

CONTRACT \_\_\_\_\_  
BETWEEN TEXAS AGRILIFE EXTENSION of the TEXAS A&M UNIVERSITY  
SYSTEM  
AND  
SUSTAINABLE ECOSYSTEMS INSTITUTE  
FOR PEER REVIEW OF THE EDWARDS AQUIFER RECOVERY  
IMPLEMENTATION PROGRAM'S SCIENCE SUBCOMMITTEE  
RECOMMENDATIONS

This Contract is made and entered into this 13th day of November, 2008 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 Sustainable Ecosystems Institute, a non-profit corporation (the "Consultant"), located at 2828 SW Corbett, Portland Oregon 97201.

RECITALS

- A. The 80<sup>th</sup> Texas Legislature adopted Senate Bill 3 in 2007, requiring the Edwards Aquifer Authority in cooperation the United States Fish and Wildlife Service and stakeholders to establish a recovery implementation program (the "EARIP"), overseen by a Steering Committee comprised of representatives of stakeholders and charged with accomplishing certain required program activities;
- B. Senate Bill 3 provides that Texas A&M University ("TAMU") will, among other things, provide assistance to the EARIP and hire and maintain a Project Manager for the EARIP;
- C. TAMU has designated the TAE, acting through its Institute of Renewable Natural Resources ("IRNR"), as the arm of TAMU responsible for performing the TAMU responsibilities related to Senate Bill 3 and the EARIP;
- D. TAMU has hired a program manager for the EARIP;
- E. The Texas Legislature required the EARIP to establish a Science Subcommittee of individuals "with technical expertise regarding the Edwards Aquifer system, the threatened and endangered species that inhabit that system, springflows, or the development of withdrawal limitations." The Legislature required the Science Subcommittee to prepare "initial recommendations by December 31, 2008, referred to herein as the "k charges" and described more fully in the Request for Proposal ("RFP") which is attached hereto as Exhibit A;
- F. The EARIP desires to have the recommendations peer reviewed by a panel of

independent scientists;

G. SEI is a public benefit non-profit organization dedicated to impartial scientific work in the natural resources arena. SEI is a leading provider of peer review;

H. The EARIP wishes to engage SEI to conduct an independent peer review of its Scientific Subcommittee's recommendations on the "k" charges;

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

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

## ARTICLE I DESCRIPTION OF WORK

Section 1.1. Services. Subject to the terms and conditions of this Contract, TAE hereby engages the Consultant to perform the work set forth and described in this Contract and in the following: (1) the Scope of Work which is attached hereto as Exhibit B (the "Scope of Work"); and (2) the RFP. The Consultant hereby accepts such engagement and agrees to devote its best efforts and abilities, and furnish all necessary labor, machinery, equipment, tools, and transportation necessary in furtherance of its engagement hereby.

Section 1.2. Commencement and Completion Date. The Consultant will commence work hereunder immediately upon receipt of written notice issued by the EARIP's Project Manager. All work covered hereby will be completed and delivered to the Project Manager by March 15, 2009. Time is of the essence in the performance of this Contract.

## ARTICLE II

### ALTERATIONS TO CONTRACT AND SCOPE OF WORK

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

Section 2.2. Change Orders. The Consultant agrees to honor any change orders to the Scope of Work issued by TAE provided that the total amount of change orders issued for this Contract shall not exceed twenty-five percent (25%) of the total amount paid pursuant to this Contract, and with each such change order the amount paid pursuant to this Contract shall be appropriately adjusted. Notwithstanding the foregoing, in the event that the additional Services requested by TAE pursuant to the change orders exceeds twenty-five percent (25%) of the total compensation amount paid pursuant to this Contract, the parties to

this Contract agree that such Services 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. TAE agrees to pay the Consultant for its services rendered, costs, and expenses incurred under this Contract which are reasonably consistent with the Scope of Work, Budget Estimate, and Rates & Personnel Chart, but in no event shall compensation to the Consultant for work under this Contract exceed \$29,120. 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 contractual amount. The Consultant is not authorized to spend any additional funds without written approval from TAE. TAE will not be held accountable for any unauthorized work performed or funds spent by the Consultant.

Section 3.2. Payment. All invoices from the Consultant for the Services related hereto, shall be sent monthly to the Project Manager and shall provide an itemization of the Services rendered, costs and expenses incurred. 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:

Mr. Robert L. Gulley  
Program Manager  
Edwards Aquifer Recovery Implementation Program  
3355 Cherry Ridge, Suite 212  
San Antonio, Texas 78230

### ARTICLE IV INDEPENDENT CONTRACTOR

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

### ARTICLE V

## CONSULTANT PERSONNEL AND SUBCONTRACTORS

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

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

## ARTICLE VI TERMINATION

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

## ARTICLE VII OWNERSHIP OF MATERIALS

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

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

## ARTICLE VIII NON-PERFORMANCE

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

## ARTICLE IX NOTICES

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

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

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

Mr. Robert L. Gulley  
Program Manager  
Edwards Aquifer Recovery Implementation Program  
3355 Cherry Ridge, Suite 212  
San Antonio, Texas 78230

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:

Sustainable Ecosystems Institute  
P.O. Box 80605

Portland, Oregon 97280  
ATTENTION: Dr. Steven Courtney

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

## ARTICLE XII

### MISCELLANEOUS

Section 12.1. 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 12.2. 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 12.3. Headings. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

Section 12.4. Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Texas.

Section 12.5. 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 12.6. 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 12.7. 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 12.8. 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 12.9. 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 12.10. 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 12.11. 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.

Section 12.12. 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

SUSTAINABLE ECOSYSTEMS INSTITUTE

By: \_\_\_\_\_  
(name)

By: \_\_\_\_\_  
Steven P Courtney Ph.D.  
Vice President

## EXHIBIT B

### **Scope of Work For Peer Review of the Edward Aquifer Recovery Implementation Program's Science Subcommittee's "k" Charge Recommendations**

Sustainable Ecosystems Institute ("SEI") will conduct a peer review of the EARIP's Science Subcommittee recommendations of the "k" charges" described in the Request for Proposal provided to SEI by the EARIP in conformance with this Statement of Work ("SOW"), and SEI's Proposal for Peer Review ("Proposal") (attached hereto as Attachment 1). To the extent that there is a conflict between the RFP or Proposal and this SOW, the SOW will govern the conduct of the work.

After initial scoping and review of materials and questions, SEI will set up a process that will provide a clear, transparent peer review of the highest caliber. SEI will use a peer review process that is well-documented and which can be shown to be impartial. The following describes the specific tasks that will be used to meet these needs and provide a clear record.

#### *Task 1: Scoping of review: Conclusions regarding documents to review and reviewer expertise*

SEI will review the Science Subcommittee's recommendations and assemble a panel of four-to-five scientists. Based on the RFP, SEI has initially determined that panel of experts should focus primarily on hydrological issues but also include ecological or species specific expertise. Accordingly SEI intends to put together a panel comprised of three hydrologists (with at least one scientist with expertise in karst systems), a population biologist, and a quantitative expert. SEI's initial determination regarding the expertise on the panel may be refined after SEI reviews the Science Subcommittee's recommendations.

#### *Task 2: Selection of reviewers*

SEI will follow its normal procedures in selecting highly-qualified reviewers who are able to review the materials. SEI will solicit the names of possible reviewers from SEI board members, from previous SEI panelists, from other eminent scientists, and from SEI's standing panels of experts in various fields. SEI will develop a file for each scientist considered as a reviewer, and the reasons for selecting (or not selecting) that scientist will be included in that file.

After considering the available pool of reviewers, SEI staff will select those reviewers who best meet the criteria of scientific eminence and experience, and who also pass all other criteria of independence and impartiality set out in the RFP. SEI will interview the

reviewers, record their responses, and ask them to sign statements attesting that they have no conflicts of interest (as per National Academy and SEI guidelines, and as in RFP).

To ensure that the review is independent of the stakeholders and interested parties, the EARIP, its Science Subcommittee or Program Manager will not control or be involved in the selection of the reviewers.

### *Task 3: Preparation of reviewers*

After SEI has selected reviewers, panelists will be provided with background and other materials as soon as they become available, through SEI's dedicated wiki-site (see below). SEI will also set up conference calls with reviewers, and facilitate discussions ahead of the actual review. SEI staff will work with individual panelists to ensure that they understand the materials, the review requirements, and their individual tasks.

### *Task 4: Wiki site*

SEI will maintain a clear record of all materials disseminated to the reviewers, the communications between SEI and the reviewers and among the reviewers, and individual reviewer's responses using SEI's wiki. The individual and group reports will also be crafted on-line, so that there will be a complete record of any changes made to any document. SEI will ensure that the site is secure so that EARIP participants may watch the review unfold, but will not be able to comment on the reviews unless expressly allowed by SEI in the limited circumstances described below.

### *Task 5: Preparation of review*

To obtain the individual opinions of reviewers, SEI will require that each reviewer provide written responses to a series of review questions. SEI will also allow reviewers to discuss their responses, the issues involved, and to modify their written responses in light of such discussions. SEI will reflect any differences of opinion among the reviewers in the final report.

After a draft final report has been completed, SEI will allow the Science Subcommittee to interact with the review panel under SEI supervision, by asking questions, or by providing additional material as requested by the reviewers. This will be accomplished either by allowing the Science Subcommittee access to the wiki or through a recorded conference call. SEI will work with Susan Aragon-Long, the chair of the Science Subcommittee, to set up the arrangements for the interactive process. At the close of the interactive process the panel will finalize the review.

### *Task 6: Deliverables*

Draft and Final reviews of documents, including individual reviewer's opinions

A full Administrative Record (to include all e-mails, drafts, ancillary materials)

*Timetable of events*

- By December 31, 2008      Set-up project specific wiki  
Select reviewers  
Load background materials to wiki  
Develop instructions for reviewers  
Conferences with reviewers regarding the review and their responsibilities
- December 31, 2008      Delivery of Science Subcommittee Recommendations by EARIP Program Manager for review
- January 26, 2009      Draft report completed and provided to Science Subcommittee
- February 16, 2009      Discuss results with Science Subcommittee
- March 2, 2009 Final Review completed and submitted to EARIP Program Manager
- March 16, 2009      Administrative Record completed and submitted to EARIP Program Manager

**Budget Estimate**

SEI will be compensated on a time and actual expense basis with a “not-to exceed” cap of \$29,100. SEI’s personnel time will be charged on an hourly basis as follows:

Dr. Courtney \$200  
Program assistants \$65

These sums include all expenses (benefits, rents, insurance, overhead).

SEI shall pay each reviewer a lump sum stipend of \$2000 s for the entire review.

SEI estimates that the costs of completing the scope of work as follows:

Dr. Courtney	\$6,000
Program Assistants	\$2,000
Benefits	\$2,800
Reviewers	\$10,000
Overhead	\$8,320
TOTAL	\$29,120