JOINT FUNDING AGREEMENT
FOR THE
IMPLEMENTATION OF THE HABITAT CONSERVATION PLAN FOR THE
EDWARDS AQUIFER RECOVERY IMPLEMENTATION PROGRAM

THIS JOINT FUNDING AGREEMENT ("Agreement") is made by and between the
EDWARDS AQUIFER AUTHORITY ("EAA"), a groundwater conservation district and
political subdivision of the State of Texas, with its principal place of business located in San
Antonio, Texas, the GUADALUPE-BLANCO RIVER AUTHORITY ("GBRA"), a river
authority and political subdivision of the State of Texas, with its principal place of business
located in Seguin, Texas, the SAN ANTONIO RIVER AUTHORITY ("SARA"), a river
authority and political subdivision of the State of Texas, with its principal place of business
located in San Antonio, Texas, the CITY OF VICTORIA ("Victoria"), a home-rule city, a
municipal corporation, and a political subdivision of the State of Texas, with its principal place
of business located in Victoria, Texas, the CITY OF SAN ANTONIO, acting by and through
the CITY PUBLIC SERVICE BOARD ("CPS Energy"), with its principal place of business
located in San Antonio, Texas, the GUADALUPE BASIN COALITION ("GBC"), an
association of chambers of commerce, governmental entities, and businesses in counties along
the Guadalupe and San Marcos Rivers, with its principal place of business located in New
Braunfels, Texas, and UNION CARBIDE CORPORATION ("Union Carbide"), a New York
corporation, collectively referred to as the "Parties".

RECITALS

WHEREAS, the EAA was created in 1993 by the Edwards Aquifer Authority Act of
May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended ("EAA Act"); and

WHEREAS, under Section 1.01 of the EAA Act, the EAA was created to, among other
things, sustain the diverse economic and social interests dependent on the Edwards Aquifer
("Aquifer") for water supply and effectively control the Aquifer to protect terrestrial and aquatic
life, domestic and municipal water supplies, the operation of existing industries, and the
economic development of the State of Texas; and

WHEREAS, under Section 1.02 of the EAA Act, the EAA is a conservation and
reclamation district created by virtue of Article XVI, Section 59 of the Texas Constitution, and is
a governmental agency and body politic and corporate vested with the full authority to exercise
the powers and to perform the functions specified in the EAA Act; and

WHEREAS, the Aquifer has a hydrologic interrelationship with the San Marcos River,
Comal River, Guadalupe River, San Antonio River, and Nueces River, among others; and

WHEREAS, under Section 1.08(a) of the EAA Act, the EAA has all the powers, rights
and privileges necessary to manage, conserve, preserve, protect, increase the recharge of, and
prevent the waste or pollution of the Aquifer; and

WHEREAS, under Section 1.11(d)(9) of the EAA Act, the EAA may hold permits under federal law pertaining to the Endangered Species Act of 1973 ("ESA");¹ and

WHEREAS, under Section 1.14(a), (2), (6), and (7) of the EAA Act, the EAA is required to manage withdrawals from the Aquifer to protect the water quality of the Aquifer, protect the water quality of the surface streams to which the Aquifer provides springflow (i.e. Comal River and San Marcos River), protect aquatic and wildlife habitat, and protect species that are designated as threatened or endangered under the ESA;² and

WHEREAS, under Section 1.14(h) of the EAA Act, the EAA is required to implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law and to achieve the purposes noted immediately above in Section 1.14(a);³ and

WHEREAS, in 2007 in Section 12 of S.B. 3, the Texas Legislature added Section 1.26A to the EAA Act which, among other things, required the EAA to cooperatively develop a "recovery implementation program" for the federally-listed threatened or endangered species associated with the Aquifer⁴ through a consensus-based process in conjunction with appropriate federal and state agencies, and other interested stakeholders; and

WHEREAS, this "recovery implementation program" has come to be known as the Edwards Aquifer Recovery Implementation Program ("EARIP") and has been underway since 2007; and

WHEREAS, under Section 1.26A(b), (c), and (d) of the EAA Act, the EARIP is to develop a "program document" that may be in the form of a habitat conservation plan ("HCP") used in issuance of an incidental take permit ("ITP") under Section 10(a) of the ESA; and

WHEREAS, under Section 1.26(a) of the EAA Act, the EARIP is to deliver the program

¹ In particular, a permit that the EAA is authorized to hold under Section 10(a) of the ESA is an "incidental take permit" which authorizes the "take" of federally-listed endangered species under certain circumstances if the permittee is engaged in an otherwise lawful activity.

² Those species are: (1) the fountain darter (Etheostoma fonticola); (2) the Comal Springs riffle beetle (Heterelmis comalensis); (3) the Comal Springs dryopid beetle (Stygoparmus comalensis); (4) the Peck's cave amphipod (Stygobromus pecki); (5) Texas wild rice (Zizania texana); (6) the Texas blind salamander (Eurycea rathbuni); (7) the San Marcos gambusia (Gambusia georgii); and (8) the San Marcos salamander (Eurycea nana).

³ These federally-required "continuous minimum springflows" have not yet been officially quantified but are currently being done so under the auspices of the Edwards Aquifer Recovery Implementation Program.

⁴ For purposes of determining those species that are "associated with the Aquifer" under Section 1.26A, it has been determined that, in addition to the species identified in note 2 infra, the following non-listed species should also be included under the recovery implementation program: (1) the Comal Springs salamander (Eurycea sp.); (2) the Edwards Aquifer diving beetle (Haideoporus texanus); and (3) the Texas troglobitic water salter (Lirceolus smithii).
documents to the EAA for review, approval, and implementation; and

WHEREAS, under Section 1.26A(d)(3) of the EAA Act, the program documents are required to be approved and executed by the EAA and the other appropriate federal and state agencies not later than September 1, 2012, and are to take effect December 31, 2012; and

WHEREAS, the program documents are expected to be delivered to the EAA and the other prospective applicants for the ITP in November 2011 with the view towards filing the ITP application with the U.S. Fish & Wildlife Service ("Service") in late 2011/early 2012 so that the application has a reasonable prospect of being processed by the Service by September 1, 2012; and

WHEREAS, the EARIP desires for the EAA to manage and oversee the implementation of the HCP; and

WHEREAS, the average annual cost for implementing the HCP during the expected fifteen year term of the ITP is estimated to be approximately $20,000,000; and

WHEREAS, the only means the EAA has to fund the implementation of the HCP is through aquifer management fees it assesses under Section 1.29 of the EAA Act on holders of groundwater withdrawal permits issued by the EAA; and

WHEREAS, the implementation of the HCP benefits the Parties, and because the Aquifer has a hydrologic interrelation with the Guadalupe, San Antonio, and Nueces River Basins, the Parties desire to enter into this Agreement setting forth the terms and conditions under which the Parties will contribute funds to the EAA for the implementation of the HCP; and

WHEREAS, under Section 1.11(d)(2) and (4) of the EAA Act, the EAA may enter into contracts and receive gifts, grants, awards, and loans for use in carrying out its powers and duties under the EAA Act; and

WHEREAS, this Agreement concerns the performance of governmental functions and services; and

WHEREAS, it is in the public interest that the Parties enter into this Agreement to share the costs of implementing the HCP as provided herein.

NOW, THEREFORE, for and in consideration of the mutual promises and benefits contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1.0 Authority to Enter in this Agreement. Each Party warrants and represents the legal authority to enter into this Agreement. If applicable, and within ten days after its adoption, each Party agrees to furnish to the EAA a certified copy of the resolution or other appropriate

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5 In addition to the EAA, the other prospective applicants at this time are the City of New Braunfels, the City of San Marcos, the Texas State University, and the City of San Antonio through its San Antonio Water System Board of Trustees.
document duly adopted by the respective governing bodies or other corporate entity approving this Agreement and authorizing the named signatories to this Agreement to execute the Agreement on behalf of their respective entity.

2.0 **Purpose.** The purpose of this Agreement is to provide the terms and conditions under which the Parties agree to provide funding to the EAA for the implementation of the HCP.

3.0 **Term.** The term of this Agreement is effective and commences on January 1, 2013, and terminates on the earlier of: (1) December 31, 2027; or (2) when terminated under the provisions of Section 11.0.

4.0 **Costs.** (a) No later than March 1 of each calendar year during the term of the Agreement, the following Parties will remit to the EAA the following amounts for the implementation of the HCP:

- GBRA: $400,000
- SARA: $25,000
- Victoria: $5,000
- CPS Energy: $100,000
- GBC: $5,000
- Union Carbide: $200,000

(b) GBRA’s and Union Carbide’s commitment to remit annually $400,000 and $200,000, respectively, to the EAA under this Agreement is only for implementation of the HCP as approved by a consensus of the Edwards Aquifer Recovery Implementation Program Steering Committee.

(c) The amounts remitted to the EAA by GBRA and Union Carbide under this Agreement may increase by an amount not to exceed 2% over the prior year’s amount for a calendar year during the term of this Agreement. Any increase must be based on an increase in the costs of implementing the HCP. The amount of any increase will be equal to the percentage increase in HCP implementation costs as certified by the EAA based on the annual budget for the implementation of the HCP for the next calendar year as approved by the Board of Directors of the EAA. Similarly, the amounts remitted to the EAA by GBRA and Union Carbide under this Agreement may decrease from the prior year’s amount. Any decrease must be based on a decrease in the costs of implementing the HCP. The amount of any decrease will be equal to the percentage reduction in HCP implementation costs as certified by the EAA based on the annual HCP implementation budget for the next calendar year as approved by the Board of Directors of the EAA. The amount paid by any other Party other than GBRA and Union Carbide is not subject to being adjusted pursuant to this subsection. Except as provided in subsection (b) of this section, unless terminated under the provisions of Section 11.0 hereinafter, in no event may the amount paid by a Party be less than the amount specified in subsection (a) of this section.

5.0 **Obligations of the EAA.**

5.1 Upon receipt of any funds from the Parties under this Agreement, the
EAA will promptly deposit the funds in the HCP Program Account.

5.2 The EAA may expend funds from the HCP Program Account only for the purpose of implementing the HCP.

5.3 The EAA will submit to the Parties the relevant portions of its written monthly unaudited financial statements and the annual report to the Service documenting the implementation of the HCP. The EAA will also respond to requests for additional information as the Parties may from time to time make.

5.4 The EAA shall provide the other Parties with written documentation if the acquisition of sufficient alternative funding is secured such that continued funding by the Parties under this Agreement is no longer necessary for the implementation of this HCP.

6.0 Contacts. The contact person for all matters and communications relating to this Agreement are as follows:

For the EAA:  
Mr. Karl J. Dreher  
General Manager  
Edwards Aquifer Authority  
1615 N. St. Mary’s St.  
San Antonio, Texas 78215  
(210) 222-2204

For GBRA:  
W. E. West, Jr.  
General Manager  
933 E. Court Street  
Seguin, Texas 78155  
(830) 379-5822

For SARA:  
Suzanne B. Scott  
General Manager  
100 East Guenther St.  
San Antonio, Texas 78204  
(210) 227-1373

For Victoria:  
Jerry James  
Director of Environmental Services  
PO Box 1758  
Victoria, Texas 77902  
361-485-3230

For CPS Energy:  
Kim R. Stoker  
Director, Environmental Planning Compliance & Sustainability  
145 Navarro  
San Antonio, Texas 78296
(210) 353-2929

For GBC: Thomas Taggart
Chairman
P.O. Box 311417
New Braunfels, Texas 78131-1417
(830) 625-2385

For Union Carbide: Brad Fedorchak
Vice President Union Carbide Corporation and
Director of Operations Seadrift Site
P.O. Box 186
Port Lavaca, Texas 77979
(361) 553-2266

A Party will give prompt written notice to the other Parties of any change in their respective contact person or their contact information.

7.0 Notices. Any notice to be given under this Agreement must be in writing. The notice shall be deemed given when mailed, postage prepaid, or hand delivered, to the contact person specified in Section 6.0, or his or her successor.

8.0 Entire Agreement; Amendments. This Agreement contains the entire agreement and understanding between the Parties. Any oral representations, modifications, or amendments concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by the party to be charged.

9.0 Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Texas. Venue for any legal action or lawsuit concerning this Agreement shall lie exclusively in Bexar County, Texas.

10.0 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. No Party may assign any of its rights, nor delegate any of its duties, hereunder without the prior written consent of the other Parties.

11.0 Termination. (a) A Party’s funding commitment under this Agreement terminates only if:

(1) the EAA is in receipt of funds for the implementation of the HCP that fully replace the need of the EAA to assess any aquifer management fees pursuant Section 1.29 of the EAA Act for this purpose, and the Party gives 30-day written notice to the EAA of its intent to terminate its funding commitment under this Agreement; or

(2) one half or more of the Parties reasonably determine, based on an audit performed under Section 13.0, that the funding for the purpose of implementing the HCP under
this Agreement is not being spent to accomplish its intended purpose. Termination of this
Agreement under this subsection (a)(2) shall be effective upon 30-days written notice to the EAA
of such a determination.

(b) Upon receipt by the EAA of the notice under subsection (a)(1) of this section, this
Agreement relative to that Party shall then be deemed terminated as a matter of law.

12.0 Validity. The invalidity of any provision of this Agreement shall not affect any
other provision, which shall remain in full force and effect. Nor shall the invalidity of a portion
of any provision of this Agreement affect the balance of such provision.

13.0 Right to Audit. The Parties remitting funds under Section 4.0, or their designated
agents, shall have the right to audit, at any time and upon reasonable notice, the EAA’s records
and associated documents relating to this Agreement. Such right to audit shall be for the
determination of the accuracy and validity of the Parties’ funds provided to the EAA under this
Agreement and for verifying compliance with other terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement and it is effective
as provided above in Section 3.0.

FOR THE EDWARDS AQUIFER AUTHORITY:

[Signature]

Karl J. Dreher
General Manager

[Signature]

January 20, 2012

Date

ATTEST:

[Signature]

Jennifer Wong-Esparza
Assistant to Board Secretary

APPROVED AS TO FORM

[Signature]

Darcy Alan Frowntelter
General Counsel

Signatures continue on next page
FOR THE GUADALUPE BLANCO RIVER AUTHORITY:

W. E. West, Jr.
General Manager

ATTEST:

Cricket Dietert
Executive Assistant to the General Manager

APPROVED AS TO FORM:

Bruce Wasinger
General Counsel

FOR THE SAN ANTONIO RIVER AUTHORITY:

Suzanne B. Scott
General Manager

ATTEST:

Stephen T. Graham, P.E.
Assistant Secretary

APPROVED AS TO FORM:

David Ross
General Counsel

FOR THE CITY OF VICTORIA:

Charmelle Garrett
City Manager

ATTEST:

Scarlett Swoboda
City Secretary

APPROVED AS TO FORM:

Thomas Gwosdz
City Attorney

Signatures continue on next page
FOR THE CITY OF SAN ANTONIO ACTING BY AND THROUGH THE CITY PUBLIC SERVICE BOARD:

Doyle N. Beneby
President and Chief Executive Officer

1/25/12
Date

ATTEST:

Carolyn Shellyman
Secretary to the Board, EVP & General Counsel

APPROVED AS TO FORM:

Curt Brockman
Director & Senior Counsel

FOR THE GUADALUPE BASIN COALITION:

Thomas Taggart
Chairman

2/3/12
Date

ATTEST:

Roger Biggers
Secretary/Treasurer

FOR THE UNION CARBIDE CORPORATION:

Brad Fedorchak
Vice President Union Carbide Corporation
and Director of Operations Seadrift Site

3/19/12
Date

ATTEST:

Annie Ramirez
Administrative Assistant

APPROVED AS TO FORM:

Paul Bork
Counsel