



INTERLOCAL AGREEMENT

between the

EDWARDS AQUIFER AUTHORITY

and the

NEW BRAUNFELS UTILITIES

for the

OPERATION OF A WATER LEVEL OBSERVATION WELL AT COMAL PLANT NO. 3 (DX-68-23-304) ADJACENT TO COMAL SPRINGS, NEW BRAUNFELS, TEXAS

THIS INTERLOCAL AGREEMENT made effective this, 1st day of May, 2024, between the EDWARDS AQUIFER AUTHORITY (EAA), a political subdivision of the State of Texas, organized and existing under and by virtue of article XVI, section 59 of the Texas Constitution; and the NEW BRAUNFELS UTILITIES (NBU), an agency of the City of New Braunfels, Texas, acting through its Board of Trustees, charged with sole management and control of the City's water system, organized and existing under and by virtue of section 11.09, of the City Charter of the City of New Braunfels, Texas.

RECITALS

WHEREAS, the EAA was created 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, protect the Edwards Aquifer (Aquifer), 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 1.27 of the Act, the EAA may conduct research; and

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

WHEREAS, on February 5, 2013, Incidental Take Permit No. TE63663A-0 (later amended to TE-6366A-1) (ITP) was issued by the U.S. Fish and Wildlife Service to the EAA, the City of San Marcos, the City of San Antonio, acting by and through its San Antonio Water System, the City of New Braunfels, and Texas State University, under Section 10(a) (16 U.S.C.A. § 1539(a)) of the ESA; and

WHEREAS, the term of the ITP is from March 18, 2013 (the effective date) to March 31, 2028 (the expiration date); and

WHEREAS, under Section 49.057(a), Texas Water Code, the EAA may contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the EAA's Board of Directors for the conduct of the affairs of the EAA; 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 EAA's Board of Directors may consider desirable, fair, and advantageous for, among other things, the exercise of any rights, powers, and duties granted to the EAA; and

WHEREAS, the Edwards Aquifer of south-central Texas supplies drinking water for approximately 2 million people and supplies springflow to at least two major springs, one located at New Braunfels and another at San Marcos, Texas; and

WHEREAS, springflows at the Comal and San Marcos Springs are vital to the survival of several endangered species of plants and animals; and

WHEREAS, the proper protection of the Edwards Aquifer and springflows is a high priority for federal, state and local authorities; and

WHEREAS, a mission and goal of the EAA is to protect the Aquifer system and to maintain continuous springflows in accordance with the requirements of the Act; and

WHEREAS, the EAA, in cooperation with the U.S. Geological Survey (USGS), operates streamflow gauging stations on the Comal River and the San Marcos River to determine daily springflow, which daily springflow data is of paramount importance to water and wildlife managers in the Edwards Aquifer region; and

WHEREAS, additional continuous monitoring stations were installed at Comal Springs and San Marcos Springs in 2013 and continue to operate as part of the Edwards Aquifer Habitat Conservation Plan, and are also central to aquifer storage and recovery (ASR) monitoring; and

WHEREAS, NBU wishes to cooperate with the EAA in data collection activities regarding the Edwards Aquifer and Comal Springs; and

WHEREAS, under previous agreements between NBU and the EAA, the EAA has used the Comal Plant #3 Well, which has been given the State Well Number DX-68-23-304 (the Comal Plant #3 Well), to collect continuous Edwards Aquifer water level data since the year 2000, and these data have proven extremely valuable in studies to evaluate groundwater flowpaths in the vicinity of Comal Springs; and

WHEREAS, both NBU and the EAA desire water level data collection to continue at the Comal Plant #3 Well to further develop the correlation of water levels at the Well and Comal Springs discharge over a wide range of hydrologic conditions; and

WHEREAS, the Comal Plant #3 Well is located adjacent to Fredericksburg Street, northwest of the former Comal Power Plant in New Braunfels, Texas; and Comal Plant #3 Well is owned by the Lower Colorado River Authority (LCRA) and, through a lease agreement between LCRA and NBU, NBU controls the Well and Well site;

WHEREAS, the EAA and NBU are local governments pursuant to Section 791.003(4)(A), Texas Government Code; and

WHEREAS, the activities to be performed by the EAA under this Agreement are governmental functions and services under Sections 791.003(3)(D), (I), (K), (N), and 791.011(c), Texas Government Code.

NOW, THEREFORE, for and in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. DEFINITIONS.

A. "EAA" means the Edwards Aquifer Authority.

B. "NBU" means the New Braunfels Utilities.

C. "USGS" means the United States Geological Survey.

D. "Well" means the Comal Plant No. 3 Well, State Well Number DX-68-23-304, as identified in Exhibit A, attached hereto and incorporated herein for all purposes. The specific location of the Well is: Latitude 29° 42' 40.8"/Longitude 098° 08' 15.4".

2. AUTHORITY FOR AGREEMENT.

A. This Agreement is entered into pursuant to the Interlocal Cooperation Act, Chapter 791, Texas Government Code.

B. The EAA represents that it has the legal authority to enter into, and that its Board of Directors has duly approved, this Agreement pursuant to law, including but not limited to, compliance with the Open Meetings Act, Chapter 551, Texas Government Code.

C. NBU represents that it has the legal authority to enter into, and that its Board of Trustees has duly approved, this Agreement pursuant to law, including but not limited to, compliance with the Open Meetings Act.

D. NBU represents that the Well is owned by the LCRA but, through a lease agreement between LCRA and NBU dated February 24, 1987, as modified by an agreement dated March 27, 1998, NBU controls the Well and Well site. NBU further represents and warrants to the EAA that it has the legal power and authority to enter into this Agreement and nothing in the agreements between NBU and LCRA shall impact, diminish or alter the EAA's rights under this Agreement.

E. Each party will furnish the other party with proof that its governing body has authorized the Agreement. Proof shall include a certified resolution or minutes of the meeting of the governing body authorizing a designated representative to sign this Agreement.

3. PURPOSE.

The sole purpose of this Agreement is to authorize the EAA's use of the Well as set forth herein. The EAA may not use the Well for any other purpose or beyond the term of this Agreement with the exception of the use of the Well for short-term scientific tests such as water quality tests, geophysical tests, and tracer tests dependent upon the approval of the Chief Executive Officer of NBU, and except as otherwise provided in Interlocal Cooperative Contract No. 17-837-EX between the EAA and NBU for the development and use of an ASR project (ICC No. 17-837-EX). In the event of a conflict between this Agreement and ICC No. 17-837-EX, ICC No. 17-837-EX shall prevail.

4. TERM.

This Agreement is effective on the 1st day of May 2024, and continuing until terminated by one of the parties pursuant to paragraph 15 of this Agreement.

5. COSTS OF MONITORING ACTIVITIES.

A. Except as provided in ICC No. 17-837-EX and in Subsection C, all costs for the activities to be performed by the EAA under this Agreement shall be borne solely by the EAA.

B. In the event that in conducting its authorized activities under Section 8 of this Agreement, the EAA determines that the Well requires repair or modification, then the EAA shall give written notice to NBU of the specific Well deficiencies and an estimate of the cost to correct the deficiencies. NBU shall review the notice and shall be entitled to a reasonable period of time

thereafter to inspect or hire a contractor to inspect the Well and verify the deficiencies identified by EAA. Subject to such verification, NBU will then issue a:

1. Stop work order, after which the EAA will remove its equipment from the Well site; or
2. Notice for the EAA to proceed with the repair or modification to the Well and to proceed with the activities authorized under this Agreement after the Well has been repaired or modified to make it suitable.

C. If NBU issues a notice to proceed, then the cost of the repairs or modifications shall be borne by the parties as follows:

1. The EAA will pay the cost of all repairs or modifications as they are completed.
2. If the Agreement remains in effect for a period of 24 months following completion of the repairs or modifications, the EAA will bear all repair costs.
3. If the Agreement is cancelled by NBU in less than 24 months after repairs or modifications are made, NBU shall share a proportion of the costs calculated in accordance with the following formula.

$$(\text{Authorized repair or modification cost} \div 24) \times (24 \text{ minus number of months elapsed from date repair or modification completed until Agreement cancelled}).$$

The EAA will provide NBU with an invoice for the repair or modification costs and the amount due from NBU within 30 days after receiving notice of cancellation by NBU. NBU shall pay to the EAA the amount due no later than 30 days after the invoice is received. NBU has no reimbursement obligation if this Agreement is cancelled more than 24 months after the repairs or modifications are completed.

4. Authorization by NBU to proceed with repairs or modifications shall constitute NBU's full agreement with the repair or modification costs and NBU agrees not to contest the cost of repairs or modifications at any later date if the cost is equal to or less than the amount estimated by the EAA per Subsection 5.B. of this Agreement.

5. In the event of NBU's termination of this Agreement, reimbursement obligations in this section survive.

6. CONTROL OF THE WELL.

Nothing in this Agreement shall be construed to be a grant of the ownership of the Well itself or the real property on which the Well is situated. During the term of this Agreement, NBU shall retain the right to withdraw and use groundwater produced from the Well, and the right to enter the Well site at any time for any reason, provided that such use and access by NBU shall not interfere with the rights conveyed to the EAA under this Agreement.

7. ACCESS TO THE WELL SITE.

During the term of this Agreement, NBU authorizes the EAA to enter the Well site for the purpose of conducting the activities authorized under Section 8 of this Agreement.

8. AUTHORIZED ACTIVITIES.

A. The EAA may conduct the following general activities on the Well and at the Well site:

1. assessment of the correlation between the discharge of the Comal Springs and the water level in the Well;
2. conducting geophysical logging, or other downhole surveys that further the understanding of the hydrologic behavior of the Well and Aquifer system surrounding the Well;
3. collecting grab and composite water quality samples from the Well; and
4. performing tracer testing studies at the Well including the injection of dyes and/or the monitoring of the Well for dyes.

B. The EAA may conduct the following specific activities on the Well and at the Well site:

1. Continuous water level and/or water quality monitoring of the Well. Data will be collected using a pressure transducer, multiprobe, and data logger or similar continuous recording device. Data analysis of the water level data from the Well will include the correlation with gauge height (stage) data and springflow data from the USGS gauging station on the Comal River near the San Antonio Street viaduct;
2. conducting water quality sampling of the Aquifer at the Well:
 - a. water quality sampling of the Well will require the Well to be pumped or flowed at a controlled and measured rate so that a minimum of three Well volumes of water are purged from the Well prior to sampling. The volume of the Well bore is approximately 15,000 gallons. This procedure will require the purging of approximately 45,000 gallons of water. If Well purging must be performed using a pump, purging will require about 7.5 hours, at a pumping rate of 100 gallons per minute (gpm). If sufficient natural artesian pressure is present at the Well, the Well may be allowed to flow naturally at a rate up to 500 gpm. The purged waters will be disposed of into a storm-water sewer inlet located at Fredericksburg and Howard Streets that will discharge downstream of Landa Lake. The EAA understands that this discharge location has been approved by the Texas Commission on Environmental Quality (TCEQ) and the U.S. Fish and Wildlife Service (USFWS), however NBU makes no representation in this regard. Water quality sampling of the Well will occur no more than once per year without receiving separate approval from NBU; and
 - b. water quality analysis will include the measurement of field parameters and laboratory analysis of a grab or composite sample of water derived, at least in part, from the Aquifer, that is discharged at the Well head. Field water quality parameters will generally

include specific conductance, water temperature, pH, dissolved oxygen, turbidity, and alkalinity. Laboratory analysis of water samples may include but are not limited to the following constituents: major ions, minor elements, volatile organic compounds, organophosphate pesticides, organochlorine pesticides, chlorophenoxy herbicides, biochemical oxygen demand nutrients, and other compounds or isotopes as needed. The sampling protocols used will meet criteria established by U.S. Environmental Protection Agency, and TCEQ, following the EAA's Groundwater Sampling Plan and quality assurance/quality control plan; and

c. the water quality data collected will be used to evaluate the quality of Aquifer source water proximate to the Well, and to aid in the assessment of overall spring and Aquifer system health; and

3. conducting geophysical logging, or other downhole surveys designed to improve the understanding of the Aquifer system, or to collect specific water quality data from subsurface isolated intervals either related to the freshwater or saline water components of the Aquifer system at the Well; and

4. performing tracer testing studies at the Well, including the injection of dyes and/or the monitoring of the Well for dyes. The injection of dye will be performed by inserting a plastic tubing into the top of the Well standpipe to the top of the Aquifer limestone and then injecting the dye into the tube using a low volume pump. The dye will be flushed from the Well bore and into the Well using high-capacity pumps at the Well head. Only water withdrawn from the Aquifer may be injected into the Well. Monitoring for dye may require the collection of a water sample, the insertion of a granular activated carbon dye trap into the Well, or insertion of a dye detection instrument into the Well. Tracer testing is usually a process occurring over many months.

C. The activities authorized in Subparagraphs 8(A) and 8(B) will be conducted within the following time frames:

1. the water level monitoring activities will be ongoing and will end no later than May 1, 2034, or as may be extended by written agreement of the parties pursuant to Paragraph 13 of this Agreement.

2. The water quality sampling activities will begin no later than May 1, 2024, and end no later than May 1, 2034, or as may be extended by written agreement of the parties pursuant to Paragraph 13 of this Agreement.

D. The EAA may not use the Well or the Well site for artificial springflow augmentation, for pumping more than 100 gpm, or for flowing the Well at more than 500 gpm using natural artesian pressure for longer than it takes to complete the purging activities described in Paragraph 8(B)(2)(a) of this Agreement or for any purpose not specifically authorized herein.

E. Any data collected from the Well will be provided to NBU upon request.

9. PERMITS.

The EAA must obtain all legally required permits, licenses, or other governmental

authorizations prior to performing any of the activities authorized to be performed in this Agreement. At the written request of NBU, the EAA will provide proof satisfactory to NBU that the EAA has obtained all such permits, licenses, or authorizations. NBU will provide a copy to the EAA of its authorization from the TCEQ to allow discharges to water in connection with the Well.

10. AGREEMENT COORDINATOR.

A. For the EAA, the Agreement coordinator to administer this Agreement is Mr. Paul Bertetti, Director of Research and Modeling, Edwards Aquifer Authority, 900 E. Quincy Street., San Antonio, Texas 78215, (210) 222-2204.

B. For NBU, the Agreement coordinator to administer this Agreement is Michael G. Short, New Braunfels Utilities, 263 Main Plaza, P.O. Box 310289, New Braunfels, Texas 78131-0289, (830) 629-8470.

C. Each party must give written notice to the other party within fifteen business days of a change in the Agreement coordinator.

11. NOTICES.

Any notice to be given under this Agreement must be in writing. The notice shall be deemed given when mailed, postage prepaid, or hand delivered, to the Agreement coordinator identified in Paragraph 10 of this Agreement.

12. RECORDS.

The EAA will establish and maintain appropriate records pertaining to the activities performed by the EAA under this Agreement, in the form of data records maintained within database applications and made available to NBU on request or other electronic means of access. The records will be subject to review, copying and distribution pursuant to the Public Information Act, Chapter 552, Texas Government Code.

13. INTEGRATION CLAUSE; AMENDMENTS.

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations, modifications, or amendments concerning this Agreement, including to extend the terms of the Agreement, shall be of no force or effect unless contained in a subsequent writing, signed by the party to be charged.

14. ASSIGNMENTS.

This Agreement is not assignable without the express prior, written consent of the parties.

15. TERMINATION.

This Agreement may be terminated for any reason by either party upon 30 calendar days written notice, without prejudice to the parties' rights to enforce provisions hereof which expressly survive termination. Otherwise, this Agreement terminates on May 1, 2034, unless extended by

written agreement of the parties pursuant to Paragraph 13 of this Agreement.

16. RESTORATION.

If, in exercising the EAA's rights in and to the Well and Well site as provided in this Agreement, the EAA directly or indirectly causes any damage to the Well or Well site or any other property appurtenant thereto or any improvements located on the Well site, the EAA will, at EAA's sole cost and expenses and within a reasonable time, but in no event later than 30 calendar days from the date the damage occurred, restore the Well or Well site and/or such improvements to the original condition existing prior to the damage. The provisions of this paragraph survive termination of this Agreement.

17. COMPLIANCE WITH LAWS.

The EAA agrees to comply at all times and at its sole cost with all applicable federal, state and local laws, rules, regulations and safety standards in connection with the EAA's activities under this Agreement. By its use of the Well and the Well site, the EAA will not cause or permit the Well or Well site or NBU to be in violation of, or do anything or permit anything to be done by the EAA, its contractors, subcontractors, agents, or employees which will subject the Well, the Well site or NBU to any remedial obligations under applicable laws pertaining to health, the environment or endangered species (such laws as they now exist or are hereafter enacted and/or amended are hereinafter sometimes collectively called "Applicable Environmental Laws"). The EAA will promptly notify NBU in writing of any existing, pending or, to the best knowledge of EAA, threatened investigation or inquiry by any governmental authority in connection with any Applicable Environmental Laws concerning the EAA's use of the Well and Well site.

18. TIME.

Time is of the essence. In the event the date for performance of any obligation under this Agreement falls on a Saturday, Sunday or Texas legal banking holiday, then that obligation will be performed on the next following regular business day.

19. COUNTERPARTS

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

(Signatures on the following pages.)

IN WITNESS WHEREOF, the parties have executed this Agreement, and it is effective on the day and year first written above.

EDWARDS AQUIFER AUTHORITY

By: _____
Roland Ruiz
General Manager

ATTEST:

Jennifer Wong-Esparza
Assistant to Board Secretary

APPROVED AS TO FORM:

Darcy A. Frownfelter
General Counsel
Edwards Aquifer Authority

NEW BRAUNFELS UTILITIES

By: _____
Ryan Kelso
Chief Executive Officer

ATTEST:

Rocio Gallegos
Executive Assistant to the Chief Executive
Officer

APPROVED AS TO FORM:

Connie C. Lock
General Counsel
New Braunfels Utilities

Exhibit A

