

RESOLUTION AND ORDER NO. 02-16-836

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING A SECOND AMENDMENT TO CONTRACT NO. 13-637-HCP WITH BIO-WEST, INC. TO CONDUCT ADDITIONAL VALIDATION STUDIES FOR THE PREDICTIVE ECOLOGICAL MODEL FOR THE COMAL AND SAN MARCOS ECOSYSTEMS PROJECT, IN AN AMOUNT NOT TO EXCEED \$125,000; FOR A TOTAL CONTRACT AMOUNT NOT TO EXCEED \$1,055,350 AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE AMENDMENT.

WHEREAS, the Edwards Aquifer Authority (“EAA”) was created in 1993 by the Edwards Aquifer Authority 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, the EAA may enter into contracts; and

WHEREAS, under Section 1.27 of the Act, the EAA may conduct research on the Aquifer; 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, under Section 1.11(d)(9) of the Act, the EAA is authorized to hold an incidental take permit under the Federal Endangered Species Act of 1973 (“ESA”), 16 U.S.C. §§ 1531-1544; and

WHEREAS, Paragraph E of Incidental Take Permit No. TE63663A-1 (“ITP”), as amended, and originally issued by the U.S. Fish and Wildlife Service (“Service”) on February 5, 2013, to be effective on March 18, 2013, to the EAA, the City of New Braunfels, the City of San Marcos, the City of San Antonio, acting by and through its San Antonio Water System, and Texas State University (“Permittees”), requires the Permittees to comply with the terms and conditions contained in the Edwards Aquifer Habitat Conservation Plan (“EAHCP”); and

WHEREAS, accompanying the EAA’s application for the ITP, and approved by the Service as part of the application for an ITP, was the Edwards Aquifer Habitat Conservation Plan (“EAHCP”) as required by Section 10(a)(2)(A) (16 U.S.C. § 1539(a)(2)(A)) of the ESA which, among other things, provides for an Adaptive Management Process identified in Chapter 6 of the HCP which is intended to enhance the effectiveness of the EAHCP by addressing uncertainty in the conservation of threatened and endangered species covered by the EAHCP; and

WHEREAS, Section 6.3.3 of the HCP requires the EAA to develop a predictive ecological model to, among other things, evaluate potential adverse ecological effects on Covered Species identified in Section 1.4 of the EAHCP from the Covered Activities identified in Chapter 2 of the HCP and to the extent that such effects are determined to occur, to quantify their magnitude; and

WHEREAS, on May 14, 2013, the Board of Directors (“Board”) of the EAA approved Contract 13-637-HCP, “Predictive Ecological Model for the Comal and San Marcos Ecosystems Project” With Bio-West, Inc. (“Contract”); and

WHEREAS, on May 13, 2014, the Board approved the first amendment to the Contract for the purpose of adding additional tasks to the Scope of Work, extending the term of the Contract, and increasing the budget as provided therein.

WHEREAS, pursuant to Section 2.2 and 13.1 of the Contract, the EAA now desires to amend the Contract again to modify the Scope of Work of the Contract and adjust the compensation accordingly; and

WHEREAS, a part of the EAHCP is that certain Funding and Management Agreement (“FMA”) effective January 1, 2012, that provides the terms of the rights and duties of the Permittees for managing and funding the implementation of the EAHCP, and the terms of the Adaptive Management Process; and

WHEREAS, subject to certain limitations, Subsection 7.1.2 of the EAHCP and Section 3.2 and Article 5 of the FMA obligate the EAA to fund the implementation of the Program Activities identified in Section 6.3.3; and

WHEREAS, on January 26, 2016, the EAA’s Aquifer Research and Technology Committee voted to recommend the Board adopt a resolution and order approving a second amendment to the Contract, in an amount not to exceed \$125,000; and authorizing the General Manager to execute the amendment; and

WHEREAS, Article 10.02(b) of the EAA's Bylaws requires that contracts whose value exceeds \$100,000 be approved by a written resolution; and

WHEREAS, the total amount of the Contract amendment will exceed \$100,000; and

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

WHEREAS, a regular meeting of the Board was held on February 9, 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, a majority of the Directors of the Board were present and constituted a quorum; and

WHEREAS, a vote of the majority of the quorum of the Board 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 approve this second amendment to the 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 the second amendment to Contract No. 13-637-HCP with the BIO-WEST, Inc., in an amount not to exceed \$125,000, for a total contract amount not to exceed \$1,055,350, to conduct additional validation studies for the Predictive Ecological Model for the Comal and San Marcos Ecosystems Project.
- Section 3. The General Manager is authorized to execute and deliver the Contract amendment attached hereto and release payment as required by the Contract, as amended.
- 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 FEBRUARY 9, 2016.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel