

# **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**

**Dated Effective January 01, 201<sup>2</sup>**

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**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”).

### **Recitals**

#### **Recital A. Parties.**

The Parties to this Agreement are the five Permittees under the incidental take permit (Permit) relating to certain threatened or endangered species covered by the Permit (Covered Species) which are associated with the Edwards Aquifer and protected under the federal Endangered Species Act of 1973 (ESA). The Parties, in their capacities as Permittees, have prepared their joint application (Application) for the Permit for submittal to the United States Fish and Wildlife Service (Service). The Application is supported by the Edwards Aquifer Recovery Implementation Program (EARIP) Habitat Conservation Plan (HCP) and the related agreement to implement the HCP by and among the Parties, as Permittees, the Texas Parks and Wildlife Department, and the Service, as Permit issuer (Implementing Agreement).

**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.

**Recital C. Legislative Directives.**

By the Act of May 28, 2007 (Senate Bill 3 or SB 3), the 80<sup>th</sup> Legislature of the State of Texas directed the EAA to cooperatively develop a recovery implementation program (RIP) for the Covered Species through a facilitated, consensus-based process that involves participation by the Service, other appropriate federal agencies, and interested Edwards Aquifer stakeholders (Stakeholders). The EAA and other RIP participants were further directed to jointly prepare, under the oversight and with the assistance of a Steering Committee of representatives of certain Stakeholders designated by SB 3, a program document that may be in the form of a habitat conservation plan as the basis for the issuance of an incidental take permit by the United States Secretary of the Interior, through the Service, under Section 10 of the ESA.

**Recital D. Cooperative Development.**

The EAA and other Stakeholders, in compliance with the SB 3 directives, have worked cooperatively since 2007 to develop a RIP program document and have determined that, in the interest of protecting the Covered Species, the RIP program document requirement is met by the development of the HCP to be submitted jointly by the Parties to the Service to support the Application.

**Recital E. Program Phases and Adaptive Management Process.**

The Parties have approved the Program consisting of two phases for the 15-year Permit Term, as it may be extended. Phase I commences with the effective date of the Permit and continues for



seven years. Phase II commences on the seventh anniversary of the effective date of the Permit and continues for eight years and for any agreed extension. The Program provides for the AMP that requires the continuing cooperation of the Parties to monitor the results of the Conservation Measures and to consider and take needed adaptive management actions by the Parties throughout Phase I and Phase II.

**Recital F. Independent Determinations by Each Party.**

Each of the Parties has independently found and determined that:

- (1) the Party is authorized under applicable law to individually seek an incidental take permit from the Service for the Covered Activities associated with the Edwards Aquifer;
- (2) the Party's respective cooperative actions to jointly submit the Application for a single permit will increase the efficiency and effectiveness of the Party and will most effectively discharge the direction in SB 3 to the Parties and other Stakeholders to develop a RIP for the Covered Species;
- (3) it is in that Party's interest to enter into each of the Program Documents;
- (4) the Party is both individually and, along with the other Parties, collectively responsible to the Service for the successful implementation of the HCP pursuant to the terms of the Implementation Agreement; and
- (5) the performance of the specific duties and responsibilities of the Party, as described in the HCP, this Agreement, and other Program Documents, is integrally related to the achievement of the Biological Goals and Biological Objectives for the Program.

Therefore, for the mutual consideration expressed in this Agreement, the Parties agree as follows:

## **Article One – Definitions and Other References**

### **Section 1.1. Terms Defined in this Agreement.**

The following terms as used in this Agreement have the meaning provided in this Article.

**1.1.1** “Adaptive Management Process” or “AMP” means an iterative process designed to develop information through monitoring and research, and the review and use of the results to confirm the efficacy of or to adjust the Conservation Measures, all as described in Article Seven and in Chapter 6 of the HCP.

**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 Circumstances that is not planned for in Table 8-1 of the HCP, or that is planned for in that table but for which the Service proposes a measure different from those included in that table.

**1.1.3** “Agreement” means this Funding and Management Agreement.

**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.

**1.1.6.** “Annual Party Work Plan and Cost Estimate” means the work plan and cost estimate prepared by a Party to describe the activities and schedules that are reasonable and necessary for the Party to perform in order to implement the Conservation Measures and other Program-related activities for which the Party has responsibility to undertake in the year following the year in which the plan and estimate are submitted to the Implementing Committee as provided in Sections 4.4 and 4.6.

**1.1.7.** “Application” means the application submitted by the Parties to the Service for the Permit.

**1.1.8.** “Biological Goals” means the long-term biological goals described for each Covered Species in Section 4.1 of the HCP.

**1.1.9.** “Biological Objectives” means the key management objectives and flow-related objectives described for each Covered Species in Section 4.1 of the HCP, as they may be changed through the AMP pursuant to Subsection 7.13.7.

**1.1.10.** “Certificate of Inclusion” means a certificate issued by a Party to a non-federal Person that has agreed to be bound by the terms of the HCP and the Permit pursuant to Section 9.2 of the Implementing Agreement.

**1.1.11.** “Changed Circumstances” means changes in circumstances affecting one or more Covered Species or the Permit Area that reasonably could have been anticipated by the Parties and the Service during the negotiation and development of the HCP and this Agreement and includes the circumstances that have been specifically planned for as provided in Table 8-1 of the HCP.

**1.1.12.** “Comprehensive Phase I Work Plan” means the work plan for Phase I Conservation Measures and other Program activities developed and approved by the

Implementing Committee as provided in Section 4.2.

**1.1.13.** “Conservation Measure” means a measure identified in Chapter 5 of the HCP, as such measure may be modified pursuant to the AMP, or a new measure developed and approved by the Parties through the AMP, 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.

**1.1.14.** “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.

**1.1.15.** “Covered Species” means 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.

**1.1.16.** “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.

**1.1.17.** “Department” means the Texas Parks and Wildlife Department.

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

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

**1.1.20.** “Edwards Aquifer” means the Southern (or San Antonio) Segment of the Edwards

Aquifer as defined in Section 1.03(1) of the EAA Act within the boundaries of the EAA.

**1.1.21.** “Effective Date” means the date on which this Agreement takes effect, as provided in Section 8.1.

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

**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.

**1.1.26.** “HCP” means the conservation plan required by Section 10(a)(2)(A) of the ESA that has been prepared by the Parties and submitted to and approved by the Service as part of the Application of the Parties for the Permit.

**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.

**1.1.28.** “Implementing Agreement” means the agreement entered into by the Parties to this Agreement and the Service to implement the Program.

**1.1.29.** “Implementing Committee” means the committee created pursuant to Section 7.7.

**1.1.30.** “Parties” means the EAA, New Braunfels, San Marcos, San Antonio, and the University. Any one of the Parties individually is referred to as a “Party.” In the Implementing Agreement the Parties are defined as the “Permittees.”

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

**1.1.32.** “Permit Amendment” means an amendment of the Permit that does not meet the Service’s criteria for a clarification, administrative change, or minor amendment to the Permit and is administered as described in Subsection 9.2.2 of the HCP.

**1.1.33.** “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 1-2 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.

**1.1.34.** “Permit Term” means the initial 15-year term of the Permit and any extension thereof as may be approved by the Parties and the Service in accordance with Section 5.3 of the Implementing Agreement.

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

**1.1.36.** “Phase I Conservation Measure” means a Conservation Measure that will be

initiated in Phase One, as that measure may be modified or developed pursuant to the AMP.

**1.1.37.** “Phase II Conservation Measure” means a Conservation Measure that will be initiated in Phase II, as that measure may be modified or developed pursuant to the AMP.

**1.1.38.** “Presumptive Phase II Conservation Measure” means the Conservation Measure of the San Antonio Water System described in Subsection 5.5.2 of the HCP.

**1.1.39.** “Program” means all activities related to implementation of the Permit and HCP, as described in the Program Documents.

**1.1.40.** “Program Administration Costs” means costs of the EAA necessary to manage the Program as described in Table 7-1 of the HCP.

**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.

**1.1.42.** “Program Documents” means the Permit, the Application, the HCP, the Implementing Agreement, and this Agreement.

**1.1.43.** “Program Expenditures” means the costs authorized by Section 5.6 and included in the Annual Program Budget.

**1.1.44.** “Program Funding” means funds provided by the EAA from the HCP Program Account to reimburse the Parties for costs associated with the Program, consistent with the Annual Program Budget and the program funding contracts provided for in Subsection 6.1.8.

**1.1.45.** “Program Funding Application” means an application submitted to the EAA by a Party for funding to implement a Conservation Measure or other Program-related activity, as provided in Section 6.1.

**1.1.46.** “Program Manager” means the employee of the EAA as described in Section 2.3 whose responsibility it is to administer the Program pursuant to the provisions of the Program Documents.

**1.1.47.** “Science Committee” means the committee created pursuant to Section 7.9.

**1.1.48.** “Science Review Panel” or “SRP” means the panel created pursuant to Section 7.10.

**1.1.49.** “Scientific Record” means a compilation of all the best scientific and commercial data currently available used to develop the Program, as supplemented by the results of new research and data made available during the Permit Term in accordance with Section 7.13.

**1.1.50.** “Service” means the United States Fish and Wildlife Service.

**1.1.51.** “Stakeholder Committee” means the committee created pursuant to Section 7.8.

**1.1.52.** “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 Parties and the Service at the time of the negotiation and development of the HCP, the Implementing Agreement, and this Agreement, and that result in a substantial and adverse change in the status of one or more of the Covered Species. The term Unforeseen Circumstances as defined in this Agreement is intended to have the same meaning as “extraordinary circumstances” as used in the No Surprises policy described in Subsection 8.7.1 of the Implementing Agreement.



**1.1.53.** “Year” means calendar year (January 1 through December 31), unless the context clearly indicates otherwise.

**Section 1.2. Terms Defined in the Implementing Agreement.**

Each capitalized and other special term not expressly defined in this Agreement has the meaning assigned in the Implementing Agreement, unless the context specifically indicates otherwise.

**Section 1.3. References to Sections.**

References to any article, section, or subsection refer to the corresponding subdivision of this Agreement unless another document is specified.

**Section 1.4. References to Other Program Documents.**

This Agreement at times refers to provisions in one or more of the other Program Documents executed by the Parties and other persons in connection with, and related to, the HCP. Any such reference refers to the applicable provision in the executed document, as it may have been amended.

**Article Two – Permit Application and Program Management**

**Section 2.1. Application for Permit.**

On or before December 31, 2011, the Parties will jointly submit to the Service the following Program Documents:

- (1) the Application;
- (2) the HCP;

- (3) the proposed Implementing Agreement; and
- (4) this Agreement, executed by the Parties.

**Section 2.2. General Program Management by EAA.**

The EAA has responsibility for the general management and oversight of the Program, subject to the duties and responsibilities held solely or jointly by the other Parties, in accordance with the terms of the Program Documents.

**Section 2.3. Program Manager.**

The EAA will employ a Program Manager whose job responsibility will be to direct, under the supervision of the General Manager of the EAA, the management of the Program consistent with the Program Documents. The Program Manager will be employed, and the Program Manager's job performance will be reviewed, as provided in this Section.

**2.3.1. Job Description.**

The EAA will develop the job description, job title, responsibilities, accountability, and salary that it determines is appropriate for the Program Manager, provided that the EAA will confer with the Implementing Committee in: (a) the development of the job description; (b) the conduct of candidate interviews; (c) the review of candidate qualifications; and (d) the selection of the preferred candidate. The EAA will make reasonable efforts to accommodate the views and comments of the Implementing Committee in making the final hiring decision and will also solicit and consider the comments of the Implementing Committee when reviewing the performance of the Program Manager.

### **2.3.2. Program Manager Duties.**

In addition to any duties and responsibilities the Program Manager will have as an employee of the EAA, the Program Manager will have the following duties:

- a.** to serve as the primary point of contact between the Parties and the Service;
- b.** to cooperate with, coordinate, and generally support the activities and decision-making processes of the Implementing Committee, Stakeholder Committee, Science Committee, and the Science Review Panel;
- c.** to use reasonable efforts to seek to secure unanimous action by the Implementing Committee, and consensus action by the Stakeholder Committee and the Science Committee, for matters brought before each of these committees pursuant to the Program Documents;
- d.** to cooperate with and coordinate with the Service;
- e.** to monitor compliance by the Parties with the Permit and other Program Documents;
- f.** to prepare and provide all reports as may be directed by the Implementing Committee or the Program Documents;
- g.** to compile and maintain the Scientific Record as described in this Agreement and as may be directed by the Implementing Committee;
- h.** to timely prepare work plans and cost estimates for the activities to be performed by the Program Manager during Phase I and Phase II for inclusion in the Comprehensive Phase I Work Plan and Comprehensive Phase II Work Plan,

respectively, as described in Sections 4.2 and 4.3;

**i.** to timely prepare for each year during the Permit Term a work plan and cost estimate for activities to be performed by the Program Manager for inclusion in the Annual Party Work Plan and Cost Estimate of the EAA;

**j.** to assist the Implementing Committee with developing and, if required, amending the Comprehensive Phase I Work Plan and Comprehensive Phase II Work Plan, each of which plans will include the activities to be performed by the Program Manager;

**k.** to assist the EAA with timely preparing the EAA's Annual Party Work Plan and Cost Estimate, which will incorporate descriptions and costs for the activities to be performed by the Program Manager, and will be submitted for approval in the same manner as the Party Annual Party Work Plan and Cost Estimate submitted by the other Parties;

**l.** to supervise all activities associated with the applied research facility described in Subsection 6.3.4 of the HCP, and the continuing reliance on the best available science and the continuing involvement of the Stakeholders in making certain AMP decisions, as provided in Article Seven;

**m.** to ensure that the EAA's website reflects all current science and research reports, and reports and activities of the Implementing Committee, Stakeholder Committee, Science Committee, and the Science Review Panel;

**n.** to perform other duties as may be assigned from time to time by the Implementing Committee, in consultation with the EAA General Manager; and

**n.** to perform any other duties and responsibilities as may be described in the job description developed by the EAA General Manager with the participation of

the Implementing Committee.

### **2.3.3. Acting Program Manager.**

The EAA General Manager may from time to time designate a qualified member of the EAA staff to serve as the Acting Program Manager for temporary periods which may occur either pending the hiring of the initial or any successor Program Manager, or in the event of the Program Manager's unavailability or incapacity. Any duties or acts assigned to the Program Manager will be undertaken during the temporary period by the acting person thus appointed.

## **Article Three – Duties and Responsibilities of the Parties**

### **Section 3.1. Parties' Collective Duties and Responsibilities.**

The collective Program duties and responsibilities of the Parties include: (a) implementing the Conservation Measures and the AMP; (b) collaborating on research and planning associated with the implementation of Conservation Measures and the AMP; and (c) participating in any federal program that may provide funding for 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 as provided in Section 9.2 of the Implementing Agreement, taking action as may be appropriate for such issuance and monitoring and enforcing the terms of any Certificate of Inclusion issued; (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.

## **Article Four – Program Work Plan and Budget Approvals**

### **Section 4.1. Implementing Committee.**

The Implementing Committee will, as soon as reasonably practicable after January 1, 2012, convene its initial organizational meeting, adopt procedures, and take other actions as may be necessary to comply with the schedule in this Article.

### **Section 4.2. Comprehensive Phase I Work Plan.**

Not later than March 1, 2012, the Implementing Committee will develop and approve a Comprehensive Phase I Work Plan, which will include descriptions, schedules, and cost estimates for the Phase I Conservation Measures and all Program activities to be conducted or managed by the Parties and the Program Manager that are to be funded from the HCP Program Account for the Phase I period through December 31, 2019. The Comprehensive Phase I Work Plan may be amended from time to time by the Implementing Committee to accommodate new information and modifications in Conservation Measures as may be approved and authorized in compliance with the AMP established by Article Seven.

### **Section 4.3. Comprehensive Phase II Work Plan.**

Not later than March 1, 2019, the Implementing Committee will develop and approve a Comprehensive Phase II Work Plan, which will include descriptions, schedules, and cost estimates for ongoing Phase I Conservation Measures, for the Phase II Conservation Measures, and for all Program activities to be conducted or managed by the Parties and Program Manager that are to be funded from the HCP Program Account for the Phase II period from January 1, 2020 until expiration of the Permit. The Implementing Committee may amend the Comprehensive Phase II Work Plan from time to time to accommodate new information and modifications in Conservation Measures as may be approved and authorized in compliance with

the AMP established by Article Seven.

**Section 4.4. Initial Annual Party Work Plan and Cost Estimate Submittal.**

Not later than April 15, 2012, each Party will submit to the Program Manager and Implementing Committee for the Implementing Committee's review and approval its Annual Party Work Plan and Cost Estimate for 2013. The EAA's Annual Party Work Plan and Cost Estimate will include all activities related to the Program to be conducted or managed by the Program Manager during 2013. Each Annual Party Work Plan and Cost Estimate will include descriptions and schedules of the tasks that are reasonable and necessary in order to perform each Party's respective Conservation Measures and other Program-related activities.

**Section 4.5. Annual Program Budget Approval.**

The Program Manager and Implementing Committee will review and recommend changes, if necessary, to each Annual Party Work Plan and Cost Estimate. Not later than June 30, 2012, the Implementing Committee will complete its review and approval of each Annual Party Work Plan and Cost Estimate for the 2013 budget year and will consolidate them into a proposed Annual Program Budget for 2013. Upon approval by the Implementing Committee, the proposed budget will be forwarded to the EAA for review and action of the EAA Board of Directors, and upon the approval by the Board of Directors, the proposed budget, as it may have been adjusted, will be the Annual Program Budget for 2013 and included in the EAA's 2013 budget.

**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.

**Article Five – Program Costs and Funding**

**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.

### **5.2.3. Initial Fee Assessment.**

The Parties acknowledge that the EAA is expected to impose and begin collecting Program Aquifer Management Fees prior to the submittal by the Implementing Committee to the EAA of the proposed Annual Program Budget for 2013 for EAA Board approval in order to ensure that sufficient funding will be available on January 1, 2013, to pay Program Expenditures during the initial year of the Comprehensive Phase I Work Plan.

### **Section 5.3. Funding Contributions by Other Persons and Entities.**

The Parties acknowledge that other persons and entities, including but not limited to the Guadalupe Blanco River Authority, have committed to make, beginning in 2012, annual contributions of funds to the EAA to be used solely for the Program. The Parties will pursue applications for grants and funds for the Program from state and federal agencies and other potential funding sources.

### **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.

## **Section 5.5. Sources of Funds in the HCP Program Account.**

Amounts deposited in the HCP Program Account will include the funds described in this Section.

### **5.5.1. EAA Fees.**

All funds collected by the EAA through the imposition of Program Aquifer Management Fees will be deposited in the HCP Program Account.

### **5.5.2. Contributions and Grants.**

All funds from contributions, grants, and other sources of funds the EAA may receive to support the Program during the Permit Term will be deposited in the HCP Program Account.

### **5.5.3. Earnings on Investments.**

All earnings on the investment of funds deposited to the HCP Program Account will be deposited in the HCP Program Account.

### **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.

## **Section 5.6. Uses of Funds in the HCP Program Account.**

Except as provided in Subsection 5.6.1 with regard to certain costs incurred by the EAA in 2012, funds deposited in the HCP Program Account may be used only for Program Expenditures as described in this Section that have been approved in the Annual Program Budget.

### **5.6.1. Use of Funds in 2012.**

Funds may be used for Program Administration Costs incurred by the EAA from the Effective Date through December 31, 2012, up to the total amount of \$375,000.

### **5.6.2. Costs of Conservation Measures.**

Funds may be used for the costs of implementation of the Conservation Measures.

### **5.6.3. AMP Costs.**

Funds may be used for the costs of the AMP described in Article Seven, including activities described in Chapter 6 of the HCP.

### **5.6.4. Federal Program Participation Costs.**

Funds may be used for the costs of qualification for participation in any federal program that may provide funding for the Program.

### **5.6.5. Limitations on Use of Funds - Employees and Administrative Costs.**

With the exception of Program Administration Costs of the 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.

**5.6.6. Limitations on Use of Funds – MS4 Permit Costs.**

Funds may not be used for the cost of measures required to be undertaken by any Party in order to obtain a Small Municipal Separate Storm Sewer System (MS4) permit under the Texas Pollution Discharge Elimination System Program as required by the Texas Commission on Environmental Quality (TCEQ) or the laws of the State of Texas. However, funds may be used for the cost of measures and activities included in a MS4 program to the extent that they implement Conservation Measures which exceed minimum requirements for obtaining the MS4 permit.

**Article Six – Applications for Program Funding**

**Section 6.1. Applications from a Party for Program Funding.**

A Program Funding Application from a Party to the EAA to implement a Conservation Measure or other Program activity which it is the duty of the Party to implement may be made and will be considered for approval by the EAA only as provided in this Article.

**6.1.1. Required Contents.**

The Program Funding Application will be filed in writing in affidavit form and include the following information:

- a. the name and contact information of the applicant and its principal offices;
- b. a resolution of the applicant representing that the filing of the application has been duly authorized by the governing body or other appropriate official of the applicant;

- c. a description of the purposes for which Program Funding is sought;
- d. a statement that the Implementing Agreement, HCP, the Permit or other appropriate regulatory document authorizes the proposed Conservation Measure or other Program activity to be performed;
- e. citations to all appropriate Program Documents demonstrating that the proposed Conservation Measure or other Program activity is authorized to be performed;
- f. the approved Annual Party Work Plan and Cost Estimate for the period for which Program Funding is sought, including the project schedule, budget, and contractors or subcontractors who will be performing the work;
- g. a description of the procurement process utilized by the applicant to secure bids or proposals and a demonstration that the bid or proposal selected is lawful and reasonable;
- h. the amount of Program Funding requested; and
- i. the proposed schedule of payments.

### **6.1.2. Application Deadline.**

Except under extenuating circumstances as approved by the Implementing Committee, a Program Funding Application will be filed with the EAA not later than October 1 of the year preceding the year for which Program Funding is sought.

### **6.1.3. Application Approval Criteria.**

No later than 30 days after the EAA Board of Directors approves the Annual Program

Budget for the next year, the EAA will approve a party's Program Funding Application if the applicant demonstrates the following considerations:

- a. the applicant is a Permittee under the Implementing Agreement;
- b. the applicant is authorized to file the application;
- c. each proposed Conservation Measure or other Program-related activity is authorized for Program Funding pursuant to Article Five and Chapters 5 and 6 of the HCP;
- d. each proposed Conservation Measure or other Program-related activity is identified by the Implementing Agreement, this Agreement, the HCP, or other Program Document, to be performed by the applicant, or, the applicant, as authorized by the Implementing Committee, is acting to cure the failure of another Party to perform one or more Conservation Measures or other Program-related activities;
- e. the approved Comprehensive Phase I Work Plan or Phase II Work Plan and Annual Program Budget include each proposed Conservation Measure or other Program-related activity for the period for which Program Funding is sought;
- f. the approved applicable Comprehensive Phase I Work Plan or Phase II Work Plan and Annual Program Budget state the estimated total costs of each proposed Conservation Measure or other Program-related activity and the amount anticipated to be expended for the period for which Program Funding is sought;
- g. The applicant's Annual Party Work Plan and Cost Estimate suitably describes each proposed Conservation Measure or other Program-related activity to be performed, the project schedule, and the proposed project cost; and

h. The recommended project cost based on the procurement process used by the applicant is reasonable.

#### **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

#### **6.1.5. Notice of Decision on Application.**

The EAA will notify the applicant in writing of its decision on the application.

#### **6.1.6. EAA Delegation of Action on Applications.**

The EAA Board of Directors may delegate to the EAA General Manager or his designee its authority to take action on an application under this Section.

#### **6.1.7. Amendments to Application.**

A Program Funding Application may be amended in writing with a request to the EAA to take action on the application as amended. The EAA will take action on the amended application in the same manner as provided for the original application.



#### **6.1.8. Program Funding Contracts.**

Funds may be disbursed by the EAA from the HCP Program Account only in the form of a Program Funding contract for the work to be performed by the applicant. If the EAA approves a Program Funding Application, it will make reasonable efforts to enter into a contract not later than 30 days after it takes final action on the application and make available to the applicant the amount of the approved Program Funding according to the terms and conditions in the contract.

### **Section 6.2. Program Payments.**

#### **6.2.1. Submission of Invoices.**

Each Party will submit invoices to the Program Manager monthly for Program Funding for work to be performed or overseen by that Party in accordance with the Annual Program Budget and that Party's applicable Program Funding contract and associated, approved Program Funding Application. Each invoice will be accompanied by appropriate documentation reflecting all costs to be incurred or paid by the Party and such other documentation as may be required by the EAA as a condition of the Program Funding. The EAA will not make any payment to any Party for any work that is not included in the Annual Program Budget, as it may be amended from time to time, and a Party's applicable Program Funding contract and associated, approved Program Funding Application. The Program Manager will coordinate with the EAA and each Party submitting an invoice to ensure that each invoice, if approved, is paid to the Party submitting the invoice within 30 days of invoice submission.

#### **6.2.2. Documenting Expenditures.**

Each Party will submit to the Program Manager receipts or other appropriate documentation reflecting actual expenditures in accordance with the Party's applicable

Program Funding contract.

### **6.2.3. Actual Costs at Variance with Budget.**

In the event actual expenditures for an action item are less than the line-item amount for that action in the Annual Program Budget, the funds committed to that action item may be used for other authorized purposes approved in accordance with the Annual Program Budget. In the event actual expenditures for an action item in the Annual Program Budget exceed the line-item amount in the Annual Program Budget, the Party responsible for that action item will provide written notice to the Program Manager of the cost overrun with substantiation for the additional expenses. The Program Manager will review the notice and provide a recommendation to the Implementing Committee, after which the Implementing Committee members will consider recommending to EAA a line-item amendment to the Annual Program Budget. The Implementing Committee may recommend an amendment to the Annual Program Budget only if adequate funds are available in the Program Account and only with the approval of the Implementing Committee and the EAA.

### **Section 6.3. Reduction or Termination of Funding Obligations.**

The Annual Funding Obligation of the EAA under this Agreement will be in effect only during the Permit Term and is subject to reduction or termination as provided in Subsection 6.4.1.

### **Section 6.4. Alternative Funding.**

The Program Manager and the Implementing Committee will pursue cooperative and grant funding to the extent available from all state, federal, and other private sources for eligible activities included in the Program. The Parties acknowledge that action by the Texas Legislature or other efforts subsequent to the Effective Date may result in adoption of a regional sales tax or other alternative source to fund the Program.

#### **6.4.1. Reduction or Termination of Funding Obligations.**

In the event that a regional sales tax or other alternative funding source to fund Program costs is created or secured, the Annual Funding Obligation of the EAA will be reduced or terminated on the date, and to the extent, that the proceeds from the tax or other alternative funding source is determined to be remitted to the EAA in amounts sufficient to reduce or displace the Annual Funding Obligation of the EAA, or the need for the EAA to assess Program Aquifer Management Fees to fund all or a part of the Program Expenditures. Thereafter, funding responsibilities for the Program described in this Agreement, to the extent of funds available from any such alternative new funding source, will be the responsibility of the administrator of the tax as provided by the legislation establishing such a tax, or the terms of any agreement establishing the alternative funding source.

#### **6.4.2. Use of Alternative Funding.**

To the maximum extent possible, funds collected from a sales tax or other alternative funding source will be used to provide funding for Program Expenditures, including without limitation, the implementation of Phase I Conservation Measures and any Phase II Conservation Measures.

#### **6.4.3. Use of Additional Funds.**

To the extent that additional funds, greater than the amount required to comply with ongoing Program obligations, are available in the HCP Program Account upon reduction or termination of the Annual Funding Obligation of the EAA, the funds will be used only for approved purposes in accordance with the Program Documents.

### **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.

## **Article Seven – Adaptive Management Process**

### **Section 7.1. Purpose.**

The Parties will follow the AMP, as described in this Article, during the Permit Term to ensure the full implementation of species protection provided by the Program. This Article provides the procedural steps and responsibilities of the Parties for making AMP decisions, the respective roles of the Implementing Committee, the Stakeholder Committee, the Science Committee, and the Science Review Panel in relation to AMP decisions, and the actions that will be taken as a result of such decisions.

### **Section 7.2. EAA Responsibilities.**

#### **7.2.1. Management Responsibilities.**

Management of the implementation of the AMP in accordance with the terms and conditions of the Program Documents is the overall responsibility of the EAA, except to the extent of the duties and responsibilities held solely or jointly by one or more Parties, or of the roles of the Department or the Service, as specifically provided in the Program Documents. The EAA will also:

- a.** provide necessary staff support to the Implementing Committee, the Stakeholder Committee, the Science Committee, the Science Review Panel, and to the Program Manager;
- b.** cooperate and coordinate its management and implementation activities

for the Program with the Service, the Implementing Committee, the Stakeholder Committee, and the Science Committee;

- c. coordinate with and facilitate meetings of the Science Review Panel; and
- d. to the extent required under the Program Documents, consult with and obtain recommendations or approval for its management and implementation activities from the Implementing Committee or the Service.

### **7.2.2. Procurement.**

Any procurement related to the Program, unless relating to the duties and responsibilities of another Party, will be made in compliance with the EAA budgeting, procurement, and disbursement policies and procedures.

### **Section 7.3. Adaptive Management in Program Phases.**

The Parties will engage in the AMP during the Permit Term, as more fully described in this Agreement and the Program Documents. The AMP related to Phase I Conservation Measures will begin on the Effective Date and continue as long as any of those Conservation Measures are ongoing. The AMP related to Phase II Conservation Measures will begin no later than January 31, 2019, and continue for the duration of the Permit Term. The AMP described in this Article provides procedures for three levels of adaptive management decisions by the Parties: (1) routine (2) nonroutine and (3) strategic. Each Phase I Conservation Measure will be undertaken as soon as reasonably practicable after the effective date of the Permit, and, subject to any modification made by the Parties through the AMP, will continue during Phase I and Phase II unless the Conservation Measure is discontinued as a result of an AMP decision. Each Phase II Conservation Measure that is implemented in addition to any continuing Phase I Conservation Measures will be undertaken as soon as reasonably practicable after the commencement of Phase II.

## **Section 7.4. Biological Goals, Biological Objectives, and Adaptive Management.**

The Parties recognize and affirm that the Biological Goals and Biological Objectives are central to the consensus developed by Stakeholders during the EARIP and that those goals and objectives will not be changed except to the extent that the best available scientific and commercial information developed after the Effective Date demonstrates that such changes are appropriate in accordance with the Scientific Record as provided in Subsection 7.13.7. The Parties also recognize that effective adaptive management is critical to the success of the Program.

## **Section 7.5. Monitoring.**

As more fully described in Section 6.2 of the HCP, the Parties, with input from the Science Committee, Stakeholder Committee, and the Department, will develop and implement a monitoring program approved by the Service to meet the goals of the AMP. The monitoring program will provide information for the Service and the Parties to: (a) evaluate compliance with the Permit and the HCP; (b) determine if the Biological Goals and Biological Objectives are being met; and (c) provide scientific data and feedback information for the AMP.

### **7.5.1. Compliance Monitoring.**

The Parties will include compliance monitoring in the monitoring program to verify that the Parties are carrying out the terms of the Program Documents.

### **7.5.2. Effects and Effectiveness Monitoring.**

The Parties will include effects and effectiveness monitoring in the monitoring program to evaluate the success of the Program in meeting the Biological Goals and Biological Objectives. The Parties will design and implement targeted studies to evaluate, at a minimum, each of the issues listed in Section 6.3 of the HCP. Utilizing the staff resources of the Parties to the extent appropriate and available, the Science Committee, the Science

Review Panel, and other appropriate persons, the Program Manager will regularly evaluate the data developed through the monitoring program, the results of the studies in the applied research facility as described in Subsection 6.3.4 of the HCP, other studies and modeling results, and other information as appropriate.

### **7.5.3. Monitoring Reports.**

As part of the annual report to be submitted to the Service pursuant to Subsection 7.1.3 of the Implementing Agreement and Sections 6.2 and 9.3 of the HCP, the Parties will prepare and submit a monitoring report.

- a. In addition to any other information deemed appropriate by the Program Manager or requested by the Service, the monitoring report will include the information required by Subsection 9.3.1 of the HCP.
  
- b. The Program Manager will prepare and submit a draft of the monitoring report to the Implementing Committee, the Stakeholder Committee and the Science Committee at least 60 days prior to the submittal to the Service of the annual report. The first monitoring report, for the year 2013, will be submitted for inclusion in the annual report in 2014. The monitoring report will also be made available to the Stakeholder Committee contemporaneously with its submission to the Service.

### **7.5.4. Technical Assistance.**

The Program Manager may engage technical assistance and consult with individual Parties, the Service, and the Department as necessary to ensure effective monitoring on a timely basis. Costs incurred under this Subsection are subject to approval pursuant to the provisions in this Agreement governing the Comprehensive Phase I Work Plan, the Comprehensive Phase II Work Plan, Annual Party Work Plans and Cost Estimates, and Annual Program Budgets.

## **Section 7.6. AMP Decisions.**

The Parties will consider and make three types of AMP Decisions during the Permit Term as provided in this Section.

### **7.6.1. Routine AMP Decisions.**

Routine AMP Decisions are decisions involving ongoing, day-to-day matters related to the management and administration of Phase I Conservation Measures, and Phase II Conservation Measures implemented through the Strategic AMP Decision Process. Routine AMP Decisions also include any modifications to a Phase I Conservation Measure and to a Phase II Conservation Measure implemented through the Strategic AMP Decision Process that do not require a Permit Amendment.

### **7.6.2. Nonroutine AMP Decisions.**

Nonroutine AMP Decisions are those decisions relating to Conservation Measures which are not Routine AMP Decisions or Strategic AMP Decisions. Nonroutine AMP Decisions include, but are not limited to, decisions to: (a) make modifications to any Phase I Conservation Measure or to any Phase II Conservation Measure implemented through the Strategic AMP Decision Process that require a Permit Amendment; (b) discontinue any Phase I Conservation Measure regardless of whether the decision requires a Permit Amendment; (c) discontinue any Phase II Conservation Measure regardless of whether the decision requires a Permit Amendment; (d) make any substantial alteration of the Biological Goals or Biological Objectives; and (e) implement or decline to implement an Additional Conservation Measure proposed by the Service.

### **7.6.3. Strategic AMP Decisions.**

Strategic AMP Decisions are those decisions that relate to the selection of Phase II



Conservation Measures to be undertaken by the Parties during Phase II.

**Section 7.7. Implementing Committee.**

The Parties will establish and designate members of an Implementing Committee to supervise implementation of the HCP in accordance with the provisions of this Agreement. The Implementing Committee will be comprised, operate, and have the duties, rights, and obligations as provided in this Article and other provisions of this Agreement.

**7.7.1. Membership on the Implementing Committee.**

**a. Voting Members of the Implementing Committee.**

The Implementing Committee will have five voting members, each appointed by and representing a Party. Each Party will take such actions as it finds appropriate to duly appoint the member, to authorize the appointed member to represent the interests of the appointing Party in deliberations, and to authorize the appointed member to cast votes for Implementing Committee actions by which the Party agrees to be bound. Within 60 days of the effective date of the Permit, and from time to time thereafter as necessary, each Party will advise the Program Manager in writing of the name and contact information of the person it has appointed to represent that Party on the Implementing Committee.

**b. Nonvoting Members of the Implementing Committee.**

The Implementing Committee will also include as nonvoting members a representative appointed by each person or group of persons, other than a Party, who contributes to the HCP Program Account, under a written agreement with the EAA, an amount not less than \$400,000 for each year of the Permit Term, as such amount may be adjusted under the terms of the written agreement. Within 60 days of the effective date of an agreement with the EAA, and from time to time

thereafter as necessary, each person or group of persons entitled to nonvoting representation on the Implementing Committee will advise the Program Manager in writing of the name and contact information of the person appointed to represent that person or group as a nonvoting member of the Implementing Committee.

**c. Alternate Members.**

Each voting and nonvoting member of the Implementing Committee may appoint, by advising the Program Manager in writing, one or more alternates to act as its representative in the absence of its regular representative.

**7.7.2. Organizational Meeting of the Implementing Committee.**

The members of the Implementing Committee will, as soon as reasonably practicable after January 1, 2012, convene their initial organizational meeting, elect a Committee chair and other officers as they may determine are necessary for Committee business, and adopt procedures to govern its activities. The Committee may take other actions as may be necessary to comply with the schedule of Program activities in this Agreement.

**7.7.3. Duties of Implementing Committee.**

The Implementing Committee will have the duties and obligations provided in this Subsection as follows:

- a.** consult with and advise the Program Manager on Routine AMP Decisions proposed by the Program Manager, the Implementing Committee, or the Stakeholder Committee;
- b.** consult with and advise the Program Manager on research and the

development of models as necessary to support and inform AMP decision-making;

c. ensure that the governing bodies of the Parties are kept informed of and, as appropriate, engaged in, through consultation with their respective representatives on the Committee or otherwise, Nonroutine AMP Decisions proposed by or to the Program Manager;

d. ensure that the governing bodies of the Parties are kept informed of and engaged in, through consultation with their respective representatives on the Committee or otherwise, Strategic AMP Decisions proposed by or to the Program Manager; and

e. make recommendations or decisions as required by the Program Documents.

#### **7.7.4. Meetings of the Implementing Committee.**

The Implementing Committee will meet once each calendar quarter and at any other time upon the request of the Program Manager or any two Parties. Meetings will be conducted at the official offices of the EAA or at any other location agreed upon by the Implementing Committee. The Program Manager will provide reasonable advance notice of the meetings to the Parties and Stakeholder Committee, and will post notice of any meeting on the EAA website. Meetings will be generally open to the public, but, with good cause, may be closed to the public at the request of the Program Manager or any two Parties. Meetings of the Implementing Committee are not subject to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, but the Committee and Program Manager will make reasonable efforts to provide notice of its meetings and conduct them open to the public as though they were subject to the Texas Open Meetings Act.

#### **7.7.5. Implementing Committee Voting.**

Except as otherwise provided in this Article for resolution of specific issues, a decision of the Implementing Committee will be made only by unanimous vote of the five voting members of the Committee, and any vote less than unanimous will result in disapproval of the proposed decision. Nonvoting members of the Implementing Committee will not be considered as members of the Committee for determining quorum or for decisions involving consensus or voting.

#### **Section 7.8. Stakeholder Committee.**

The Parties, through the Implementing Committee, will establish, and invite Stakeholders to designate members of, an Adaptive Management Stakeholder Committee (Stakeholder Committee). The Stakeholder Committee will be comprised and operate as provided in this Section.

##### **7.8.1. Membership on the Stakeholder Committee.**

The Stakeholder Committee will be comprised of one representative from each of the Parties and, to the extent possible, one representative from each of the following:

- a. Texas Commission on Environmental Quality;
- b. Texas Parks and Wildlife Department;
- c. Texas Department of Agriculture;
- d. Texas Water Development Board;
- e. Guadalupe-Blanco River Authority;

- f. San Antonio River Authority;
- g. South Central Texas Water Advisory Committee;
- h. Bexar County;
- i. CPS Energy;
- j. Bexar Metropolitan Water District or its successor, if that successor entity is not already represented on the Stakeholder Committee;
- k. A holder of an initial regular permit issued to a retail public utility located west of Bexar County, to be appointed by the EAA;
- l. A holder of an initial regular permit issued by the EAA for industrial purposes, to be appointed by the EAA;
- m. A holder of an industrial surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;
- n. A holder of a municipal surface water right in the Guadalupe River Basin, to be appointed by the Texas Commission on Environmental Quality;
- o. A retail public utility in whose service area the Comal Springs or San Marcos Springs is located;
- p. A holder of an initial regular permit issued by the EAA for irrigation, to be appointed by the commissioner of agriculture;
- q. An agricultural producer from the Edwards Aquifer region, to be appointed by the commissioner of agriculture;

- r. Environmental interests from the Texas Living Waters project, to be appointed by the governing body of that project, or if that project is discontinued, jointly by the National Wildlife Federation and the Lone Star Chapter of the Sierra Club;
- s. Recreational interests in the Guadalupe River Basin, to be appointed by the Texas Parks and Wildlife Commission;
- t. A holder of an EAA initial regular permit issued to a small municipality (population under 50,000) located east of San Antonio to be appointed by the Stakeholder Committee;
- u. Edwards Aquifer region municipal ratepayers/general public, to be appointed by the Stakeholder Committee;
- v. Guadalupe River Basin municipal ratepayers/general public, to be appointed by the Stakeholder Committee;
- w. A conservation organization, to be designated by the Stakeholder Committee; and
- x. Nueces River Authority.

**7.8.2. Representatives Serving on the Stakeholder Committee.**

The Parties recognize that, with the exception of the Parties, participation on the Stakeholder Committee is voluntary and cannot be compelled by the Service or the Parties. Any entity or class listed above that does not have a designated representative to the Stakeholder Committee will not be considered as a member of the Committee for purposes of determining quorum, consensus, affirmative votes or unanimous votes.

**a. Timely Acceptance.**

Within 60 days of the effective date of the Permit, and from time to time thereafter as necessary, each designating entity described in Subsection 7.8.1 entitled to designate an entity representative or one or more class representatives to serve as members of the Stakeholder Committee will advise the Program Manager in writing of the name and contact information of each designated representative.

**b. Later Acceptance.**

A designating entity listed in Subsection 7.8.1 may, at any time after the 60-day period, elect to designate a qualified representative to serve as a member of the Stakeholder Committee by giving written notice to the Program Manager of its intent to designate a representative and by providing the name and contact information of the representative.

**c. Authorization to Vote.**

Each designated entity representative or class representative will become a member of the Stakeholder Committee on the date that the Program Manager receives the written notification from the designating entity of the designation and the designee's acceptance of the designation as a member. Each member will be authorized to vote on behalf of the entity or class the member represents. If an entity or class listed in Subsection 7.8.1 was represented on the EARIP Steering Committee created under Section 1.26A of the EAA Act, the representative of that entity or class will be presumed to continue as the voting representative of that entity or class on the Stakeholder Committee in the absence of a contrary designation or a written resignation.

**d. Alternates.**

Each designating entity may appoint one or more alternates to act as its representative Stakeholder Committee member in the absence of its regular designee.

**7.8.3. Role of the Stakeholder Committee.**

The Stakeholder Committee will have the role in the AMP and the Program as described as follows in this Subsection and as may be specifically provided in other sections of this Agreement:

- a.** at the request of the Program Manager or an individual Party, consult with, advise, and make recommendations to the Program Manager, the individual Party, or the Implementing Committee on Routine AMP Decisions;
- b.** consult with, advise, and make recommendations to the Implementing Committee on proposed Nonroutine AMP Decisions;
- c.** consult with, advise, and make recommendations to the Implementing Committee on proposed Strategic AMP Decisions;
- d.** consult with, advise, and make recommendations to the Program Manager or the Implementing Committee on the design of studies related to the Biological Goals or the Biological Objectives;
- e.** consult with, advise, and make recommendations to the Program Manager or the Implementing Committee on any other matter at the request of the Program Manager or Implementing Committee; and
- f.** make appointments of members to the Science Committee as provided in



## Section 7.9.

### **7.8.4. Meetings of the Stakeholder Committee.**

The Stakeholder Committee will meet twice each calendar year and at any other time upon the request of the Program Manager or of any two voting members of the Implementing Committee, or upon petition to the Program Manager by four members of the Stakeholder Committee. Meetings will be conducted at the official offices of the EAA or at another location agreed upon by the Stakeholder Committee. The Program Manager will provide reasonable advance notice of the meetings via email to each member of the Stakeholder Committee and will also post notice of any meeting on the EAA website. Meetings will generally be open to the public, but, with good cause, may be closed to the public at the request of the Program Manager or any two members of the Stakeholder Committee. Meetings of the Stakeholder Committee are not subject to the Texas Open Meetings Act, but the Committee and Program Manager will make reasonable efforts to provide notice of its meetings and conduct them open to the public as though they were subject to the Texas Open Meetings Act.

### **7.8.5. Stakeholder Committee Voting.**

Each member of the Stakeholder Committee will have one vote until that member's participation is resigned, or forfeited by absence, without an authorized alternate, from three consecutive meetings.

### **7.8.6. Procedures of the Stakeholder Committee.**

A quorum for any meeting of the Stakeholder Committee will be three-fourths of the total number of members. The Stakeholder Committee will operate on a consensus basis, to the maximum extent achievable. In the absence of consensus, an affirmative vote of at least three-fourths of the entire membership will be required to approve any recommendation to the Program Manager or the Implementing Committee. The

Stakeholder Committee will elect a chair person, along with any other officers, and adopt procedures to govern its activities.

## **Section 7.9. Science Committee.**

The Parties, through the Implementing Committee, will establish and, in conjunction with the Stakeholder Committee, appoint an Adaptive Management Science Committee (Science Committee). To the extent possible, the Science Committee will be comprised of an odd number of not fewer than seven or more than eleven members, as determined by the Implementing Committee, who have technical expertise in one or more of the following areas: (a) the Edwards Aquifer or its management; (b) the Comal Springs and River as defined by Subsection 3.4.2 of the HCP; (c) the San Marcos Springs and River as defined by Subsection 3.4.3 of the HCP; or (d) the Covered Species.

### **7.9.1. Membership on the Science Committee.**

The Implementing Committee and the Stakeholder Committee will each select an equal number of members of the Science Committee and will coordinate with one another in making selections in order to ensure balance and proper coverage of areas of expertise. The Implementing Committee and the Stakeholder Committee will jointly select one additional member of the Science Committee. In the case of a vacancy on the Science Committee, the committee, or committees, that made the initial appointment for that position will appoint a replacement member.

#### **a. Invitations to Serve.**

The Parties recognize that participation on the Science Committee is voluntary and cannot be compelled by the Service or the Parties. Any person to which the Implementing Committee or the Stakeholder Committee extends an invitation to be a member of the Science Committee will be requested to respond in writing to the Program Manager within 30 days of the date of the invitation advising of the

acceptance of the invitation and to provide the invitee's contact information. If an invitee does not timely respond with acceptance, that invitation will be considered declined and another qualified person will be invited to become a member of the Science Committee in the same manner as for the invitation that was declined.

**b. Authorization to Vote.**

Each member appointed to the Science Committee will be authorized to vote and such appointed member will become a member of the Committee on the date that the Program Manager receives the written acceptance of the appointment.

**c. No Alternate.**

No member of the Science Committee may designate an alternate to act for that member in the member's absence.

**7.9.2. Role of the Science Committee.**

The Science Committee will have the role in the AMP and the Program as described in this Subsection, as follows:

**a.** consult with, advise and make recommendations to the Program Manager, the Implementing Committee and the Stakeholder Committee on any AMP Decision upon request;

**b.** provide independent and unbiased advice based on their best scientific judgment so that all AMP Decisions will be made consistent with the best scientific and commercial data available; and

**c.** participate in the meetings of the Science Review Panel and provide to the Panel such information as requested by that Panel or the Implementing

Committee.

### **7.9.3. Operations of the Science Committee.**

#### **a. Meetings.**

The Science Committee will meet at any time upon the request of the Program Manager, the Implementing Committee, or the Stakeholder Committee. Meetings will be conducted at the official offices of the EAA or at any other location agreed upon by the Science Committee. The Program Manager will provide reasonable advance notice of the meetings via email to each member of the Science Committee and will post notice of any meeting on the EAA website. Meetings will generally be open to the public, but, with good cause, may be closed to the public at the request of the Program Manager or any two members of the Science Committee. Meetings of the Science Committee are not subject to the Texas Open Meetings Act, but the Committee and Program Manager will make reasonable efforts to provide notice of its meetings and conduct them open to the public as though they were subject to the Texas Open Meetings Act.

#### **b. Subcommittees.**

The Science Committee may be organized into subcommittees as jointly determined by the Program Manager and Implementing Committee.

### **7.9.4. Requests for Science Committee Evaluations or Recommendations.**

#### **a. Requests on Proposed Routine AMP Decisions.**

Requests by the Program Manager, the Implementing Committee, or the Stakeholder Committee for an evaluation or recommendation on a proposed Routine AMP Decision may be made to the entire Science Committee or the

appropriate subcommittee of the Science Committee. However, for any proposed Routine AMP Decision that has significant potential to affect the overall well-being of a Covered Species, the decision-maker (the Program Manager or the Implementing Committee, as appropriate) will, if time allows, consult the Science Committee for input prior to making a decision or, if that is not possible, as soon as possible after making the decision and will adjust the decision as appropriate.

**b. Requests on Other AMP Decisions.**

For any proposed Nonroutine or Strategic AMP Decision, the Implementing Committee will seek a recommendation from the entire Science Committee prior to taking action on the proposed decision.

**c. Information Provided.**

The Program Manager will regularly inform the Science Committee of plans related to the applied research activities described in the HCP, including, but not limited to, Subsections 6.3.4 (applied research facility), 6.3.5 (Texas wild-rice enhancement) and 6.3.6 (monitoring and reduction of gill parasites), and, unless exigent conditions require otherwise, seek comments and recommendations from the Science Committee with regard to the research plans before the plans are implemented. The Program Manager will also inform the Science Committee and the Science Review Panel of the findings and results of the research activities.

**7.9.5. Procedures.**

The Science Committee and its subcommittees will operate to the maximum extent achievable by a collaborative process designed to achieve consensus. In the absence of full consensus on any evaluation or recommendation, the Science Committee will provide a written summary of competing positions to the Program Manager or the Implementing or Stakeholder Committees, as may be appropriate. Each member of the Science

Committee will have one vote towards consensus until participation is resigned, or forfeited by absence from three consecutive meetings. A quorum for any meeting of the Science Committee will be three-fourths of the total number of members for whom the Program Manager has received the notification of acceptance described in Subsection 7.9.1.b. The Science Committee will elect a chair person and a vice chair and adopt procedures to govern its activities.

#### **7.9.6. EAA Funding.**

The EAA, after consulting with the Implementing Committee, may enter into contracts with members of the Science Committee as, in the judgment of the EAA, are necessary and reasonable to secure the members' services.

### **Section 7.10. Creation of the Science Review Panel.**

Not later than December 31, 2013, the EAA will enter into a contract with the National Academies of the National Academy of Science to establish an independent Science Review Panel (SRP), select its members, and undertake the ongoing role of overseeing the SRP activities. If the National Academies declines to enter into a contract that is reasonable in the judgment of the Implementing Committee, the Program Manager will consult with the Implementing Committee and the Stakeholder Committee in order to develop a consensus recommendation to the EAA on another comparable organization to select, and contract to fulfill that role. The Implementing Committee, in its discretion and after receiving the recommendation of the Stakeholder Committee, may recommend to the EAA that it contract with one organization for selection of SRP members, and contract with another organization for the ongoing role of overseeing SRP activities.

#### **7.10.1. Membership of the Science Review Panel.**

The SRP will have five members, chosen on the basis of their expertise in the scientific areas most relevant to resolution of issues expected to arise in the AMP. The members

need not have specific knowledge about the Covered Species or the Edwards Aquifer and must not have pre-conceived positions on the appropriate resolution of the issues expected to be presented to the SRP.

#### **7.10.2. Meetings of the Science Review Panel.**

From the time that the SRP is established until determinations have been made under Subsection 7.13.7, the SRP will meet quarterly at various locations within the jurisdiction of the EAA. After determinations under Subsection 7.13.7 have been made, the Program Manager will request the SRP to meet on an as-needed basis for the remainder of the Permit Term. To the maximum extent practicable, such meetings will be open to the public and will be recorded, with the recordings included in the administrative record. As part of its meetings, the SRP is expected to tour various sites and facilities in order to obtain first-hand knowledge and insights about key issues and challenges to be addressed through the AMP. Such tours need not be recorded or open to the public.

#### **7.10.3. Role of the Science Review Panel.**

The SRP will serve as a formal review body as requested by the Program Manager to provide scientific advice to the Program Manager, Implementing Committee, Stakeholder Committee, and Science Committee on issues related to the AMP. The SRP will provide ongoing comments on the modeling, studies, and data collection and analyses performed pursuant to the HCP. The SRP will provide resolution of major scientific issues involved in the HCP and the AMP (including without limitation, changes to a Biological Goal or Biological Objective), and, upon request by the Project Manager, will definitively determine if the Scientific Record establishes each of the conclusions required in Subsection 7.13.7 and explain its determinations.

### **Section 7.11. Procedures for Routine AMP Decisions.**

Routine AMP Decisions will be made in accordance with the procedures stated in this Section.

### **7.11.1. Program Manager Approval Authority.**

Routine AMP Decisions that do not involve an adjustment to the Annual Program Budget in excess of \$50,000.00, and that do not primarily affect an individual Party, will be made by the Program Manager, subject to Subsections 7.2.2 and 7.11.4.

### **7.11.2. Decisions Involving Substantial Budget Adjustments.**

If a Routine AMP Decision involves an adjustment to the Annual Program Budget in excess of \$50,000, the decision will be subject to approval by the Implementing Committee, subject to Subsections 7.2.2 and 7.11.4.

### **7.11.3. Decisions Affecting an Individual Party.**

If a Routine AMP Decision will primarily affect an individual Party, the Program Manager will consult with that Party. Such a decision will not require the approval of the Implementing Committee unless it involves an adjustment to the Annual Program Budget in excess of \$50,000, or an increase in the Annual Program Budget. If the Party and the Program Manager agree that such a decision does not require Implementing Committee approval, they will report it to the Implementing Committee. If the affected Party and the Program Manager cannot reach agreement on a decision that does not otherwise require Implementing Committee approval, the decision will be made by a majority vote of the voting members of the Implementing Committee.

### **7.11.4. Decisions Involving the Annual Program Budget.**

Routine AMP Decisions involving an increase in the Annual Program Budget will require approval by the Implementing Committee and the EAA Board of Directors. Routine AMP Decisions that require amendments, transfers, or adjustments to the Annual Program Budget will be subject to applicable EAA budgeting, procurement, and



disbursement policies and procedures.

#### **7.11.5. Use of Science in Decisions.**

The Program Manager, individual Parties, and, if applicable, the Implementing Committee, will: (a) make Routine AMP Decisions on the basis of the best scientific and commercial data available; (b) consult with the Science Committee on any such decision that has significant potential to affect the overall well-being of a Covered Species for input prior to making a Routine AMP Decision or, if prior consultation is not possible, as soon as possible after making the decision; and (c) make appropriate adjustments in the decisions if the Science Committee input so advises. The Service will also be consulted on such decisions as a part of the AMP, as appropriate.

#### **7.11.6. Voting on Decisions.**

The Implementing Committee members may vote on a Routine AMP Decision by email or other electronic communication.

### **Section 7.12. Procedures for Nonroutine AMP Decisions.**

Nonroutine AMP Decisions will be made on the basis of the best scientific and commercial data available, and in accordance with the procedures stated in this Section.

#### **7.12.1. Submission of Proposals.**

A draft proposal for a Nonroutine AMP Decision may be brought forward by the Program Manager, any Party, the Implementing Committee, or any three members of the Stakeholder Committee. A draft proposal for a Nonroutine AMP Decision will be forwarded in writing to the Program Manager. The Program Manager will promptly forward the draft proposal to the Implementing Committee and the Stakeholder Committee, as appropriate, and to the Science Committee.

### **7.12.2. Science Committee Review.**

Upon receipt of a draft proposal for a Nonroutine AMP Decision, the Program Manager will convene a meeting of the Science Committee as soon as practicable to discuss the draft proposal and to develop a schedule and identify any resources or studies that will be necessary for the Science Committee to evaluate the proposal and make any recommendations, if necessary.

### **7.12.3. Stakeholder Committee Review.**

Within 14 days of receipt of a draft proposal for a Nonroutine AMP Decision, the Program Manager will convene a meeting of the Stakeholder Committee. With the consensus agreement of the Stakeholder Committee, obtained through polling of the members, the Program Manager may delay the meeting by up to an additional 14 days. The Program Manager will provide each member of the Stakeholder Committee a copy of the proposal and the written recommendation of the Science Committee, along with any other available supporting information, in advance of the meeting. If the Science Committee has not had sufficient time to complete its evaluation and recommendation of the draft proposal, the Program Manager will convene another meeting of the Stakeholder Committee within 14 days of receipt of the Science Committee's evaluation report. The Stakeholder Committee will take action on the proposal as provided below.

#### **a. Consensus.**

At the meeting to consider the draft proposal, the Stakeholder Committee will seek to achieve consensus on a recommendation regarding the proposal.

#### **b. Recommendation.**

The Stakeholder Committee will have 60 days from the date of its initial meeting

on the draft proposal to develop, approve, and submit a report with its recommendation on the proposal to the Program Manager. The Stakeholder Committee may, for good cause, request more time to submit its report, and such request will not be unreasonably denied by the Program Manager.

**c. Adoption by Three-fourths Majority.**

Any recommendation of the Stakeholder Committee for a Nonroutine AMP Decision will require at least a three-fourths majority of the entire Stakeholder Committee membership to be adopted. In the absence of consensus, the report of the Stakeholder Committee report will include a succinct summary of the competing positions.

**d. Recommendation Forwarding.**

The Stakeholder Committee will deliver its report on the proposal in writing to the Program Manager. The Program Manager will promptly deliver the Stakeholder Committee report to the Implementing Committee and the Service.

**7.12.4. Implementing Committee Decision.**

The Program Manager will call a meeting of the Implementing Committee within 14 days of receipt of the Stakeholder Committee's report on a proposal for a Nonroutine AMP Decision. The Implementing Committee will take action on the proposal as provided below.

**a. Approval or Disapproval.**

If the report includes a recommendation for a change to a Biological Goal or a Biological Objective, the Implementing Committee may either: (1) approve the recommendation of the Stakeholder Committee and direct the Program Manager

to commence discussion with the Service on the proposal; or (2) disapprove (by any vote other than unanimous approval) the Stakeholder Committee recommendation and direct the Program Manager to provide a written explanation of the disapproval to the Stakeholder Committee and to the Service. Any substantial alteration to a Biological Goal or Biological Objective will be based only upon new science developed during Phase I of the HCP. The Parties acknowledge that such an alteration will require a Permit Amendment.

**b. Unanimous Vote Required.**

A unanimous vote by the voting members of the Implementing Committee will be required to move forward with any proposed Nonroutine AMP Decision.

**c. Discussion With the Service.**

After consideration of the Stakeholder Committee report on a proposed modification to a Conservation Measure, the Implementing Committee, through the Program Manager, or, in the case of a modification that would primarily affect an individual Party and does not require a Permit Amendment, the Party that would be primarily affected, after notice to the Program Manager, may commence discussion with the Service on the proposed modification, and implement the modification if approved by the Service so long as the modification is not substantially less likely to achieve the Biological Goals and Biological Objectives than the Conservation Measure described in the HCP, as it may have been modified through the AMP.

**d. Additional Approval by Implementing Committee and EAA.**

A Nonroutine AMP Decision involving an increase in the Annual Program Budget will require approval by the Implementing Committee and the EAA Board of Directors. A Nonroutine AMP Decision that requires an amendment, transfer,

or adjustment to the Annual Program Budget will be subject to applicable EAA budgeting, procurement, and disbursement policies and procedures.

**e. Additional Approval by All Parties.**

If a Nonroutine AMP Decision involves an Additional Conservation Measure, the written approval of all of the Parties will be required, in addition to approval by the Implementing Committee, to implement the Additional Conservation Measure.

**f. Discontinuance of a Phase I Conservation Measure.**

Notwithstanding the unanimous vote requirement in Subsections 7.7.5 and 7.12.4.b, a Phase I Conservation Measure may be discontinued during the Permit Term by an affirmative vote of at least three voting members of the Implementing Committee if the measure is not needed to achieve any Biological Goal or Biological Objective.

**g. Right of Protest.**

The right of any member of the Stakeholder Committee to protest any Permit Amendment under consideration by the Service is recognized.

**Section 7.13. Scientific Record.**

**7.13.1. Supplementation of the Scientific Record.**

During Phase I, the Implementing Committee will ensure that the Program Manager continues to supplement the Scientific Record in accordance with Chapter 6 of the HCP to include the best scientific and commercial data available as necessary to evaluate, for each Covered Species, whether:

- a. the Biological Objectives are necessary and adequate to meet the Biological Goals; and
- b. the Conservation Measures are necessary and adequate to meet the Biological Objectives.

### **7.13.2. Identification of Research and Modeling.**

The research and modeling to be performed in connection with the AMP include the following:

- a. **Ecological Modeling.**

The EAA will develop an ecological model to better understand biological and ecological relationships, processes, interactions, and responses over time of the systems being studied, and to predict ecological responses to changes in environmental conditions. The ecological model will address as many of the objectives and criteria listed in Subsection 6.3.3 of the HCP as possible. The EAA, through the Program Manager, will seek input from the Science Committee on the design and use of the model, and will seek input from the Implementing Committee on significant issues which arise in development of the model. The EAA, through the Program Manager, will also inform the SRP of planning and development related to the ecological model. The EAA will, as it determines to be appropriate, seek comment and evaluation from the SRP in order to help ensure that the SRP is able to rely on the model results in making its determinations pursuant to Subsection 7.13.7.

- b. **Applied Research Facility and Other Studies.**

The EAA will support and coordinate the construction of an applied research

facility as described in Subsection 6.3.4 of the HCP. The primary purpose of the applied research facility will be to provide data and information important for informing AMP decisions during Phase I and Phase II of the Program. Key studies to be performed are more completely described in Subsection 6.3.4 of the HCP. As authorized in the Annual Party Work Plans and Cost Estimates and the Annual Program Budgets, other studies will be performed on Texas Wild Rice enhancement as described in Subsection 6.3.5 of the HCP and on non-native snails and gill parasites as described in Subsection 6.3.6 of the HCP, and studies and data collection efforts recommended by the EARIP Expert Science Subcommittee (2008 and 2009) and Dr. Thomas Hardy (2011) may be undertaken. The Party responsible for a study will, through the Program Manager, seek input from the Science Committee on the design of the study, and will seek input from the Implementing Committee on significant issues which arise in the course of the study. The EAA, through the Program Manager, will also inform the SRP of activities related to the applied research facility and associated studies. The EAA will, as it determines to be appropriate, seek comment and evaluation from the SRP in order to help ensure that the SRP is able to rely on the study results in making its determinations pursuant to Subsection 7.13.7.

**c. Edwards Aquifer Groundwater Modeling Improvements.**

The EAA will make improvements to its MODFLOW model, and will create a new groundwater model, as described in Section 6.3.2 of the HCP. The goals of the model improvements include but are not limited to:

- (1) improving the simulated transient water level residuals output;
- (2) incorporating additional Edwards Aquifer characterization data and information as may be appropriate and available;
- (3) incorporating reconceptualizations of boundary conditions,

geologic structures and stratigraphy, hydraulic architecture, recharge, and water budget; and

(4) improving calibration with respect to Comal Springs elevation, discharge, and observed instrumental record well level measurements throughout the Edwards Aquifer region.

The EAA, through the Program Manager, will keep the Implementing Committee informed on the progress of the model improvements and creation of the new model. The Implementing Committee may, through the Program Manager, provide comments to the EAA on the model improvements and the creation of the new model. The EAA, through the Program Manager, will also keep the SRP apprised of activities related to the creation of the new model and to groundwater modeling improvements and seek such SRP input as the EAA, in consultation with the Implementing Committee, determines to be appropriate in order to help ensure that the SRP is able to rely on the modeling results in making its determinations pursuant to Subsection 7.13.7.

### **7.13.3. Other Studies.**

The Implementing Committee will also ensure the performance of other studies, research and experimentation determined to be necessary during the AMP.

### **7.13.4. Deadlines for Research and Modeling.**

The Program Manager will compile all relevant completed research, modeling and other data not later than December 31, 2017.



#### **7.13.5. Science Committee Review.**

Not later than January 15, 2018, the results of the research and modeling, along with the data compiled by the Program Manager, will be submitted to the Science Committee for review and comment. All information submitted to the Science Committee will at the same time also be made available to the SRP, the Implementing Committee and the Stakeholder Committee. All Science Committee review and comment will be completed and incorporated into a report to the Program Manager not later than May 15, 2018. The Program Manager will submit the report from the Science Committee summarizing its review pursuant to this Section to the SRP, the Implementing Committee, and the Stakeholder Committee as soon as possible after its completion.

#### **7.13.6. Science Review Panel Research Review.**

Not later than June 1, 2018, the Program Manager will deliver the results of the research and modeling, along with the data compiled by the Program Manager, and the report of the Science Committee, to the SRP and request the determinations required by Subsection 7.13.7 in the form of a written report to be provided not later than September 30, 2018. On or before October 15, 2018, the Program Manager will distribute the report of the SRP to the Implementing Committee, the Stakeholder Committee, and the Science Committee.

#### **7.13.7. Action on Science Review Panel Determinations.**

The Implementing Committee will take such actions on the determinations of the SRP as provided in this Subsection.

##### **a. If Some Objectives Not Necessary.**

If the SRP determines for any Covered Species that the Scientific Record establishes that the full complement of Biological Objectives is not necessary to

meet the Biological Goals, then the Implementing Committee will propose changes to the Biological Objectives applicable to that Covered Species based solely on, and in accordance with, the Scientific Record utilizing the procedures for a Nonroutine AMP Decision set forth in Section 7.12.

**b. If Objectives Are Not Adequate.**

If the SRP determines for any Covered Species that the Scientific Record establishes that the Biological Objectives are not adequate to achieve the Biological Goals, then the Implementing Committee will propose changes to the Biological Objectives applicable to that Covered Species based solely on, and in accordance with, the Scientific Record utilizing the procedures for a Nonroutine AMP Decision set forth in Section 7.12.

**c. If Conservation Measures Not Needed.**

If the SRP determines that the Scientific Record establishes that any Phase I Conservation Measure is not needed to achieve the Biological Objectives, then the Implementing Committee will propose discontinuation of that Phase I Conservation Measure utilizing, the procedures for a Nonroutine AMP Decision set forth in Section 7.12.

**d. If Phase I Measures Are Achieving Objectives.**

If the SRP determines that the Scientific Record establishes the Phase I Conservation Measures are achieving the Biological Objectives, then neither the Presumptive Phase II Conservation Measure nor any other Phase II Conservation Measure will be pursued.

**e. If Phase I Measures Are Not Achieving Objectives.**

(1) If the SRP determines that the Scientific Record establishes the Phase I Conservation Measures are not sufficient to achieve the Biological Objectives, then the Implementing Committee will consider modifications to the Phase I Conservation Measures based solely on, and in accordance with, the Scientific Record, utilizing the procedures for a Nonroutine AMP Decision set forth in Section 7.12.

(2) If, however, the Implementing Committee does not recommend modifications to the Phase I Conservation Measures sufficient to achieve the Biological Objectives, based on direction from the SRP about the degree to which those objectives are not being achieved, the Implementing Committee will direct the Program Manager to initiate, not later than January 31, 2019, the procedures for Strategic AMP Decisions set forth in Section 7.14.

**f. If Review Fails or is Inconclusive.**

If, contrary to its duties as set out in Subsection 7.10.3, the SRP fails to make a determination or determines that the Scientific Record is inconclusive about whether the Phase I Conservation Measures are achieving the Biological Objectives, the Implementing Committee will coordinate with the Service as part of the AMP, and attempt to reach a conclusion that the Presumptive Phase II Conservation Measure or another Phase II Conservation Measure either is or is not necessary to achieve the Biological Objectives. The Implementing Committee will proceed as provided below:

(1) If the Implementing Committee concludes that the Presumptive Phase II Conservation Measure or other Phase II Conservation Measures are necessary, the Implementing Committee will direct the Program

Manager to initiate the procedures for Strategic AMP Decisions set forth in Section 7.14.

(2) If the Implementing Committee concludes that neither the Presumptive Phase II Conservation Measure nor any other Phase II Conservation Measure is necessary, the Implementing Committee will inform the Service and seek the Service's concurrence, as part of the AMP, that the Scientific Record supports the conclusion to not pursue these measures. If the Service does not concur, the Implementing Committee will direct the Program Manager to initiate, not later than January 31, 2019, the procedure for Strategic AMP Decisions set forth in Section 7.14.

(3) If the Implementing Committee, after coordination with the Service, is unable to reach a conclusion that alternative Phase II Conservation Measures or the Presumptive Phase II Conservation Measure either are or are not necessary, the Implementing Committee will direct the Program Manager to initiate, not later than January 31, 2019, the procedure for Strategic AMP Decisions set forth in Section 7.14.

#### **Section 7.14. Procedures for Strategic AMP Decisions.**

Strategic AMP Decisions regarding Phase II of the Program will be made on the basis of the best scientific and commercial data available in accordance with this Section.

##### **7.14.1. Submission of Proposals.**

If directed by the Implementing Committee pursuant to Section 7.13 to initiate the procedures for Strategic AMP Decisions, a draft proposal for a Strategic AMP Decision may be brought forward by the Program Manager, the Implementing Committee or any three members of the Stakeholder Committee. Any such draft proposal will be forwarded

in writing to the Program Manager. The Program Manager will promptly forward the draft proposal to the Implementing Committee and the Stakeholder Committee, as appropriate, and to the Science Committee.

#### **7.14.2. Science Committee Review.**

Upon receipt or development of a draft proposal for a Strategic AMP Decision, the Program Manager will convene a meeting of the Science Committee as soon as practicable to discuss the draft proposal and to develop a schedule and identify resources or studies, if any, that will be necessary for the Science Committee to evaluate the proposal and make any recommendations.

#### **7.14.3. Stakeholder Committee Review.**

##### **a. Draft Proposal.**

If a draft Strategic AMP Decision proposal is received prior to January 31, 2019, the Program Manager will present the draft for initial consideration by the Stakeholder Committee on a convenient time schedule designed to ensure completion of review in a timely and efficient manner with reasonable access to scientific review and input.

##### **b. Meeting Convened.**

(1) If one or more draft Strategic AMP Decision proposals are received later than January 31, 2019, the Program Manager will convene, within 14 days of receipt of the draft proposal, a meeting of the Stakeholder Committee. With the consensus agreement of the Stakeholder Committee obtained through polling of the members, the Program Manager may delay the meeting by up to an additional 14 days. The Program Manager will provide each member of the Stakeholder

Committee a copy of each draft Strategic AMP Decision proposal and the written recommendation of the Science Committee, along with any other available supporting information, in advance of the meeting.

(2) If the Science Committee has not had sufficient time to complete its evaluation and recommendation of each draft proposal, the Program Manager will convene another meeting of the Stakeholder Committee within 14 days of receipt of the Science Committee's evaluation report. The Program Manager may include multiple and alternative draft Strategic AMP Decision proposals for consideration by the Stakeholder Committee at a single meeting.

**c. Recommendation.**

At the meeting to consider the draft Strategic AMP Decision proposal(s), the Stakeholder Committee will seek to achieve consensus on a recommendation regarding each proposal.

**d. Develop Report.**

The Stakeholder Committee will have 180 days from the date of its initial meeting on the proposal to develop, approve and submit its report to the Program Manager on each draft Strategic AMP Decision proposal. The Stakeholder Committee may, for good cause, request additional time to develop a report. Approval of the request for additional time will be granted at the sole discretion of the Implementing Committee, but will not be unreasonably withheld.

**e. Science Committee Prior Consideration.**

The Stakeholder Committee will not be required to make a recommendation on a draft Strategic AMP Decision proposal without the opportunity to consider formal

input from the Science Committee on the draft proposal.

**f. Three-fourths Majority.**

Any recommendation of the Stakeholder Committee on a draft Strategic AMP Decision proposal will require at least a three-fourths majority of the entire Stakeholder Committee membership to be adopted. In the absence of consensus, the report of the Stakeholder Committee report will include a succinct summary of the competing positions.

**g. Report Forwarded.**

The Stakeholder Committee will deliver a report with its recommendation on each draft Strategic AMP Decision proposal(s) in writing to the Program Manager. The Program Manager will deliver the report of the Stakeholder Committee to the Implementing Committee and to the Service.

**7.14.4. Implementing Committee Decisions.**

The Program Manager will call a meeting of the Implementing Committee within 14 days of receipt of the report from the Stakeholder Committee to consider the report. The Implementing Committee will not consider approval of any draft proposal for a Strategic AMP Decision without first reviewing the Stakeholder Committee report on the proposal in accordance with this Section.

**a. Unanimous Vote Required.**

After review and discussion of a draft proposal, the Implementing Committee will vote on the proposal. Any decision by the Implementing Committee to proceed with a draft proposal will be made by unanimous vote.

**b. Accepted Proposal.**

The Implementing Committee will proceed on a draft proposal that is accepted as provided below.

(1) If the Implementing Committee accepts the recommendation of the Stakeholder Committee on a draft proposal, the Program Manager will inform the Stakeholder Committee and the Service of the decision.

(2) If the recommendation that was accepted calls for implementing one or more Phase II Conservation Measures other than the Presumptive Phase II Conservation Measure as described in Subsection 5.5.2 of the HCP, the Implementing Committee will direct the Program Manager to initiate discussions with the Service about amending the Permit to implement the recommended modification.

(3) If the recommendation that was accepted calls for implementing the Presumptive Phase II Conservation Measure, then the Implementing Committee will commence action to implement the Presumptive Phase II Conservation Measure and ensure that it is fully implemented by December 31, 2020.

**c. Rejected Proposal.**

The Implementing Committee will take action on a draft proposal that is rejected as provided below.

(1) If the Implementing Committee rejects a recommendation of the Stakeholder Committee, the Implementing Committee will direct the Program Manager to provide a written explanation of the rejection to the Stakeholder Committee and to the Service.



(2) If the recommendation that was rejected calls for implementing Phase II Conservation Measures other than the Presumptive Phase II Conservation Measure as described in Subsection 5.5.2 of the HCP, the Implementing Committee will either commence steps to implement the Presumptive Phase II Conservation Measure, or present alternate proposed Phase II Conservation Measures for expedited consideration by the Stakeholder Committee.

(3) If the Implementing Committee subsequently elects to pursue an alternate Phase II Conservation Measure that was previously presented for formal consideration by the Stakeholder Committee and not favorably recommended, the Implementing Committee may direct the Program Manager to provide a written explanation for the decision to the Service and to initiate discussions with the Service to implement the alternative Phase II Conservation Measure.

(4) If the recommendation that was rejected calls for proceeding with the Presumptive Phase II Conservation Measure as described in Subsection 5.5.2 of the HCP, the Implementing Committee may initiate steps to pursue an alternative Phase II Conservation Measure only if the alternative Phase II Conservation Measure was previously presented to the Stakeholder Committee for formal consideration.

**d. No Resolution.**

If the Program Manager initiates the Strategic AMP Decision process under Section 7.14 and the Implementing Committee fails to reach a resolution on the Strategic AMP Decision and take action to commence discussion with the Service on or before December 31, 2019 on the Strategic AMP Decision, the Parties will undertake the Presumptive Phase II Conservation Measure as described in

Subsection 5.5.2 of the HCP and ensure that it is fully implemented by December 31, 2020.

**e. No Compelled Measure Not in HCP or AMP.**

No Party may be compelled to take any Conservation Measure, including any Strategic AMP action not included in Chapter 5 of the HCP or approved through the AMP.

**f.** The Parties may not pursue a Phase II Conservation Measure other than the Presumptive Phase II Conservation Measure as described in Subsection 5.5.2 of the HCP without first presenting the proposed measure to the Stakeholder Committee for formal consideration pursuant to this Section.

**Article Eight – General Provisions**

**Section 8.1. Term.**

This Agreement will be effective on January 1, 2012, and will continue in effect until the end of the Permit Term. In the event the Service denies the Application of the Parties for the Permit, this Agreement becomes null and void for all purposes on the date of final action taken by the Service.

**Section 8.2. Remedies.**

The Parties recognize that failure in the performance of any Party's obligations hereunder cannot be measured in money damages. Each Party therefore agrees in the event of any default on its part that each Party will have available to it only the equitable remedy of mandamus and/or specific performance, but not termination as long as the Permit is outstanding. It is the intent of the Parties to this Agreement that any default will be subject to the remedy of mandamus and/or specific performance to the extent that mandamus and/or specific performance is possible under

the existing circumstances. It is the further intent of the Parties that money damages will not be available to any Party under any circumstances. If any Party fails to appropriate funds necessary to discharge that Party's obligations under this Agreement and a court of competent jurisdiction fails to enforce that obligation, then this Agreement will terminate with regard to that Party, and the other Parties will have the right to petition the Service to terminate the Permit with regard to the defaulting Party.

### **Section 8.3. Default – Notice and Opportunity to Cure.**

If any Party fails to perform any obligation or make any payment in the required amount when due under this Agreement, any other Party may, without prejudice to any other right or remedy it may have under this Agreement, provide written notice of default to the nonperforming Party. If written notice of default is provided to a nonperforming Party, a copy of said notice will also be provided to every other Party. The nonperforming Party has 60 days from receipt of the notice within which to remedy the default.

### **Section 8.4. Payments from Current Revenue.**

The Parties acknowledge that pursuant to the requirements of Texas Government Code Section 791.011(d)(3), a Party to this Agreement that pays for the performance of services must make those payments from current revenues available to that Party. A Party to this Agreement will never have the right to demand payment by another Party of any obligations assumed by or imposed upon that Party under or by virtue of this Agreement from any funds raised or to be raised by taxation (other than revenues from a regional sales tax as an alternative funding source under Subsection 6.4.1), and a Party's obligation under this Agreement will never be construed to be a debt of the Party of such kind as to require it under the Constitution and laws of the State to levy and collect an ad valorem tax to discharge such obligation. The Parties agree that the cost of all Conservation Measures and other Program-related activities will be paid solely from Program Funding defined in this Agreement, and that the Parties will not be obligated to provide funding beyond the sources and limitations identified in Article Five.

### **Section 8.5. Rights Regarding Books and Records.**

Each Party will permit any other Party upon reasonable notice to examine and copy all the books and records kept by the Party regarding this Agreement. In addition, upon reasonable prior written notice to the Party, any other Party may conduct a complete audit of the books and records kept by the Party regarding this Agreement as well as upon the information and documentation used to prepare the books and records. Any such audit will be at the requesting Party's sole expense and will be prepared by a certified public accounting firm. If the audit report discloses actual errors in the books and records such that the charges assessed to another Party are in error then such error will be corrected for the period up to four years after the erroneous charge was paid and all payments reconciled over the subsequent twelve month period beginning with the audited Party's fiscal year. If the error identified in the audit is greater than the cost of the audit, the audited Party will reimburse the requesting Party the cost of the audit.

### **Section 8.6. Mediation.**

In the event any controversy arising under this Agreement is not resolved by informal negotiations between the Parties within 30 days after any Party requests negotiations, then, upon the request of any Party, the controversy will be referred to the voluntary settlement procedure known as mediation, which process will be governed by the Texas Civil Practice and Remedies Code, Chapter 154, or its successor statute. The Parties will attempt to select a mutually acceptable mediator. Failing identification of a mutually acceptable mediator, the mediation will be conducted by the University of Texas School of Law Center for Public Policy Dispute Resolution. The mediation process will continue until the controversy is resolved, the mediator makes a finding that there is no possibility of settlement through mediation, or either Party chooses not to continue further. All costs and expenses of the mediation (including the mediator's fees) will be shared equally by the Parties involved in the mediation, provided however, that costs incurred by each Party will be costs solely of such Party.

### **Section 8.7. Interpretation.**

The caption headings of this Agreement are for reference purposes only and will not affect its interpretation in any respect. Unless the context otherwise requires, words of the masculine gender will be construed to include correlative words of the feminine and neuter genders and vice versa. This Agreement and all the terms and provisions will be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

### **Section 8.8. Participation by the Parties.**

Each Party to this Agreement represents to the others that it is empowered by law to execute this Agreement and other agreements and documents and to give such approvals, in writing or otherwise, as are or may hereafter be required to accomplish the same, and that its execution of this Agreement has been duly authorized by action of its governing body.

### **Section 8.9. Force Majeure.**

If by reason of Force Majeure any Party hereto will be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such Party will give notice and full particulars of such Force Majeure in writing to the other Parties within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as its performance is prevented by such Force Majeure, will be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party will endeavor to remove or overcome such inability with reasonable dispatch. The term "Force Majeure" as employed herein will mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas, regulatory restrictions by a groundwater district (other than those of the EAA as described in the Program Documents), any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, tornados, blue northers, storms, floods, washouts, any drought defined as an Unforeseen Circumstance in Section 8.2 of the HCP, restraint of government and people, civil disturbances, explosions, extraordinary breakage or accidents to

machinery, pipelines or canals, partial or entire failure of water supply, or on account of any other causes to the extent not reasonably within the control of the party claiming such inability. The Parties acknowledge that nothing in this provision affects the authority of the Service to suspend or revoke the Permit, either partially or in its entirety, as to the Party experiencing the inability or as to all Parties.

#### **Section 8.10. Indemnification.**

To the fullest extent allowed by law, each Party agrees on behalf of itself and its successors and assigns to defend, save and hold harmless the other Parties and their officers, directors, and employees from and against any and all claims, losses, expenses, costs, demands, judgments, causes of action, suits, and liability for personal injury or property damage (including but not limited to all costs of defense, such as fees and charges of attorneys, expert witnesses, and other professionals and all court or other dispute resolution costs) resulting from the negligence or other wrongful acts or omissions of the Party or an officer, director or employee of the Party.

#### **Section 8.11. Modification.**

This Agreement may be amended only by written agreement of all of the Parties. No change, amendment, or modification of this Agreement will be made or be effective that will: (a) cause this Agreement to diverge from or create an inconsistency with any Program Document; or (b) affect adversely the prompt payment when due of all money required to be paid by a Party under the terms of this Agreement.

#### **Section 8.12. Addresses and Notice.**

Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") provided or permitted in this Agreement to be given, made, or accepted by any Party to the other Parties will be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or

by delivering the same to an officer of such Party, or by prepaid telegram when appropriate, addressed to the Party to be notified. Notice deposited in the mail in the manner hereinabove described will be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given by electronic communication or in any other manner will be effective only if and when receipt is acknowledged by the Party to be notified. For the purposes of notice, the addresses of the Parties will, until changed as provided in the last sentence of this Section, be as follows:

**If to the EAA:**

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

**If to New Braunfels:**

City Manager (with copy to Watershed Manager)  
City of New Braunfels  
424 South Castell Avenue  
New Braunfels, Texas 78130

**If to San Marcos:**

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

**If to the University:**

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

**If to San Antonio:**

President/Chief Executive Officer  
San Antonio Water System  
2800 U.S. Highway 281 North  
San Antonio, Texas 78212

Any Party which changes its address or contact person for notice under this Agreement will provide at least five days' written notice to the other Parties.

**Section 8.13. State or Federal Laws, Rules, Orders, or Regulations.**

This Agreement is subject to all applicable federal and state laws and any applicable permits, ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having or asserting jurisdiction but nothing contained herein will be construed as a waiver of any right to question or contest any such law, ordinance, order, rule, or regulation in any forum having jurisdiction. Each Party represents that, to the best of its knowledge, no provisions of any applicable federal or state law, nor any permit, ordinance, rule, order, or regulation of any Party will limit or restrict the ability of such Party to carry out its respective obligations under or contemplated by this Agreement.

**Section 8.14. Severability.**

The Parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention will not affect any other sections, subsections, provisions, clauses, or words of this Agreement or the application of such actions, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Agreement



will be severable and will be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the Parties hereto will be construed and remain in force accordingly.

**Section 8.15. Waiver.**

Notwithstanding anything to the contrary contained in this Agreement, any right or remedy or any default under this Agreement, except the right of a Party to receive the payments from another Party, which will never be determined to be waived, will be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within four (4) years after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by any Party hereto or of the performance by any other Party of any duty or obligation hereunder will be deemed a waiver thereof in the future, nor will any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

**Section 8.16. Venue.**

It is specifically agreed among the Parties to this Agreement that in the event that any legal proceeding is brought to enforce this Agreement or any provision hereof, the same will be brought in the County in which the principal administrative offices of the Defendant or any one Defendant are located.

**Section 8.17. Succession and Assignment.**

This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors, representatives, and assigns. This Agreement may not be assigned by any Party hereto without prior written notice to and approval by the other Parties, which consent may be withheld without cause.

**Section 8.18. Entire Agreement.**

This Agreement, along with the other Program Documents, constitutes the entire agreement among the Parties with respect to the matters described herein.

**Section 8.19. Applicable Law.**

This Agreement will be governed by and construed in accordance with the laws of the State, and the obligations, rights, and remedies of the Parties hereunder will be determined in accordance with such laws without reference to the laws of any other state or jurisdiction, except for applicable federal laws, rules, and regulations.

**Section 8.20. Counterparts.**

This Agreement may be executed in counterparts, each of which will be an original and all of which together will constitute but one and the same instrument.

**Section 8.21. Officers and Agents.**

No officer or agent of the Parties is authorized to waive or modify any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document signed by the Parties' authorized representatives.

**Section 8.22. Recitals.**

The Parties agree that the recitals in this Agreement are true and correct and are incorporated into the terms of this Agreement.

**Section 8.23. Approval by Parties.**

Each Party affirms that it has taken all necessary official action to approve this Agreement.

**Section 8.24. Goods and Services.**

The Parties agree that the mutual commitments stated in this Agreement to provide operational, regulatory and implementation services in execution of the HCP and mutual discharge of the Implementing Agreement constitute an agreement by each Party for providing goods and services to the other Parties, that payments due from the EAA and the mutual provision of goods and services are amounts due and owing under this Agreement, and that this Agreement is subject to Chapter 271, Subchapter I, of the Texas Local Government Code.

**Section 8.25. No Third Party Beneficiary; No Partnership.**

This Agreement is not intended to confer any rights, privileges or causes of action upon any third Party other than the Parties to this Agreement. The relationship of the Parties under this Agreement is not and will not be construed or interpreted to be a partnership, joint venture or agency. The relationship of the Parties will be an independent contractor relationship. No Party will have the authority to make any statements, representations or commitments of any kind, or to take any action, which will be binding on another Party.

**IN WITNESS WHEREOF**, the Parties hereto acting under authority of their respective governing bodies have caused this Agreement to be duly executed as of the Effective Date.

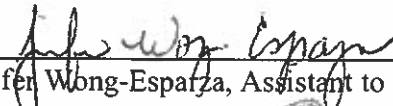
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**EDWARDS AQUIFER AUTHORITY**

By:   
Karl J. Brehe, General Manager

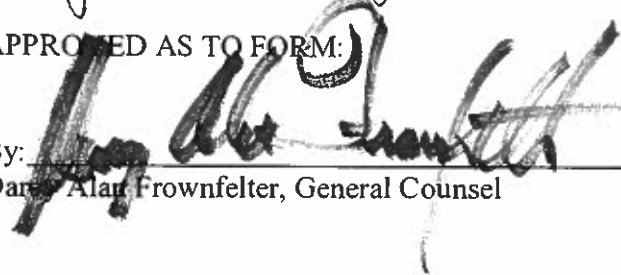
Date: 01/03/2012

ATTEST:

By:   
Jennifer Wong-Esparza, Assistant to Board Secretary

Date: 01/03/2012

APPROVED AS TO FORM:

By:   
Darin Alan Frownfelter, General Counsel

Date: 01/02/2012

**CITY OF NEW BRAUNFELS**

By: \_\_\_\_\_  
Michael Morrison, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Patrick Aten, City Secretary

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Paul Isham, City Attorney

Date: \_\_\_\_\_

*Signatures continue on next page*

**EDWARDS AQUIFER AUTHORITY**

By: \_\_\_\_\_  
Karl J. Dreher, General Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Jennifer Wong-Esparza, Assistant to Board Secretary


Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Darcy Alan Frownfelter, General Counsel

Date: \_\_\_\_\_

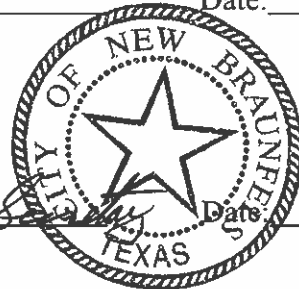
**CITY OF NEW BRAUNFELS**

By:   
Michael Morrison, City Manager

Date: 12/28/11

ATTEST:

By:   
Patrick Aten, City Secretary



Date: 12/28/11

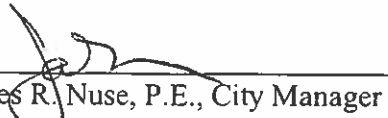
APPROVED AS TO FORM:

By:   
City Attorney

Date: 12/28/11

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**CITY OF SAN MARCOS**

By:   
James R. Nuse, P.E., City Manager

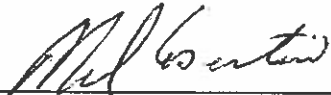
Date: 12/30/11

ATTEST:

By:   
Jamie Lee Pettijohn, City Clerk

Date: 12/30/11

APPROVED AS TO FORM:

By:   
Michael Cosentino, City Attorney

Date: 12/30/11

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

By: \_\_\_\_\_  
Robert R. Puente, President/CEO

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Becky Gonzalez, Executive Administrative Assistant

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Phil Steven Kosub, Senior Water Resources Counsel

Date: \_\_\_\_\_

*Signatures continue on next page*

**CITY OF SAN MARCOS**

By: \_\_\_\_\_  
James R. Nuse, P.E., City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Jamie Lee Pettijohn, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael Cosentino, City Attorney

Date: \_\_\_\_\_

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

By:   
Robert R. Puente, President/CEO

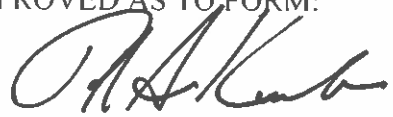
Date: 12/29/11

ATTEST:

By:   
Becky Gonzalez, Executive Administrative Assistant

Date: 12/29/11

APPROVED AS TO FORM:

By:   
Phil Steven Kosub, Senior Water Resources Counsel

Date: 12/29/11

*Signatures continue on next page*

TEXAS STATE UNIVERSITY – SAN MARCOS

wm By: Denise M. Trauth  
Denise M. Trauth, President

Date: 1/4/2012

ATTEST:

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

Date: 1/3/12

APPROVED AS TO FORM:

By: Diane Corley  
Diane Corley, Associate General Counsel, Texas  
State University System

Date: 1/4/2012