

**INTERLOCAL FUNDING AGREEMENT
AND MEMORANDUM OF UNDERSTANDING**

This Interlocal Funding Agreement and Memorandum of Understanding (the "Agreement") is hereby executed this the 10th day of October, 2019 by and between the Barton Springs Edwards Aquifer Conservation District, a special district created under Chapter 8802 of the Texas Special District and Local Laws Code and having authority under Chapter 36 of the Texas Water Code ("BSEACD"), and Hays County, a political subdivision of the State of Texas ("the County") (collectively, the "Parties"), related to study of the Trinity Aquifers in Hays County and the region.

RECITALS

WHEREAS, the County and BSEACD have a history of collaborating to study and better understand the availability of groundwater within Hays County and the region; and

WHEREAS, Hays County and BSEACD executed Memorandums of Understanding in 2008 and 2016 to collaboratively review Groundwater Availability Studies in an effort to have a better understanding of the availability of groundwater and to characterize the Trinity Aquifers in central Hays County; and

WHEREAS, BSEACD believes that the installation of a multiport monitor well and a standard monitor well upgradient of Jacob's Well will significantly increase our understanding of groundwater flow to Jacob's Well and the impacts to flow from Jacob's Well by pumping; and

WHEREAS, the Parties agree that the best way to promote their mutual desire to have a better understanding of groundwater availability upgradient and downgradient of Jacob's Well is to collaboratively fund BSEACD's continued study of groundwater within central Hays County;

NOW, THEREFORE, in consideration of the foregoing and the mutual terms and conditions of the Parties in this Agreement, the County and BSEACD agree as follows:

**ARTICLE 1
PURPOSE**

1.1 The purpose of this Agreement is to provide BSEACD with sufficient funding to enhance subsurface characterization in the vicinity of Jacob's Well with the installation of a multiport monitor well within Hays County ("Jacob's Well Multiport Monitor Well"), installation of a standard monitor well, dye tracing, stream-flow measurements, and other activities that will provide data that could support numerical groundwater models (TWDB Hill Country GAM, Blanco River surface-groundwater model (BRATWURST), and a MODFLOW model by BSEACD) and to provide data for management of the groundwater resources of Hays County.

**ARTICLE 2
OBLIGATIONS AND RIGHTS OF BSEACD**

2.1 BSEACD hereby agrees to perform all tasks associated with the "Aquifer Studies of the Jacob's Well Area," which is attached hereto as Exhibit "A" and incorporated herein for all purposes (the "Project").

2.2 BSEACD agrees to perform the Project in general accordance with the task descriptions provided in Exhibit "A" (incorporated herein), delivering a preliminary report on the Monitor Wells by December of 2020 and continuing to perform support tasks, such as, Potentiometric Measuring, Analysis of Stream Gain/Loss, and Dye Tracing, through the end of calendar year 2020.

**ARTICLE 3
OBLIGATIONS OF THE COUNTY**

3.1 Hays County agrees to provide funding to BSEACD for its Project activities within Hays County as follows: Within thirty (30) days of the Effective Date, the County shall pay BSEACD an amount not to exceed fifty-eight thousand dollars (\$58,000.00 USD) for the installation of a multiport monitor well, a standard monitor well, and the performance of supporting activities, as highlighted in Exhibit "A".

3.2 If BSEACD is unable to or does not otherwise perform the tasks cited in Exhibit "A" by August 31, 2021, then BSEACD shall return the monies paid by Hays County within thirty (30) days of August 31, 2021 calendar year. If BSEACD performs only a portion of the tasks cited in Exhibit "A" by August 31, 2021, then it shall return an appropriate portion of the monies paid by Hays County, as agreed by the Parties.

**ARTICLE 4
TERM AND TIME OF PERFORMANCE**

4.1 The effective date of this Agreement shall be the date last executed by the Parties, below (the "Effective Date"). The term of the Agreement shall continue from the Effective Date until August 31, 2021, or until the Parties have fulfilled all obligations under this Agreement.

**ARTICLE 5
NOTICE**

5.1 Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests, or communications related to non-compliance issues required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the County:

Hays County
Attn: Ruben Becerra
County Judge
111 E. San Antonio, Suite 300
San Marcos, Texas 78666
(512) 393-2205

With Copy to:

General Counsel
111 E. San Antonio St., Suite 202
San Marcos, TX 78666
Email: mark.kennedy@co.hays.tx.us

If to the BSEACD:

Barton Springs/Edwards
Aquifer Conservation District
Attn: Alicia Reinmund-Martinez
General Manager
1124 Regal Row
Austin, Texas 78748
(512) 282-8441
(f): (512) 282-7016
Email: areinmund@bseacd.org

**ARTICLE 6
DISPUTE RESOLUTION**

6.1 Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Agreement. If a controversy or claim should arise, the Parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any Party may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The Parties shall, within ten (10) days after the Effective Date of this Agreement, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes subject to approval of the part's governing body. Each of the Parties may change the designation of its Representative, but shall maintain at all times during the term of this Agreement a designated Representative and shall ensure that the other Parties are notified of any change in the designation of its Representative.

6.2 Mediation. If the dispute has not been resolved within sixty (60) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. The Parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

6.3 Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon), any of the Parties may commence litigation to resolve the dispute in any Texas state court of competent

jurisdiction, or in the United States District Court for the Western District of Texas to the extent said Court shall have jurisdiction over the matter.

ARTICLE 7 MISCELLANEOUS

7.1 Not-to-Exceed; Budget Out. Under no circumstances shall BSEACD's obligation exceed the scope of work cited in Section 2.1, above, unless otherwise agreed in writing by the Parties. Notwithstanding any other provision of this Agreement, if the BSEACD or the Hays County Commissioners Court fails to appropriate or budget funds to meet the terms and conditions cited herein, then the non-appropriating entity shall not be obligated to fulfill the its obligations under this Agreement.

7.2 Entire Agreement. This Agreement represents the entire and integrated agreement between the County and BSEACD and supersedes all prior negotiations, representations or arguments either written or oral.

7.3 Lawful Authority. The execution and performance of this Agreement by the County and BSEACD have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of the County and BSEACD in accordance with its terms.

7.4 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

7.5 Independent Parties. It is understood and agreed between the Parties that the County and BSEACD, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture.

7.6 Construction. The captions and headings contained in this Agreement are solely for convenient reference and will not be deemed to affect the meaning or interpretation of any provision or paragraph hereof. All references in this Agreement to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. For the purposes of this Agreement, the term "will" is mandatory. Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

7.7 Conflict with Applicable Law. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, ordinance or administrative executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have not legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

7.8 No Waiver. No waiver by a Party of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision

hereof.

7.9 Public Information Act. BSEACD and County are governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under this Act.

7.10 Additional Documents. The BSEACD and the County covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

7.11 Compliance with Laws. In performing this Agreement, BSEACD will comply with all local, state and federal laws.

7.12 Counterparts. This Agreement has been executed by the parties in multiple originals or counterparts each having full force and effect.

[SIGNATURES ON NEXT PAGE]

This Interlocal Funding Agreement and Memorandum of Understanding is hereby EXECUTED on this 10th day of October, 2019.

County of Hays:

By: _____
Judge Ruben Becerra
Hays County Judge

ATTEST:

Elaine Cardenas, Hays County Clerk

Barton Springs Edwards Aquifer Conservation District:

By: Blayne Stansberry
Blayne Stansberry
Board President

Attest:

Blake Dorsett
Blake Dorsett
Board Secretary
_____ Date

Approved as to Form:

William D. Dugat, III 10/10/19
William D. Dugat, III
Counsel
_____ Date

Mark D. Kennedy
General Counsel – Hays County
_____ Date

EXHIBIT A

Aquifer Studies of the Jacob's Well Area, Central Hays County

The Barton Springs/Edwards Aquifer Conservation District (BSEACD) is planning studies of the Trinity Aquifers associated with Jacob's Well in central Hays County to gain a better understanding of recharge to the Middle Trinity Aquifer, how groundwater might move vertically between the aquifers, discharge from Jacob's Well, and the potential for groundwater flow further downgradient of Jacob's Well. Results of these studies will be used to determine sustainable yield of the aquifers, develop numerical models, and inform groundwater districts (BSEACD and HTGCD) and Hays County of appropriate groundwater management policies. These numerical models will serve as tools for assessing impacts to Jacob's Well from pumping of the Middle Trinity Aquifer in the vicinity of, and downgradient, of Jacob's Well.

The installation of two monitor wells upgradient of Jacob's Well are proposed as part of these studies. One well will be a multiport monitor well similar to the one in the Rolling Oaks subdivision that was funded in part by Hays County. This multiport well will be installed to monitor five or six unique hydrologic zones. Each of these zones can be tested for hydraulic conductivity, water levels, and water quality. Monitoring and testing of these zones will allow for a detailed analysis of how water moves vertically and horizontally through the aquifers. The second monitor well will be done with a standard completion in which the borehole will be left open for testing and monitoring. Each of these wells will be installed into the Cow Creek Formation to depths of about 250 feet below ground surface. Groundwater samples will be collected from each monitor zone of these wells and analyzed for basic water-quality parameters.

Once these monitor wells are completed, additional dye trace studies will be conducted upgradient of Jacob's Well. These monitor wells could be used for monitoring of the dyes moving through the aquifer or used as injection points for dye. Two to three dyes will be injected into caves, recharge features, or wells. Monitoring of dye movement will be done in Jacob's Well and water-supply wells downgradient of the dye injection points. Periodic water-level measurements will be made in these new monitor wells, and in additional wells in the area to understand how the aquifers respond to drought and pumping. One, or both, of the proposed monitor wells could be used as index wells for determination of drought and excessive pumping.

Estimates of costs for these studies are provided below along with potential contributions from BSEACD and Hays County.

Task	Cost		
	\$K	BSEACD	Hays Co.
Multiport monitor well			
Drilling	20		20
Installation	13		13
Material	17	17	
Standard monitor well	15		15
Dye tracing	8	3	5
Water chemistry	7	2	5
Total	80	22	58