

RESOLUTION AND ORDER NO. 09-19-947

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS APPROVING A ONE-YEAR RENEWAL AND EXTENSION OF INTERLOCAL COOPERATIVE CONTRACT NO. 15-775-ERA BETWEEN THE EAA AND EVERGREEN UNDERGROUND WATER CONSERVATION DISTRICT TO CONDUCT PRECIPITATION ENHANCEMENT ACTIVITIES IN AN AMOUNT NOT TO EXCEED \$163,000, FOR THE PERIOD OCTOBER 1, 2019, THROUGH SEPTEMBER 30, 2020, AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE DOCUMENTS NECESSARY TO EFFECTUATE THE 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 or pollution of water in the Aquifer; and

WHEREAS, under 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, the Evergreen Underground Water Conservation District (“Evergreen”) is a groundwater conservation district having those powers, duties, rights, and privileges as are conferred by Chapter 36, Texas Water Code; and

WHEREAS, on December 9, 2015, the EAA entered in that certain Interlocal Cooperation Contract No. 15-775-ERA between Edwards Aquifer Authority and Evergreen Underground Water Conservation District to Conduct a Precipitation enhancement Program (“Contract”); and

WHEREAS, Section 1.3 of the Contract provides as follows: “At the sole option of the EAA, this Contract may be renewed and extended for up to four (4) periods of one additional calendar year each, with such election made by the EAA giving the Contractor written notice to renew and extend this Contract on or before September 30 prior to the end of the then Contract period.”; and

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

WHEREAS, this renewal and extension is the final of four possible renewal and extension periods provided for under the Contract; and

WHEREAS, the renewal of the Contract that is the subject of this Resolution and Order 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)(A) and (5) of the ICA, both the EAA and EVERGREEN 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 functions in which the Parties are mutually interested; and

WHEREAS, on August 27, 2019, the Aquifer Management and Planning Committee voted to recommend the EAA Board adopt a resolution and order renewing and extending Contract No. 15-775-ERA between the EAA and Evergreen Underground Water Conservation District (“Evergreen”), to conduct precipitation enhancement activities in an amount not to exceed \$163,000 for the period October 1, 2019, through September 30, 2020, and authorizing the General Manager to execute the documents necessary to effectuate the renewal and extension; 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 Evergreen, under the terms of the Contract will exceed \$100,000; and

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

WHEREAS, a regular meeting of the Board was held on September 10, 2019, at 3:00 p.m., notice of the 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 enter into 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 renewal of Contract No. 15-775-ERA between the EAA and Evergreen for a one-year period, being the second of four possible renewals and extensions, in a total amount not to exceed \$163,000 to conduct precipitation enhancement activities for the period October 1, 2019, through September 30, 2020.

Section 3. The General Manager is authorized to execute the documents necessary to effectuate the renewal and extension of the Contract attached hereto and release payment 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 10th DAY OF SEPTEMBER 2019.

Luana Buckner
Chairman, Board of Directors

ATTEST:

Enrique P. Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel