EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM

AMENDMENT NO. 1

TO THE 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 Amendment No. 1 to the Funding and Management Agreement (Amendment Agreement) is entered into to be effective on the date of execution by the last signing Party as indicated below ("Effective Date"), 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").

RECITALS

WHEREAS, the Parties entered into that certain Funding and Management Agreement ("FMA") with an Effective Date of January 1, 2012; and

WHEREAS, the Parties now desire to amend the FMA.

AGREEMENT

NOW, THEREFORE, for the mutual consideration expressed in this Amendment Agreement, the Parties agree as follows:

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1. **Amendment.** As of the Effective Date, the Parties hereby amend the FMA as follows:

**SUBSECTION 5.6.5 IS AMENDED TO READ AS FOLLOWS:**

**5.6.5.1 Limitation on Use of Funds – Employees and Administrative Costs.**

With the exception of Program Administration Costs of EAA, funds may not be used for: (a) costs of any Party’s employees; or (b) any Party’s administrative costs, such as costs of overhead, management, administration, research, planning, engineering, or legal services, or any other ancillary costs that are not directly required for the Program.

**5.6.5.2 Special Exception.**

Notwithstanding anything in Section 5.6.5.1(a), an employee of Texas State University may submit a proposal for consideration and may be awarded a contract for work associated with the implementation of a Conservation Measure in Chapter 5 or Program activity in Chapter 6 of the HCP assigned to any Party in an approved Work Plan and Funding Application as long as each of the following conditions are met:

(a) The costs for the measures are not used to fund an increase in Texas State’s permanent Staff or for work that is historically operational in nature;

(b) The contract for the project has been awarded through a competitive procurement process that considers cost, contractor qualifications, and merits of the contractor’s proposal, and through which the selected contractor’s proposal was determined to be competitive with respect to each of these criteria; and

(c) After the contractor has been selected, the EAA will issue those contracts for which Texas State or the City of San Marcos is responsible under which a Texas State Employee will be paid, and the HCP Program Manager will
manage those contracts.

5.6.5.3 Conduct of Texas State Contractor/Employees.

Any employee of Texas State who is paid from HCP Funds shall:

(a) Give first priority to the purposes and goals of the HCP as reflected by the entire Implementing Committee over the individual purposes and goals of the employee’s employer;

(b) Conduct his or her work and communications in an open and transparent manner and in a manner that avoids a conflict of interest or the appearance of a conflict of interest;

(c) Not use the employee’s Party’s status as a member of the Implementing Committee or information that is not publicly available to obtain an advantage in the procurement process; and

(d) Not advocate, directly or indirectly, a particular decision or participate in discussions of policy matters unless expressly requested to participate by the Program Manager and the Implementing Committee. Nothing herein precludes the employee, when requested by the Implementing Committee, from discussing scientific data and conclusions with the Science Review Panel and Science Committee.

Failure to strictly comply with the requirements of Section 5.6.5.3 may be the basis for the termination of the Special Exception with respect to future contracts involving that employee or, if the non-compliance warrants, a recommendation to terminate the employee’s participation in an existing contract. In any vote of the Implementing Committee with regard to such a recommendation of termination, Texas State shall abstain, and a decision to terminate must be unanimous among the remaining four voting members of the Implementing Committee.

2. No Effect on Remainder of the FMA. Except as provided in this Amendment Agreement, the FMA shall remain in full force and effect in all respects. This Amendment Agreement shall be governed by and construed under the terms of the FMA.
IN WITNESS WHEREOF, the Parties hereto acting under authority of their respective governing bodies have caused this Amendment Agreement to be duly executed as of the Effective Date.

EDWARDS AQUIFER AUTHORITY

By: [Signature]  
Roland Ruiz, General Manager  
Date: 9-26-13

ATTEST:

By: [Signature]  
Jennifer Wong-Esparza, Assistant to Board Secretary  
Date: 09-26-13

APPROVED AS TO FORM:

By: [Signature]  
Darcy Alan Frownfelter, General Counsel  
Date: 09/26/2013

CITY OF NEW BRAUNFELS

By: [Signature]  
Robert Camareno, Interim City Manager  
Date: 9-19-13

ATTEST:

By: [Signature]  
Patrick Aten, City Secretary  
Date: 09-19-13

APPROVED AS TO FORM:

By: [Signature]  
Valeria Acevedo, City Attorney  
Date: 9/19/13

[additional signatures on next page]
CITY OF SAN MARCOS

By: ___________________________ Date: 6-10-13
James R. Nuse, P.E., City Manager

ATTEST:

By: ___________________________ Date: 6-13-13
Jamie Lee Pettijohn, City Clerk

APPROVED AS TO FORM:

By: ___________________________ Date: ____________
Michael Cosentino, City Attorney

CITY OF SAN ANTONIO,
ACTING BY AND THROUGH ITS SAN ANTONIO WATER SYSTEM

By: ___________________________ Date: 9-25-13
Robert R. Puente, President/CEO

ATTEST:

By: ___________________________ Date: 9-25-13
Becky Gonzalez, Executive Administrative Assistant

APPROVED AS TO FORM:

By: ___________________________ Date: 9/24/13
Phil Steven Kosub, Senior Water Resources Counsel

Signatures continue on next page
TEXAS STATE UNIVERSITY – SAN MARCOS

By: Denise M. Trauth, President

Date: 9-12-13

ATTEST:

By: William Nance

Date: 9-12-13

William Nance, Vice President for Finance and Support Services, Texas State University-San Marcos

APPROVED AS TO FORM:

By: Diane Corley

Date: 9-9-13

Diane Corley, Associate General Counsel, Texas State University System