

RESOLUTION AND ORDER NO. 07-16-847

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING AN INTERLOCAL CONTRACT BETWEEN THE EAA AND NEW BRAUNFELS UTILITIES, FOR CONSTRUCTION OF PHASE 1 OF THE COMAL SPRINGS CONSERVATION CENTER, IN AN AMOUNT NOT TO EXCEED \$540,000, FOR THE PERIOD JULY 13, 2016, THROUGH JANUARY 31, 2018, AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE CONTRACT.

WHEREAS, the Edwards Aquifer Authority (“EAA”) was created by the Edwards Aquifer Authority Act, Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended (“Act”); and

WHEREAS, under Section 1.02 of the Act, the EAA is a conservation and reclamation district created by virtue of Article XVI, Section 59 of the Texas Constitution, and is a governmental agency and body politic and corporate vested with the full authority to exercise the powers and to perform the functions specified in the Act; and

WHEREAS, under Section 1.08(a) of the Act, the EAA has all the powers, rights and privileges necessary to manage, conserve, preserve, and protect the Edwards Aquifer (“Aquifer”) and to increase the recharge of, and prevent the waste or pollution of water in, the Aquifer; and

WHEREAS, under Sections 1.01, 1.11, 1.14 and 1.26A of the Act, the EAA is authorized to implement programs designed to protect threatened and endangered species associated with the Aquifer; and

WHEREAS, under Section 1.11(d)(2) of the Act, and other applicable law, the EAA may enter into contracts; and

WHEREAS, under Section 49.211(a), Texas Water Code, the EAA has the functions, powers, authority, rights, and duties that will permit it to accomplish the purposes for which it was created or the purposes authorized by the constitution, the Texas Water Code, or any other law; and

WHEREAS, under Section 49.213(b), Texas Water Code, the EAA may enter into contracts with any person or any public or private entity in the performance of any purpose or function permitted by the EAA; and

WHEREAS, under Section 49.213(c)(7), Texas Water Code, the EAA may enter into contracts with persons or any public or private entities on the terms and conditions the Board of Directors (“Board”) of the EAA may consider desirable, fair, and advantageous for, among other things, the exercise of any rights, powers, and duties granted to the EAA; and

WHEREAS, New Braunfels Utilities (“NBU”) desires to restore and conserve certain property owned by NBU located at 347 E Klingemann Street, New Braunfels, Texas (“Property”)

to mitigate and minimize the water quality impacts on the Comal Springs and River ecosystem due to diffuse surface water runoff from the Property into this ecosystem; and

WHEREAS, the Comal Springs and River ecosystem is under management pursuant to the Edwards Aquifer Habitat Conservation Program (EAHCP) which is funded by the EAA; and

WHEREAS, NBU will redevelop the Property as the Comal Springs Conservation Center, a multi-use facility to enhance the community's relationship with nature and, specifically, the Comal Springs and thereby improve the quality of the habitat in this ecosystem for the benefit of the EAHCP; and

WHEREAS, the purpose of the EAA in contributing funding for the construction of Phase 1 of the Comal Springs Conservation Center is to assist in restoring the Property's natural environment to minimize adverse water quality impacts to habitats in the Comal Springs and River ecosystem and the federally protected endangered and threatened species that live therein, which is a purpose or function permitted by the EAA under the EAA Act and the EAHCP; and

WHEREAS, this interlocal contract ("Contract") is intended to satisfy the intent of Resolution and Order No. 12-11-673 of the Board adopted on December 28, 2011; and

WHEREAS, the Contract is intended to satisfy the intent of the Parties in that certain Memorandum of Understanding last signed on August 29, 2014, wherein the Parties agreed to share in NBU's cost to implement Phase 1 of the construction of the Comal Springs Conservation Center described herein only, according to the general terms consistent with the MOU, as described in the Contract; and

WHEREAS, the Contract is an interlocal contract entered into under the authority of the Interlocal Cooperation Act ("ICA"), Chapter 791, Texas Government Code; and

WHEREAS, under Section 791.003(4) and (5) of the ICA, the EAA and NBU are local governments; and

WHEREAS, under Section 791.003(3) of the ICA, the activities that are the subject of the Contract are governmental functions and services in that they involve the public health and welfare, planning, administrative functions, and/or other governmental function in which the parties are mutually interested, and under Section 791.026(a), are related to water quality protection; and

WHEREAS, the EAA's Executive Committee, on July 5, 2016, voted to recommend the Board adopt a resolution and order of the Edwards Aquifer Authority Board of Directors approving the Contract with NBU for the construction of Phase 1 of the Comal Springs Conservation Center; and

WHEREAS, Article 10.02(b) of the EAA Bylaws requires that any agreement, contract, or any other procurement instrument whose value exceeds \$100,000 be approved by a written resolution of the EAA Board; and

WHEREAS, the total amount to be paid to NBU, under the terms of the Contract will exceed \$100,000; and

WHEREAS, the Contract was reviewed by EAA legal counsel prior to Board approval; and

WHEREAS, a regular meeting of the Board was held on July 12, 2016, at 3:00 p.m., notice of public meeting having been duly and properly posted in accordance with Chapter 551, Texas Government Code; and

WHEREAS, an agenda item was duly listed in the notice of public meeting that is the subject of this Resolution and Order; and

WHEREAS, the Board considered the Agenda Item that is the subject of this Resolution and Order; and

WHEREAS, a majority of the Directors of the Board were present and constituted a quorum; and

WHEREAS, a vote of the majority of the quorum present passed on, voted in favor of, and adopted the following Resolution and Order; and

WHEREAS, it is in the public interest that the EAA enter into this Contract.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE EDWARDS AQUIFER AUTHORITY THAT:

- Section 1. The recitals set out above are found to be true and correct, and they are hereby adopted by the Board of Directors and are made a part of this Resolution and Order for all purposes.
- Section 2. The Board of Directors hereby approves Interlocal Contract No. 16-806-EX between the EAA and New Braunfels Utilities for construction of Phase 1 of the Comal Springs Conservation Center, as attached hereto, in an amount not to exceed \$540,000.
- Section 3. The General Manager is authorized to execute and deliver the Contract attached hereto and release payments as required by the Contract.
- Section 4. This Resolution and Order shall become effective from and after its adoption.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE EDWARDS
AQUIFER AUTHORITY THIS 12TH DAY OF JULY 2016.

Luana Buckner
Chairman of the Board

ATTEST:

Enrique P. Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:



Darcy Alan Frownfelter
General Counsel