

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND TRAVIS COUNTY FOR
JOINT FUNDING AND MANAGEMENT OF THE BALCONES CANYONLANDS
CONSERVATION PLAN COORDINATING COMMITTEE SECRETARY**

THIS AGREEMENT (“Agreement”) is an interlocal agreement authorized and governed by the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function, which it is authorized to perform individually under the applicable statutes of the State of Texas or its charter. Each party represents and warrants that the compensation to be made to the performing party contemplated in this Agreement are in amounts that fairly compensate the performing party for the services or functions described in this Agreement, and are made from current revenues available to the paying party. This Interlocal Cooperation Agreement is between Travis County (the “County”) and the City of Austin (the “City”).

WHEREAS, Travis County and the City of Austin are joint holders of United States Fish and Wildlife Service (“USFWS”) Permit TE-788841-2, an Endangered Species Act (ESA) Section 10a permit for the Balcones Canyonlands Conservation Plan (the “BCCP”) a 30-year permit issued by the USFWS in 1996;

WHEREAS, The County and City’s joint and cooperative administration and management of the BCCP are guided, in part, by the “Interlocal Cooperation Agreement between Travis County and the City of Austin Implementing the Balcones Canyonlands Conservation Plan – Shared Vision” adopted in August 1995 (the “ILA/ Shared Vision”); and included as part of the ESA Section 10a permit;

WHEREAS, The office of BCCP Coordinating Committee Secretary (“BCCP Secretary”) is established by the ILA/ Shared Vision;

WHEREAS, The BCCP Secretary serves as the chief administrative officer to the BCCP Coordinating Committee;

WHEREAS, Duties of the Secretary are established, defined and elaborated in:

- (a) The ILA/Shared Vision;
- (b) The BCCP “Habitat Conservation Plan and Final Environmental Impact Statement” (March, 1996); and by
- (c) Accepted practice of the parties over the past 20 years;

WHEREAS, these duties are summarized in Attachment 1 to this Agreement;

WHEREAS, The City and the County have jointly concluded that growing demands on the office of BCCP Secretary have made it impractical and infeasible for existing staff to adequately fulfill the duties of the office of BCCP Secretary as has been the practice to date;

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements of the parties, to be by them kept and performed as set forth below, the County and City agree as follows:

1. BCCP Secretary Position Established.

- (a) The position of BCCP Coordinating Committee Secretary will be established at the City within Austin Water Wildland Conservation Division at the classification of Environmental Conservation Program Manager, salary grade IB2, and will report independently to the Assistant Director of Austin Water responsible for managing the Wildland Conservation Division.
- (b) The City will have primary responsibility for managing the BCCP Secretary including hiring, supervision, disciplinary actions, and performance evaluation, but will coordinate with and consult with the County to provide joint oversight and ensure consensus between the City and County on all key management decisions for this position.
- (c) Primary contact for management of the BCCP Secretary at the City will be the Assistant Director of Austin Water responsible for managing the Wildland Conservation Division. Primary contact at the County will be the Director of the Natural Resources and Environmental Quality Division within the Transportation and Natural Resources Department.

2. Financial Obligations.

- (a) For each year that this Agreement remains in effect, the City and County will each establish and maintain a budget of one half of the cost of a full time employee at the City's salary grade IB2, including salary and fringe benefits.
- (b) Initial budget for the City and the County will be based on:
 - (i.) The salary midpoint of the Environmental Conservation Program Manager classification plus corresponding fringe benefits adjusted;
 - (ii.) Adjusted for actual hiring rate based on qualifications; and
 - (iii.) Will be prorated for the remaining budget year on the initial date of hire.
- (c) For annual budget planning, the Assistant Director of Austin Water over the Wildland Conservation Division and the County's Director for the Natural Resources and Environmental Quality Division within the Department of Transportation and Natural Resources Department will coordinate by February 1 each year to plan budget needs for the position for the upcoming fiscal year.
- (d) Upon initial hiring of the BCCP Secretary, the City will invoice the County for its contribution to the position no later than the end of the first quarter following the date of hire. Thereafter, the City will invoice the County for its contribution no later than the end of the first quarter of the fiscal year. The invoice will include a request for payment as well as a breakdown of agreed costs.
- (e) The County will remit payment to the City within 30 days of receipt of a complete invoice with agreed costs.
- (f) In the event changes or corrections are required to any invoice prior to payment, a request for additional information will be made by the County within 30 days of receipt of the invoice.
- (g) Interest on overdue payments is governed by Chapter 2251 of the Texas Government Code.
- (h) In the event of any proposed reclassification of this position or other compensation or benefit adjustments, the City will first coordinate with the

County to ensure County concurrence with the compensation adjustment and to ensure adequate budget adjustments.

3. Duties of the BCCP Secretary and Related Work Tasks.

- (a) Duties of the BCCP Secretary, summarized in Attachment 1, are defined in:
 - (i.) The ILA/Shared Vision,
 - (ii.) The Balcones Canyonlands Conservation Plan “Habitat Conservation Plan and Final Environmental Impact Statement” (March, 1996), and by
 - (iii.) Accepted practice of the parties over the past 20 years;
- (b) Modification of these duties will be subject to mutual agreement between the Assistant Director of Austin Water over the Wildland Conservation Division and the County’s Director for the Natural Resources and Environmental Quality Division within the Department of Transportation and Natural Resources Department and, as necessary, in consultation with BCCP Coordinating Committee.
- (c) For certain work tasks in support of the duties of the BCCP Secretary, City and County staff have established a division of labor and responsibilities. This includes, among other things, responsibility for preparation of the BCCP Annual Report (County), review of infrastructure projects (City) and review and issuance of Public Participation Certificates (County). Any changes to the division of labor and responsibilities will be subject to mutual consent of the City and County.

4. Effect of Municipal Civil Service.

All obligations of the City under paragraphs 1 and 3, above, are subject to the requirements of the City’s classified civil service as established in the City’s Charter and the rules of the City’s municipal civil service commission.

5. Effective Date.

This Agreement takes effect upon the last date of execution of the Agreement by the City and the County and will be effective until September 30, 2017. This Agreement will automatically renew from year to year from October 1 of each year to September 30 of the following year unless terminated earlier by the Parties.

6. Default.

A Party to this Agreement is in default (Default) under the Agreement if the Party fails to fully, timely, and faithfully perform any of its material obligations under the Agreement; and following notice of default as provided in Section 7 (Termination for Default), fails to cure the alleged default as provided in Section 7.

7. Termination for Default.

In the event of Default by a Party, the other Party has the right to terminate the Agreement for cause, by written notice delivered to the Party alleged to be in default via certified mail, postage prepaid, and return receipt requested. The notice is effective within 90 days after delivery to the

defaulting party, unless otherwise specified for a longer time period. During this time period, the Party alleged to be in default may cure the event of Default or provide evidence sufficient to prove to the other Party's reasonable satisfaction that such default does not exist or will be cured in a time satisfactory to the Party alleging the default. In the event of Termination for Default, the County and its officials, agents, and representatives will not be liable for loss of any profits by any of the City's contractors.

8. Termination for Convenience.

A Party may terminate this Agreement for convenience by providing written notice to the other Party at least 90 days before October 1st of the year in which the Agreement would otherwise renew.

9. Funding and Funding Out.

Each party acknowledges the other party has provided notice that the party's payment obligations to, or expenditures for, the other party are payable only from funds appropriated or available for the purpose of this Agreement in the current fiscal year. Despite anything to the contrary in this Agreement, if either party does not appropriate funds for this Agreement in future years, or if there are no other lawfully available funds for this Agreement, the Agreement is void due to failure to fund it. Each party shall provide written notice to the other party of the failure to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit the non-appropriating party to pay its obligations under the Agreement. Additionally, payments or expenditures under this Agreement shall be made from current revenues appropriated and available in the parties' current year operating budget. If, during budget planning, it appears that appropriation may not occur, each party will advise the other party as soon as possible.

10. Miscellaneous.

- (a) Force Majeure. Each party to this agreement agrees to excuse the failure of another party to perform its obligations under this Agreement to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this Agreement, but only if and to the extent the event or circumstance is not within the control of the party seeking to have its performance obligation excused thereby and which the party was unable by the exercise of due diligence to avoid or prevent. Events of Force Majeure include acts of God, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do not include economic or market conditions which affect a party's cost but not its ability to perform. The party invoking Force Majeure shall give timely and adequate notice to the other party, by e-mail or telephone confirmed promptly in writing, and shall use diligence to remedy the effects of an event of Force Majeure, as soon as reasonably possible. The party invoking Force Majeure shall be excused from such performance for such period of time as it reasonably necessary after such occurrence to remedy the default.

- (b) Notice. When this Contract requires the Parties to provide notice to each other, the notice shall be in writing. Notices must be addressed, hand-delivered, faxed, or emailed only to the person designated for receipt of notice. A mailed notice shall be considered delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested, postage prepaid. Hand-delivered notices are considered delivered only when the addressee receives those notices. Notices delivered by fax or e-mail are considered delivered three (3) business days after transmittal or when received by the addressee whichever is earlier. The Parties may make routine communications by first class mail, email, fax, or other commercially accepted means. Notices and routine communications to the City and Travis County shall be addressed as follows:

CITY: Daryl Slusher
City of Austin
Austin Water
625 E. 10th Street
Austin, Texas 78701
Phone: (512) 972-0218
Facsimile: (512) 972-0111
E-mail: Daryl.Slusher@austintexas.gov

WITH COPY TO: Ross Crow
Assistant City Attorney
City of Austin Law Department
P.O. Box 1088
Austin, Texas 78767-1088

COUNTY: Jon A. White
P. O. Box 1748
Austin, Texas 78767
Phone: 512-854-7212
Facsimile: 512-854-4697
E-mail: Jon.White@traviscountytexas.gov

WITH A COPY TO: Tom Nuckols
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767

- (c) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular of plural number shall each be deemed to include the others.
- (d) Amendments. This Agreement may not be amended, modified, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the parties. No official, representative, or employee of either party has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the governing body of the party.
- (e) Independent Entities. The parties expressly acknowledge and agree that City and County are independent entities and each assumes all the rights, obligations, and liabilities applicable to it as an independent entity. This Agreement shall not be construed as creating a partnership, joint enterprise, or joint venture between the parties. No employee of the City shall be considered an employee, agent, or representative of the County or gain any rights against the County pursuant to the County's personnel policies. No employee of the County shall be considered an employee, agent, or representative of the City or gain any rights against the City pursuant to the City's personnel policies. It is expressly understood and agreed that in the execution of this Agreement, no party waives, nor shall be considered to waive, any immunity or defense otherwise available to it against any claims by third parties.
- (f) Other Instruments. The parties covenant and agree that they will execute other and further instruments and documents as are may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (g) Invalid Provision. Any portion of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

- (h) No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties hereto, any benefits, rights, or remedies under or by reason of this Agreement. Nothing in this Agreement shall be construed as creating an obligation or duty of either party to any third party or any member of the public.
- (i) Cooperation. The parties agree to cooperate at all times in good faith to effectuate the purposes and intent of this Agreement.
- (j) Assignment. A party to this Agreement may not assign or transfer its interests under this Agreement.
- (k) Jurisdiction and Venue. This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. The courts of Texas shall have jurisdiction of any dispute arising out of or concerning this Agreement, either administrative or judicial, and venue shall be proper and lie exclusively in Travis County Texas.
- (l) Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be considered an original and all of which together constitute one and the same instrument.

[Signatures on following page]

TRAVIS COUNTY, TEXAS

By: _____
Sarah Eckhardt
Travis County Judge

Date: _____

CITY OF AUSTIN, TEXAS

By: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Printed Name: _____

Assistant City Attorney

ATTACHMENT 1

Background and Duties of the BCCP Secretary

The BCCP Coordinating Committee Secretary is established by the *Interlocal Cooperation Agreement between Travis County and the City of Austin Implementing the Balcones Canyonlands Conservation Plan – Shared Vision* (1995, the ILA/Shared Vision). The BCCP Secretary serves as the chief administrative officer to the BCCP Coordinating Committee.

Under the ILA, secretary services may be provided by the City of Austin through the City Manager or by the County through the Executive for the Transportation and Natural Resources Department. The ILA provided that the City would provide secretary services initially and, after two years, the Coordinating Committee could decide to rotate these duties. In practice the position of Secretary has remained with the City since the inception of the BCCP.

Duties of the Secretary are established:

- In the ILA/Shared Vision,
- The BCCP Habitat Conservation Plan, and by
- Accepted practice over the past 20 years.

Duties of the Secretary include but are not limited to:

- Managing meetings, records, and correspondence of the BCCP Coordinating Committee and advisory committees
- Providing support to the Coordinating Committee and its members including
 - Policy development and interpretation
 - Policy review and analysis
 - Interpret BCCP governing documents
 - Lead coordination with USFWS and other partners and stakeholders
 - Lead response to major issues as they arise
 - Recommend members for service on advisory committees
 - Provide staff support to the advisory committees
- Negotiating, implementing, overseeing and managing contracts authorized by the Coordinating Committee
- Administering and overseeing the BCCP Public Participation Process
- Authorizing payments
- Overseeing operating funds
- Overseeing the BCCP mitigation bank
- Developing policy recommendations for the Coordinating Committee, Permit Holders and Managing Partners
- Recommending BCCP amendments
- Making recommendations on land management compliance
- Providing administrative guidelines and reports to the Coordinating Committee, including the Annual Report

Land Management - the Secretary shall:

- Receive information on all land transactions related to the BCCP
- Provide recommendations to the Permit Holders to ensure integrity of the Preserve system
- Receive annual land management reports from all Permit partners
- Prepare and submit a comprehensive annual land management report to the Coordinating Committee, the Permit Holders and the USFWS

Research - the Secretary shall:

- Establish guidelines for research and monitoring of endangered species and species of concern within the Preserve.
- Identify, prioritize, review and authorize research on endangered species and species of concern within the Preserve

Land Management Guidelines - the Secretary:

- Is responsible for overseeing implementation of USFWS approved land management guidelines
- May initiate amendments to the USFWS approved land management guidelines

Land Management Plans for Individual Parcels - the Secretary shall:

- Receive land management plans for individual parcels
- Review the plans for compliance with the land management guidelines
- Approve the plans if they comply with the guidelines

Infrastructure Management – The Secretary shall:

- Be responsible for ensuring that infrastructure corridor activities and management are consistent with the terms of the BCCP Permit
- Negotiate procedures, schedules and key decisions for infrastructure projects within the designated infrastructure corridors. This includes design, construction, operation and maintenance elements.
- Ensure that infrastructure projects meet land management guidelines and the BCCP Permit requirements.
- Ensure recognition of existing right of way and easement rights.
- Negotiate roadway realignments within the infrastructure corridor framework – with Coordinating Committee approval.
- Ensure that the planning and implementation of new infrastructure corridors, is consistent with the provisions of the BCCP.
- Negotiate infrastructure access routes and procedures.
- Review and approve major and minor infrastructure construction activity
- Manage accidental habitat disturbance
- Consider requests to clear between March 1 and August 31
- Review and accept construction related restoration
- Consider requests to relocate facility locations during construction
- Approve limits of construction
- Review and accept final construction

- Administer maintenance activities within infrastructure corridors
 - Receive notices of maintenance activities
 - Facilitate compliance by infrastructure owners and operators
 - Manage review and approval procedures for scheduled maintenance activities, emergency maintenance, and modifications and amendments to approved maintenance.

Additional duties that have been established by practice:

- Consultations with staffs (City, County) regarding interpretations of BCCP governing documents, (weekly).
- Consultations regarding review and interpretations of actions, ideas, or needs with respect to impacts to or from BCCP, (almost daily).
- Organize, convene, facilitate, and operate special committees to address policy and or permit compliance. Examples include: Advisory Committee Task Group, Infrastructure Management task group, Trail Master Plan Committee, Karst Substitution Task Group, BCP Completion Analysis team. Duration ranges from two weeks to six months. (annually)
- Initiate actions with third parties who create conflicts with BCCP Compliance. Duration = days to months. (annually)
- Serve on various committees and provide support with BCCP perspective and negotiate BCCP Compliance. Examples include WTP4 Environmental Mitigation Plan (lead) (old site), WTP4 EC plan, Canyon Creek rate settlement agreement, Walk For A Day/Violet Crown Trail, SH45 Technical Working Group, Imagine Austin.
- Report to various entities regarding BCCP, BCCP questions, compliance, and complaints. Examples include City Council, Travis County Commissioners Court, Interdepartmental committees, boards and commissions, state agencies, USFWS. (occasionally)
- Respond to citizen inquiries and requests for information. (daily)
- Review Plans, designs, submissions, and reports and comment on BCCP/BCP related issues and concerns. (weekly)
- Provide training to agencies and staff for BCCP compliance related issues.