

RESOLUTION AND ORDER NO. 10-20-981

OF THE EDWARDS AQUIFER AUTHORITY BOARD OF DIRECTORS TO ADOPT RESOLUTION AND ORDER NO. 10-20-981 APPROVING INTERLOCAL COOPERATION CONTRACT NO. 20-024-TES BETWEEN THE EAA AND THE CITY OF NEW BRAUNFELS FOR FUNDING FOR THE EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM FOR THE IMPLEMENTATION OF EACH OF THE CONSERVATION MEASURES ASSIGNED TO THE CITY OF NEW BRAUNFELS IN CHAPTER 5 OF THE HABITAT CONSERVATION PLAN, IN AN AMOUNT NOT TO EXCEED THE AMOUNTS IN AN APPROVED PROGRAM FUNDING APPLICATION FOR EACH FISCAL YEAR FOR THE PERIOD DURING THE REMAINING TERM OF THE INCIDENTAL TAKE PERMIT (2021-2028), AND AUTHORIZING THE GENERAL MANAGER TO EXECUTE THE CONTRACT.

WHEREAS, the Edwards Aquifer Authority (“EAA”) was created by the Edwards Aquifer Authority Act of May 30, 1993, 73<sup>rd</sup> 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, the EAA has the authority to enter into contracts; 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 Board of Directors (“Board”) 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 Board 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 Sections 1.01, 1.11, 1.14 and 1.26A of the Act, the EAA is authorized to implement programs designed to protect federally-listed threatened and endangered species associated with the Aquifer; 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 by the U.S. Fish and Wildlife Service 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 (the “Permittees”), requires the Permittees to comply with the terms and conditions contained in the Edwards Aquifer Habitat Conservation Plan (Nov. 2012) (“EAHCP”) approved by the Service; and

WHEREAS, the Chapter 5 of the EAHCP, among other things, requires the City of New Braunfels to implement various Conservation Measures intended to minimize or mitigate the impact of the use of groundwater withdrawn from the Aquifer on the federally-listed threatened and endangered species associated with the Aquifer and contribute to the recovery of such species; and

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

WHEREAS, Section 6.1 of the FMA requires the City of New Braunfels to submit to the EAA a Program Funding Application (“PFA”) to provide funding from the EAA for each Fiscal Year during the term of the ITP to implement the City of New Braunfels’s respective Conservation Measures, and such PFAs are required to be approved by the Board; and

WHEREAS, pursuant to Section 6.1 of the FMA, the City of New Braunfels each year files with the EAA a PFA for each fiscal year during the term of the ITP seeking funding for the Conservation Measures assigned to the City of New Braunfels under Chapter 5 of the EAHCP; and

WHEREAS, the EAA staff annually reviews each PFA and determines whether they are complete and meet the approval criteria in Subsection 6.1.3 of the FMA, and makes a recommendation to the Board whether a PFA should be approved as filed; 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 Conservation Measures

being implemented by the City of New Braunfels; and

WHEREAS, the EAA's Finance Committee, on September 22, 2020, voted to recommend the Board approve the resolution and order approving the Interlocal Cooperation Contract No. 20-024-TES between the Edwards Aquifer Authority and the City of New Braunfels for Edwards Aquifer Habitat Conservation Plan Program Funding (the "Contract"), attached hereto, and authorizing the General Manager to execute the Contract; and

WHEREAS, the Contract is an interlocal contract entered into under the authority of Sections 791.011(a) of the Interlocal Cooperation Act ("ICA"), Chapter 791, Texas Government Code; and

WHEREAS, under Section 791.003(4) of the ICA, the EAA and City of New Braunfels 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 because they involve the public health and welfare, planning, engineering, and/or other governmental functions in which the Parties are mutually interested; and

WHEREAS, Article 10.02(b) of the EAA's Bylaws requires that any agreement, contract, or other procurement instrument whose value exceeds \$100,000 be approved by a written resolution of the Board; and

WHEREAS, the total amount to be paid to the City of New Braunfels under the terms of the Contract and according to the PFAs of the City of New Braunfels that are annually approved by the Board for each Fiscal Year during the term of the ITP will be deemed to be attached as Exhibit A to the Contract and will exceed \$100,000; and

WHEREAS, the Contract which is the subject of this Resolution and Order and attached hereto has been reviewed by the EAA's legal counsel prior to Board approval; and

WHEREAS, a regular meeting of the Board was held on October 13, 2020, 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, the Board duly considered the agenda item that is the subject of this Resolution and Order; and

WHEREAS, a vote of the majority of the quorum of the Board present passed on, voted in favor of, and adopted this Resolution and Order; and

WHEREAS, it is in the public interest that the EAA enter into the Contract for the funding of the implementation of the Conservation Measures of the City of New Braunfels in Chapter 5 of the EAHCP.

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 Interlocal Cooperation Contract No. 20-024-TES between the Edwards Aquifer Authority and the City of New Braunfels for Edwards Aquifer Habitat Conservation Plan Program Funding for an amount not to exceed the annual amount, as may be amended, in a Program Funding Application approved by the Board of Directors for each Fiscal Year during the remaining term of the ITP (2021-2028) to fund the undertaking and performance of each of the specific Conservation Measures assigned to the City of New Braunfels in Chapter 5 of the EAHCP, which Program Funding Application upon approval by the Board shall be deemed to be attached as Exhibit A to the Contract and made a part thereof for all purposes.
- Section 3. The General Manager is authorized to execute and deliver the Contract attached hereto, and to release payments as may be 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 13TH DAY OF OCTOBER 2020.

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Luana Buckner  
Chairman, Board of Directors

ATTEST:

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Enrique Valdivia  
Secretary, Board of Directors

APPROVED AS TO FORM:

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Darcy Alan Frownfelter  
General Counsel