially begun voluntarily by stakeholders and that subsequently became subject to specific requirements pursuant to direction of the 80th Texas Legislature in Article 12 of Senate Bill 3 (“S.B. 3”). A copy of Article 12 can be found at <http://earip.tamu.edu/GuidanceDocs.cfm>. S.B. 3 includes a requirement that the EARIP must prepare, approve, and execute a program document by September 1, 2012. The program document may take the form of a Habitat Conservation Plan (“HCP”) under § 10 of the Endangered Species Act. It must provide, among other things, recommendations for withdrawal adjustments during critical periods to ensure that federally-listed species associated with the Edwards Aquifer and associated springs will be protected at all times including throughout a repeat of the drought of record. S.B. 3 also directs that a Steering

Committee be established to oversee the EARIP's activities.

c. Technical Resources

At a minimum, the following technical and scientific information developed by the EARIP resources will be utilized during the decision-making process. It is the intent of the EARIP that the decision-making process provides a full vetting of this information.

1. Science Subcommittee

The Texas Legislature required the EARIP to establish a Science Subcommittee comprised of individuals who have "technical expertise regarding the Edwards Aquifer system, the threatened and endangered species that inhabit that system, springflows, or the development of withdrawal limitations." The EARIP has appointed fifteen well-respected scientists from academia, state and federal agencies, water authorities and purveyors, and the private sector to serve as the Science Subcommittee and to make recommendations to the EARIP regarding:

- the option of designating a separate San Marcos pool, of how such a designation would affect existing pools, and of the need for an additional well to measure the San Marcos pool, if designated;
- the necessity to maintain minimum springflows, including a specific review of the necessity to maintain a flow to protect the federally threatened and endangered species;
- as to whether adjustments in the trigger levels for the San Marcos Springs flow for the San Antonio pool should be made; and
- withdrawal reduction levels and stages for critical period management to maintain target spring discharge and Aquifer levels based on an analysis of species requirements in relation to spring discharge rates and aquifer levels as a function of recharge and withdrawal levels.

The Science Subcommittee recommendations with respect to the first three issues were completed in November 2008 and then were evaluated in a peer-review process. The Science Subcommittee is currently working on the last issue. It is expected to complete its recommendations on the withdrawal reduction levels by December 31, 2009.

2. Biological Modeling Study

To support the Science Subcommittee's work on the withdrawal limitations and assist in the preparation of the program document, the EARIP has retained a team of scientists to evaluate the impacts of in-stream flows and other impacts such as recreation, flood events, and other factors on listed species in the Comal and San Marcos Springs systems, including the river reaches just downstream of the spring openings. *See* <http://earip.tamu.edu/Science/SciCommDocs.cfm> Each of the scientists on the team has worked extensively on the listed species in the springs. The team is led by Dr. Thomas Hardy from Utah State University. Dr. Hardy is expected to produce an initial report on this study by July 15, 2009, with a final report due by November 30, 2009. We anticipate that the EARIP and the facilitator(s) will be able to draw upon the services of Dr. Hardy and the team during the EARIP decision-making process.

3. United States Geological Survey

The EARIP retained the United States Geological Survey (“USGS”) to participate in the Hardy study process to ensure that the results will serve both the needs of the EARIP in preparing its program document and the FWS in reviewing it. Jean Cochrane of the USGS has worked with the Hardy team to assist in identifying impacts and developing influence diagrams of those impacts on listed species using Structured Decision-Making (SDM). See http://www.fws.gov/science/doc/structured_decision_making_factsheet.pdf (describing the Structured Decision-Making process); <http://earip.tamu.edu/Science/SciCommDocs.cfm> (influence diagrams). We anticipate that Jean Cochrane will continue to be available to assist the EARIP and facilitator(s) with scientific issues, including the targeted application of the SDM process. The selected facilitator(s) is encouraged to draw upon Ms. Cochrane’s work with Dr. Hardy’s team and her SDM expertise in the facilitation of scientific issues.

4. HCP Consultant

The EARIP is in the process of retaining a technical consultant to undertake the actual preparation of the program documents, including the required NEPA documentation. We anticipate that, in addition to preparing the program documents, the consultant will assist the stakeholders and facilitator(s) in developing measures and alternatives that will form the basis for these documents.

d. Tentative Decision-making Process/Timeline

The decision-making process will be open, inclusive, and transparent. It is expected that the selected facilitator will facilitate the decision-making process during meetings of the EARIP and will do all such preparatory and follow up work necessary to ensure that the process moves forward efficiently. The selected facilitator, or team, will be expected to coordinate with scientists who are also assisting the EARIP’s decision-making process.

In September, the EARIP will begin reaching the decisions necessary to develop a program document. Beginning in September, the Steering Committee, working with the EARIP stakeholders in a public, consensus-based process, will (1) develop specific goals and objectives for the program document, (2) resolve Endangered Species Act issues such as the geographic scope of the HCP, the duration of the permit, and the species to be covered. Later in the fall and into 2010, the Steering Committee, again working with the EARIP participants in a public, consensus-based process, will begin identifying the actions to be covered by the program document. Attachment 2 outlines some of the general issues the EARIP will have to address in its decision-making process. A rough timeline for addressing those issues is attached as Attachment 3.

2. RESPONDENT’S PROPOSAL SUBMITTAL

Two paper copies and an electronic pdf copy of all responses must be sent to:
Robert L. Gulley, Ph.D.

Program Manager
Edwards Aquifer Recovery Implementation Program
Institute of Renewable Natural Resources
2632 Broadway, Suite 301
San Antonio, Texas 78215
210-222-0711 (W)
979-595-8084 (C)
RLGulley@ag.tamu.edu

No facsimiles will be accepted. Questions regarding this RFP should also be sent to Robert Gulley by e-mail. All responses must be received by 5 p.m. CDT on June 12, 2009. Statements received after 5:00 p.m. on June 12, 2009, will be declared late and will not be eligible for consideration.

Responses to this RFP will be reviewed by a Work Group that will identify a short list of candidate facilitators for initial telephone interviews, followed by in-person interviews of the finalists on or before August 12, 2009. Those persons interviewed in-person will be expected to make a brief presentation to the Steering Committee and stakeholders at the EARIP meeting on August 13, 2009.

Formal selection of the facilitator(s) will be made by the Steering Committee, with input from stakeholders and the Work Group. The EARIP will base its choice largely on demonstrated competence and experience in facilitating the decision-making process of large consensus-based stakeholder groups with respect to water allocation issues involving complex technical and scientific issues. Experience with public stakeholder processes and water issues involving federally-listed species will be considered a plus. The EARIP has been awarded a Section 6 Habitat Conservation Planning Assistance Grant from FWS. It is anticipated that the federal and non-federal contributions will cover most, if not all of the cost of the facilitation. *See*

<http://earip.tamu.edu/ProgramDocs/EARIP%20Section%206%20Grant%20-%20Appl.pdf> (Section 6 Grant Application). The grant is a cost-reimbursement grant. The EARIP will contract for the selected facilitator(s) through a contracting agent. The EARIP reserves the right to reject any and all RFPs received or to negotiate separately with any source whatsoever in any manner necessary to serve the best interest of the EARIP. The EARIP does not intend to pay for the information solicited or obtained through any response.

3. SPECIFIC INFORMATION REQUESTED

The respondent will provide information about the individual(s) who will facilitate the EARIP decision-making process. Current resumes should be provided for that individual or individuals.

Responses should include the following information:

- A brief statement (no more than one page) describing the proposed facilitator's(s') assessment of the facilitation needs of the EARIP process;
- A two-to-three page statement regarding how the proposed facilitator(s) anticipates approaching the facilitation of the EARIP decision-making process. The statement should include the facilitator's(s') approach to integrating the technical resources described above and the information developed by USGS through Structured Decision-Making;

- A list of any facilitation process that the proposed facilitator(s) has been involved with that included participation by any of the Stakeholders shown in Attachment 1 within the last 5 years. This list should include, at a minimum, contact information, type of work done, and dates of work performed;
- A list of the projects with which the proposed facilitator(s) has had a primary role in facilitating disputes regarding water issues involving complex technical and scientific issues. The list should identify the nature of the dispute, the scientific issues involved, and the outcome for each project. The list should also state whether the dispute involved federally-listed species, whether the facilitation occurred in an open process, and whether the facilitation involved a multi-party collaborative, consensus-based process;
- A list of references complete with names, addresses, e-mail addresses, and phone numbers for the proposed facilitator(s). Any reference should include persons who have knowledge of the proposed facilitator's(s') work on at least one of the projects described above;
- Comparable references for each person expected to participate in any direct facilitation capacity;
- A timely completion of the project is important to the EARIP. Accordingly, please identify all other significant projects that the proposed facilitator(s) will be involved with between August 2009 and December 2010 and the amount of that person's involvement; and
- The billing and fee structure, including expenses (travel, etc.) of the proposed facilitator(s) and all persons who will assist the proposed facilitator(s) in the facilitation process. Respondent should estimate the number of hours that each person will spend each month on the project assuming that the process will include approximately 24 full-day decision-making sessions over the period from August 2009 through December 2010, some of which may occur over two consecutive days, and taking into account the amount of preparatory and follow up work that will be required for each session.

To the extent possible, the response should be limited to 20 pages.

4. RIGHTS RESERVED

The EARIP expressly reserves the right to accept or reject any and all statements submitted; and is under no legal requirement to execute a resulting contract on the basis of this RFP and intends that the material is to be provided only as a means of identifying the various consultant alternatives.

This RFP does not commit the EARIP or its contracting agent to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the EARIP to award a contract or to pay any costs incurred in the preparation of a response. The EARIP specifically reserves the right to vary all provisions set forth at any time prior to

execution of a contract where it deems it to be in the best interest of the EARIP.

ATTACHMENT 1

PARTICIPANTS IN THE EDWARDS AQUIFER RECOVERY IMPLEMENTATION PROGRAM

The following thirty-nine Stakeholders have executed the 2007 Memorandum of Agreement with the United States Fish and Wildlife Service regarding participation in the Edwards Aquifer Recovery Implementation Program:

Aquifer Guardians in Urban Areas
Alamo Cement Company
Bexar County
Bexar Metropolitan Water District
Carol G. Patterson
City of Garden Ridge
City of New Braunfels
City of San Marcos
City of Victoria
Comal County
CPS Energy
Dow Chemical
East Medina Special Utility District
Edwards Aquifer Authority
Gilleland Farms
Greater Edwards Aquifer Alliance
Greater San Antonio Chamber of Commerce
Guadalupe Basin Coalition
Guadalupe-Blanco River Authority
Guadalupe County Farm Bureau
John M. Donahue, Ph.D.
Larry Hoffman
Mary Q. Kelly
Nueces River Authority
New Braunfels Utilities
Protect Lake Dunlap Association
Regional Clean Air and Water Association
San Antonio River Authority
San Antonio Water System
San Marcos River Foundation
South Central Texas Water Advisory
Committee
South Texas Farm and Ranch Club
Texas Bass Federation
Texas Commission on Environmental
Quality
Texas Department of Agriculture
Texas Living Waters Project
Texas Parks and Wildlife Department

Texas Water Development Board
Texas Wildlife Association

**OUTLINE OF SOME ELEMENTS OF THE DECISION-MAKING
PROCESS FOR THE DEVELOPMENT OF THE PROGRAM
DOCUMENT**

- A. Define goals and objectives
 - a. Biological
 - b. Policy and management goals
- B. Resolve threshold ESA issues:
 - a. What constitutes the program document?
 - b. Who is the applicant for the HCP part of the program document?
 - c. What is the geographic scope of the HCP?
 - d. What are the “covered species”?
 - e. What will be the length of the HCP?
- C. Determine what the “covered activities” are:
 - a. Develop aquifer management alternatives
 - i. Hardy Study
 - ii. Science Subcommittee recommendations on “k” and “j” charges
 - b. Tradeoffs: Are we willing to implement actions to ameliorate the impacts of the management alternatives?
 - i. Identify specific actions to protect and/or maintain springflow.
 - ii. Identify specific actions to protect species or habitat
 - iii. Influence diagrams
 - c. Timing, cost, and feasibility of the actions?
 - d. Input from Hardy team, Science Subcommittee and consultant on the adequacy of the action.
- D. Identify actions necessary to minimize and mitigate “take” to the “maximum extent practicable.”
- E. Determine whether additional actions are necessary to contribute to the recovery of the species.
- F. Develop an Implementing Agreement
 - a. Who will implement what actions and when.
 - b. Sources of funding