



EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM  
INTERLOCAL CONTRACT NO. 20-025-TES  
BETWEEN THE  
EDWARDS AQUIFER AUTHORITY  
AND  
THE CITY OF SAN MARCOS AND TEXAS STATE UNIVERSITY  
FOR EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM FUNDING

**THIS INTERLOCAL CONTRACT** for program funding associated with the Edwards Aquifer Habitat Conservation Plan Program (Funding Contract) is made and entered into under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, by and between the **EDWARDS AQUIFER AUTHORITY** (EAA), a conservation and reclamation district and political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy Street, San Antonio, Texas 78215, the **CITY OF SAN MARCOS** (City), a municipal corporation, with its principal place of business located at 630 East Hopkins, San Marcos, Texas 78666, and **TEXAS STATE UNIVERSITY** (Texas State), an institution of higher education and an agency of the State of Texas, with its principal place of business located at 601 University Dr., San Marcos, Texas 78666. The EAA, the City, and Texas State are each referred to hereinafter as a “Party,” and collectively as the “Parties.”

**AGREEMENT**

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

**ARTICLE I  
DEFINITIONS**

As used in this Funding Contract, the following terms shall have the following meanings:

- A. “Annual Program Budget” means the budget for Program Expenditures adopted by the Board pursuant to the process described in Sections 4.4 through 4.7 of the FMA, subject to the limitations in Section 3.2 and Subsection 5.2.1 of the FMA.
- B. “Board” means the Board of Directors of the Edwards Aquifer Authority.
- C. “City and Texas State” means the City and/or Texas State, as appropriate.

D. “Conservation Measure” means a measure identified in Chapter 5 of the Edwards Aquifer Habitat Conservation Plan (EAHCP), as such measure may be modified pursuant to adaptive management, or a new measure developed and approved through adaptive management, 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.

E. “Covered Species” means the species identified in Table 1-3 of the EAHCP, for which the EAHCP provides protection in a manner sufficient to meet all of the criteria for issuing an Incidental Take Permit (ITP).

F. “Edwards Aquifer Habitat Conservation Plan” (EAHCP or HCP) means the conservation plan prepared by the EAA, the City, and Texas State, among others, approved by the Board, required by Section 10(a)(2)(A) of the Endangered Species Act (ESA), and submitted to and approved by the Service as part of the application for an ITP and entitled Recon Environmental Inc. et al., *Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan* (Nov. 2012).

G. “Funding and Management Agreement” (FMA) means the agreement effective January 1, 2012, as may be amended, to which the EAA, 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 are parties, which provides for the funding and management of the EAHCP.

H. “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 of the FMA to accumulate and disburse Program Aquifer Management Fees consistent with the Annual Program Budget for the implementation of the EAHCP and the ITP.

I. “Implementing Agreement” means the agreement, effective January 1, 2013, entered into by the EAA, 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, Texas State University, Texas Parks and Wildlife Department, and the Service to implement the EAHCP.

J. “Implementing Committee” means the committee established in accordance with Section 7.7 of the FMA to supervise the implementation of the EAHCP.

K. “Incidental Take Permit” (ITP) means Permit No. TE-63663A-1 issued by the Service to the EAA and others, pursuant to Section 10(a)(1)(B) (16 U.S.C. § 1539(a)(1)(B)) of the ESA.

L. “Program Activities” means activities described in the EAHCP and ITP, other than Conservation Measures, related to the implementation of the EAHCP and ITP.

M. “Program Documents” means the ITP, the Application for the ITP, the EAHCP, the Implementing Agreement, and the FMA.

N. “Program Funding” means funds provided by the EAA from the HCP Program Account to reimburse the City and Texas State for the costs associated with the implementation of the EAHCP and the ITP, consistent with the Annual Program Budget and the Program Funding Contracts provided for in Subsection 6.1.8 of the FMA.

O. “Program Funding Application” (Funding Application or Application) means the application submitted by the City and Texas State and approved by the EAA pursuant to Article 6 of the FMA for funding to implement the Conservation Measures and other Program Activities for which the City or Texas State has been designated responsibility in the EAHCP, and in effect for the calendar year for which it is submitted.

P. “Service” means the U.S. Fish and Wildlife Service of the U.S. Department of Interior.

Q. “Work Plan and Cost Estimate” (Work Plan) means the work plan and cost estimate prepared by the City and Texas State as provided in Sections 4.4 and 4.6 of the FMA to describe the activities and schedules that are reasonable and necessary for the City and Texas State to perform in order to implement the Conservation Measures and other Program Activities for which the City or Texas State have responsibility to undertake during the term of the current, approved Funding Application.

## ARTICLE II PURPOSE

In accordance with Subsection 6.1.8 of the FMA, the purpose of this Funding Contract is to provide for the funding of the current, approved Funding Application of the City and Texas State that is approved by the Board, referenced and incorporated herein for all purposes, and the requirements for the reimbursement of funds from the HCP Program Account as necessary for the implementation of the Conservation Measures or other Program Activities as described in the EAHCP as being the responsibility of the City or Texas State and as more specifically set out in the current, approved Application.

## ARTICLE III TERM

This Funding Contract shall commence and be effective on January 1, 2021 (Effective Date), and shall remain in effect through March 31, 2028, unless terminated sooner in accordance with Article X.

## ARTICLE IV ANNUAL PROGRAM FUNDING APPLICATIONS

A. For each year during the term of this Funding Contract, in accordance with Section 6.1 of the FMA, the City and Texas State will prepare a Funding Application and submit it to the EAA for formal approval by the Board through a resolution and order. It is the intention of the Parties that, each year, the current, approved Application will be considered to be attached to and

incorporated into this Funding Contract following formal approval of the Application by the Board.

B. The Funding Application shall be on a form prescribed by the EAA. The Application must include the information described in Subsection 6.1.1 of the FMA, including the total amount of requested Program Funding. Each Application shall also contain a line-item budgeted amount for each Task, including a separate budget for any associated Subtask.

C. Upon approval of the Funding Application as provided by Subsections 6.1.3 and 6.1.4 of the FMA, the EAA agrees to reimburse the City for implementation of each Task described in a current, approved Application in an amount not to exceed the Task's individual, line-item budget. Funds may only be disbursed through the approval of individual monthly invoices in accordance with Article 6 of the FMA and this Funding Contract. Except as provided below, the EAA will not reimburse the City for any costs in excess of the total amount budgeted and approved for each Task and Subtask included in a current, approved Application.

## ARTICLE V PERFORMANCE

A. The City and Texas State agree to devote their diligent and professional efforts and abilities to implement each Conservation Measure, shown here, and for which Program Funding has been approved in accordance with the current, approved Funding Application.

EAHCP Conservation Measure No.	Conservation Measure Title
5.3.1 & 5.4.1	Texas Wild-Rice Enhancement/Restoration
5.3.2 & 5.4.2	Management - Key Recreation Areas
5.3.3 & 5.4.3	Management - Floating Vegetation Mats & Litter
5.3.5 & 5.3.9 & 5.4.11 & 5.4.13	Non-Native Animal Species Control
5.3.7	Bank Stabilization/Permanent Access Points
5.3.8 & 5.4.3.1 & 5.4.12	Non-Native Plant Species Control
5.7.1	Native Riparian Habitat Restoration
5.7.5	Household Hazardous Waste Management
5.7.6	Impervious Cover/Water Quality Protection

B. It shall be the City's and Texas State's responsibility to ensure that each Conservation Measure is completed in accordance with the schedules, budgets, descriptions, and specifications contained in the current, approved Funding Application.

C. The City and Texas State will provide, solely by and through their contractors, any and all personnel necessary for the implementation of the Conservation Measures included in the current, approved Funding Application. To the extent permitted by Texas law, the City and Texas State each hereby indemnifies and holds harmless the EAA and its officers, directors, employees, and agents from and against any claims brought by any contractor, subcontractor or other agent of Texas State relating in any way to the work performed under this Funding Contract.

Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by the City and Texas State of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflict with any other provision in this Contract, the terms of this paragraph shall control.

To the extent permitted by Texas law, EAA hereby indemnifies and holds harmless the City and Texas State and its officers, directors, employees, and agents from and against any claims brought by any third parties relating in any way to the work performed under this Funding Contract. When implementing the Conservation Measures included in the current, approved Funding Application, the City and Texas State may retain and utilize contractors or subcontractors as necessary to complete the implementation of the Conservation Measures included in the current, approved Funding Application. The EAA shall not have the right to terminate, limit, or alter, at any time, the participation of any contractor or subcontractor utilized by the City or Texas State. The City and Texas State will require their contractors or subcontractors to comply with all applicable laws.

D. The City and Texas State will implement the Conservation Measures described in the current, approved Funding Application in a good and workmanlike manner, strictly in accordance with the standards of the associated scopes of work and with the purpose and intent to achieve full compliance with the requirements of the current, approved Application, the EAHCP and the other Program Documents.

## ARTICLE VI INVOICING AND REIMBURSEMENTS

A. The City shall submit a monthly invoice packet to the EAA as a reimbursement request. Each invoice packet shall contain, at a minimum:

- (1) a progress report, attached hereto in template form as provided in Exhibit B, containing:
  - a description of the work completed during the billing cycle, by each contractor or subcontractor, as appropriate, within each Conservation Measure set out in Article IV.A.;
  - a monthly update regarding compliance with the work schedule as it relates to achievement of the annual goals;
  - an estimate of the percent completion year-to-date of each Conservation Measure, in accordance with the associated schedule in the current, approved Funding Application; and
  - a discussion of any issues or problems that may result in an adjustment of the approved Conservation Measure budget or the total amount of Program Funding requested in the current, approved Application.

The City and Texas State have a separate interlocal contract dated December 29, 2016, that outlines reimbursement to Texas State from the City.

(2) documentation of all costs and expenses incurred during the billing cycle, including copies of all invoices from the City's and Texas State's contractors or subcontractors, including supporting documentation; and

(3) an invoice summary sheet, attached hereto in template form as Exhibit C, by an authorized representative (staff member) of the City and Texas State that such invoices have been approved for payment by the City and Texas State.

B. The monthly invoice packet will be submitted electronically in Adobe Acrobat (pdf) format via email to the HCP Coordinator and HCP Contract Administrator. All invoice packets from the City and Texas State to the EAA for the services for each previous month's activities shall be sent no later than the 30th day of each month.

C. Upon review and acceptance of the monthly invoice packet, the EAA agrees to reimburse the City and Texas State for all costs and expenses incurred for all work performed to implement the Conservation Measures set out in Article IV.A., as described in the proposals submitted in the current, approved Funding Application. However, in no event shall reimbursement to the City or Texas State exceed the amounts shown in the current, approved Application, unless amended in accordance with Article VI. The EAA will not be held accountable for any work performed or funds spent by the City or Texas State, which are not consistent with the current, approved Application.

D. The EAA will reimburse funds to the City and Texas State within 30 days of receipt and approval of a completed invoice packet.

E. The EAA will not reimburse for any expenditures of the City or Texas State for each previous year's activities that are not submitted to the EAA by the last business day of January of each year, except for projects that were included in the previous year's activities but for which the City or Texas State has not received an invoice, or retainage is being held pending completion of a project, in which case the City or Texas State must provide written notification to the EAA prior to the last business day of January, along with an estimate of these expenses and the anticipated date reimbursement will be requested.

## ARTICLE VII BUDGET AMENDMENTS

In the event actual expenditures for a Conservation Measure require adjustment of the approved budget amount in a current, approved Funding Application, the City or Texas State may request an amendment to the approved budget amount, and if necessary, the Annual Program Budget.

The Board may approve such a request if:

(1) the requested budget variance is documented in the submittal of an amended Funding Application, as provided in Subsections 6.1.7 and 6.2.3 of the FMA; and

(2) the amended Application is accompanied by a recommendation for approval by the Implementing Committee.

Upon receipt of a budget amendment request, EAA staff will place the item on the agenda of the next Implementing Committee. If the Implementing Committee approves the request, EAA staff will present the request for amendment to the Board, to the extent possible, within 45 days of receipt of the Implementing Committee recommendation. Such an amendment shall be approved at the sole discretion of the Board.

## ARTICLE VIII LIMITATIONS ON FUNDING

No costs or expenses of the City or Texas State may be reimbursed under this Funding Contract to:

A. fund the costs of any employee of the City or Texas State, except as may be authorized under Section 5.6.5.2 of the FMA;

B. fund any of the City's or Texas State's administrative costs, including, but not limited to overhead or any form of management, administration, research, planning, engineering, or legal services performed by an employee of the City or Texas State; or

C. fund the cost of measures required to be undertaken by the City or Texas State in order to obtain a Small Municipal Separate Storm Sewer System permit under the Texas Pollution Discharge Elimination System Program as required by the Texas Commission on Environmental Quality or the laws of the State of Texas (funds may be used for the cost of measures and activities included in such a permit to the extent that they implement Conservation Measures or other Program Activities in the current, approved Application, which exceed minimum requirements for obtaining the permit).

## ARTICLE IX NOTICES

A. All formal notices or communications which are required or permitted under this Funding Contract shall be in writing and shall be deemed properly delivered if sent by (a) U.S. Mail, return-receipt requested, (b) a nationally recognized overnight courier service, or (c) by facsimile, and if sent to the following addresses:

If to the EAA:

Attention: EAHCP Program Manager  
Threatened and Endangered Species  
Edwards Aquifer Authority  
900 E. Quincy Street  
San Antonio, TX 78215

If to the City of San Marcos:                      Attention: Habitat Conservation Plan Manager  
City of San Marcos  
630 East Hopkins  
San Marcos, TX 78666

If to Texas State University:                      Attention: Executive Director – The Meadows Center for  
Water and the Environment  
Texas State University  
601 University Drive  
San Marcos, TX 78666

If any of the contact information changes, the Party shall notify the other parties in writing within 30 days of the change.

B.        The Parties may designate in writing another person or persons for informal communication, including invoicing or administrative matters. Informal contacts may be designated through each Party's representative on the Implementing Committee.

C.        Notices or other communications made under this section shall be deemed to have been received on the date of delivery if delivered personally or sent via facsimile or overnight service, or three (3) days after the date such notice is delivered, properly addressed, in the U.S. Mail, if mailed.

## ARTICLE X TERMINATION

This Funding Contract may be terminated at any time by delivery of written notice of termination by any Party to the other Parties. The termination of this Funding Contract shall be effective 90 days after the date of the notice of termination unless the Parties jointly agree otherwise in writing. Upon receipt or issuance of such termination notice, the City and Texas State shall immediately stop all work in progress. Insofar as possible, all work in progress will be brought to a logical termination point on the date notice of termination was received, or on the date the termination is effective, whichever is later. Within 120 days after the date of the notice of termination, and as long as consistent with the current, approved Funding Application, the EAA shall pay the City and Texas State all moneys then due and owing for the rendered work to be performed hereunder, costs and expenses reasonably incurred up to the logical termination point. Upon receipt of a termination notice, the City and Texas State shall, within sixty (60) days, deliver or make copies available to the EAA, of all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the City and Texas State in the performance of this Funding Contract, whether completed or in process.

## ARTICLE XI GENERAL

A.        Entire Funding Contract; Modification. This Funding Contract and the attached exhibits constitute the entire agreement between the Parties (other than the FMA and those related documents, including the Program Documents, specifically referred to herein including but not



limited to the current, approved Funding Application) relating to the rights granted and the obligations assumed herein. There are no representations, warranties, agreements or commitments between the Parties hereto except as set forth herein. Any oral representations, modifications, or amendments concerning this Funding Contract shall be of no force or effect. No representations, modifications, or amendments to this Funding Contract shall be binding on the Parties unless in writing, properly approved, and signed by both Parties. This Funding Contract may be amended only by written agreement of all of the Parties. No change, amendment, or modification of this Funding Contract will be made or will be effective that will cause this Funding Contract to diverge from or create an inconsistency with any Program Document.

B. Counterparts. This Funding Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

C. Succession and Assignment. The provisions of this Funding Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, no Party may assign any of its rights or delegate any of its duties hereunder without written consent from the other Parties.

D. Applicable Law; Venue. This Funding Contract is deemed to have been made in and to be performable in the State of Texas, and shall be construed in accordance with and governed by the laws of the State of Texas. It is specifically agreed among the Parties that in the event that any legal proceeding is brought to enforce this Funding Contract or any provision hereof, the same will be brought in Hays County, Texas.

E. Headings. The heading and captions of the various sections of this Funding Contract are for convenience and descriptive purposes only and shall not be used to interpret or construe its provisions, nor alter or affect the terms and conditions of this Funding Contract.

F. Interpretation. This Funding Contract or any portion thereof shall not be interpreted by a court of law to the detriment of a Party based solely upon that Party's authorship of the Funding Contract or any portion thereof.

G. Legal Authority; Approval by the Parties. The Parties each affirm and certify that they have the legal authority to enter into this Funding Contract, and that their execution of this Funding Contract has been duly authorized by action of their governing bodies as required by Section 791.011(d)(1), Texas Government Code; and that each Party has taken all necessary official action to approve this Funding Contract. Each Party to this Funding Contract represents to the others that it is empowered by law to execute this Funding Contract 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.

H. Severability. The invalidity of any provision or provisions of this Funding Contract shall not affect any other provision of this Funding Contract, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Funding Contract affect the balance of such provision.

I. Waiver. Notwithstanding anything to the contrary contained in this Funding Contract, any right or remedy or any default under this Funding Contract, 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. Termination of this Funding Contract for breach shall not constitute a waiver of any rights or remedies available at law or in equity to a Party to redress such breach. All remedies, either under this Funding Contract or at law or in equity or otherwise available to a Party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination. In addition, to these provisions, applicable provisions of this Funding Contract shall survive any termination of this Funding Contract.

J. Exhibits. The Exhibits, schedules and/or other documents attached hereto or referred to herein, are incorporated herein and made a part of this Funding Contract for all purposes. As used herein, the expression "Funding Contract" means the body of this Contract and such attachments, Exhibits, schedules and/or other documents, and the expressions "herein," "hereof," and "hereunder" and other words of similar import refer to this Funding Contract and such attachments, exhibits, schedules and/or other documents as a whole and not to any particular part or subdivision thereof.

K. No Third-Party Beneficiary; No Partnership. This Funding Contract is not intended to confer any rights, privileges or causes of action upon any third party other than the Parties to this Funding Contract. The Parties understand and agree that this Funding Contract does not create a fiduciary relationship between them, they are separate entities, the City and Texas State are independent contractors with respect to the Conservation Measures or other Program Activities to be implemented hereunder and are not subject to the direct or continuous control and supervision of the EAA. Nothing in this Funding Contract is intended or will be construed to convert any Party into a subsidiary, joint venturer, partner, employee, servant, representative, or other agent of another Party for any purpose whatsoever. Nor will any Party have the authority to bind another in any respect. Each Party will remain an independent contractor responsible for its own actions except as otherwise specifically provided herein. The EAA shall have no right of direction or control of the City or Texas State, or their respective employees, agents, contractors, or subcontractors except as to the results to be obtained, and in a general right to order the implementation of the Conservation Measures or other Program Activities to start or stop as agreed to herein, to inspect the progress of the implementation of the Conservation Measures or other Program Activities to be performed, and to receive reports. The City and Texas State shall accommodate reasonable requests from the EAA to allow EAA employees, agents or representatives to accompany and observe the implementation of the Conservation Measures or other Program Activities as described in each current, approved Funding Application.

L. Payment from Current Revenues. Pursuant to Section 271.903(a), Texas Local Government Code, this Funding Contract is conditioned upon, and the EAA agrees to use its best

efforts to obtain and appropriate funds for the payment of all obligations due under the terms of this Funding Contract. The City and Texas State acknowledge and agree that all payments and other obligations due under the terms of this Funding Contract shall be deemed to be the commitment of the EAA's current revenues only. Moreover, the City and Texas State acknowledge that pursuant to Section 791.011(d)(3), Texas Government Code, the EAA must make any payments under this Funding Contract only from current revenues available to the EAA. The City and Texas State will not have the right to demand payment by the EAA 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 of the FMA), and the EAA's obligation under this Funding Contract will never be construed to be a debt of the EAA 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. Moreover, the City and Texas State agree and understand that the cost of implementation of the Conservation Measures or other Program Activities by the City and Texas State under this Funding Contract and the current, approved Funding Application will be paid solely from Program Aquifer Management Fees, or funding contributions from third parties, disbursed from the HCP Program Account of the EAA as provided by Sections 5.1, 5.3, 5.4 and 5.6 of the FMA, and that the EAA will not be obligated to provide funding beyond the sources and limitations identified in the current, approved Application.

M. Informal Negotiations; Mediation. In the event any controversy arising under this Funding Contract 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 extent applicable, to the dispute resolution process provided for in Chapter 2260 of the Texas Government Code. If it is determined that the Chapter 2260 of the Texas Government Code is not applicable, the parties agree to utilize the process provided in the Texas Civil Practice and Remedies Code, Chapter 154, to the extent applicable, as may be amended, or its successor statute. 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.

N. 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 Funding Contract, then if such Party gives notice and the 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 means 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 imposed on the EAA by the Texas Legislature, any civil or military authority, insurrection, riots, epidemics and pandemics, landslides, lightning, earthquake, fires, hurricanes, tornadoes, blue northers, storms, floods, washouts, any drought defined as an Unforeseen Circumstance in Section 8.2 of the EAHCP, 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.

O. Remedies. The Parties recognize that failure in the performance of any Party's obligations hereunder may not be measurable solely in money damages. Each Party therefore agrees in the event of any default on its part that each Party will have available to it, in addition to all other legal remedies, the equitable remedy of mandamus and/or specific performance, but not termination as long as the ITP is outstanding. It is the intent of the Parties to this Funding Contract that any default may 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. If the EAA fails to appropriate funds necessary to discharge that Party's obligations under this Funding Contract and a court of competent jurisdiction fails to enforce that obligation, then this Funding Contract will terminate, and the other Parties will have the right to petition the Service to terminate the ITP with regard to the EAA.

P. 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 Funding Contract, the other Parties may, without prejudice to any other right or remedy it may have under this Funding Contract, 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 the Implementing Committee. The nonperforming Party has 60 days from receipt of the notice within which to remedy the default.

Q. Rights Regarding Books and Records. Each Party will permit the other Parties, upon reasonable notice, to examine and copy all the books and records kept by the Party regarding this Funding Contract. In addition, upon reasonable prior written notice to the other Party, any Party may conduct a complete audit of the books and records kept by the Party regarding this Funding Contract and any approved Funding Application 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 the other Party are in error, then such error will be corrected for the period up to four years from the date the erroneous charge was paid and all payments reconciled over the subsequent twelve-month period beginning with the audited Party's fiscal year.

R. Assumption of the Risk; Indemnification. To the extent permitted by Texas law, the City and Texas State each hereby indemnifies and holds harmless the EAA and its officers, directors, employees, and agents from and against any third-party claims relating in any way to the work performed under this Contract.

Notwithstanding any provision of this Contract, nothing herein shall be construed as a waiver by the City or Texas State of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflict with any other provision in this Contract, the terms of this paragraph shall control.

S. Goods and Services. The Parties agree that the mutual commitments stated in this Funding Contract to provide operational, regulatory and implementation services in execution of the EAHCP constitute an agreement by each Party for providing goods and services to the other Party, that payments due from the EAA and the mutual provision of goods and services are amounts due and owing under this Funding Contract, and that this Funding Contract. This Funding Contract is subject to Chapter 271, Subchapter I, Texas Local Government Code, as it relates to the City but does not apply to Texas State.

T. Ownership and Disclosure of Materials.

(1) All information, documents, property and materials produced, created or supplied under this Funding Contract, whether by the EAA, the City or Texas State, their employees, agents, contractors, or subcontractors or anyone else, and whether finished or unfinished or in draft or final form, will be the property of the City and Texas State. Said materials shall be provided to the EAA upon request for archival purposes, for the development of the EAHCP administrative record, and to reflect the City and Texas State work performed, including after expiration or termination of the Funding Contract. The EAA shall have unlimited rights to technical and other data resulting directly from the performance of the Conservation Measures associated with the any approved Funding Application and this Funding Contract. The City and Texas State will also cooperate fully with the EAA by sharing information and documentation in the development of the EAHCP annual report as more specifically set forth below.

(2) The information, documents, property and materials produced, created or supplied under this Funding Contract, including preliminary technical reports and studies, may be disclosed to any third-party pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code. The City and Texas State shall immediately advise the EAA of any requests for any document by a third party made pursuant to the Texas Public Information Act.

U. Additional Cooperation and Obligations. The City and Texas State agree to timely prepare and submit their monitoring report under Subsection 7.5.3 of the FMA for all of the Conservation Measures and Program Activities undertaken and funded pursuant to this Funding Contract. Moreover, the City and Texas State agree to fully cooperate and assist the EAA in the preparation, development, and submission to the Service of an annual report (as set forth in Section 11.1.c. of the Implementing Agreement), which includes a description of all of the Parties' HCP activities and an analysis of whether the terms of the HCP have been met in that annual reporting period. The City and Texas State will make available to the EAA their administrative records and such other documents and data as the EAA may request in furtherance of the preparation of such annual report.

V. In accordance with Texas Education Code, Section 51.9335(h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:

- (1) whether the provision appears on the face of the Agreement or Contract; or
- (2) whether the Agreement or Contract includes any provision to the contrary.

W. Nondiscrimination. In their execution of this Funding Contract, the Parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. The Parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Funding Contract.

**IN WITNESS WHEREOF**, the Parties have executed this Interlocal Cooperation Contract in duplicate counterparts, both having equal force and effect, as of the Effective Date stated in Article III.

FOR CITY OF SAN MARCOS

By: \_\_\_\_\_  
Bert Lumbreras Date  
City Manager

ATTEST:

By: \_\_\_\_\_  
Tammy Cook Date  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michael J. Cosentino Date  
City Attorney

**THE TEXAS STATE UNIVERSITY SYSTEM**

\_\_\_\_\_  
Denise M. Trauth  
President

\_\_\_\_\_  
Date

Reviewed and Recommended:

\_\_\_\_\_  
Daniel Harper  
Vice Chancellor and Chief Financial Officer

\_\_\_\_\_  
Date

Approved as to Legal Form:

\_\_\_\_\_  
Nelly Herrera  
Vice Chancellor and General Counsel

\_\_\_\_\_  
Date

ATTEST:

APPROVED by the Board of Regents of The Texas State University System on  
\_\_\_\_\_, at \_\_\_\_\_, Texas.

\_\_\_\_\_  
Brian McCall, PhD, Chancellor  
Secretary to the Board

\_\_\_\_\_  
Date



FOR THE EDWARDS AQUIFER AUTHORITY

By: \_\_\_\_\_  
Roland Ruiz Date  
General Manager

ATTEST:

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

APPROVED AS TO FORM:

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

EXHIBIT A  
TABLE 1 – CURRENT, APPROVED FUNDING APPLICATION

EAHCP Mitigation No.	Description	Final Amount Requested	Selected Contractor
5.3.1 & 5.4.1	Texas Wild-Rice Enhancement/Restoration		
5.3.2 & 5.4.2	Management - Key Recreation Areas		
5.3.3 & 5.4.3	Management - Floating Vegetation Mats & Litter		
5.3.5 & 5.3.9 & 5.4.11 & 5.4.13	Non-Native Animal Species Control		
5.3.7	Bank Stabilization/Permanent Access Points		
5.3.8 & 5.4.3.1 & 5.4.12	Non-Native Plant Species Control		
5.7.1	Native Riparian Habitat Restoration		
5.7.5	Household Hazardous Waste Management		
5.7.6	Impervious Cover/Water Quality Protection		
	<b>Funding Request Total</b>		

**EXHIBIT B**  
**PROGRESS REPORT TEMPLATE**

Date:

HCP Measure(s) Addressed:

Project Name:

Invoice Number:

Invoice Period: mm/dd/yyyy to mm/dd/yyyy

**1. Services Performed During the Invoice Period**

Describe the activities that were performed for each Conservation Measure during the invoice period.

**2. Schedule Issues**

Describe the status of the project progress, identifying which activities, if any, are behind schedule.

**3. Budget Issues**

EXHIBIT C  
INVOICE SUMMARY SHEET TEMPLATE

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

City of San Marcos/Texas State University									
EAA PO#	EAA Invoice#	Conservation Measure	HCP Measure(s) Addressed	Contractor Name	COSM PO#	Contract #	Beginning Contract Amount	Budget Adjustment	Total Contract Amount
		Native Riparian Habitat Restoration	5.2.1						0.00
		Management of Recreation in Key Areas	5.2.10						0.00
		Control of Non Native Predator Species	5.2.11						0.00
		Control of Non Native Plant Species	5.2.2.1/5.2.2.3						0.00
		Permanent Access Points/Bank Stabilization	5.2.2.2/5.2.2.3						0.00
		Impervious Cover/Water Quality Protection	5.2.4						0.00
		Management of Household Hazardous Wastes	5.2.5/5.2.9						0.00
		Texas wild-rice Enhancement	5.2.6/6.3.6						0.00
		Management of Floating Aquatic Vegetation and Litter	5.2.7						0.00
Totals:									0.00

Affidavit:

I hereby certify and attest the above information to be true and correct to the best of my knowledge. I further certify that all work or materials covered by this Invoice for Payment has been completed or materials delivered in accordance with the Contract Documents and, that all amounts have been paid to the Contractor or Supplier and that the current payment shown herein is now due.

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