

RESOLUTION AND ORDER NO. 09-17-880

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING A ONE-YEAR RENEWAL AND EXTENSION OF CONTRACT NO. 14-689-HCP BETWEEN THE EAA AND BIO-WEST INC., TO CONTINUE TO PROVIDE A BIOLOGICAL MONITORING PROGRAM FOR THE COMAL AND SAN MARCOS SPRINGS ECOSYSTEMS, IN AN AMOUNT NOT TO EXCEED \$734,352, FOR THE PERIOD EXTENDING FROM JANUARY 1, 2018 THROUGH DECEMBER 31, 2018; AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE DOCUMENTS NECESSARY TO EFFECTUATE THE CONTRACT RENEWAL AND EXTENSION.

WHEREAS, the Edwards Aquifer Authority ("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, and protect the Edwards Aquifer ("Aquifer") and to increase the recharge of, and prevent the waste 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 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, the purpose of the EAA in contributing funding for the biological monitoring of the Comal Spring and River Ecosystem and the San Marcos Spring and River Ecosystem is to

implement the EAHCP in order to provide for maintenance and protection of the endangered and threatened species to the extent required by federal law is a purpose or function permitted by the EAA under the Act; 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") issued 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, the EAHCP requires, among other things, the Permittees to conduct research and modelling efforts sufficient to support and inform the Phase II Adaptive Management Decision with complete and relevant data; and

WHEREAS, Section 6.3.1 of the EAHCP requires the EAA to provide a means of monitoring changes to habitat availability and the population abundance of the Covered Species that may result from Covered Activities; 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 adaptive management research; and

WHEREAS, on February 11, 2014, the EAA entered into that certain Contract No. 14-689-HCP ("Contract") between the EAA and BIO-WEST, Inc. to provide for a biological monitoring program for the Comal and San Marcos Springs ecosystems; and

WHEREAS, Article I, Paragraph 1.3 of the Contract authorizes four renewals and extensions of the Contract; and

WHEREAS, the EAA desires to exercise its right to renew and extend for an additional one-year period of time; and

WHEREAS, this renewal and extension is the fourth and final renewal and extension provided for under the Contract; and

WHEREAS, on September 22, 2017, the Research and Technology Committee, voted to recommend that the EAA Board adopt a resolution and order approving a one-year renewal and extension of Contract No. 14-689-HCP with Bio-West, Inc. to continue to provide for a biological monitoring program for the Comal and San Marcos Springs ecosystems in an amount not to exceed \$734,352, for the period extending from January 1, 2018 through December 31, 2018; and authorizing the general manager to execute the documents necessary to effectuate contract renewal and extension; 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 to be paid to BIO-WEST, Inc., under the terms of the renewal and extension of the Contract will exceed \$100,000; and

WHEREAS, the original Contract and the renewal and extension documents for the Contract were reviewed by the EAA's legal counsel prior to Board approval; and

WHEREAS, a regular meeting of the Board was held on September 12, 2017 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 the renewal and extension of the Contract for an additional one-year period.

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 renewal and extension of Contract No. 14-689-HCP with BIO-WEST, Inc. for an additional one-year period being the fourth and final renewal and extension, in an amount not to exceed \$734,352 to continue to provide a comprehensive biological monitoring program for the Comal and San Marcos Springs ecosystems for the period extending from January 1, 2018 through December 31, 2018.
- Section 3. The General Manager is authorized to execute and deliver the documents necessary to effectuate the renewal and extension of the Contract attached hereto and release payment required by the Contract as renewed and extended.
- 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 OF SEPTEMBER, 2017.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:



Darcy Alan Frownfelter
General Counsel