

KEY FINANCIAL DOCUMENTS

HABITAT CONSERVATION PLAN (Chapter 7)

FUNDING AND MANAGEMENT AGREEMENT (App. R)
(Amendment to FMA)

IMPLEMENTING AGREEMENT

JOINT FUNDING AGREEMENT

FUNDING AND MANAGEMENT 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, and Texas State University – San Marcos to fund and manage the Habitat Conservation Plan for the Edwards Aquifer Recovery Implementation Program

This Funding and Management Agreement (Agreement), effective on the Effective Date provided in Section 8.1, is an interlocal cooperation contract made pursuant to Texas Government Code Chapter 791 by and among the Edwards Aquifer Authority (“EAA”), the City of New Braunfels (“New Braunfels”), the City of San Marcos (“San Marcos”), the City of San Antonio acting by and through its San Antonio Water System (“San Antonio”), and Texas State University – San Marcos (“University”) (collectively, the “Parties,” and individually, “Party”).

Recital B. Purpose.

The purposes of this Agreement are to:

- (1) provide the terms of the rights and duties agreed to by the Parties for managing and funding the Program for the implementation of the HCP as provided in the Implementing Agreement; and
- (2) provide the terms of the Program's Adaptive Management Process.

Article One – Definitions and Other References

Article Two – Permit Application and Program Management

Article Three – Duties and Responsibilities of the Parties

Article Four – Program Work Plan and Budget Approvals

Article Five – Program Costs and Funding

Article Six – Applications for Program Funding

Article Seven – Adaptive Management Process

Article Eight – General Provisions

1.1.4 “Annual Funding Obligation” means the level of funding required to be provided by the EAA for the Annual Program Budget as established according to Section 3.2 and Subsection 5.2.1.

1.1.5. “Annual Program Budget” means the budget for Program Expenditures adopted by the Board of Directors of the EAA for each year of the Permit Term pursuant to the process described in Sections 4.4 through 4.7, subject to the limitations in Section 3.2 and Subsection 5.2.1.

1.1.23. “Excess Fund Balance” means any amount of funds at the end of an EAA budget year that has accumulated in the HCP Program Account in excess of the Fund Balance Cap.

1.1.24. “Fund Balance” means the accumulation of the excess of Program Aquifer Management Fees and other funds deposited to the HCP Program Account over Program Expenditures.

1.1.25. “Fund Balance Cap” means the maximum Fund Balance that the EAA may plan to accumulate in the reserve fund of the HCP Program Account as provided in Subsection 5.5.4.

1.1.27. “HCP Program Account” means the restricted account, composed of a **reserve fund** and an **operations fund**, created by the EAA in accordance with Section 5.4 to accumulate and disburse Program Aquifer Management Fees consistent with the Annual Program Budget for the implementation of the Program.

Excerpt from HCP, Section 7.1.2, Page 7-6:

To the extent there is a “Fund Balance” (*id.* § 1.1.24) in any particular year over “Program Expenditures,” (*id.* § 1.1.43), the EAA will accumulate the balance in the reserve fund of the HCP Program Account. (*id.* § 5.5.4). However, the amount that the EAA may accumulate is capped at \$46 million dollars. (*id.*). This cap is referred to as the “Fund Balance Cap.” (*id.* § 1.1.25). **The reserve fund will allow the accumulation of funds for the projected costs of the VISPO and SAWS ASR measures, full funding for which is needed at irregular periods and is based on a probabilistic analysis of the number of years in which these measures will be triggered as provided in Chapter 5.**

1.1.41. “Program Aquifer Management Fees”

means aquifer management fees collected by the EAA under Section 1.29 of the EAA Act from the holders of Edwards Aquifer groundwater withdrawal permits issued by the EAA and deposited in the HCP Program Fund to fund the costs of the Program.

Section 3.2. Each Party's Individual Duties and Responsibilities.

Each Party has sole responsibility for:

- (a) undertaking and performing each of the specific Conservation Measures assigned to that Party in Chapter 5 of the HCP;
- (b) if the Party determines to issue Certificates of Inclusion ...
- (c) undertaking and performing each additional duty and responsibility that may be assigned to that Party as a result of decisions made under the AMP; and
- (d) complying with the terms of this Agreement to implement the Program. **Subject to the limitations to the 2% annual increase from the 2013 Annual Funding Obligation as provided in Subsection 5.2.1, the EAA has responsibility for fully funding implementation of the Program, as the Program may be adjusted pursuant to the AMP.**

Section 4.6. Subsequent Years.

For the 2014 budget year and each subsequent budget year during the Permit Term, **each Party will prepare and submit its Annual Party Work Plan and Cost Estimate for inclusion into the Annual Program Budget**, in accordance with the requirements in Sections 4.4 and 4.5 but reflecting the activities and costs for the relevant budget year. The schedule for the submittal of the Annual Party Work Plan and Cost Estimate and the development and approval by the Implementing Committee and the EAA Board of Directors of the Annual Program Budget will be consistent with the schedule for the 2013 budget year, unless the Implementing Committee, with the approval of the EAA, establishes a different schedule.

Section 4.7. Limitation.

The EAA will promptly notify the Program Manager and Implementing Committee if the EAA Board is unable to grant final approval during any year to a proposed Annual Program Budget or any Program Funding Application submitted or proposed to be submitted by a Party as provided in Article Six, because funds available for the Program are or are likely to be insufficient. In that event, the Implementing Committee will collaborate in a timely manner to amend the proposed Annual Program Budget for that year to incorporate less costly measures, activities, or schedules that will still ensure compliance with the Program Documents, and each Party will amend its Program Funding Application consistent with the revised proposed Annual Program Budget. **The Implementing Committee will not submit to the EAA for action by the EAA Board a proposed Annual Program Budget, or any amendment to such proposed budget, that provides for expenditures greater than the funds that the EAA expects to have available for that year, including any available Fund Balance as provided in Subsection 5.5.4.**

Section 5.1. Program Implementation Costs.

Subject to the terms and limitations described in this Agreement, the cost of implementing the Program as described in Subsections 3.2 and 5.2.1 and Table 7-1 of the HCP, including maintaining appropriate reserves by the EAA, will be funded by Program Aquifer Management Fees, and by other contributions, grants and funds received by the EAA for implementation of the Program, all as described in this Article.

Section 5.2. Annual Funding Obligation of the EAA.

5.2.1. Level of Funding.

The EAA will provide funding for the costs of implementing the Program during each year of Phase I and Phase II (Annual Funding Obligation) in accordance with each Annual Program Budget approved by the Implementing Committee and the EAA Board. As long as adequate to implement the Program, the Annual Funding Obligation for 2013 will be at the amount indicated for 2013 in Table 7-1 of the HCP. The Annual Funding Obligation for 2014, and each Program year thereafter, may be increased or decreased from the Annual Funding Obligation for 2013 based on the Annual Program Budget developed for the year in accordance with Article Four. **The Annual Funding Obligation for any Program year will be limited to the 2013 Annual Funding Obligation, adjusted for a 2% increase, compounded annually for the years that have elapsed since 2013. The EAA will ensure that any funds collected or received for the Program that are in excess of Program Expenditures during any year and result in a Fund Balance, as provided in Subsection 5.5.4, will be applied to Program Expenditures in subsequent years, subject to the provisions of Subsection 5.5.4.**

5.2.2. Assessment of Fees by EAA.

The EAA will assess Program Aquifer Management Fees annually sufficient to meet the Annual Funding Obligation in accordance with Subsection 5.2.1. The EAA Board of Directors may, at its sole discretion, assess Program Aquifer Management Fees in an amount that will generate more funds than the amount required by Subsection 5.2.1, subject to the provisions of Subsection 5.5.4. If the EAA determines that the funds collected through the Program Aquifer Management Fees are or will be insufficient to fund the proposed Annual Program Budget and the associated Program Funding Applications for any year, the EAA will promptly notify the Implementing Committee of the expected amount of the insufficiency. The Implementing Committee will collaborate in a timely manner to amend the proposed Annual Program Budget as set forth in Section 4.7, and each Party will amend its respective Application for Program Funding consistent with the revised proposed Annual Program budget.

Section 5.4. The HCP Program Account.

Not later than October 1, 2012, the EAA will take action to create the HCP Program Account. The EAA will deposit funds in either the **reserve fund or operations fund** of the HCP Program Account as appropriate, and will **disburse funds from the operations fund of the HCP Program Account for costs and expenses** approved by the EAA in the Annual Program Budget in accordance with this Article. The HCP Program Account will **allow for the accumulation of a Fund Balance in the reserve fund** of the HCP Program Account subject to the Fund Balance Cap as provided in Subsection 5.5.4.

5.5.4. Fund Balance.

In recognition that Program Expenditures may be higher in years in which Edwards Aquifer levels are low or are anticipated to be low, the HCP Program Account will allow for the accumulation by the EAA of a Fund Balance. **The accumulated Fund Balance will be capped at \$46 million (Fund Balance Cap),** unless amended by the Implementing Committee. **Any Excess Fund Balance may be used to reduce the Annual Funding Obligation** of the EAA as otherwise required under Section 5.2. The EAA will reduce the Program Aquifer Management Fees assessed for the next following year to fund the Annual Program Budget to reflect the use of the Excess Fund Balance in that year.

6.1.4. Withholding Action on Application.

The EAA may withhold action on a Program Funding Application if the funds in the HCP Program Account are insufficient to provide Program Funding in the requested amount or if the EAA identifies a consideration in Subsection 6.1.3 that is deficient and allows reasonable time for the filing of additional information before the application is reconsidered for final action. **If the reason for withholding action is the insufficiency of money in the HCP Program Account, the EAA will advise all applicants and withhold action on all applications until sufficient money is available.** The EAA will promptly notify the Program Manager, and the Implementing Committee and Parties will take action in accordance with Section 4.7 and Subsection 5.2.2, and submit revised applications for EAA review and approval

Section 6.5. Refund Upon Termination of this Agreement.

Upon termination of this Agreement, any available Fund Balance held by the EAA will be refunded pro rata to the permit holders and other funding parties from whom Program Aquifer Management Fees or funding contributions were collected during the immediate prior year, unless the Implementing Committee and EAA Board of Directors take action to transfer all or a portion of the Fund Balance to a successor program.