

**AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
BETWEEN THE CITY OF AUSTIN AND TRAVIS COUNTY
FOR SHARED VISION AND IMPLEMENTATION OF
THE BALCONES CANYONLANDS CONSERVATION PLAN**

THIS INTERLOCAL COOPERATION AGREEMENT (the "Agreement") is made and entered into by and between Travis County, Texas (the "County"), and the City of Austin, Texas (the "City"), hereinafter referred to individually as "Party" and collectively as the "Parties" for the purposes and consideration in this Agreement. This Agreement amends and restates the August 3, 1995, Interlocal Cooperation Agreement between Travis County and the City of Austin Implementing the BCCP - Shared Vision, as amended, (the "Original Agreement") in its entirety and such prior agreement shall cease to exist as of the Effective Date of this Agreement.

RECITALS

1. The Balcones Canyonlands region of Central Texas is home to several species of animals and plants listed as endangered under the federal Endangered Species Act of 1973, as amended. 16 U.S.C. & 1531, et seq. (the "Act"). Development of endangered species habitat in the region is subject to approval under the Act, and to avoid the burden of project-by-project approval, a group of individuals representing federal, state, and local governments, the private business sector, private landowners, and environmental interests worked to create a regional Habitat Conservation Plan ("HCP") in accordance with Section 10(a) of the Act.
2. The Balcones Canyonlands Conservation Plan ("BCCP") is a regional HCP that ensures the protection of endangered species and species of concern under the Act, while providing a mechanism to permit continued economic development in the region without the need for individual project approval. The BCCP includes the following elements, including all amendments:
 - a. This Agreement;
 - b. The HCP and Final Environmental Impact Statement ("HCP-EIS") dated March 1996, to which the Original Agreement was outlined and described in Appendix A; and
 - c. The United States Fish and Wildlife Service ("USFWS") issued Permit No. PRT 788841, an Endangered Species Act Section 10(a)(1)(B) Incidental Take Permit, on May 2, 1996, to the City of Austin and Travis County ("Regional Permit"). Amended in 2005 and administratively corrected in 2013, the Regional Permit was reissued as Permit No. TE-788841-2 on August 5, 2013.

3. The City and the County desire to continue joint and cooperative implementation of the BCCP to offer a streamlined mechanism for the private sector to mitigate endangered species take.

In consideration of these recitals and mutual covenants in this Agreement, the Parties agree as follows:

1.0 DEFINITIONS

- 1.1 "Permit Holders" means the City of Austin and Travis County collectively, as co-permittees on the Regional Permit.
- 1.2 "Coordinating Committee" means the entity created pursuant to Section 791.013 of the Texas Government Code and established by the Permit Holders to implement and administer the BCCP.
- 1.3 "BCCP Take Permits" means permits issued by Travis County or the City of Austin under the terms of the BCCP for the incidental take of habitat that involve the sale of mitigation value by the Parties to this Agreement and were previously referred to as "Participation Certificates."
- 1.4 "Mitigation Credits" means the use of mitigation value for infrastructure and capital improvement projects by the Permit Holders and Managing Partners.
- 1.5 "Managing Partners" are those entities that provide land management of designated preserve lands to support the public benefits of the preserve system and have the right to use mitigation credits associated with that land contributed to the preserve system.

2.0 GOALS OF THE BCCP

- 2.1 Ensure the protection of the habitat of species of concern and endangered species in Travis County by acquiring and setting aside in public preserves the best remaining habitat in a habitat preserve system.
- 2.2 Manage the habitat preserve system for the ongoing protection of viable populations of endangered species, species of concern, threatened species, or rare species.
- 2.3 Hold a Regional Permit under Section 10(a) of the Act.
- 2.4 Provide adequate revenue to ensure that the goals of the BCCP are met.

- 2.5 Provide a streamlined system for developers and infrastructure providers to achieve compliance with the Act by mitigating for the incidental take of endangered species habitat.

3.0 AUTHORITY OF THE AGREEMENT

- 3.1 This Agreement is entered into pursuant to the Interlocal Cooperation Act, Tex. Government Code Chapter 791, and other applicable laws.

4.0 BCCP AMENDMENTS AND SECTION 10(A) PERMIT

- 5.1 The Permit Holders are jointly responsible for implementing the conditions of the Regional Permit as granted by the USFWS.
- 5.2 This Agreement replaces the Original Agreement approved August 3, 1995.
- 5.3 Changes to the Permit which may affect the scope of mitigation or method of implementation of the terms of the BCCP or the Permit may be initiated by the Parties to this Agreement pursuant to Section 11.1 of this Agreement.
- 5.4 Changes made for the purpose of streamlining, updating, or clarifying the BCCP that do not affect the scope of mitigation or method of implementation of the terms of the BCCP or the Permit may be made by the Coordinating Committee, pursuant to Section 11.2.

6.0 BCCP COORDINATING COMMITTEE

- 6.1 Creation
 - a) The Balcones Canyonlands Coordinating Committee ("Coordinating Committee") was created pursuant to Texas Government Code Section 791.013.
 - b) The Parties are authorized by state law to implement the BCCP and the Coordinating Committee was created to carry out those essential government purposes.
- 6.2 Principal Duties
 - a) The principal duties of the Coordinating Committee are to:
 - 1) carry out the goals of the BCCP and this Agreement;

- 2) avoid jeopardizing the Regional Permit by any action or inaction;
- 3) provide policy oversight and coordination for implementing the BCCP;
- 4) establish and discontinue advisory groups as appropriate to implement the BCCP;
- 5) review and recommend approval of contractual agreements with governmental entities who wish to participate in the BCCP as managing partners or become Parties to this Agreement;
- 6) review and evaluate the effectiveness of implementation to assure that the conditions of the Regional Permit are being met;
- 7) educate the public about protected species and the importance of carrying out the BCCP; and
- 8) make recommendations to the Parties regarding actions necessary to implement the BCCP.

6.3 Coordinating Committee Membership

- a) The Coordinating Committee shall consist of:
 - 1) one voting member appointed by the County from among the members of the County Commissioners Court;
 - 2) one voting member appointed by Austin from among the members of the City Council; and
 - 3) one non-voting member appointed by the USFWS.
- b) Each member shall serve as chair when the meeting is held at their own agency's facilities.
- c) A member, by virtue of membership on the Coordinating Committee, does not hold a civil office, an office of profit of trust, or civil office of emolument, within the meaning of Article XVI, Section 12, 30, or 40 of the Texas Constitution.
- d) The governing body appointing a member shall furnish a certified copy of the appointing resolution to the BCCP Officer; and a member shall serve at the pleasure of the appointing governing body.

6.4 Membership Term

- a) A member shall serve a one-year term.
- b) A member whose term expires continues to serve until a successor is appointed.
- c) A member may be re-appointed for successive terms by the appointing governing body.

6.5 Meetings of the Coordinating Committee

- a) The Coordinating Committee shall hold two regular meetings each year. Meeting dates and locations will be determined by agreement among the members. Regular meetings may be canceled if agreed to by both voting members.
- b) The Coordinating Committee may call special meetings if requested in writing by a member and agreed to by the voting members. Special meeting requests shall be sent to the BCCP Officer, describing the purpose of the meeting.
- c) A quorum of the Coordinating Committee is two voting members. A unanimous vote is required to enact motions. A member may send a proxy to vote in his or her place provided that the proxy is a member of the same governing body as the member.
- d) Except where this Agreement or the bylaws of the Coordinating Committee provides otherwise, the conduct of meetings is governed by the latest edition of Robert's Rules of Order Newly Revised.

6.6 Meeting Notice

- a) The BCCP Officer shall provide written notice and an agenda for each regular or special meeting of the Coordinating Committee by mail, electronic mail, or delivery at least three calendar days before a regular or special meeting.
- b) Meetings of the Coordinating Committee are subject to the Texas Open Meetings Act (Texas Government Code, Chapter 551).

6.7 Administration

- a) Hereafter, the BCCP Secretary as described in the "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" , which took effect on April 19, 2016, when it was fully

executed by the Parties, will be referred to as the "BCCP Officer" and will continue to provide administrative support services for the Coordinating Committee in accordance with that agreement and any subsequent amendments to that agreement.

- b) The BCCP Officer serves as the chief administrative officer to the Coordinating Committee. The position's duties include, but are not limited to, assuring that BCCP Take Permit sales proceed in accordance with established policies and with the BCCP, maintaining a record of mitigation credit balances, interpreting BCCP documents, making policy and plan amendment recommendations, making Land Management Plan compliance recommendations, developing administrative guidelines, and providing reports to the Coordinating Committee.
- c) The BCCP Officer shall review annual program reports from Balcones Canyonlands Preserve ("BCP") Land Managers, compile them as the BCCP Annual Report, and submit the BCCP Annual Report to the USFWS.

7.0 FUNDING THE BALCONES CANYONLANDS CONSERVATION PLAN

7.1 Obligations of Parties

To ensure that the goals of the BCCP are met, City and County each agree to:

- a) Provide resources sufficient to implement the BCCP.
- b) Manage its BCP lands in accordance with the Regional Permit and Section 8.0 of this Agreement.
- c) Use funds from BCCP Take Permit sales for BCP land acquisition or preserve system needs.
- d) Provide resources sufficient to complete land and/or conservation easement acquisition for the BCP system, to fund capital costs for its acquired and designated BCP system lands, and to maintain and operate designated BCP system lands in accordance with Section 8.0 of this Agreement.
- e) The party that receives the funds collected from Take Permit sales will transfer one-half of the funds to the other party on an annual basis.

- 7.2 The Parties may, on a project-by-project basis, consider cost-sharing projects that will benefit and further the purposes of the BCCP.

- 7.3 The Parties agree that all mitigation credits associated with preserve system land that is not needed for capital improvement projects shall be available for BCCP Take Permit sales.
- 7.4 The obligations set forth above in this Section 7.0 constitute the sole financial obligations of the Parties. No further financial obligations shall be inferred from this Agreement, the BCCP-Shared Vision, or the Regional Permit.

8.0 PRESERVE MANAGEMENT

8.1 Land Management

- a) Each party is responsible for managing its own BCP lands. The responsible party may manage land through staff or contractors but it cannot assign its underlying obligation for land management to another party.
- b) All BCP lands shall be managed in a manner that does not jeopardize the BCCP.
- c) Preserve management shall be conducted in accordance with Land Management Plans and BCCP requirements.

8.2 Land Management Guidelines

- a) The Parties have established land management guidelines ("Land Management Guidelines") which identify minimum standards and limitations for land management to meet the terms of the BCCP to manage all preserve system lands.
- b) Land Management Guidelines are used to manage all BCP lands held by the City, County, Managing Partners, and other entities that manage lands dedicated to the BCP.
- c) Amendments to Land Management Guidelines may be prepared when significant changes to established land management procedures are recommended.
 - 1) Amendments shall be reviewed and approved by BCP staff, submitted to the BCCP Officer, and approved by the Coordinating Committee.
 - 2) Proposed amendments shall be posted for discussion and public comment at a meeting of the Coordinating Committee.
 - 3) Approved amendments the Land Management Guidelines shall be submitted to the USFWS.

9.0 DISSOLUTION OF THE COORDINATING COMMITTEE

9.1 Vote to Dissolve

- a) The parties may dissolve the Coordinating Committee by written resolution of each party's governing body if a liquidation plan pursuant to Section 9.2 has been adopted.
- b) A certified copy of a resolution approving the dissolution of the Coordinating Committee shall be delivered to the BCCP Officer.

9.2 Liquidation Plan

- a) Prior to consideration by the Parties of dissolution of the Coordinating Committee, the Coordinating Committee shall adopt a plan to liquidate the Coordinating Committee and furnish a copy of the plan to each voting party's governing body for approval. The plan will be submitted to the USFWS for review and approval, if required by the USFWS.
- b) The liquidation plan shall provide a timetable and identify the procedures the Permit holders plan to use to oversee the BCCP, preserve system, and the Permit.

10.0 TERM AND TERMINATION

- 10.1 This Agreement replaces the "Interlocal Cooperation Agreement between Travis County and the City of Austin Implementing the Balcones Canyonlands Conservation Plan - Shared Vision" of August 3, 1995, in its entirety.
- 10.2 This Agreement terminates upon expiration of the Regional Permit, unless terminated earlier pursuant to Section 9.0 of this Agreement.
- 10.3 Notwithstanding anything to the contrary within this Agreement, if, at any time during the term of this Agreement, the Commissioners Court of Travis County, Texas, or the City of Austin, Texas, fails to provide funding for all or any part of its obligations herein for the following fiscal year of said party, the failing party shall give notice to the Coordinating Committee and the Parties to this Agreement of such failure to fund and upon delivery of such notice shall no longer be liable for said unfunded obligations. Upon receipt of such notice, the non-failing party may elect to terminate this Agreement as their sole recourse.

10.4 If a party defaults in the performance of any of the terms or conditions of this Agreement, other than by failure to fund under Section 10.3, the defaulting party shall have 30 days after receipt of written notice of such default within which to pursue to cure the default. If the defaulting party fails, within 30 days after receiving the written notice, to pursue to cure the default, then the non-defaulting party shall have the right without further notice to terminate this Agreement and to seek relief as specified in Section 10.5 below.

10.5 The Parties agree the preserve system acquired and dedicated to the preserve pursuant to Section 5.0 of this Agreement is unique and irreplaceable, and that the failure of a party to dedicate property as preserve system land or to dedicate as preserve system land those tracts which have been purchased with funds from BCCP Take Permits sales pursuant to the terms of this Agreement would result in damage to the Parties seeking to maintain the Regional Permit that could not be adequately compensated by a monetary award.

The Parties therefore agree that if either party fails to dedicate preserve system land pursuant to Section 7.0 of this Agreement, or fails to dedicate as preserve system land those tracts which have been purchased with funds from BCCP Take Permit sales, the other party may appropriately seek an order from a court of appropriate jurisdiction requiring the defaulting party to specifically perform those covenants. Such order shall not require the failing party to maintain, repair, or otherwise expend funds, but only to dedicate the land in question.

11.0 AMENDMENTS AND ADMINISTRATIVE CHANGES

11.1 Amendments to Agreement or the BCCP

- a) A voting member of the Coordinating Committee or any party to this Agreement may propose an amendment to this Agreement or the Regional Permit by presenting it in writing to the Coordinating Committee with the meeting notice for a regular or special meeting of the Coordinating Committee. The Coordinating Committee shall review and make a recommendation to the governing bodies of the Parties to this Agreement concerning the proposed amendment no more than 90 days after receipt of the written proposal.
- b) An amendment is adopted when the governing bodies of all the Parties to this Agreement adopt the amendment and furnish the BCCP Officer with certified copies of the adopting resolutions.

- c) When an amendment is adopted, the BCCP Officer shall furnish a copy of the amendment to USFWS.

11.2 Administrative Changes to the BCCP

- a) In coordination with the USFWS, BCCP staff at City and County shall develop administrative changes to the BCCP to update, clarify, improve readability, and modernize the BCCP.
- b) Proposed changes shall be reviewed by the BCCP Officer for compliance with the essential terms of the Regional Permit and the BCCP that require a minor or major amendment.
- c) The BCCP Officer shall post administrative changes on the agenda of a regular or special meeting of the Coordinating Committee for discussion and approval.
- d) The Coordinating Committee shall review and make a recommendation to the governing bodies of the Parties to this Agreement concerning the proposed changes that require their approval no more than 90 days after receipt of the written proposal.
- e) Administrative changes that have been approved by the governing bodies of the Parties to this Agreement shall be submitted to the USFWS by the BCCP Officer.

12.0 NOTICE TO PARTIES

Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing. Notices shall be considered delivered three business days after postmarked if sent, postage prepaid, by U.S. Postal Service Certified or Registered Mail, addressed to the person designated for receipt of notice, and Return Receipt requested. Notices delivered electronically or by courier shall be considered delivered upon receipt of a successful reply confirming receipt or courier confirmation report; provided the notice is specifically addressed to the attention of the person designated for notice. A party may change its information under this Section by providing notice of the change. The Parties may make routine communications by first class mail, fax, or other commercially accepted means. Notices to the City and County shall be addressed as follows:

County: Cynthia McDonald (or successor)
County Executive, TNR
P.O. Box 1748
Austin, Texas 78767

With a copy to: Delia Garza (or successor)
Travis County Attorney
P.O. Box 1748
Austin, Texas 78767
Attention: File Number 356.530

And to: Bonnie S. Floyd, MBA, CPPO, CPPB (or successor)
Purchasing Agent
P. O. Box 1748
Austin, Texas 78767-1748
Phone: 512-854-9700
Facsimile: 512-854-9185

City: Shay Roalson (or successor)
Director, Austin Water
625 E 10th St
Austin Texas 78701

With a copy to: Anne Morgan (or successor)
City Attorney
PO Box 1088
Austin, Texas 78767-1088

And to: Jonathan Dalchau (or successor)
Division Manager, Utility Supply Chain, Austin Water
625 E 10th St
Austin Texas 78701

13.0 MISCELLANEOUS

- 13.1 The recitals set forth above are incorporated herein. This Agreement states the entire Agreement of the Parties, and it may be amended only as provided in Section 11.0 of this Agreement.
- 13.2 This Agreement is binding on the successors in interest to the Parties.
- 13.3 This Agreement is performable in Travis County, Texas, and Texas law governs its interpretation in application.
- 13.4 This Agreement may be executed in multiple counterparts.

Each of the signatories to this Agreement represents and warrants that he or she is duly authorized to sign this in the capacity indicated.

EXECUTED AS OF THE LATER DATE SET FORTH BELOW.


CITY OF AUSTIN

By:  _____

Robert Goode, Interim Assistant City Manager

Date: 10/20/2023

Approved As To Form:



Assistant City Attorney

TRAVIS COUNTY, TEXAS

DocuSigned by:
By:  _____
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Andy Brown, County Judge

Date: 10/30/2023 | 12:56 PM PDT

Amended and Restated Interlocal Cooperation Agreement Between the City Of Austin and Travis County for Shared Vision and Implementation of the Balcones Canyonlands Conservation Plan