SUPPORT AGREEMENT

by and among

the Edwards Aquifer Authority

and

the Edwards Aquifer Conservancy

Dated Effective: July 9, 2024

Table of Contents

Recitals 1

Article One – Definitions 4

Section 1.1. Definitions. 4

Article Two – EAC Management 7

Section 2.1. Generally. 7

Section 2.2. Communications between EAC and EAA. 7

Section 2.3. Staff Work Group. 7

Article Three – Duties and Responsibilities of the EAC 8

Section 3.1. Generally. 8

Section 3.2. Fundraising. 8

Section 3.3. Property Acquisition. 8

Section 3.4. Public Awareness Activities. 9

Section 3.5. Expenditure of Funds Received. 9

Section 3.6. Property Management. 9

Section 3.7. Transfer to the EAA of Funds or Property Received when Appropriate. 10

Section 3.8. EAC Meetings 10

Section 3.9. EAC Annual Program Report. 10

Section 3.10. EAC Annual Audit. 11

Section 3.11. Strategic Planning. 11

Section 3.12. EAC Self Sufficiency. 12

Article Four – Duties and Responsibilities of the EAA 12

Section 4.1. Oversight of the EAC 12

Section 4.2. EAA Funding of the EAC. 13

Section 4.3. In kind Administrative Support. 13

Section 4.4. In Kind EAA Personnel Support. 14

Section 4.5. Limitations on Available EAA Resources 14

Section 4.6. EAA Annual Program Report. 15

Article Five – EAA Funding of EAC Activities 15

Section 5.1. Funding Limited to EAA Non-AMF Generated Revenues 15

Section 5.2. Limitation on Funding from Fees 15

Section 5.3. Other Funding Sources 15
Section 5.4. Uses of Funds by EAC. 16
Section 5.5. EAC Annual Work Plan. 16
Section 5.6. EAC Annual Budget. 16
Section 5.7. EAC Funding Application. 17
5.7.1. Required Contents. 17
5.7.2. Application Approval Criteria 18
5.7.3. Withholding Action on Application. 19
5.7.4. Notice of Decision on Application. 19
5.7.5. Amendments to Application 19
Section 5.8. Disbursements of Funding. 20
Section 5.9. EAC Expenditure of Funds. 20
Section 5.10. Unspent Funds 20
Article Six – General Provisions 20
Section 6.1. Effective Date; Term 20
Section 6.2. Payments from Current Revenue; Funding Sources 20
Section 6.3. Rights Regarding Books and Records 21
Section 6.4. Interpretation. 21
Section 6.5. Authority to Contract. 21
Section 6.6. Modification 21
Section 6.7. Addresses and Notices. 21
Section 6.8. Severability. 22
Section 6.9. Binding Effect; Succession and Assignment. 23
Section 6.10. Entire Agreement. 23
Section 6.11. Applicable Law 23
Section 6.12. Counterparts. 23
Section 6.13. Officers and Agents 24
Section 6.14. Recitals. 24
Section 8.23. Approval by Parties. 24
Section 6.16. No Third Party Beneficiary; No Partnership. 24
Section 6.17. No Change in Support Relationship 24
Section 6.18. Termination. 25
Section 6.19. Non-Waiver of Immunity. 25

Section 6.20. Documents and Materials **25**
Section 6.21. Assumption of Risk and Indemnification. **26**
Party Signatures **27**

SUPPORT AGREEMENT

by and among

the Edwards Aquifer Authority

and

the Edwards Aquifer Conservancy

THIS SUPPORT AGREEMENT (Agreement) is made and entered into by and between the **EDWARDS AQUIFER AUTHORITY** (EAA), a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy, San Antonio, Texas 78215, and the **EDWARDS AQUIFER CONSERVANCY** (EAC), a Texas nonprofit corporation, with its principal place of business also located at 900 E. Quincy, San Antonio, Texas 78215. Each of these entities is, at times, referred to in this Agreement individually as a "Party," and both are referred to collectively as "Parties."

Recitals

WHEREAS, the EAA was created by the EAA 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 other applicable law; and

WHEREAS, under Section l.08(a) of the Act, the EAA has all the powers, rights and privileges necessary to manage, conserve, preserve, and protect the Edwards Aquifer and to increase the recharge to; and prevent the waste or pollution of water in, 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 1.11(d)(4) of the Act, the EAA may receive gifts, grants, awards, and loans for use in carrying out its powers and duties; and

WHEREAS, under Section 1.24(b) of the Act, the EAA may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this article; and

WHEREAS, the EAC was created under Subchapter C, Chapter 22, Texas Business Organizations Code, relating to the formation and governing documents of a nonprofit corporation in Texas; and

WHEREAS, the EAC was created by the filing, on June 23, 2014, of a Certificate of Formation Nonprofit Corporation Form 202 (revised 05/11) with the Office of the Secretary of State of Texas, and issuance, dated and effective on June 23, 2014, of Certificate of Filing of Edwards Aquifer Conservancy File Number: 802014668 as evidencing the existence of the EAC; and

WHEREAS, as stated in the Minutes of the Organizational Meeting of the Board of Directors of the Edwards Aquifer Conservancy conducted on August 12, 2014, the EAC Board ratified, adopted, and affirmed the Certificate of Formation Nonprofit Corporation Form 202 (revised 05/11) filed with the Office of the Secretary of State of Texas on June 23, 2014; and

WHEREAS, under Sections 22.001(3) and (5), and 22.051, Texas Business Organizations Code, Section 1.2 of the Bylaws of the Edwards Aquifer Conservancy (EAC Bylaws), the EAC is a nonprofit corporation, and is vested with the full authority to engage in any lawful purpose not expressly prohibited by applicable law; and

WHEREAS, under Sections 4.3 and 5.1 of the EAC Bylaws, and other applicable law, the EAC has the general authority to execute contracts in the name of the EAC; and

WHEREAS, on March 12, 2015, the Internal Revenue Service (IRS) of the U.S.

Department of Treasury advised the EAC that the IRS had determined that it is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code (IRC); and that the EAC is a public charity and, more specifically, that the EAC is a Type I supporting organization under Section 509(a)(3) of the IRC; and

WHEREAS, the Parties acknowledge that the EAC is created, organized, operated, and managed exclusively for the support and benefit of the EAA, which, as stated above under Section 1.08(a) of the Act, is generally to manage, conserve, preserve, and protect the Aquifer and to increase the recharge of, and prevent the waste or pollution of water in, the Aquifer, in accordance with the Act, and other applicable law; and

WHEREAS, the EAA desires to provide the EAC, and the EAC desires to receive, certain support as set forth in this Agreement to assist the EAC in carrying on its Activities in the support of the EAA; and

WHEREAS, the EAA's providing of support for the Term of this Agreement is intended to help expedite the EAC's ability to sustain itself independently from the EAA; and

WHEREAS, the purpose of this Agreement is to provide the terms and conditions of the rights, duties, and obligations agreed to by the Parties for the EAA's support, including funding, the administration of EAC Activities as provided herein, and the actions to be taken by the EAC in exchange for that certain support as provided by the EAA under this Agreement; and

WHEREAS, the EAA benefits from its relationship with the EAC in that the EAC allows the EAA to enhance its own mission through the EAC's supporting activities that promote the EAA's management, conservation, preservation, and protection of the Aquifer, the increase of the recharge of, as wells as the prevention of waste or pollution of water in, the Aquifer through the EAC having access to grants, corporate gifts, philanthropic donations, and other funding sources for activities that support the EAA's mission that can only be accessed, or more easily be accessed, by a supporting organization such as the EAC as a 501(c)(3) organization, and the EAC's assistance to the EAA in establishing or strengthening relationships with other local communities,

government agencies, conservation organizations, and other sources of funding that have an interest the Aquifer; and

WHEREAS, the EAA Board approved this Agreement on July 9, 2024, and authorized the EAA General Manager to execute this Agreement; and

WHEREAS, the EAC Board approved this Agreement on _____, and authorized the EAC Board President to execute this Agreement; and

WHEREAS, it is in the public interest that the EAA enter into this Agreement with the EAC.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth in this Agreement, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

Article One – Definitions

Section 1.1. Definitions.

The following terms as used in this Agreement shall have the meanings as provided below:

1.1.1. "Act" or "EAA Act" means the Edwards Aquifer Authority Act, Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended.

1.1.2. "Aquifer" or "Edwards Aquifer" means the San Antonio Segment of the Edwards (Balcones Fault Zone) Aquifer as defined in Section 1.03(1) of the EAA Act within the boundaries of the EAA.

1.1.3. "Aquifer Management Fees" means the fees authorized to be assessed by the EAA for Aquifer use under Section 1.29(b) and (e) of the EAA Act.

1.1.4. "Days" means calendar days unless otherwise specified. If the date of any performance falls on a Saturday, Sunday, or observed state, federal or local holiday, the date of performance is the next business day following the calculated date of performance.

1.1.5. "EAA Board" means the Board of Directors of the EAA.

1.1.6. "Non-AMF Generated Revenues" means revenues derived from sources other than the assessment of Aquifer Management Fees which may be accumulated from time to time in a designated fund within the EAA general operations budget. Examples of such sources of Non-AMF Generated Revenues include, but are not limited to, the following:

(1) Enforcement, compliance, penalty, and settlement-related receipts; and

(2) Payments received from the lease or sublease of any Initial Regular Permits or Regular Permits owned or leased by the EAA.

1.1.7. "EAC Activities" or "Activities" means those actions specified in an approved EAC Annual Work Plan that the EAC intends to perform in the Year specified in the Work Plan.

1.1.8. "EAC Annual Budget" or "Budget" means the budget adopted by the EAC Board for the performance of the EAC Activities in the Year specified in an approved EAC Annual Work Plan.

1.1.9. "EAC Funding Application" or "Application" means the application submitted to the EAA by the EAC requesting funding from the EAA to perform the EAC Activities specified in an approved EAC Annual Work Plan and accompanying EAC Annual Budget.

1.1.10. "EAC Annual Work Plan," "Annual Work Plan," or "Work Plan" means the document prepared by the EAC specifically identifying the EAC Activities to be performed by the EAC in the Year identified in the Work Plan.

1.1.11. "EAC Board" means the Board of Directors of the EAC.

1.1.12. "Effective Date" means the date on which this Agreement takes effect, as provided in Section 6.1.

1.1.13. "Executive Director" means the employee or non-employee designee of the EAC who reports to the EAC Board and is responsible for the overall administration and management of the EAC, subject to EAC Board supervision. Whenever the Executive Director is referred to in this Agreement and this position in not occupied, Executive Director shall mean the EAC Board until the position of Executive Director is occupied.

1.1.14. "General Manager" means the employee of the EAA who reports to the EAA Board and is responsible for the overall administration and management of the EAA, subject to EAA Board oversight.

1.1.15. "Groundwater Withdrawal Permit" means a permit issued by the EAA under Subsection 1.15(b) of the EAA Act authorizing the withdrawal of groundwater from the Aquifer.

1.1.16. "Initial Regular Permit" means a Groundwater Withdrawal Permit issued by the EAA under Subsection 1.16(d) of the EAA Act.

1.1.17. "Program Aquifer Management Fees" means the fee authorized to be assessed by the EAA for Aquifer use under Section 709.18(a)(2) of the rules of the EAA for the purpose of implementing the Edwards Aquifer Habitat Conservation Plan Program.

1.1.18. "Regular Permit" means a Groundwater Withdrawal Permit issued by the

EAA after August 12, 2008, resulting from the sale or amendment of an Initial Regular Permit, or the consolidation of two or more such Permits.

1.1.19. "Staff Work Group" means the group created pursuant to Section 2.3 to facilitate the administration of this Agreement to accomplish its objectives.

1.1.20. "Term" means the term of this Agreement as provided for in Section 6.1.

1.1.21. "Year" means calendar year (January 1 through December 31).

Article Two – EAC Management

Section 2.1. Generally.

The EAC Board has responsibility for the general administration, management, operation, and oversight of the EAC.

Section 2.2. Communications between EAC and EAA.

(a) The points of contact between the EAA and the EAC will be the EAA General Manager, or his or her designee, and the EAC Executive Director, or his or her designee.

(b) The EAA General Manager and the EAC Executive Director agree to strive to communicate in the frequency and in the amount of time as may be necessary to effectively and efficiently coordinate actions between the EAA and the EAC consistent with this Agreement.

Section 2.3. Staff Work Group. The EAA General Manager and the EAC Executive Director, may establish a Staff Work Group to facilitate the implementation of the terms and conditions of this Agreement. The EAA has the responsibility for the organization, administrative support, costs, and overall facilitation of the Work Group.

Article Three – Duties and Responsibilities of the EAC

Section 3.1. Generally.

The Parties specifically acknowledge that it is the EAA's desire for the EAC's assistance, as a supporting organization, in the EAA's performance of its rights, powers, privileges, authority, functions, and duties under the EAA Act and other applicable law. The EAC understands that, as it attempts to fulfill its charitable purposes, the EAC is to endeavor to be an integral part of, and maintain a significant involvement in, advancing these rights, powers, privileges, authority, functions, and duties of the EAA. The EAC acknowledges that any financial assistance obtained by the EAC is important to and for the sole benefit of the EAA, and that the EAC will coordinate with and conduct all its Activities solely to serve the interests of the EAA. The EAC shall be operated in accordance with the terms and conditions of this Agreement, and its governing documents, in such a manner as to be responsive to the needs and requirements of the EAA with respect to the support of the EAA.

Section 3.2. Fundraising.

The EAC will devote its best efforts and abilities to solicit, acquire, collect, and receive any and all contributions, donations, gifts, grants, or awards of any funds from any public or private entity on the terms and conditions the EAC Board may consider desirable, fair, and advantageous in furtherance of the EAC's charitable purpose of supporting the EAA.

Section 3.3. Property Acquisition.

The EAC will devote its best efforts and abilities to solicit, acquire, collect, and receive any and all contributions, donations, gifts, grants, awards of any land or interest in land, or personal property, from any public or private entity on the terms and conditions the EAC Board may consider desirable, fair, and advantageous in furtherance of the EAC's charitable purpose of supporting the EAA.

Section 3.4. Public Awareness Activities.

The EAC will devote its best efforts and abilities to conduct activities that foster the public awareness of the EAC and the EAA for the purpose of improving the EAC's prospect of receiving funds or property under Sections 3.2 and 3.3 and generally attracting support for the EAA and its mission to manage, conserve, preserve, and protect the Aquifer and increase the recharge of, and the prevent the waste or pollution of water in, the Aquifer, all in accordance with the Act, and other applicable law.

Section 3.5. Expenditure of Funds Received.

(a) Any funds received by the EAC from a source other than the EAA may be expended only as follows:

(1) To supplement its administration, management, and operation costs; or

(2) To support the EAA in its performance of its rights, powers, privileges, authority, functions, and duties under the EAA Act and other applicable law.

(b) Any funds received by the EAC from the EAA may only be expended in the performance of EAC Activities specified in an approved EAC Annual Work Plan in the Year specified in the Work Plan.

(c) In the event the EAC receives funds from a source other than the EAA that are authorized to be expended on the performance of EAC Activities specified in an approved EAC Annual Work Plan for which the EAA has provided funding, the EAC, to the extent feasible and practicable, will first expend the funds received from the non-EAA sources prior to expending any funds received from the EAA.

Section 3.6. Property Management.

(a) As to any land or interest in land, or personal property received by the EAC, the EAC will devote its best efforts and abilities to manage the land, interest, or property for the benefit of the EAA consistent with the EAA's performance of its rights, powers, privileges, authority,

functions, and duties under the EAA Act and other applicable law.

(b) The EAC may contract with the EAA to perform property management responsibilities on its behalf under those terms and conditions the Parties may consider desirable, fair, and advantageous to further the EAC's charitable purpose of supporting the EAA. The EAC shall contract with the EAA to perform property management responsibilities if the EAA Board determines that the EAC does not possess the current financial resources, expertise, or capacity necessary to properly manage the property for the benefit of the EAA.

Section 3.7. Transfer to the EAA of Funds or Property Received when Appropriate.

(a) As soon as practicable and in compliance with all applicable donation agreements, laws, and regulations, the EAC shall transfer to the EAA any funds received by the EAC from a source other than the EAA if the donor's intent is that the funds be transferred to the EAA for the EAA's benefit.

(b) As soon as practicable and in compliance with all applicable donation agreement, laws, and regulations, the EAC shall transfer to the EAA any land or interest in land, or personal property received by the EAC from a source other than the EAA if the donor's intent is that the land or interest in land, or personal property be transferred to the EAA for the EAA's benefit.

Section 3.8. EAC Meetings.

For the Term of this Agreement, the EAC shall give the EAA General Manager advance written notice of all meetings of the EAC Board. The EAA shall be entitled, in its sole discretion, to have one or more designated representatives of the EAA in attendance at said meetings. Copies of all minutes of such meetings shall promptly be made available to the EAA.

Section 3.9. EAC Annual Program Report.

(a) The EAC shall prepare a program report annually providing information as to the activities, expenditures, and accomplishments of the EAC, and other relevant information, during the reporting Year.

(b) The program report shall be filed with the EAA no later than the end of the first quarter of the calendar year following the conclusion of the reporting Year.

Section 3.10. EAC Annual Audit.

(a) The EAC, organized exclusively in support of the EAA, is reported as a blended component unit in the EAA's financial statements in accordance with Governmental Accounting Standards Board guidelines. The EAA financial statements, which includes EAC financial information, undergo an annual audit performed by a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(b) If a separate annual audit of the EAC's accounts and records are required by the EAC Board, the audit shall be performed at the expense of the EAC, as follows:

(1) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy;

(2) The audit shall be completed within 90 days after the close of the EAC's fiscal year; and

(3) Copies of the annual audit shall be made available to the EAA within ten days of the receipt of the audit by the EAC Board.

Section 3.11. Strategic Planning.

As appropriate at the discretion of the EAC, and no less than every three years, the EAC shall develop a strategic plan providing information as to the EAC's mission, vision, guiding principles, goals, objectives, and key initiatives to accomplish. In the preparation of the plan, the EAC will ensure that the plan furthers the EAC's charitable purpose of supporting the EAA's performance of its rights, powers, privileges, authority, functions, and duties under the EAA Act and other applicable law. The EAC shall file with the EAA any planning documents or strategic plans as soon as reasonably practicable upon adoption by the EAC Board.

Section 3.12. EAC Self Sufficiency.

It is expressly understood by the EAC that it is the goal of the Parties that the EAC become financially self-sufficient from the EAA as soon as practicable, and in no event not later than the expiration of the Term of this Agreement. Accordingly, the EAC agrees to take all appropriate efforts and due diligence to work toward the goal of covering the entirety of its administration, management, and operation costs by the expiration of the Term of this Agreement. The EAC understands that it is the EAA's intention to provide funding to the EAC only for the Term of this Agreement for the purpose of assisting the EAC in becoming financially self-sufficient. The EAC also understands that it is the EAA's intention that after the expiration of the Term of this Agreement the EAA intends to cease to provide further financial support to the EAC for its administration, management, and operation costs.

Article Four – Duties and Responsibilities of the EAA

Section 4.1. Oversight of the EAC.

(a) As a means of ensuring the furtherance of the EAC's charitable purpose of supporting the EAA, during the Term of this Agreement, the EAA Board will regularly oversee, monitor, review, and assess the performance of the EAC. The EAA will review and assess the following:

(1) Whether the EAC's actions are in compliance with the terms and conditions of this Agreement;

(2) Whether the EAA's support to the EAC under this Agreement continues to be useful, necessary and reasonable;

(3) Whether a function being performed by the EAC is better performed internally by the EAA;

(4) Whether it is prudent and reasonable to discontinue financial support for the EAC's performance of a particular activity;

(5) Whether the EAC is effectively assisting and supporting the EAA through its fundraising, property acquisitions and management, and public awareness efforts;

(6) Whether the EAA's support to the EAC is effective in assisting the EAC to become financially self-sufficient from the EAA,

(7) Whether the EAC's efforts to become financially self-sufficient from the EAA are effective;

(8) Whether the public purposes of the EAA in its performance of its rights, powers, privileges, authority, functions, and duties under the EAA Act and other applicable law, are being suitably promoted;

(9) Whether there are sufficient institutional fiscal controls in place to ensure that the public purpose(s) to be served by the EAC's support of the EAA are reasonably likely to be fulfilled; and

(10) Whether the expected consideration to be received by the EAA from its support of the EAC is reasonably adequate and being received.

(b) Upon receipt of the EAC Annual Report, the EAA General Manager shall prepare and deliver a response to the EAC providing an assessment of the EAC's operations. The report should address each consideration in subsection (a), contain a summary of issues related to the EAC's operations that affect the efficacy of the EAC in assisting and supporting the EAA, and any other recommendations as may be appropriate.

Section 4.2. EAA Funding of the EAC.

To facilitate and aid the EAC in the performance of its Activities, the EAA agrees to provide funding to the EAC for its Activities under the terms and conditions as provided in Article 5.

Section 4.3. In kind Administrative Support.

To facilitate and aid the EAC in the performance of its Activities, the EAA agrees, at no charge, to provide the following administrative support to the EAC as may be determined by the EAA to be appropriate in its sole discretion:

(1) Office space in the EAA's official offices for the directors and employees of the EAC;

(2) Meeting space in the EAA's official offices for the directors of the EAC Board and EAC employees;

(3) Office equipment and supplies, including furniture, telephones, copy machines, document management systems, and the like; and

(4) Utilities, including heating, lighting, cooling, electricity, internet, and the like.

Section 4.4. In Kind EAA Personnel Support.

(a) To facilitate and aid the EAC in the performance of its Activities, the EAA agrees, at no charge, to provide EAA personnel support to the EAC as may be determined by the EAA to be appropriate in its sole discretion.

(b) At all times that an EAA employee is aiding the EAC, the employee will remain and be considered an employee of the EAA.

(c) At all times that an EAA employee is aiding the EAC, the employee will report to and be supervised only by the EAA General Manager, or his or her delegee.

(d) An EAA employee may not serve as EAC staff and at all times owes his or her sole duty to the EAA.

Section 4.5. Limitations on Available EAA Resources.

The determination by the EAA as to the level of support to be provided to the EAC under Sections 4.2 -- 4.4 will be at the sole discretion of the EAA Board, as may be delegated to the EAA General Manager, and taking in account the following factors:

(1) The availability of EAA resources;

(2) The public purpose to be served by the support;

(3) The extent to which institutional fiscal controls are sufficient to ensure that the public purpose to be served by the support is reasonably likely to be fulfilled; and

(4) The expected consideration to be received by the EAA from the support provided to the EAC is reasonably adequate.

Section 4.6. EAA Annual Program Report.

(a) The EAA shall keep and maintain accurate records of all of its activities and expenditures of funds received from the EAC.

(b) A report of the EAA's activities and expenditures shall be filed annually with the EAC upon the fiscal closeout of the budget year.

(c) The EAC may request interim activity and expenditure reports at more frequent intervals as the EAC may deem appropriate.

Article Five – EAA Funding of EAC Activities

Section 5.1. Funding Limited to EAA Non- AMF Generated Revenues

The EAA may fund EAC Activities only from funds that may be accumulated from time to time through Non-AMF Generated Revenues as defined in Section 1.1.6 collected and designated for such purposes in the EAA general operations budget. The EAA is not obligated to provide funding from any other sources or in any amounts that exceed those amounts that may be accumulated and designated by the EAA Board for such purposes from time to time.

Section 5.2. Limitation on Funding from Fees.

The EAA may not fund EAC Activities from Aquifer Management Fees or Program Aquifer Management Fees.

Section 5.3. Other Funding Sources.

The EAA may, in its sole discretion, fund EAC Activities from any contributions, gifts, grants, awards, or other funds from any other source the EAA may receive that are otherwise eligible to be expended for the support of the EAC.

Section 5.4. Uses of Funds by EAC.

Funds provided by the EAA to the EAC under this Agreement may be expended only for the following:

(1) Costs of qualifying for participation in any private, federal, state, or local program that may provide funding to the EAC under Section 3.2 for the benefit of the EAA;

(2) Costs to acquire, manage, and maintain any land or interest in land the EAC may acquire under Sections 3.3 and 3.6;

(3) Costs for public awareness activities under Section 3.4;

(4) Costs for administration, management, and operation of the EAC including salaries, benefits, appropriate expense reimbursables, overhead, research, and planning; and

(5) Costs to perform other EAC Activities specified in an approved EAC Annual Work Plan.

Section 5.5. EAC Annual Work Plan.

Each Year during the Term of this Agreement, the EAC Board will develop and approve an Annual Work Plan, which shall include descriptions, schedules, and cost estimates of all EAC Activities projected to be implemented during the following Year. The projected activities shall be categorized according to the costs allowed under Section 5.4. The EAC Board may amend a Work Plan from time to time to accommodate any modifications necessary to be made to EAC Activities.

Section 5.6. EAC Annual Budget.

Each Year during the Term of this Agreement, the EAC Board will develop and approve an EAC Annual Budget consistent with the projected costs of performing the EAC Activities identified in an approved EAC Annual Work Plan. The EAC Board may amend the Budget from time to time to accommodate any modifications made to an approved EAC Annual Work Plan to ensure that they are consistent with one another.

Section 5.7. EAC Funding Application.

Not later than August 1 each Year during the Term of this Agreement, the EAC shall file with the EAA an EAC Funding Application to obtain funding to conduct the EAC Activities specified in an approved EAC Annual Work Plan and EAC Annual Budget. The Application will be considered for approval by the EAA only as provided in this section.

5.7.1. Required Contents.

The EAC Funding Application will be filed using the form prescribed by the EAA as attached as Exhibit A – EAC Funding Application, attached hereto and incorporated herein for all purposes, as such form may be amended from time to time at the EAA's sole discretion which shall be in affidavit form and include the following information:

(1) The name and contact information of the person authorized to file the application on behalf of the EAC;

(2) A resolution of the EAC Board representing that the Application has been approved and the filing of the Application has been duly authorized;

(3) A copy of the approved EAC Annual Work Plan;

(4) A copy of the approved EAC Annual Budget;

(5) An explanation how each EAC Activity for which funding is sought is expected to benefit a public purpose of the EAA in its performance of its rights, powers, privileges, authority, functions, and duties under the EAA Act and other applicable law;

(6) A representation that the EAC Activities for which funding is sought are within the authority of the EAC to perform and in furtherance of the EAC's charitable purpose of supporting the EAA;

(7) A list of any contractors or subcontractors, if any, who the EAC anticipates engaging to assist the EAC in the performance of its EAC Activities;

(8) A statement as to the total amount of funding requested, along with appropriate line-item breakouts for individual EAC Activities; and

(9) Any other information the EAA may require.

5.7.2. Application Approval Criteria.

The EAA Board may approve an EAC Funding Application within 60 Days of receipt, unless the EAA Board deems it otherwise inappropriate to do so in its sole discretion. The EAA Board may approve an EAC Funding Application if the Application demonstrates the following:

(1) The Application has been approved by the EAC Board;

(2) The person filing the Application has been authorized to do so by the EAC Board;

(3) The Application is complete and contains the information required in Section 5.7.1;

(4) Each EAC Activity specified in the EAC Annual Work Plan is within the authority of the EAC to perform;

(5) The EAC Activities specified in the EAC Annual Work Plan are sufficiently described such that the EAA can reasonably assess the need for, cost, and expected benefit to the EAA;

(6) The budgeted costs for the EAC activities are reasonable in the sole judgment of the EAA Board;

(7) Each EAC Activity specified in the EAC Annual Work Plan is in furtherance of the EAC's charitable purpose of supporting the EAA;

(8) Each EAC Activity specified in the EAC Annual Work Plan will benefit a public purpose of the EAA in its performance of its rights, powers, privileges, authority, functions, and duties under the EAA Act and other applicable law;

(9) Sufficient institutional fiscal controls are in place to ensure that the public purpose(s) of the EAA to be served by the EAA financial support of the EAC are reasonably likely to be fulfilled;

(10) The EAA finds that it is likely to receive reasonably adequate and sufficient consideration through a net benefit and return because of the financial support the EAA provides to the EAC; and

(11) The EAC has timely filed all reports or audits required under this Agreement.

5.7.3. Withholding Action on Application.

(a) The EAA will withhold action on an EAC Funding Application if:

(1) The EAA finds that the Non-AMF Generated Revenues available in the EAA general operations budget designated for such purposes are insufficient to provide funding in the requested amount; or

(2) The EAA identifies a consideration in Subsection 5.7.2 that is deficient in the Application and allows the EAC additional time to file the additional information before the Application is reconsidered for final action.

(b) If the reason for withholding action is the insufficiency of Non-AMF Generated Revenues, the EAA will advise the EAC and withhold action on the Application until sufficient monies are available in the sole discretion of the EAA. In the alternative, the EAA may advise the EAC to file an amended Funding Application in an amount that is able to be funded from the Non-AMF Generated Revenues that are available in the EAA general operations budget for such purposes.

(c) The EAA will promptly notify the EAC Executive Director, or the EAC Board, as may be appropriate, and the EAC may submit an amended Funding Application for EAA review and consideration for approval.

5.7.4. Notice of Decision on Application.

The EAA will promptly notify the EAC in writing of its decision on an EAC Funding Application.

5.7.5. Amendments to Application.

An EAC Funding Application may be amended by filing an amended Funding Application with a request to the EAA to take action on the Application as amended. The EAA will take action on the amended Application in the same manner as provided for the original Application.

Section 5.8. Disbursements of Funding.

After an EAC Funding Application has been approved, the EAA will disburse funds to the EAC in the amount approved on a one-time lump sum basis not later than January 31 of the funding year.

Section 5.9. EAC Expenditure of Funds.

The EAC may only expend funds received from the EAA solely for EAC Activities as specified in and in accordance with an approved EAC Annual Work Plan and EAC Annual Budget. Any deviation from the intended use of funds received by the EAC from the EAA will require an amendment to the Funding Application.

Section 5.10. Unspent Funds.

The EAA shall require the EAC to return to the EAA any unspent funds that are attributable to funding by the EAA. However, by giving written notice to the EAC, the EAA may waive this requirement and consider the unspent funds as part of a future funding request in an EAC Funding Application when deciding on the Application, or may allow the unspent funds to accrue to the EAC reserves for general operations to support the EAC in achieving self-sufficiency.

Article Six – General Provisions

Section 6.1. Effective Date; Term.

This Agreement will be effective upon the date of execution by the last executing party and continue in effect until the end of December 31, 2029.

Section 6.2. Payments from Current Revenue; Funding Sources.

The Parties acknowledge that pursuant to the requirements of Texas Government Code

Section 791.011(d)(3), the EAA in paying for the performance of services by the EAC under this Agreement will make those payments from current revenues available to the EAA.

Section 6.3 Rights Regarding Books and Records.

Each Party will permit the other Party upon reasonable notice to examine and copy all the books and records kept by the Party regarding this Agreement. In addition, upon reasonable prior written notice to the EAC, the EAA may conduct a complete audit of the books and records kept by the EAC regarding this Agreement as well as upon the information and documentation used to prepare the books and records. Any such audit will be at the EAA's sole expense.

Section 6.4. Interpretation.

The caption headings of this Agreement are for reference purposes only and will not affect its interpretation in any respect. This Agreement and all the terms and provisions will be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

Section 6.5. Authority to Contract.

Each Party represents to the other that it is empowered by law to execute this Agreement and to give such approval, and that its execution of this Agreement has been duly authorized by action of their respective governing bodies.

Section 6.6. Modification.

This Agreement may be amended only by written agreement of the Parties.

Section 6.7. Addresses and Notices.

Unless otherwise provided herein, any notice, communication, request, reply, or advice (herein severally and collectively, for convenience, called "Notice") provided or permitted in this

Agreement to be given, made, or accepted by any Party to the other Party will be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the Party to be notified, with return receipt requested, or by delivering the same to an officer of such Party, or by prepaid telegram when appropriate, addressed to the Party to be notified. Notice deposited in the mail in the manner hereinabove described will be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three Days after it is so deposited. Notice given by electronic communication or in any other manner will be effective only if and when receipt is acknowledged by the Party to be notified. For the purposes of notice, the addresses of the Parties will, until changed as provided in the last sentence of this section, be as follows:

If to the EAA:

General Manager
Edwards Aquifer Authority
900 E. Quincy St.
San Antonio, Texas 78215

If to the EAC:

Executive Director (with copy to EAC Board President)
Edwards Aquifer Conservancy
900 E. Quincy St.
San Antonio, Texas 78215

If either Party which changes its address or contact person for notice under this Agreement, it will provide at least five Days' written notice to the other Party.

Section 6.8. Severability.

The Parties specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Agreement or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be,

for any reason, invalid or unconstitutional, under the laws or constitutions of the State or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention will not affect any other sections, subsections, provisions, clauses, or words of this Agreement or the application of such actions, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Agreement will be severable and will be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the Parties will be construed and remain in force accordingly.

Section 6.9. Binding Effect; Succession and Assignment.

This Agreement is binding on and inures to the benefit of the Parties. This Agreement may not be assigned by either Party.

Section 6.10. Entire Agreement.

This Agreement constitutes the entire agreement among the Parties and there are no representations, warranties, agreements, or commitments between the Parties except as set forth herein.

Section 6.11. Applicable Law.

This Agreement will be governed by and construed in accordance with the laws of the State of Texas.

Section 6.12. Counterparts.

This Agreement may be executed in counterparts, each of which will be an original and all of which together will constitute but one and the same instrument.

Section 6.13. Officers and Agents.

No officer or agent of the Parties is authorized to waive or modify any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document signed by the Parties' authorized representatives.

Section 6.14. Recitals.

The Parties agree that the recitals in this Agreement are true and correct and are incorporated into the terms of this Agreement.

Section 6.15. Approval by Parties.

Each Party affirms that it has taken all necessary official action to approve this Agreement.

Section 6.16. No Third Party Beneficiary; No Partnership.

(a) This Agreement is not intended to confer any rights, privileges or causes of action upon any third party other than the Parties to this Agreement.

(b) The relationship of the Parties under this Agreement is not and will not be construed or interpreted to be a subsidiary, partnership, joint venture or agency. The relationship of the Parties will be an independent contractor relationship. No Party will have the authority to make any statements, representations or commitments of any kind, or to take any action, which will be binding on the other Party.

Section 6.17. No Change in Support Relationship.

This Agreement is not intended to change in any manner the supporting relationship between the EAC and the EAA.

Section 6.18. Termination.

(a) The EAA may terminate this Agreement at any time, including at the expiration of each budget or payment period during the term of this Agreement, with or without cause, upon 30 Days prior written notice to the EAC that it no longer desires to provide support to the EAC under this Agreement. Upon receipt of such termination notice, the EAC shall immediately stop all work in progress that is attributable to funding provided by the EAA, including all work performed by its employees, agents, contractors, or subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point. Within 30 Days of termination, the EAC shall account to the EAA for all moneys expended from funds provided by the EAA, and shall refund to the EAA any unobligated or unspent funds held by the EAC that are attributable to funding by the EAA.

(b) This Agreement shall automatically terminate if the EAC loses its status as a nonprofit supporting organization exempt from taxation under federal law, or as a Texas nonprofit corporation.

(c) The EAC shall have no right to terminate this Agreement under any circumstances.

Section 6.19. Non-Waiver of Immunity.

Nothing in this Agreement is intended as any waiver by the EAA of any immunity from suit to which it is entitled under Texas law.

Section 6.20. Documents and Materials.

(a) All information, documents, property, or materials produced, created, or supplied under this Agreement by the EAC, its employees, agents, contractors, or subcontractors or anyone else, and whether finished or unfinished or in draft or final form, specifically for the EAA will be the property of the EAA. All other documents information, documents, property, or materials produced, created, or supplied will be property of the EAC. The EAA shall have unlimited rights to technical and other data resulting directly from any EAC Activities.

(b) Upon expiration or termination of this Agreement, the EAC will promptly deliver to the EAA all information, documents, property, and materials not already in the possession of the EAA.

(c) The information, documents, property, or materials produced, created, or supplied under this Agreement by the EAC, including preliminary technical reports and studies, shall not be disclosed by the EAC to any third-party without the prior written consent of the EAA. The EAC shall immediately advise the EAA of any requests for any such information, documents, property, or materials by a third-party.

(d) The EAC shall retain a record copy of all information, documents, property, or materials developed. Upon request of the EAA, such information, documents, property, or materials will be promptly supplied to the EAA, including after the Expiration Date or the termination of this Agreement under Section 6.1. The EAA will reimburse the Contractor for actual cost of time and expenses of reproduction of such materials when requested.

Section 6.21. Assumption of Risk and Indemnification.

(a) The EAC shall assume all risks associated with the EAC's, or its contractors' and subcontractors', performance of any and all activities, whether or not attributable to funding provided by the EAA under this Agreement, and shall waive any claim against the EAA, and its directors, officers, employees, and agents for damages arising out of the performance of the activities.

(b) The EAC shall defend, indemnify, and hold harmless the EAA, and its directors, officers, employees, and agents, from any and all claims, damages, loss, or liability of any kind whatsoever brought against the EAA by any person or entity, including the costs and attorneys' fees of litigation or any other proceeding arising from:

(1) Any contract, or any other arrangement, between the EAC and any third-party entered into to perform an activity or other service by or for the EAC, whether or not attributable to funding provided by the EAA under this Agreement; or

(2) Any injury to person or property suffered by any person during the course of the EAC, or a contractor or subcontractor of the EAC, in the performance of an activity or other

service for the EAC, whether or not attributable to funding provided by or for the EAA under this Agreement.

IN WITNESS WHEREOF, the Parties acting under authority of their respective governing bodies have caused this Agreement to be duly executed as of the Effective Date.

EDWARDS AQUIFER AUTHORITY

By:_____ Date:_____
Enrique Valdivia, Board Chair

ATTEST:

By:_____ Date:_____
Jennifer Wong-Esparza, Assistant to Board Secretary

APPROVED AS TO FORM:

By:_____ Date:_____
Darcy Alan Frownfelter, General Counsel

EDWARDS AQUIFER CONSERVANCY

By:_____ Date:_____
Carol Patterson, Board President

ATTEST:

By:_____ Date:_____
Abelardo "Abe" A. Salinas, III, Board Secretary

APPROVED AS TO FORM:

By:_____ Date:_____
Darcy Alan Frownfelter, General Counsel