



EDWARDS AQUIFER HABITAT CONSERVATION PLAN PROGRAM

AMENDMENT NO. 1
TO THE
INTERLOCAL CONTRACT
BETWEEN THE
EDWARDS AQUIFER AUTHORITY AND THE SAN ANTONIO WATER SYSTEM
FOR THE USE OF THE TWIN OAKS AQUIFER STORAGE AND RECOVERY
PROJECT FOR CONTRIBUTION TO SPRINGFLOW PROTECTION

Dated Effective: _____

THIS AMENDMENT AGREEMENT (“Amendment Agreement”) is entered into under the Interlocal Cooperation Act, Chapter 791, Texas Government Code, by and between the Edwards Aquifer Authority (“EAA”), a conservation and reclamation district and political subdivision of the State of Texas, and the City of San Antonio, acting by and through its San Antonio Water System Board of Trustees (“SAWS”), to amend that certain Interlocal Contract between the Edwards Aquifer Authority and the San Antonio Water System for the Use of the Twin Oaks Aquifer Storage and Recovery Project for Contribution to Springflow Protection (eff. Aug. 14, 2013) (“ASR Contract”). This Amendment Agreement is entered into to be effective on the date of execution by the last signing Party as indicated below (“Effective Date”). Each of these entities is, at times, referred to in this Amendment Agreement individually as a “Party,” and both are referred to collectively as “Parties.”

RECITALS

WHEREAS, the Parties entered into the ASR Contract; and

WHEREAS, the Parties are pursuing adaptive management changes to the use of the Twin Oaks Aquifer Storage and Recovery Project of SAWS for contribution to springflow protection under Section 5.5.1 of the Edwards Aquifer Habitat Conservation Plan; and

WHEREAS, the Parties now desire to amend the ASR Contract in light thereof.

AGREEMENT

NOW, THEREFORE, for the mutual consideration expressed in this Amendment Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Amendment.** As of the Effective Date, the Parties hereby amend the ASR Contract as follows:

Section 6.2 is amended to read as follows:

6.2 Permitted Edwards Rights

(a) The EAA shall be solely responsible to acquire and maintain Permitted Edwards Rights necessary to provide HCP Groundwater to SAWS. The EAA may acquire the rights itself or, after consultation with the Implementing Committee, engage a third party to act as its agent.

(b) The EAA shall use reasonable efforts to acquire and maintain as soon as practicable leases of Permitted Edwards Rights in an amount not to exceed 16,667 AF per annum that may be exercised on or after January 1, 2013.

(c) The EAA may not transfer the leases to a third party unless SAWS certifies that the amount of HCP Groundwater required to be in storage in the ASR Project under Subsection 6.7(c) has been satisfied. If SAWS makes this certification, the EAA may transfer to a third party, including to SAWS, the right to make withdrawals of groundwater from the Aquifer under the leases. SAWS shall have rights of first refusal of any transfers proposed to be made by the EAA under this subsection. The EAA shall condition any such transfers upon a right of recall in the event such leases are needed to accomplish the objectives of this Contract.

Section 6.3 header and subsection (g) is amended to read as follows:

6.3 Notice of Availability; Partial Assignment of Leases; Credit of HCP Groundwater in Storage

(g) The EAA desires for SAWS to use, and SAWS desires to use, HCP Groundwater according to the terms and conditions of this Contract. Therefore, as consideration for the duty to forbear under Section 5, through the notice of availability issued under this Section 6, the EAA grants to SAWS the right to withdraw HCP Groundwater from the Aquifer as provided in the notice and transmit such groundwater to the ASR Project for recharge, storage, and recovery under the terms and conditions of this Contract. The notice of availability is to be considered by the Parties to be a transfer and assignment to SAWS of the EAA's rights to make withdrawals from the Aquifer under the Permitted Edwards Rights which have been leased that have been acquired by the EAA under Section 6.2 for the remaining term thereof. This transfer and assignment shall not include any other rights, duties or obligation of the EAA under the leases, nor does SAWS agree to assume any such other rights, duties or obligations. The EAA agrees to continue to keep, perform and fulfill or cause to be performed all of the other rights, duties or obligations contained in the leases which by the terms or conditions thereof are imposed upon the EAA. This transfer and assignment is intended by the Parties to be self-implementing under the terms and conditions of the notice and to apply to any leases that are in effect on the Effective Date of this Contract, and any such leases that may become effective thereafter during its term, without the need of the Parties having to execute any documents other than the notice of availability to effectuate this transfer and assignment.

Section 6.5 is amended to read as follows:

6.5 Failure to Obtain Leases

(a) SAWS acknowledges that the acquisition by the EAA of the leases as provided for in Section 6.2 is dependent on the availability of Permitted Edwards Rights through transactions based on willing buyers and sellers. Therefore, as long as the EAA, or its agent, is using reasonable efforts, SAWS shall not have a right of action against the EAA, or its agent, in the event that the EAA is unable to fulfill its obligations to timely obtain leases in the amounts required under Subsection 6.2(b).

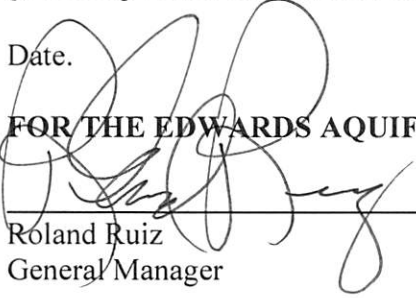
(b) If, on or after December 31, 2018, the EAA has not acquired the amounts of leases required under Subsection 6.2(b), the EAA shall advise the Program Manager and the Implementing Committee and request that the Committee refer the matter to the AMP process under Article 7 of the FMA for review and recommendations on what adjustments, if any, to the ASR Program, or other Conservation Measure in Chapter 5 of the HCP, are reasonable and appropriate under the circumstances. In no event, however, shall SAWS be required to utilize the ASR Project or forbear in any manner other than as described in Section 5 of this Contract.

2. No Effect on Remainder of the ASR Contract. Except as provided in this Amendment Agreement, the ASR Contract shall remain in full force and effect in all other respects. This Amendment Agreement shall be governed by and construed under the terms of the ASR Contract.

IN WITNESS WHEREOF, the Parties acting under authority of their respective governing bodies have caused this Amendment Agreement to be duly executed as of the Effective

Date.

FOR THE EDWARDS AQUIFER AUTHORITY:

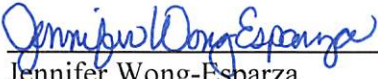


Roland Ruiz
General Manager

3-15-2018

Date

ATTEST:




Jennifer Wong-Esparza
Assistant to Board Secretary

APPROVED AS TO FORM:



Davey Alan Frownfelter
General Counsel

FOR THE CITY OF SAN ANTONIO, ACTING BY AND THROUGH ITS SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:



Robert R. Puente
President/CEO

04-11-18


Date

ATTEST:



Becky Gonzalez *Florinda Gonzalez*
Executive Administrative Assistant

APPROVED AS TO FORM:



Phil Steven Kosub
Senior Water Resources Counsel

