

IMPLEMENTING AGREEMENT

by and among

**The Edwards Aquifer Authority, The City of New Braunfels,
The City of San Marcos,
The City of San Antonio acting by and through its
San Antonio Water System Board of Trustees,
Texas State University – San Marcos, Texas Parks and Wildlife Department**

and

United States Fish and Wildlife Service

**to implement the Habitat Conservation Plan
for the Edwards Aquifer Recovery Implementation Program**

This Implementing Agreement (“Agreement”) is made and entered into by and among the Edwards Aquifer Authority (“EAA”), the City of New Braunfels, Texas (“New Braunfels”), the City of San Marcos, Texas (“San Marcos”), the City of San Antonio, Texas, acting by and through its San Antonio Water System Board of Trustees (“San Antonio”), Texas State University – San Marcos (“the University”) (collectively “the Permittees”), the Texas Parks and Wildlife Department (the “Department”), and the UNITED STATES FISH AND WILDLIFE SERVICE (“USFWS” or the “Service”). Each Permittee, the Department, and the Service may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

Recitals

Recital A. Edwards Aquifer. The Edwards Aquifer is a karstic aquifer system characterized by complex geology, prolific recharge, very high permeability, and the capability to produce large quantities of high-quality water. The Aquifer is the primary source of water for the residents of South Central Texas in the San Antonio, Texas, region, and is vital to the general economy and welfare of the State of Texas.

Recital B. Springs. The Edwards Aquifer discharges at, among other locations, Comal Springs and San Marcos Springs. These springs are important to the quality of life and economies of New Braunfels and San Marcos, respectively, as well as providing instream flows for recreation uses downstream of these springs in the Comal River and San Marcos River. The flow from these springs is influenced by the water level of the Aquifer, which in turn is influenced by the ratio of recharge over time in relation to natural discharge through springs and artificial discharge through wells.

Recital C. Listed Covered Species: Comal Springs. Certain Covered Species listed as threatened or endangered under the ESA have been identified to occupy, be associated with, or depend upon discharges from the Edwards Aquifer at Comal Springs as well as instream flows proximately downstream of the springs in Landa Lake and the Comal River and associated riparian areas within New Braunfels. The listed Covered Species related to Comal Springs are: (1) the fountain darter (*Etheostoma fonticola*), (2) the Comal Springs riffle beetle (*Heterelmis comalensis*), (3) the Comal Springs dryopid beetle (*Stygoparnus comalensis*), and (4) the Peck's cave amphipod (*Stygobromus pecki*).

Recital D. Listed Covered Species: San Marcos Springs. Certain Covered Species listed as threatened or endangered under the ESA have been identified to occupy, be associated with, or depend upon discharges from the Edwards Aquifer at San Marcos Springs as well as instream flows proximately downstream of the springs in Spring Lake and the San Marcos River and associated riparian areas within San Marcos. The listed Covered Species related to San Marcos Springs are (1) the fountain darter (*Etheostoma fonticola*), (2) the Comal Springs riffle beetle (*Heterelmis comalensis*), (3) Texas wild rice (*Zizania texana*), (4) the Texas blind salamander (*Eurycea rathbuni*), (5) the San Marcos gambusia (*Gambusia georgei*), and (6) the San Marcos salamander (*Eurycea nana*).

Recital E. Petitioned Covered Species: Comal Springs. A certain Covered Species petitioned for listing as either threatened or endangered under the ESA has been identified to occupy, be associated with, or depend upon discharges from the Edwards Aquifer at Comal Springs as well as instream flows proximately downstream of the springs in Landa Lake and the Comal River and associated riparian areas within New Braunfels. The petitioned Covered Species related to Comal Springs is the Comal Springs salamander (*Eurycea sp.*).

Recital F. Petitioned Covered Species: San Marcos Springs. Certain Covered Species petitioned for listing as either threatened or endangered under the ESA have been identified to occupy, be associated with, or depend upon discharges from the Edwards Aquifer at San Marcos Springs as well as instream flows proximately downstream of the springs in Spring Lake and the San Marcos River and associated riparian areas within San Marcos. The petitioned Covered Species related to San Marcos Springs are (1) the Edwards Aquifer diving beetle (*Haideoporus texanus*) and (2) the Texas troglobitic water slater (*Lirceolus smithii*).

Recital G. Creation of the EAA. To provide for the necessary and effective management of the Edwards Aquifer to sustain the diverse economic and social interests associated with the Edwards Aquifer and foster the interests of the Covered Species, the EAA was created by the Texas Legislature in 1993. The EAA manages the Edwards Aquifer pursuant to the EAA Act.

Recital H. Authorization for Incidental Take. Permittees have sought authorization from the Service for the "incidental take" of the Covered Species, as authorized by Section 10(a)(1)(B) of the ESA, which is incidental to, and not for the purpose of, the carrying out of the otherwise lawful Covered Activities described in Chapter 2 of the HCP.

Recital I. EARIP. The Permittees, with technical assistance from the Service, and with guidance and approval from the Edwards Aquifer Recovery Implementation Program (EARIP), have developed a series of Conservation Measures, described in the HCP to minimize and mitigate to the maximum extent practicable the impacts of the taking of the Covered Species incidental to the Covered Activities.

Recital J. Service Approval. It is anticipated that the Service will approve the Permittee's application for an incidental take permit (the "Permit"), including the HCP, and to issue the Permit to the Permittees.

Recital K. Purposes. The Parties desire to enter into this Agreement for the following purposes:

1. to ensure implementation of each of the terms of the Program Documents (defined in Article One below);
2. to describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement;
3. to provide assurances to the Permittees that as long as the terms of the Program Documents are properly implemented, no Additional Conservation Measures will be required of the Permittees, with respect to the Covered Activities for the Covered Species except as provided for in this Agreement or as may otherwise be required by applicable law; and
4. to assure the Permittees that compliance with the terms of the HCP, the Permit, and this Agreement is sufficient for Permittees to obtain and retain the Permit and adequately provides for the minimization and mitigation of the impacts of the incidental taking of the Covered Species resulting from the Covered Activities.

THEREFORE, in consideration of the facts and information stated in the foregoing Recitals and for other good and valuable mutual consideration, the Parties agree as provided in this Agreement.

Article One - Definitions

Section 1.1. Defined Terms. The following capitalized terms as used in this Agreement have the meanings provided in this Article Two.

- 1.1.1.** "Adaptive Management Process" or "AMP" means an iterative process designed to develop information gathered through monitoring and research, and the review and use of the results to confirm the efficacy of or to adjust the Conservation Measures described in Chapter 5 of the HCP, all as described in the FMA.

1.1.2. “Additional Conservation Measure” means a measure to minimize or mitigate impacts to one or more Covered Species that differs from the Conservation Measures and that is proposed by the Service in response to:

(a) an Unforeseen Circumstance; or

(b) a Changed Circumstance that is not planned for in Chapter 8 of the HCP or that is planned for in Chapter 8 of the HCP but for which the Service proposes a measure different from those included in that chapter.

1.1.3. “Agreement” means this Implementing Agreement.

1.1.4. “Application” means the application for the Permit, defined in Section 3.1.

1.1.5. “Aquifer” means the Edwards Aquifer as fully defined in subsection 1.1.13.

1.1.6. “Certificate of Inclusion” means a certificate issued by a Permittee to a non-federal person, firm or entity that has agreed to be bound by the terms of the HCP and the Permit pursuant to Section 9.2 of this Agreement. A form for the certificate is attached hereto and incorporated herein for all purposes as Exhibit A, and has been approved by the Service.

1.1.7. “Changed Circumstances” means changes in circumstances affecting one or more Covered Species or the Permit Area that reasonably could have been anticipated by the Permittees and the Service during the negotiation and development of the HCP and this Agreement and includes the circumstances that have been specifically planned for in Chapter 8 of the HCP.

1.1.8. “Conservation Measure” means a measure identified in Chapter 5 of the HCP, as such measure may be modified or developed pursuant to the Adaptive Management Process, to minimize or mitigate to the maximum extent practicable the impacts of the authorized taking of the Covered Species or contribute to the recovery of the Covered Species.

1.1.9. “Covered Activities” means those activities described in Chapter 2 of the HCP for which incidental take authorization of Covered Species is authorized pursuant to the Permit.

1.1.10. “Covered Species” means each of the species identified in Table 1-3 of the HCP for which the HCP provides protection in a manner sufficient to meet all of the criteria for issuing the Permit.

1.1.11. “Days” means calendar days unless otherwise specified. If the date of any performance falls on a Saturday, Sunday, or observed state, Federal or local holiday, the date of performance is the next business day following the calculated date of performance.

1.1.12. “EAA Act” means the Edwards Aquifer Authority Act, Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended.

1.1.13. “EARIP” means the Edwards Aquifer Recovery Implementation Program, which was developed through the consensus-based process under Section 1.26A of the EAA Act as amended.

1.1.14. “Edwards Aquifer” means the Southern (or San Antonio) Segment of the Edwards Aquifer as defined in Section 1.03(1) of the EAA Act and within the boundaries of the EAA.

1.1.15. “Effective Date” means the date on which this Agreement takes effect, as provided in Section 5.1 of this Agreement.

1.1.16. “ESA” means the Federal Endangered Species Act of 1973, as amended (16 U.S.C. §§ 1531-1544).

1.1.17. “Funding and Management Agreement” or “FMA” means that certain agreement effective January 1, 2012, to which the EAA, New Braunfels, San Marcos, San Antonio, and the University are parties, which provides for the funding and management of the HCP.

1.1.18. “HCP” means the Habitat Conservation Plan required by Section 10(a)(2)(A) of the ESA that has been prepared by the Permittees and submitted to and approved by the Service as part of the application of the Permittees for an incidental take permit pursuant to Section 10(a) of the ESA.

1.1.19. “Permit” means the incidental take permit to be issued by the Service to the Permittees pursuant to Section 10(a) of the ESA.

1.1.20. “Permit Area” means the geographic jurisdictional area of the EAA as defined in Section 1.04 of the EAA Act in all of Uvalde, Medina, and Bexar Counties, and part of Atascosa, Guadalupe, Comal, Caldwell, and Hays Counties, all in the State of Texas, as depicted in Figure 1-3 of the HCP, which includes the Comal Springs, Landa Lake, and the portion of the Comal River and associated areas riparian thereto within the municipal boundaries of New Braunfels in Comal County, Texas, and the San Marcos Springs, Spring Lake, and the portion of San Marcos River and associated areas riparian thereto within the municipal boundaries of San Marcos in Hays County, Texas.

1.1.21. “Permittees” means the EAA, New Braunfels, San Marcos, San Antonio, and the University, but does not include the Department.

1.1.22. “Person” means an individual and any organization or entity, such as a business or a governmental unit, that has a legal identity apart from its members

1.1.23. “Program Documents” means this Agreement, the FMA, the HCP, the Application, and the Permit.

1.1.24. “Program Manager” means the employee of the EAA identified in Section 2.2 of the AMP and Section 1.3 of the FMA whose responsibility it is to administer the implementation of the HCP pursuant to the provisions of the Program Documents.

1.1.25. “Recitals” means the Recitals in this Agreement.

1.1.26. “Third Party Provided With Incidental Take Coverage” means any person, other than a Permittee, who performs one or more of the Covered Activities or Conservation Measures authorized by the Permit pursuant to the provisions of 50 CFR §13.25(d) or (e), as more specifically provided for in section 9.1 of this Agreement.

1.1.27. “Unforeseen Circumstances” means changes in circumstances affecting one or more Covered Species or the Permit Area that could not reasonably have been anticipated by the Permittees and the Service at the time of the negotiation and development of the HCP and this Agreement, and that result in a substantial and adverse change in the status of one or more Covered Species. The term Unforeseen Circumstances is intended to have the same meaning as defined in this Agreement is intended to have the same meaning as “extraordinary circumstances” as used in the No Surprises policy.

Section 1.2. Other Terms.

Terms used in the Program Documents will have the meanings assigned in the ESA and applicable regulations, except as explicitly provided in this Agreement or the respective Program Document. Unless the context in any of the Program Documents clearly indicates otherwise, terms and words not specifically defined in this Article One, the FMA, or in the ESA or in applicable regulations will have their ordinary meanings. As may be appropriate to the context, singular pronouns and words will be interpreted to include the plural, and pronouns of any gender will be interpreted to include other genders. References in this Agreement to Articles, Sections or Subsections are to the appropriate part of this Agreement, unless another Program Document is specified.

Article Two - Incorporation

Section 2.1. Incorporation of Recitals

The statements in the Recitals are incorporated in this Agreement as if fully restated as Agreement terms.

Section 2.2. Incorporation of Program Documents and Permit; Interpretation

The HCP and each of its provisions are intended to be, and by this reference are, incorporated in this Agreement. In the event of any direct contradiction between the terms of this Agreement and the terms of either the HCP or the FMA, the terms of this Agreement will control. In the event of a direct contradiction between the provisions of the HCP and the terms of the FMA, the FMA will control. In all other cases, the terms of this Agreement and the terms of the HCP and the FMA will be interpreted to be complementary to one another.

Section 2.3. Terms in the Permit Control

The terms and provisions of the Permit and the terms and provisions of the Program Documents are intended by the Parties, and will be interpreted, to be complementary. In the event of any direct contradiction between the terms of the Permit and other Program Documents, the terms of the Permit will control.

Article Three - Habitat Conservation Plan and Adaptive Management

Section 3.1. The Habitat Conservation Plan

Pursuant to the provisions of Section 10(a)(2)(A) of the ESA, Permittees have prepared and submitted to the Service the HCP to support their application (Application) for an incidental take permit (Permit) , and the Service is expected to approve the Application, including the HCP, and issue the Permit. The HCP provides for two phases, consisting of Phase One and Phase Two, to be conducted during the Permit term, as further described in Section 1.4.2 of the HCP. The effectiveness of the HCP in minimizing and mitigating the impacts of the authorized incidental take of the Covered Species will be considered on the basis of the implementation of the Conservation Measures set forth in Chapter 5 of the HCP, or as modified through the adaptive management process described in Section 3.2.

Section 3.2. Importance of Adaptive Management

The Conservation Measures proposed to be funded and implemented by the Permittees meet the incidental take permit issuance criteria of the ESA and applicable regulations. The Parties recognize, however, that because of the number of Covered Species, the quantity and quality of the data and information regarding some of the Covered Species, and the dynamic nature of the habitats of both the Covered Species and the pursuit of the Covered Activities, an essential component of the HCP is science-based management that adapts to changing information about the Covered Species. The Permittees have thus developed and incorporated into this Agreement the description of the adaptive management process (AMP) in the FMA. The iterative AMP process provided in the FMA requires the Permittees to rely on the best available scientific and commercial information and knowledge for monitoring, research, and management practices to minimize and mitigate, to the maximum extent practicable, the impacts of the authorized taking

of the Covered Species. Each Party will, to the maximum extent practicable, fully cooperate in implementing the AMP.

Section 3.3. Adaptive Management Process Adjustments and Changes

As more particularly described in the FMA, the Parties will comply with the AMP to evaluate the effectiveness of the Conservation Measures and to make appropriate adjustments if warranted.

3.3.1 Changes to Conservation Measures pursuant to the AMP, including Changed Circumstances Provided for in the HCP. The potential for voluntary changes to Conservation Measures to address new information is contemplated in Chapter 6 of the HCP and in the FMA pursuant to the AMP. In addition, certain changes to Conservation Measures to respond to specific Changed Circumstances are contemplated in Chapter 8 of the HCP and Subsection 8.7.2.

3.3.2. Additional Conservation Measures to Address Unforeseen Circumstances or Changed Circumstances not Provided for in the HCP.

(a) In the event of Changed Circumstances not planned for in Chapter 8 of the HCP, the obligations of the Permittees to implement Additional Conservation Measures are controlled by 50 C.F.R. §§17.22(b)(5)(ii) and 17.32(b)(5)(ii) and Section 8.7.

(b) In the event of Unforeseen Circumstances, the obligations of the Permittees to implement Additional Conservation Measures are controlled by 50 C.F.R. §§17.22(b)(5)(iii) and 17.32(b)(5)(iii) and Section 8.7.

(c) Any Additional Conservation Measures that the Permittees agree to implement will be evaluated pursuant to the AMP.**3.3.3. Requirement for Permit Amendment.** If the Conservation Measures are changed or supplemented as a result of the AMP, including in response to Changed Circumstances or Unforeseen Circumstances, the Service will not require the Permittees to follow the procedures for a substantive amendment to the Permit, HCP, or this Agreement, except in the circumstances identified in Subsection 9.2.2 of the HCP. The Service will not require the Permittees to follow procedures for a substantive amendment to implement measures listed in Table 8.1 of the HCP in response to identified Changed Circumstances.

Section 3.4. Reporting of Changes Resulting From Adaptive Management Process

All proposed changes as a result of the AMP will be identified in the annual implementation report submitted to the Service as provided in Section 7.1.3 of this Agreement.

Article Four - Requirements for Permit Issuance

Section 4.1. Conservation Measures in HCP.

In order to fulfill the requirements that will allow the Service to issue the Permit, the HCP requires the Permittees to take Conservation Measures that are intended to ensure (i) that any take occurring as a result of the Covered Activities within the Permit Area will be incidental to otherwise lawful activities; (ii) that the impacts of the take will, to the maximum extent practicable, be minimized and mitigated; and (iii) that the take authorized by the permit will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. The HCP includes procedures for developing measures to accommodate Changed Circumstances and Unforeseen Circumstances and measures that have been suggested by the Service as being necessary or appropriate for purposes of the HCP. The HCP also requires that adequate funding for the HCP be provided.

Section 4.2. Cooperative Efforts.

Each of the Parties to this Agreement will perform certain specific tasks relating to the Conservation Measures, as more particularly provided in the Program Documents. The Program Documents thus describe a program for cooperation by Federal, State, and local agencies to minimize and mitigate the effects of the take of Covered Species which may be caused by Covered Activities.

Article Five - Effective Date and Term

Section 5.1. Effective Date.

This Agreement is effective on the date that the Service issues the Permit.

Section 5.2. Term of Agreement.

This Agreement will remain effective for a term commensurate with the term of the Permit as it may be extended.

Section 5.3. Extension of the Permit.

The Service may, with the agreement of the Permittees, from time to time extend the Permit for an additional period of years beyond its initially stated period of years in compliance with the applicable law and regulations in effect on the date of any such extension.

Article Six - Funding and Management

Section 6.1. The FMA.

The Permittees have entered into the FMA, which provides the terms of the AMP and provides for the management, administration, and payment of the costs of the HCP. The costs of each

Permittee's Conservation Measures for implementing the HCP will be funded in accordance with the funding and payment provisions of the FMA.

Section 6.2. Commitment to Funding Obligations.

Execution of this Agreement and the contemporaneous execution of the FMA constitute each Permittee's commitment to the Service: (i) to carry out the Conservation Measures for which the Permittee is assigned responsibility in Chapter 5 of the HCP in accordance with the FMA; and (ii) to be responsible for obtaining funding from the EAA as described in the FMA. The FMA provides that under no circumstances will any Permittee be required to expend funds in connection with the Program Documents in excess of that Permittee's respective funding commitments described in the FMA. The costs of all adaptive management actions, the implementation of responses to Changed Circumstances that were planned for in Chapter 8 of the HCP, and the implementation of any Additional Conservation Measures to respond to Changed Circumstances that were not planned for in Chapter 8 of the HCP or to respond to Unforeseen Circumstances that the Parties have agreed to implement in accordance with Subsection 8.7.2 and 8.7.3, will be funded in accordance with Articles 4 and 5 of the FMA with appropriate reallocations and prioritizations made to the budget as may be necessary to accommodate the measure.

Section 6.3. Notification to Service.

A Permittee will promptly notify the other Permittees and the Service if the Permittee's funding resources, including funding from the EAA as described in the FMA, have materially changed from the relevant information relating to those resources available to the Permittee on the Effective Date. The notification will include an explanation of the funding change.

**Article Seven - Responsibilities of the Parties
for HCP Implementation; Responsibilities of the Service
for Monitoring; and Responsibilities of the Department**

Section 7.1. Responsibilities of the Permittees

7.1.1. The Parties acknowledge that the HCP will achieve its purpose if the terms of the Program Documents have been or are being fully implemented.

7.1.2. To the full extent of their respective funding commitments, the Permittees will undertake all Conservation Measures set forth in Chapter 5 of the HCP in order to meet the terms of the HCP and comply with the Permit, including the AMP.

7.1.3. The Permittees will submit an annual report (Annual Report) which includes a description of the Permittees' HCP activities and an analysis of whether the terms of the HCP were met for the reporting period. The Annual Report will provide all reasonably available data regarding incidental take, and if requested by the Service and practicable

to ascertain, data regarding changes to the overall population of Covered Species or changes to their habitat that occurred in the Permit Area during the reporting period.

Section 7.2. Responsibilities of the Department

The Department will undertake all Conservation Measures assigned to it as provided in Chapter 5 of the HCP and fully cooperate with the Permittees in the preparation and development of the Annual Report provided for in Section 7.1.3.

Section 7.3. Responsibilities of the Service

7.3.1. The Service will cooperate and provide technical assistance to the Permittees. Nothing in this Agreement will require the Service to act in a manner contrary to the requirements of the Anti-Deficiency Act.

7.3.2. The Service will monitor Permittees implementation of the Permit, including each of the terms of this Agreement and the HCP in order to ensure compliance with the Permit, the HCP and this Agreement

Article Eight - Remedies and Enforcement

Section 8.1. Good Faith Resolution

The Parties will work together in good faith to resolve disagreements and will use informal meetings and conferences to reach mutually satisfactory conclusions to matters in dispute.

Section 8.2. Notice of Alleged Default

In the event that any Party fails or refuses to undertake or complete any obligation required by the Program Documents, the Party alleging such default will notify the Party alleged to be in default, the Service, the Program Manager, and the other Parties of the alleged default. The Party alleged to be in default will be given reasonable opportunity, which, absent extenuating circumstances requiring more immediate action, will not be fewer than 60 days, to cure the alleged default.

Section 8.3. Remedies in General

Except as set forth below, each Party will have all remedies otherwise available to enforce the terms of the Program Documents and the Permit and to seek remedies for any breach hereof, subject to the provisions of this Section and other applicable law.

8.3.1. No Monetary damages. No Party will be liable in damages to any other Party or other person for any breach of the Program Documents, any performance or failure to perform a mandatory or discretionary obligation imposed by the Program Documents, or any other cause of action arising from this Agreement. Notwithstanding the foregoing,

the Parties will retain certain liabilities and authorities, as described in the following paragraphs:

- (a) **Retain Liability.** Except as to liability under the ESA for incidental takes of the Covered Species that result from the Covered Activities, all Parties will retain whatever liability they would possess for their present and future acts or failure to act if this Agreement did not exist.
- (b) **Land Owner Liability.** Except as to liability under the ESA for incidental takes of Covered Species that result from the Covered Activities, all Parties will retain whatever liability they possess as an owner of interests in land.
- (c) **Responsibility of the United States.** Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA and other applicable laws. However, so long as the HCP is being properly implemented in accordance with the Program Documents, the Service will not seek civil or criminal penalties or otherwise enforce the take prohibitions of the ESA and other applicable laws for incidental take of Covered Species that is in accordance with the terms of the Permit.

8.3.2. Injunctive Relief and Temporary Relief. The Parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

8.3.3. No Allocation of Individual Responsibility. The Parties have quantified the effects of the Covered Activities for development of the HCP. The Parties acknowledge that the possible decline of species and habitats in the Permit Area could be caused by many factors, and therefore have not separately quantified specific impacts that any person's Covered Activities may have had or will have upon the Covered Species and their habitats.

Section 8.4. Permit Severability

If any part or provision of this Agreement is held invalid or unenforceable by a court having jurisdiction under applicable law, and after exhaustion of all available appeals, said part or provision will be ineffective only to the extent of such invalidity without in any way affecting the remaining parts of said part or provision or the remaining provisions of this Agreement. Notwithstanding the provision for severability in the preceding sentence, in the event any partial invalidity or any partial rescission alters the relative balance of benefits of the Parties to the substantial disadvantage of a Party, the Parties will attempt to negotiate a modification of the terms of the Agreement in order to reestablish the original balance of benefits, and if such modification is not agreed to within a reasonable time, the disadvantaged Party may rescind the

Agreement, but the Agreement will remain in effect for the remaining Parties. Nothing in this provision constrains the authority of the Service to suspend or revoke the Permit in accordance with applicable law and regulations

Section 8.5. Suspension of Permit Coverage

8.5.1. Consistent with 50 C.F.R §§ 13.27-13.29, in the event of a material violation of the Permit or this Agreement by a Permittee, the Service may suspend Permit coverage as to that Permittee in whole or in part. The Service may suspend coverage relative to an individual Permittee if the Permittee is not in compliance with the conditions of the Permit, this Agreement, or any applicable Federal Law, and it shall be within the Service's sole discretion to determine whether a suspension, if justified, applies to all the Permittee's Covered Activities or to a particular Covered Activity.

8.5.2. The Service recognizes that Conservation Measures will be implemented by different Permittees, each having differing legal authorities and contractual commitments to perform the measures, and that the Conservation Measures, while interrelated, have not all been measurably compared to each other to determine the likely effects of nonperformance of a particular Conservation Measure on the efficacy of another particular Conservation Measure or on the well-being of the Covered Species. The Service may, therefore, also suspend Permit coverage of one or more complying Permittees as a result of the noncompliance of a single Permittee if the noncompliance materially affects compliance with the applicable Permit issuance criteria or the efficacy of any Conservation Measure being implemented by another Permittee. Coverage for an individual Permittee under the Permit will not be suspended, revoked, or terminated against its will due solely to the noncompliance of another Permittee unless the Service determines that the noncompliance materially affects compliance with relevant Permit issuance criteria or that a material relationship exists between the Conservation Measure of the noncomplying Permittee and the Conservation Measure or Measures of the complying Permittee.

8.5.3. For the purposes of the HCP, the procedures applicable to any suspension will be in accordance with the Federal regulations in effect at the time of the suspension; provided however, that, at a minimum, the Permittee for whom the Permit has been suspended will be afforded the procedural rights set forth in 50 C.F.R. §§13.27 and 13.29 in existence on the Effective Date. In addition, in the case of a proposed partial suspension, the procedural rights will be afforded to the other Permittees, including the right to notice and opportunity to cure or mitigate on behalf of the nonperforming Permittee. The suspension will remain in effect until the Service determines that the Permittees have corrected the deficiencies. The Service may pursue partial suspension of the Permit with respect to specified Covered Species, or to a portion of the Permit Area or Covered Activities, or in relation to a specific Permittee or specific Permittees. In the event of a partial suspension, the portion of the Permit not subject to suspension will remain in full force and effect.

Section 8.6. Permit Revocation

8.6.1. The Service will not revoke the Permit for any reason except those listed in 50 C.F.R. §13.28(a)(1)-(5), or unless the Covered Activities are inconsistent with the criteria set forth in 16 U.S.C. §1539(a)(2)(B)(iv) and the inconsistency has not been remedied. Notwithstanding the foregoing, the Permit will be revoked only if the Service, the Permittees, and other interested parties have not been successful in remedying any inconsistency through other means.

8.6.2. The Service may pursue Permit revocation with respect to specified Covered Species, to a portion of the Permit Area or the Covered Activities, or in relation to a specific Permittee or specific Permittees in lieu of pursuing revocation of the entire Permit. In the event of a partial revocation, the portion of this Permit not subject to revocation will remain in full force and effect. All Conservation Measures in the HCP that are continued in effect after any Permit revocation will be taken into account by the Service and credited toward any future efforts by the Permittees to ensure that any Covered Activities are in compliance with requirements of the ESA.

8.6.3. Procedures applicable to any revocation will be in accordance with the federal regulations in effect at the time of the revocation; provided, however, that, at a minimum, the Permittee will be afforded the procedural rights set forth in 50 C.F.R. §§13.28 and 13.29 in effect on the Effective Date. In addition, if the Service seeks partial revocation for a particular Permittee, these procedural rights will also be afforded to the other Permittees, including the right for notice and opportunity to cure or mitigate on behalf of the non-performing Permittee. This provision will survive any revocation of the Permit in whole or in part and will remain in full force and effect thereafter.

Section 8.7. Limitations and Extent of Enforceability.

This Agreement is subject to the limitations of liability and enforceability provided in this Section.

8.7.1. No Surprises Rule. For the purposes of the No Surprises Rule (50 C.F.R. §§17.22(b)(5) and 17.32(b)(5)), the Service has determined that the Covered Species are adequately addressed by the HCP and that the Permittees are entitled to all of the assurances provided in such rule.

8.7.2. Responses to Changed Circumstances.

(a) In the event that Changed Circumstances occur during the term of the Permit and a responsive measure has been planned for in Chapter 8 of the HCP, in accordance with 50 CFR §§ 17.22(b)(5)(i) and 17.32(b)(5)(i) the appropriate Permittee or Permittees will ensure that the planned responsive measure is

promptly implemented. The Permittees will follow the AMP in determining the details of implementation.

(b) In the event that Changed Circumstances occur during the term of the Permit and a responsive measure has not been planned for in Chapter 8 of the HCP, the obligations of the Permittees are governed by 50 CFR §§ 17.22(b)(5)(ii) and 17.32(b)(5)(ii). If the HCP is being properly implemented by the Permittees, the Service will require the implementation of an Additional Conservation Measure by the Permittees to address such a Changed Circumstance only if:

- (1) the measure is necessary to respond to the Changed Circumstance; and
- (2) all of the Permittees consent in writing to the implementation of the Additional Conservation Measure.

(c) Changed Circumstances for which a responsive measure has not been planned in the HCP will be resolved through procedures consistent with those applicable to Unforeseen Circumstances.

(d) If any Permittee discovers that Changed Circumstances have occurred, the Permittee will give notice to the Program Manager who will then give notice to the other Permittees and the Service as soon as practicable after learning of the Changed Circumstances.

8.7.3. Response to Unforeseen Circumstances.

(a) In the event of the occurrence of Unforeseen Circumstances during the term of the Permit, in accordance with 50 CFR §§ 17.22(b)(5)(iii)(A) and 17.32(b)(5)(iii)(A), if the HCP is being properly implemented the Service will not require of the Permittees the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon in the HCP without the unanimous consent of the Permittees.

(b) In the event of the occurrence of Unforeseen Circumstances during the term of the Permit, in accordance with 50 CFR §§ 17.22(b)(5)(iii)(B) and 17.32(b)(5)(iii)(B), if the HCP is being properly implemented, the Service will require the implementation of an Additional Conservation Measure by the Permittees only in accordance with Paragraph (a) of this Subsection and only if the measure:

- (1) is necessary to respond to the Unforeseen Circumstance; and

- (2) is limited to modifications that:
 - (A) are consistent with and maintain the terms of the HCP to the maximum extent possible, and
 - (B) either are within the conserved habitat areas, if any, for the Covered Species or relate to the HCP's operating conservation program for the affected Covered Species.

(c) In accordance with 50 CFR §§ 17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C), the Service has the burden to demonstrate the existence of an Unforeseen Circumstance.

8.7.4. Minimizing Effect on Permittees. If Additional Conservation Measures are required, in accordance with applicable regulations and Subsections 8.7.2 and 8.7.3, for the benefit of one or more of the Covered Species as the result of a Changed Circumstances that is not planned for in Chapter 8 of the HCP or Unforeseen Circumstances, the Service will propose, to the extent possible, measures that will have the least effect upon the Permittees and the respective constituents served by the Permittees. Prior to proposing Additional Conservation Measures, the Service will consider all practical alternatives, including but not limited to additional public education, translocation programs, and propagation programs.

8.7.5. Cooperation of Permittees. If any Unforeseen Circumstances or Changed Circumstances should occur, the Permittees will cooperate with and assist the Service to address the circumstances.

8.7.6. Private Property Rights and Legal Authorities Unaffected. Except as otherwise specifically provided herein, nothing in this Agreement will be deemed to restrict the rights of the Permittees to the use or development of those lands, or interests in lands or water constituting the Permit Area; provided, that nothing in this Agreement will absolve the Permittees from such other limitations as may apply to such lands, or interests in lands, under other laws of the United States and the State of Texas.

8.7.7. Enforcement Discretion of the Service. To the extent that one or more Permittees violate the terms of the Permit, the Service will utilize its discretion to the maximum extent practicable and allowed by law, to pursue enforcement or to otherwise

craft a remedy, that does the least harm to the overall functioning of and implementation of the Permit and the HCP and to the rights and interests of those Permittees who have not violated the Permit.

Article Nine - Incidental Take Coverage

Section 9.1. Incidental Take.

Coverage for incidental take of Covered Species for Covered Activities or Conservation Measures in accordance with the terms of the Permit will be available to:

- (1) the Permittees;
- (2) Persons, other than federal entities, authorized under the EAA Act and the EAA's rules to withdraw groundwater from the Edwards Aquifer within the jurisdictional boundaries of the EAA and who are in compliance with the EAA Act and the EAA's rules;
- (3) the Department for activities related to the establishment and maintenance of state scientific areas and for activities related to implementing Conservation Measures;
- (4) Persons that support or facilitate recreational activities in the Permit Area in conformance with all conditions in a Certificate of Inclusion issued by New Braunfels, San Marcos, or the University; and individuals who participate in recreational activities in the Permit Area in conformance with all rules of New Braunfels, San Marcos, the University, or the Department applicable to the activities; and
- (5) other Persons undertaking Covered Activities or Conservation Measures who are: (i) under the direct control of a Permittee, in conformance with any approval granted by that Permittee, and in compliance with the Permit, this Agreement and the HCP; (ii) under contract with a Permittee to perform one or more Covered Activities or Conservation Measures to the extent such Persons perform in accordance with the terms of the contract, and in compliance with the Permit, this Agreement and the HCP; or (iii) subject to, and in compliance with, a Certificate of Inclusion issued by the Permittee for the jurisdiction within which the activity is to occur pursuant to Section 10.2 of this Agreement.

Section 9.2. Certificate of Inclusion.

9.2.1. Purpose and Applicability. The purpose of the issuance of Certificates of Inclusion is to provide certain persons whose activities fall under Section 9 of the ESA the option and benefits of complying with the terms of the Permit instead of having to obtain a separate incidental take permit under the ESA for those activities. Any person,

other than a Permittee, who desires to undertake one or more Covered Activities within the Permit Area may apply to a Permittee for a Certificate of Inclusion for that person's activities to be covered under the Permit. A Certificate of Inclusion will provide incidental take coverage to the person to take Covered Species as an incidental result of Covered Activities within the Permit Area pursuant to the terms of the Permit and this Agreement.

9.2.2. Development of Standards and Procedures. Each Permittee that accepts applications for the issuance of Certificates of Inclusion will issue such certificates only in accordance with the standards and procedures set forth in Chapter 5 of the HCP for issuance of Certificates of Inclusion. The standards and procedures will be consistent with this Section 9.2 and other applicable provisions of the Program Documents. A Permittee may establish an application fee schedule from time to time for Certificate applications and may determine the amount of the fee on a case-by-case basis, taking into account the level of effort required by the Permittee or its consultants or staff to process the application.

9.2.3. Application Process. A Person seeking to have an activity included in Permit coverage will submit a complete application for the proposed activity to the Permittee with jurisdiction over the activity sought to be covered by the Permit. Each Permittee that issues Certificates of Inclusion will develop an application form consistent with the approved standards and will independently process applications that may be submitted by Persons seeking to conduct Covered Activities within the Permittee's jurisdiction. Each application will contain a detailed description of the proposed activity, a map indicating the location of the proposed activity, an analysis of the potential impacts to Covered Species, and any other requested information, and will be accompanied by the application fee set by the Permittee. Each Permittee that issues Certificates of Inclusion will encourage compliance with the HCP through the Certificate of Inclusion process. The Permittee will deny an application for a Certificate of Inclusion if it determines, in its sole discretion, that the proposed inclusion is not consistent with the Biological Goals, Key Management Objectives, and Flow-Related Objectives of the HCP or will compromise the goals and provisions of the HCP or the Permit. Upon receiving from an applicant for a Certificate of Inclusion the required application materials and application fee, the Permittee will conduct any assessment and evaluation necessary for the Permittee to determine whether it should approve the application and grant the Certificate of Inclusion.

9.2.4. Issuance of Certificate of Inclusion. Upon a finding by the Permittee with jurisdiction over the Covered Activity that the applicant for a Certificate of Inclusion has (i) complied with that Permittee's application requirements standards and procedures; (ii) paid any application fees set by the Permittee; (iii) demonstrated, to the Permittee's satisfaction, that the proposed activity complies with all terms and requirements of the Program Documents, and that issuance of the Certificate of

Inclusion will not compromise the Biological Goals, Key Management Objectives, and Flow-Related Objectives of the HCP, the Permittee may approve the application and issue a Certificate of Inclusion to the applicant. The Certificate of Inclusion will be signed by the issuing Permittee and the applicant. By signing the Certificate of Inclusion, the applicant agrees to be bound by and comply with the terms of the Certificate of Inclusion, the Permittee's standards and procedures, and all applicable terms of the Program Documents. Upon obtaining the required signatures, the Permittee will cause the fully executed Certificate of Inclusion to be recorded in the Real Property Records in the applicable county and thereafter, during the term of the Certificate, the holder of the Certificate of Inclusion will be a Third Party Provided With Incidental Take Coverage, subject to the terms of Subsection 9.2.5. A breach of the obligations imposed upon the holder of the Certificate of Inclusion will not be considered a violation by the Permittee issuing the Certificate of Inclusion or any other Permittee or other Third Party Provided With Incidental Take Coverage.

9.2.5. Terms of Certificate of Inclusion. Incidental take coverage for any person who is a Third Party Provided With Incidental Take Coverage pursuant to a Certificate of Inclusion will be available only to the extent the person is in full compliance with all relevant requirements of the Certificate of Inclusion, the Program Documents, the standards and procedures adopted by the Permittee issuing the Certificate of Inclusion, and all other applicable legal requirements. Permittees will include as part of any Certificate of Inclusion, among other provisions:

- (1) a condition requiring compliance with the Program Documents, and any applicable independent funding agreement entered into to ensure funding for the HCP and that the full rights, benefits, and authorizations of the Permit shall apply;
- (2) a specific designation of the land or property to which the Certificate of Inclusion applies;
- (3) a description of the Covered Activity for which the Certificate of Inclusion was issued;
- (4) in the event of a breach of the Certificate of Inclusion, and if after reasonable notice by the Permittee and an opportunity to cure, the Third Party Provided With Incidental Take Coverage fails to cure, remedy, rectify, or adequately mitigate the effects of the breach, the Permittee will suspend or revoke the Certificate of Inclusion;
- (5) that the Certificate of Inclusion is valid for a specific term not to exceed two years, and that the Third Party Provided With Incidental Take Coverage must submit an application to renew a Certificate of Inclusion prior to the expiration of the current term in order to renew the certificate;

(6) a requirement that a copy of the recorded Certificate of Inclusion be posted in public view at the holder's site at any time Covered Activities are being conducted by the holder and, if applicable, that the holder provide notice of the Certificate of Inclusion to any purchaser of its services or goods that are sold or used within the permit Area; and

(7) that the Certificate of Inclusion is not transferable unless approved by the issuing Permittee, and such Permittee will not approve a transfer unless the Permittee determines, to its satisfaction, that the transferee will comply with all terms and conditions of the Certificate of Inclusion and that the transferee will not cause any deviation from any Covered Activity described in the Certificate of Inclusion.

9.2.6. Notice Required After Issuance of Certificate of Inclusion. Any Permittee issuing a Certificate of Inclusion will promptly notify and, within 30 days of issuance will provide a copy to, the Service, the Implementing Committee, and the Program Manager. The Permittee will also notify such persons of any Certificate suspension, revocation, transfer, or renewal.

Article Ten - General Provisions

Section 10.1. Response Times

The Parties agree that time is of the essence in performance of the obligations of this Agreement. Except as otherwise set forth herein or as required by applicable laws or regulations, the Parties will use reasonable efforts to respond to written requests within forty-five (45) days.

Section 10.2. No Partnership

Except as otherwise expressly set forth herein, neither the Permit nor the Program Documents will make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

Section 10.3. Nullification of Agreement

In the event that the Permit is revoked in its entirety or substantially modified without the consent of the Parties, this Agreement will be null and void, and in such event, no Party will be bound by its terms.

Section 10.4. Successors and Assigns

This Agreement and each of its covenants and conditions will be binding on and will inure to the benefit of the Parties and their respective successors and assigns, including Third Parties Authorized to Take. Assignment or other transfer of the Permit or any rights or authorities granted thereunder will be governed by ESA permit regulations

Section 10.5. Notice

Any notice authorized or required by this Agreement will be in writing, and either delivered personally, or by United States mail, certified and postage prepaid, return receipt requested to the addresses on file with the Program Manager and to the persons set forth below. Notwithstanding the foregoing, notices may be delivered by facsimile or other electronic means, provided that receipt is acknowledged and such notices are also delivered personally or by overnight or certified mail. Notices will be transmitted so that they are received within the specified deadlines. Notices delivered via certified mail will be deemed received seven (7) days after deposit in the United States mail. Notices delivered personally will be deemed received on the date they are delivered. Notices delivered by facsimile transmission or other electronic means will be deemed received on the date sent, subject to the requirement for acknowledgement and for an additional method of notification. Notices delivered via overnight delivery will be deemed received on the next business day after timely deposit with the overnight mail delivery service.

Assistant Regional Director
United States Fish and Wildlife Service
500 Gold Avenue, SW
Albuquerque, New Mexico 87102

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

City Manager
City of New Braunfels
424 South Castell Avenue
New Braunfels, Texas 78180

City Manager
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

President

San Antonio Water System
2800 U.S. Highway 281 North
San Antonio, Texas 78212

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

Executive Director
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Senior Program Manager – Endangered Species
Edwards Aquifer Authority
1615 N. St. Mary's Street
San Antonio, Texas 78215

Section 10.6. Entire Agreement

This Agreement, together with the other Program Documents, constitutes the entire agreement between the Parties. It supersedes any and all other agreements, either oral or in writing among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

Section 10.7. Amendment

Except as otherwise provided by its terms, this Agreement may be amended consistent with the ESA and with the written consent of each of the Parties hereto.

Section 10.8. Preparation by All Parties

This Agreement will not be construed as if it had been prepared by any one Party, but rather as if all the Parties had prepared the Agreement.

Section 10.9. Availability of Funds

Implementation of this Agreement and the HCP by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury.

Section 10.10. Multiple Original Counterparts

This Agreement may be executed in multiple counterparts, and each will be deemed an original. A complete original of this Agreement will be maintained in the official records of each of the Parties hereto.

Section 10.11. Third Party Beneficiaries

Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Agreement will not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor will it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties will remain as imposed under existing Federal or State law.

Section 10.12. Relationship to the ESA and Other Authorities

The terms of this Agreement will be governed by and construed in accordance with the ESA and other applicable laws. In particular, nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the Federal Government.

Section 10.13. References to Regulations

Any reference in the Permit, this Agreement, or any other Program Document to any regulation or rule of the Service will be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

Section 10.14. Changes in Environmental Laws

It is acknowledged and agreed by the Service that the Permittees are agreeing to perform substantial minimization and mitigation of the effects of the Covered Activities on the Covered Species due to the implementation of the Conservation Measures as set forth in the HCP. If a change in, or an addition to, any Federal law governing or regulating the impacts of Covered Activities occurs as they relate to Covered Species, including, but not limited to, ESA and NEPA, the Service will give due consideration to the measures required under the HCP in applying the new laws and regulations to the Permittees.

Section 10.15. Headings

The section headings used in this Agreement are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

Section 10.16. Faxed Signatures

Any Party may deliver its signed duplicate of this Agreement to any other Party by facsimile transmission, and such delivery will be deemed made and completed upon receipt of such facsimile transmission by the other Party. Any Party delivering a signed duplicate by facsimile transmission will promptly send the duplicate original bearing its original signature to the other Party, provided that a delay or failure to do so will not negate the effectiveness of the delivery made by the facsimile transmission.

Section 10.17. Further Instruments

Each of the Parties will, promptly upon the request of another Party, execute, acknowledge, and deliver to the other Party any and all further instruments as are reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

Section 10.18. Applicable Law

With respect to the ESA and other applicable Federal laws, the laws of the United States will govern the construction and interpretation of this Agreement. With respect to Texas state laws pertaining to the Permittees and the Department, the laws of the State of Texas will govern the construction and interpretation of this Agreement and the other Program Documents. Further, nothing in this Agreement will require any Party to: 1) violate any Federal statute or regulation, or 2) exceed its legal authority, as defined by applicable state statute, regulation, rule, or order lawfully promulgated.

Section 10.19. No Admission

Neither the application for the Permit, nor the execution of this Agreement or any other Program Document by the Permittees or the Department, will be construed, considered, or deemed to be an admission by the Permittees or the Department of liability in connection with any incidental take of any Covered Species that has occurred or will occur.

Section 10.20. General Obligations of Parties

Each Party will fully and faithfully perform all obligations undertaken or assigned to such Party pursuant to this Agreement or any other Program Document.

Section 10.21. Authority

Each Party represents and warrants for the benefit of every other Party hereto that: (i) the execution of this Agreement has been duly authorized; (ii) no other authorization or approval,

whether of governmental bodies or otherwise, will be necessary in order to enable that Party to enter into and comply with the terms of this Agreement; and (iii) the person executing this Agreement on behalf of each Party has the authority to bind that Party.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

EDWARDS AQUIFER AUTHORITY

BY _____ Date: _____
Karl J. Dreher
General Manager

ATTEST:

BY _____ Date: _____
Jennifer Wong-Esparza
Assistant to Board Secretary

APPROVED AS TO FORM:

BY _____ Date: _____
Darcy Alan Frownfelter
General Counsel

CITY OF NEW BRAUNFELS

BY _____ Date: _____
Gale Pospisil
Mayor

BY _____ Date: _____
Michael E. Morrison
City Manager

ATTEST:

BY _____ Date: _____
Patrick Aten
City Secretary

CITY OF SAN MARCOS

BY _____ Date: _____

Jim Nuse
City Manager

ATTEST:

BY _____ Date: _____

[name]
[title]

APPROVED AS TO FORM:

BY _____ Date: _____

[name]
City Attorney

SAN ANTONIO WATER SYSTEM

BY _____ Date: _____

Robert R. Puente
President/CEO

ATTEST:

BY _____ Date: _____

[name]
[title]

APPROVED AS TO FORM:

BY _____ Date: _____

Phil Steven Kosub
Senior Water Resources Counsel

TEXAS STATE UNIVERSITY – SAN MARCOS

BY _____ Date: _____

Denise M. Trauth
President

ATTEST:

BY _____ Date: _____
[name]
[title]

APPROVED AS TO FORM:

BY _____ Date: _____
[name]
General Counsel

TEXAS PARKS AND WILDLIFE DEPARTMENT

BY _____ Date: _____
Carter Smith
Executive Director

ATTEST:

BY _____ Date: _____
[name]
[title]

APPROVED AS TO FORM:

BY _____ Date: _____
[name]
General Counsel

UNITED STATES FISH AND WILDLIFE SERVICE

BY _____ Date: _____
Regional Director
Albuquerque, New Mexico

ATTEST:

BY _____ Date: _____
[name]
[title]

APPROVED AS TO FORM:

BY _____ Date: _____
[name]

[title]

State Agency Signatures

The state agencies below are neither Permittees nor parties to this Agreement and, accordingly, have no obligations under this Agreement or the HCP. Their signatures are solely for the purposes of Section 1.26A(d)(3) of the EAA Act.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

BY _____ Date: _____
[name]
Executive Director

TEXAS DEPARTMENT OF AGRICULTURE

BY _____ Date: _____
[name]
Executive Director

TEXAS WATER DEVELOPMENT BOARD

BY _____ Date: _____
[name]
Executive Administrator