



INTERLOCAL COOPERATION CONTRACT NO. 20-017-AMS
BETWEEN THE
EDWARDS AQUIFER AUTHORITY
AND
THE UNIVERSITY OF TEXAS AT SAN ANTONIO
FOR
ASSESSMENT OF WATER QUALITY RESPONSES TO RECHARGE AT COMAL
SPRINGS

This INTERLOCAL COOPERATION CONTRACT (Contract) is made and entered into under the Texas Interlocal Cooperation Act (ICA), Chapter 791, Texas Government Code, by and between the EDWARDS AQUIFER AUTHORITY (EAA), a conservation and reclamation district and a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy Street, San Antonio, Texas 78215, and THE UNIVERSITY OF TEXAS AT SAN ANTONIO (Participant), an agency of the State of Texas and an institution of higher learning in the University of Texas System, with its principal place of business located at One UTSA Circle, San Antonio, Texas, 78249. Each of these entities is, at times, referred to in this Contract individually as a “Party”, and both are referred to collectively as “Parties”.

RECITALS

WHEREAS, the EAA was created in 1993 by the Edwards Aquifer Authority Act, 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 Section 1.11(d)(2) of the Act, and other applicable law, the EAA may enter into contracts; and

WHEREAS, this Contract 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, the EAA and Participant are local governments; and

WHEREAS, under Section 791.003(3) of the ICA, the activities that are the subject of this 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, the EAA Board of Directors approved this Contract on August 11, 2020 and authorized the EAA General Manager to execute the Contract; and

WHEREAS, the EAA Board has elected to pursue the assessment of water quality responses to recharge at Comal Springs; and

WHEREAS, the EAA and Participant have been authorized by their respective governing bodies to enter into this Contract; and

WHEREAS, it is in the public interest that the EAA enter into this Contract.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth in this Contract, the EAA and Participant agree as follows:

ARTICLE I – TERM; DESCRIPTION OF WORK

Section 1.1. Term. This Contract is effective and commences on August 12, 2020 (Effective Date) and terminates on December 31, 2022 (Expiration Date).

Section 1.2. Services. Subject to the terms and conditions of this Contract, the EAA engages the Participant to perform, for the benefit of the EAA, the work set forth and described in this Contract and in the following documents (Services) which are attached hereto: (1) the Scope of Work which is attached hereto as Exhibit A (Scope of Work); and (2) the Project Budget which is attached hereto as Exhibit B (Project Budget). The Participant accepts such engagement and agrees to devote its best efforts and abilities, and furnish all necessary labor, machinery, equipment, tools, and transportation necessary in furtherance thereof.

Section 1.3. Commencement and Completion of Services. The Participant will commence performing the Services immediately upon the date of receipt of the written notice to proceed issued by the EAA's General Manager. All Services will be completed and delivered to the EAA by the Expiration Date and shall be completed in compliance with the schedules, budgets, descriptions, and specifications contained herein and in the Exhibits attached hereto. It shall be the Participant's responsibility to ensure that the completion times for the tasks required under this Contract are met. At the sole option of the EAA, this Contract may be renewed and extended for up to one additional year, with such election made by the EAA giving the Participant written notice

to renew and extend this Contract prior to the end of the then Contract period. Time is of the essence in the performance of this Contract.

ARTICLE II – AMENDMENTS

Section 2.1. Amendments. The EAA may request changes or additions to the Scope of Work during the progress of the Services. Upon mutual agreement, the EAA and Participant will make the necessary written revisions to the Scope of Work to reflect such changes or additions. Upon such request by the EAA, Participant may propose the necessary revisions to specific tasks in the Scope of Work, associated schedules and costs. This Contract, including any changes to the Scope of Work, may be amended only by written agreement of the Parties.

Section 2.2. Delegation to the General Manager. The Board of Directors of the EAA delegates the authority to the General Manager to enter into amendments to this Contract without further authorization by the Board consistent with the General Manager's authority to enter into contracts under Section 4.01 of the EAA's Bylaws.

ARTICLE III – COST SHARING

Section 3.1. Fees and Expenses. Participant agrees to be directly responsible for the payment of any invoices, costs or expenses incurred by it or its Subcontractor in the performance of the Services. The EAA agrees to reimburse Participant an amount up to \$60,000 for a portion of the fixed costs or expenses which are incurred by Participant in the performance of the Services.

Section 3.2. Payment. All "invoice packets" from the Participant to the EAA for the Services for each previous month's activities shall be sent no later than the 15th day of each month beginning September 15, 2020, and shall provide an itemization of the Services rendered, and any costs and expenses incurred during the billing cycle. Documentation in the invoice packet must be sufficiently itemized and detailed and include invoices and/or receipts for all purchases and expenses (summary credit card charge receipts are not acceptable) which allow the EAA to clearly discern purchases made. Purchases and expenses documented with lost receipt forms are not eligible for reimbursement. Receipts without purchase details or are not legible are not acceptable at any time. Alcohol purchases will NOT be reimbursed under any circumstances. Mileage will be reimbursed at the current IRS approved rate, if submitted. The monthly invoice packet will be submitted electronically in Adobe Acrobat (pdf) format via email to the Director of Aquifer Science at pbertetti@edwardsaquifer.org. If the Contractor utilizes subcontractors (see Article V), the Contractor shall submit a Subcontractor Utilization Report with each invoice submitted to the EAA for payment. The terms of each invoice shall be net thirty (30) days upon EAA receipt and approval of that invoice.

ARTICLE IV – INDEPENDENT CONTRACTOR

Section 4.1. No Employment Relationship. The Parties understand and agree that this Contract does not create a fiduciary relationship between them, that they are separate entities, that the Participant is an independent Participant with respect to the performance of the Services and is not subject to the direct or continuous control and supervision of the EAA, and that nothing in this Contract is intended to make either Party a subsidiary, joint venturer, partner, employee, agent,

servant or representative of the other Party for any purpose whatsoever. The Participant shall provide any and all equipment and materials necessary for the performance of the Services. The EAA shall have no right of direction or control of the Participant, or its employees and agents, except in the results to be obtained, and in a general right to order the performance of the Services to start or stop as agreed to herein, to inspect the progress of the Services, and to receive reports. The Participant shall accommodate reasonable requests from the EAA to allow EAA employees, agents or representatives to accompany and observe Participant personnel in carrying out the Services under this Contract.

ARTICLE V – CONTRACTOR PERSONNEL AND SUBCONTRACTORS

Section 5.1. Personnel. The Participant will provide any and all personnel necessary for its performance of the Services. The Participant will be responsible for its employees and agents in all respects, including, without limitation, their compliance with applicable laws and their safety, including without limitation, all Occupational Safety and Health Administration (OSHA) standards, requirements, and regulations. To the extent authorized by law, each Party indemnifies and holds harmless the other Party, as well as the other Party's officers, employees, and directors, from and against any claims brought by any employee, subcontractor, or other agent of the indemnifying Party relating in any way to the Services performed under this Contract.

Section 5.2. Subcontractors. In performing the Services under this Contract, the Participant may retain and utilize as its subcontractors, to the extent that they are not already employees of the Participant, those individuals identified to and approved in writing by the EAA, in advance. The EAA, in consultation with the Participant, shall have the right to terminate, limit, or alter, at any time, the participation of any subcontractor utilized by the Participant. No additional subcontractors may be retained by the Participant to perform any Services under this Contract without the prior written consent of the EAA, provided that no such consent shall be necessary for the retention of any subcontractor previously approved by the EAA and identified by the Participant on the Effective Date of this Contract. The Participant will be responsible for its subcontractors in all respects including their compliance with applicable laws and their safety, including without limitation, all OSHA standards, requirements, and regulations.

ARTICLE VI – TERMINATION

Section 6.1. Termination for Convenience. The EAA may terminate this Contract at any time, including at the expiration of each budget or payment period during the term of this Contract, with or without cause, upon ten (10) days prior written notice to Participant.

Section 6.2. Termination for Cause. If the Services are not being carried out in a manner satisfactory to the EAA, the EAA may terminate this Contract upon the failure of Participant to cure the unsatisfactory condition within ten (10) days after receipt of written notice from the EAA.

Section 6.3. Actions in the Event of Early Termination. Upon receipt of a notice of termination under this Article, Participant shall immediately stop all work in progress, including all work performed by its employees, agents, or subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point. Within 30 days of the final invoice

following termination, the EAA shall pay Participant all moneys then due and owing for the Services rendered, and costs and expenses reasonably incurred up to the time of termination. Participant will deliver to the EAA copies of all finished and unfinished documents, data, studies, surveys, drawings, maps, reports, photographs, and other materials prepared by Participant, and each Party shall be free to utilize such documents, data, studies, surveys, drawings, maps, reports, photographs, and other materials as it sees fit.

ARTICLE VII – OWNERSHIP OF MATERIALS

Section 7.1. Ownership. All information, documents, property, or materials produced, created, or supplied under this Contract by the Participant, its employees, agents or subcontractors or anyone else, and whether finished or unfinished or in draft or final form, will be the jointly owned property of EAA and the Participant. Each Party shall have unlimited rights to technical and other data resulting directly from the performance of the Participant's Services under this Contract.

Section 7.2. Delivery of Documents upon Termination. Upon termination of this Contract under Sections 1.3 or 6.1, all such information, documents, property and materials not already in the possession of the EAA will be delivered to the EAA within 30 days of termination.

Section 7.3. Nondisclosure of Documents. Both Parties recognize that each Party is subject to the provisions of Chapter 552, Texas Government Code. If a request for public information is filed with one of the Parties under Chapter 552, any information, property, or materials produced, created, or supplied under this Contract that is subject to disclosure under Chapter 552 may be disclosed by the Party to any third-party without the prior written consent of the other Party. If such a request is filed, the Party receiving the request shall promptly give notice to the other Party of the request and provide a schedule of the documents provided.

Section 7.4. Record Copies. The Participant shall retain a record copy of all information, documents, property, or materials developed in the course of performing the Services for a minimum of three (3) years. 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 Contract under Section 6.1. The EAA will reimburse the Participant for actual cost of time and expenses of reproduction of such materials when requested.

Section 7.5 Publications. For publications, the publishing Party shall provide the other Party a thirty-day (30) period in which to review proposed publications, identify proprietary or confidential information, and to submit comments. The publishing Party will give full consideration to all comments before publication. All publications created by Participant pertaining to this Contract shall acknowledge that research performed by Participant was funded in part by the EAA.

ARTICLE VIII – PERFORMANCE

Section 8.1. Performance of Services. The Participant agrees that it will perform all Services in a good and workmanlike manner, strictly in accordance with the standards of the

Participant's profession, the Scope of Work, and as otherwise provided in this Contract and the Exhibits hereto. To the extent permitted by law, the Participant's failure to timely perform the Services as agreed shall constitute a breach of this Contract and shall be subject to all applicable remedies at law or equity. Judgment of nonperformance shall rest solely with the EAA.

ARTICLE IX – LIQUIDATED DAMAGES

THIS ARTICLE INTENTIONALLY LEFT BLANK

ARTICLE X – BOND COVERAGE

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ARTICLE XI – INSURANCE

Section 11.1. Insurance Coverages. EAA acknowledges that, because Participant is an agency of the State of Texas, liability for the tortious conduct of the agents and employees of Participant is governed by Chapters 101 and 104, Texas Civil Practice and Remedies Code and Chapter 2259, Texas Government Code, and that Workers' Compensation Insurance coverage for employees of Participant is provided by Participant as mandated by the provisions of Chapter 503, Texas Labor Code. The liability of Participant and its members for personal injury and property damage is controlled by the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101, Section 101.021. The limits of liability are \$250,000 for each person, \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

Section 11.2. No limitations. Participant's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by the EAA, nor shall Participant's performance of this obligation relieve it of liability under the indemnity provisions set forth in Section 12.2.

ARTICLE XII – ASSUMPTION OF RISK AND INDEMNIFICATION

Section 12.1. Risk. To the extent authorized by law, each Party shall assume all risks associated with its or its subcontractors' performance under this Contract and shall waive any claim against the other Party for damages arising out of the performance of the Services under this Contract.

Section 12.2. Indemnification. To the extent authorized by law, each Party shall defend, indemnify, and hold harmless the other Party, its directors, officers, employees, and agents from any and all damages, loss, or liability arising from (a) other contracts or arrangements between the indemnifying Party and any third parties that are entered into to perform the Services of this Contract, (b) any claims brought by any person relating to this Contract or the Services, or (c) the quality or the performance of the Services. The foregoing indemnification is limited to the extent that such liability, loss, or damage was caused by the negligent act, error, or omission of the indemnifying Party or any person or entity for whom the indemnifying Party is legally liable.

Section 12.3. Sovereign Immunity. Nothing herein shall constitute a waiver of the State's right or either Party's right to assert sovereign immunity.

ARTICLE XIII – NOTICES

Section 13.1. Notices to the EAA. All notices or communications under this Contract to be mailed or delivered to the EAA shall be in writing and shall be sent to the EAA's principal place of business as follows, unless and until the Participant is otherwise notified:

EDWARDS AQUIFER AUTHORITY
Attention: Latifah Jackson, Contract and Business Development Coordinator
900 E. Quincy Street
San Antonio, Texas 78215

Section 13.2. Notices to the Participant. All notices or communications under this Contract to be mailed or delivered to the Participant shall be in writing and shall be sent to the address of the Participant as follows, unless and until the EAA is otherwise notified:

THE UNIVERSITY OF TEXAS AT SAN ANTONIO
Attention: Director of Contracts & Industry Agreements
One UTSA Circle
San Antonio, TX 78249

Section 13.3. Effective Date of Notice. Any notices or communications required to be given in writing by one Party to the other shall be considered as having been given to the addressee on the date the notice of communication is posted by the sending Party. Electronic notices shall be deemed delivered as of the stamp date generating by the receiving Party's system.

ARTICLE XIV – MISCELLANEOUS

Section 14.1. Entire Agreement. This Contract and the attached Exhibits constitute the entire agreement between the Parties regarding the Services to be performed by the Participant and there are no representations, warranties, agreements or commitments between the Parties except as set forth herein. Unless otherwise authorized herein, no amendments or additions to this Contract shall be binding on the Parties unless in writing and signed by the Parties.

Section 14.2. Non-Waiver. No delay or failure by either Party to exercise any right under this Contract, nor any partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

Section 14.3. Headings. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

Section 14.4. Governing Law. This Contract shall be deemed to have been executed and performed in the State of Texas and shall be construed in accordance with and governed by the laws of the State of Texas. Venue for any disputes or claims arising from this Contract shall be

exclusively in the proper courts in Bexar County, Texas. The dispute resolution process provided for in Section 2009.053(c) of the Texas Government Code shall be used to resolve a dispute arising under this Contract.

Section 14.5. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 14.6. Binding Effect. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that the Participant may not assign any of its rights nor delegate any of its duties hereunder without the EAA's prior written consent.

Section 14.7. Validity. The invalidity of any provision or provisions of this Contract shall not affect any other provision of this Contract, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Contract affect the balance of such provision.

Section 14.9. Survival. Termination of this Contract for breach shall not constitute a waiver of any rights or remedies available at law or in equity to a Party to redress such breach. All remedies, either under this Contract or at law or in equity or otherwise available to a Party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination. In addition, to these provisions, applicable provisions of this Contract shall survive any termination of this Contract.

Section 14.10. Attachments. The Exhibits, schedules and/or other documents attached or referred to, are incorporated in and made a part of this Contract of for all purposes. As used herein, the expression Contract means the body of this Contract and such attachments, Exhibits, schedules and/or other documents, and the expressions herein, hereof, and hereunder and other words of similar import refer to this Contract and such attachments, exhibits, schedules and/or other documents as a whole and not to any particular part or subdivision thereof.

Section 14.11. Costs. If any legal action, arbitration, or other proceeding is brought by a Party for the enforcement of this Contract or because of an alleged breach or default of this Contract, the prevailing Party shall be entitled to recover reasonable costs incurred, including but not limited to attorney's fees, in such action or proceeding in addition to any other relief to which it or they may be entitled.

Section 14.12. Authority to Contract. Each Party represents and warrants for the benefit of the other Party that: (1) it has the legal authority to enter into this Contract; (2) this Contract has been duly approved and executed; (3) no other authorizations or approvals are or will be necessary in order to approve this Contract and to enable that Party to enter into and comply with the terms and conditions of this Contract; (4) the person executing this Contract on behalf of each Party has the authority to bind that Party; and (5) the Party is empowered by law to execute any other agreement or documents and to give such other approvals, in writing or otherwise, as are or may hereafter be required to implement and comply with this Contract.

Section 14.13. Officers or Agents. No officer or agent of the Parties is authorized to waive or modify any provision of this Contract. No amendment to or rescission of this Contract may be made except by a written document signed by the Parties' authorized representatives.

IN WITNESS WHEREOF, this Contract is executed as of the day and date first stated above, in Section 1.1.

EDWARDS AQUIFER AUTHORITY

THE UNIVERSITY OF TEXAS
AT SAN ANTONIO

By: _____
Roland Ruiz
General Manager

By: _____
Jessica Fernandez
Senior Director, Office of Contracts & Industry
Agreements

ATTEST:

By: _____
Jennifer Wong-Esparza
Assistant to the Board Secretary

APPROVED AS TO FORM:

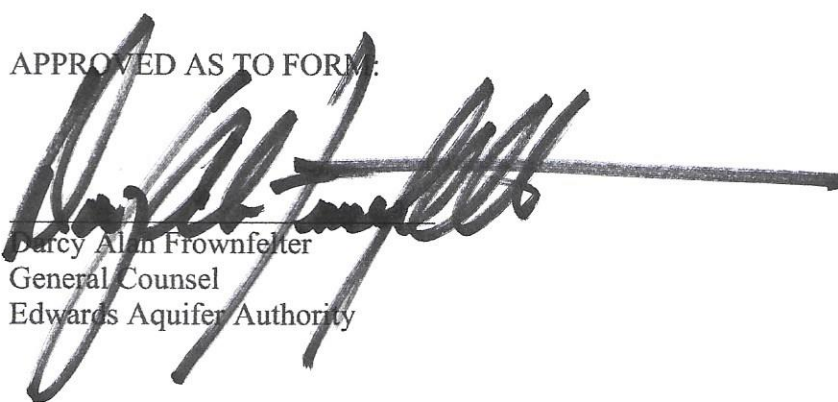

Darcy Alan Frownfelter
General Counsel
Edwards Aquifer Authority

EXHIBIT A SCOPE OF WORK

BACKGROUND

Geochemical sampling and dye tracing results suggest that multiple orifices within the Comal Springs complex have potentially varying source waters with differing flow paths in the Edwards Aquifer. Although some time-series data are available, there are limited high-frequency data sets that represent discharges from more than one of the major Comal Springs discharge orifices.

OBJECTIVES

The purpose of this Contract is to collect high-frequency and targeted time-series samples of water discharging from three major orifices at Comal Springs. Samples will be analyzed to assess the major ion, trace element, and stable and radiogenic isotope compositions of spring waters over time. Results of the analyses will be used to evaluate the effects of recharge events and varying spring flowrates on spring water chemistry to delineate possible recharge sources and flow paths. The project results could have a significant impact by identifying areas that are critical for maintenance of water quality in the Comal Springs system.

The following tasks will be completed over the term of the Contract.

Task 1: High-frequency monitoring of water quality over a period of approximately 24 months.

1. Biweekly water sampling of Comal Springs (1, 3, and 7) for field parameters, major ions, and selected trace metals.
2. Biweekly water sampling of Comal Springs (1, 3, and 7) for stable isotopes in water (δD , $\delta^{18}O$) and dissolved inorganic carbon ($\delta^{13}C$).
3. Periodic collection of water samples from Comal Springs (1, 3, and 7) for delivery to EAA for subsequent analyses of additional stable isotopes (e.g., $\delta^{18}O$ and $\delta^{15}N$ of dissolved nitrate and $\delta^{11}B$) and/or radiogenic isotopes (e.g., $^{87/86}Sr$, 3H and ^{14}C) as indicated by preliminary analyses.

Task 2: Investigate responses of springs to recharge via short-term time-series sampling.

1. Daily water sampling of Comal Springs (1, 3, and 7) for a period of approximately 2 to 5 days after storm events for field parameters, major ions, and selected trace metals.
2. Daily water sampling of Comal Springs (1, 3, and 7) for a period of approximately 2 to 5 days after storm events for stable isotopes in water (δD , $\delta^{18}O$) and dissolved inorganic carbon ($\delta^{13}C$).
3. Periodic collection of water samples from Comal Springs (1, 3, and 7) following storm events for delivery to EAA for subsequent analyses of additional stable isotopes (e.g., $\delta^{18}O$ and $\delta^{15}N$ of dissolved nitrate and $\delta^{11}B$) and/or radiogenic isotopes (e.g., $^{87/86}Sr$, 3H and ^{14}C) as indicated by preliminary analyses.

DELIVERABLES

The Participant will provide the following no later than December 31 of each calendar year of the Contract:

1. Preliminary data report containing geochemical results and analytical methods.
2. All associated geochemical results and sample location information in spreadsheet format.

The Participant will provide the following no later than August 31, 2022.

1. An Arc GIS geodatabase file(s) containing the spatial information used in the report.
2. A comprehensive data report detailing the geochemical results, methods of analysis, and associated maps of sampling locations.

EXHIBIT B
PROJECT BUDGET

The EAA will provide up to \$60,000 to Participant for salaries and wages, water chemistry analyses, and stable isotope analyses over the Contract term for work related to Tasks 1–2 as described in Exhibit A, Scope of Work. The EAA will also provide selected sampling equipment and instrumentation to Participant for use during the project. Equipment and instruments will be returned to EAA at the completion of project work.

Calendar Year	Salary and Wages	Water chemistry analyses, at Cost	Stable isotope analyses, at Cost	Total
2020	\$6,000	\$3,000	\$3,000	\$12,000
2021	\$18,000	\$6,000	\$6,000	\$30,000
2022	\$12,000	\$3,000	\$3,000	\$18,000
2020-2022 Total	\$36,000	\$12,000	\$12,000	\$60,000