



**NOTICE OF MEETING OF THE  
BARTON SPRINGS EDWARDS AQUIFER CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

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**Thursday, February 8, 2024**

**5:00 PM**

**IN-PERSON**

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Notice is given that a **Regular Meeting** of the Board of Directors (Board) of the Barton Springs/Edwards Aquifer Conservation District will be held on **Thursday, February 8, 2024** commencing at **5:00 p.m.** at **the District office, located at 1124 Regal Row, Austin, Texas.**

This meeting will be audio recorded and the recording will be available on the District’s website after the meeting.

Public Comments at the Board Meeting – Please complete a comment card prior to the start of the meeting. Each registered person will be recognized and identified by the Presiding Officer or staff moderating the communications when it is their turn to speak. **Public comment is limited to 3 minutes per person.**

**AGENDA**

Note: The Board of Directors of the Barton Springs/Edwards Aquifer Conservation District reserves the right to meet in Executive Session at any time during the course of this meeting to discuss any of the matters listed on this agenda, as authorized by the Texas Government Code Sections §551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donati), 418.18374 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Homeland Security). No final action or decision will be made in Executive Session.

- 1. Call to Order.**
- 2. Citizen Communications (Public Comments of a General Nature).**
- 3. Consent Agenda.** *(Note: These items may be considered and approved as one motion. Directors or citizens may request any consent item be removed from the consent agenda, for consideration and possible approval as a separate item of Regular Business on this agenda.)*
  - a. Approval of Financial Reports under the Public Funds Investment Act, Directors’ Compensation Claims, and Specified Expenditures greater than \$5,000.
  - b. Approval of minutes of the Board’s January 11, 2024, Regular Meeting and Public Hearing.

**4. General Manager’s Report. Discussion and possible action.**

**Topics**

- a. Review of key team activities/projects.
  - i. Trinity Sustainable Yield Study
  - ii. Database update
  - iii. Administrative Program Review/Activities
- b. Aquifer status update.
- c. Upcoming events of possible interest.

**5. Discussion and possible action.**

- a. Discussion and possible action on EEOC No. 451-2024-00138 charge of discrimination by Brian Smith against the District.
- b. Discussion and possible action related to a Report of Investigation, Notice of Alleged Violation, and Draft Agreed Order for initiation and resolving enforcement proceeding concerning Roy Seiders for failure to reduce pumping during District declared drought.
- c. Discussion and possible action on contract with City of Austin for installation of Multiport Monitor Well in Zilker Park.
- d. Discussion and possible action on well-impact analysis award solely to LRE Water and approve new scope of work under existing Master Service Agreement.
- e. Discussion and possible action related to the performance and compliance of District permittees with their User Drought Contingency Plan curtailments.
- f. Discussion and possible action on declaring drought-stage change.
- g. Discussion and possible action on the District’s general counsel and transition to new lead attorney by end of the calendar year.
- h. Discussion and possible action on Hill Country developments outside of the District’s territory (e.g., Blizexas LLC - Rockingwall Ranch Proposed Permit No. WQ0016111001)
- i. Discussion and possible action on holding a March Board meeting.

**6. Director Reports.**

Directors may report on their involvement in activities and dialogue that are of likely interest to the Board, in one or more of the following topical areas:

- Meetings and conferences attended or that will be attended;
- Board committee updates;
- Conversations with public officials, permittees, stakeholders, and other constituents;

- Commendations; and
- Issues or problems of concern.

## **7. Adjournment.**

**Please note:** This agenda and available related documentation, if any, have been posted on the District website, [www.bseacd.org](http://www.bseacd.org). If you have a special interest in a particular item on this agenda and would like any additional documentation that may be developed for Board consideration, please let staff know at least 24 hours in advance of the Board Meeting so that we can have those copies made for you. The Barton Springs/Edwards Aquifer Conservation District is committed to compliance with the Americans with Disabilities Act (ADA). Reasonable accommodations and equal opportunity for effective communications will be provided upon request. Please contact the District office at 512-282-8441 at least 24 hours in advance if accommodation is needed.

Item 1

Call to Order

## Item 2

### Citizen Communications

## Item 3

### Consent Agenda

*(Note: These items may be considered and approved as one motion. Directors or citizens may request any consent item be removed from the consent agenda, for consideration and possible approval as a separate item of Regular Business on this agenda.)*

- a. Approval of Financial Reports under the Public Funds Investment Act, Directors' Compensation Claims, and Specified Expenditures greater than \$5,000.
  
- b. Approval of minutes of the Board's January 11, 2024, Regular Meeting and Public Hearing.

# **Financial Reports – January 2024**

## **February 8, 2024 Board Meeting**

(These report numbers are pre-audit adjustments)

### **1. Profit and Loss Budget vs Actual**

September 1, 2023 through January 31, 2024

### **2. Profit and Loss Previous Year Comparison**

September 1, 2023 through January 31, 2024

### **3. Balance Sheet Previous Year Comparison**

As of January 31, 2024 (compared to January 31, 2023)

**1. Profit and Loss Budget vs Actual**

September 1, 2023 through January 31, 2024



## Barton Springs Edwards Aquifer Profit & Loss Budget vs. Actual September 2023 through January 2024

	Sep '23 - Jan 24	Budget
<b>Ordinary Income/Expense</b>		
<b>Income</b>		
4400.0 · Interest Income	29,700.86	40,000.00
4625.0 · MISCELLANEOUS INCOME	676.03	
4800.0 · USAGE AND PRODUCTION FEES	934,418.82	1,648,612.00
4810.0 · OTHER FEES	146,731.50	12,300.00
<b>Total Income</b>	1,111,527.21	1,700,913.00
<b>Expense</b>		
6000.0 · UTILITIES	8,592.90	22,000.00
6005.0 · Print/Copy/Photo Services	29.17	2,000.00
6007.0 · Postage/Freight/Shipping	104.04	2,000.00
6010.0 · Office Supplies	3,101.47	6,000.00
6010.2 · Office Furniture	0.00	5,000.00
6011.0 · Comp Hardware-Plotter Supplies	9,773.23	25,000.00
6014.0 · Software Acquisition & Upgrades	0.00	6,000.00
6015.0 · IT Monthly Maintenance	11,765.30	30,000.00
6016.0 · Meeting Expense	1,162.08	4,500.00
6017.3 · Sponsorships	0.00	5,000.00
6019.0 · Subscriptions/Publications	263.43	5,000.00
6020.0 · Advertising	2,206.19	4,000.00
6021.0 · MISCELLANEOUS EXPENSES	268.95	
6022.0 · Accounting System Operation	698.00	7,500.00
6023.0 · MAINTENANCE	6,836.49	23,500.00
6030.0 · CAPITAL OUTLAY-over 5,000	0.00	40,000.00
6040.0 · LEASES	3,229.80	9,650.00
6065.0 · DIRECTOR EXPENSES	55.16	2,500.00
6066.0 · Directors Compensation	5,850.00	25,000.00
6075.0 · DUES & MEMBERSHIPS	2,490.00	6,100.00
6080.0 · COMMUNICATIONS AND OUTREACH		
6080.0 · COMMUNICATIONS AND OUTREACH	247.57	20,300.00
6081.0 · REGULATORY COMPLIANCE	686.00	7,500.00
6084.92 · GENERAL MANAGEMENT	460.88	25,000.00
6089.0 · AQUIFER SCIENCE	1,829.63	15,000.00
6095.0 · CONTRACTED SUPPORT	31,118.17	130,750.00
6100.0 · INSURANCE - DISTRICT	2,261.80	7,047.00
6150.0 · INSURANCE - GROUP	39,030.49	134,650.00
6160.0 · LEGAL SERVICES	17,647.25	85,000.00
6170.0 · PROFESSIONAL SERVICES	50,789.96	111,150.00
6179.0 · LEGISLATION	3,000.00	12,000.00
6180.0 · PROFESSIONAL DEVELOPMENT	1,001.47	25,000.00
6199.0 · SALARIES AND WAGES	317,695.72	751,339.00
6203.0 · TAXES & BENEFITS	47,271.43	112,549.00
6690.0 · Reconciliation Discrepancies	780.22	
6800.0 · PROJECTS	39,147.90	2,500.00

## Barton Springs Edwards Aquifer Profit & Loss Budget vs. Actual September 2023 through January 2024

	Sep '23 - Jan 24	Budget
Total Expense	609,394.70	1,670,535.00
<b>Other Income</b>		
9000.00 · Transfer from Reserves	0.00	105,375.00
<b>Total Other Income</b>	0.00	105,375.00
<b>Other Expense</b>		
9001.00 · Transfer to Reserves	0.00	135,000.00
<b>Total Other Expense</b>	0.00	135,000.00
<b>Net Other Income</b>	0.00	-29,625.00
<b>Net Income</b>	<b>502,132.51</b>	<b>753.00</b>

## Barton Springs Edwards Aquifer Profit & Loss Budget vs. Actual September 2023 through January 2024

	<u>\$ Over Budget</u>	<u>% of Budget</u>
<b>Ordinary Income/Expense</b>		
<b>Income</b>		
4400.0 · Interest Income	-10,299.14	74.25%
4625.0 · MISCELLANEOUS INCOME		
4800.0 · USAGE AND PRODUCTION FEES	-714,193.18	56.68%
4810.0 · OTHER FEES	134,431.50	1,192.94%
<b>Total Income</b>	<u>-589,385.79</u>	<u>65.35%</u>
<b>Expense</b>		
6000.0 · UTILITIES	-13,407.10	39.06%
6005.0 · Print/Copy/Photo Services	-1,970.83	1.46%
6007.0 · Postage/Freight/Shipping	-1,895.96	5.2%
6010.0 · Office Supplies	-2,898.53	51.69%
6010.2 · Office Furniture	-5,000.00	0.0%
6011.0 · Comp Hardware-Plotter Supplies	-15,226.77	39.09%
6014.0 · Software Acquisition & Upgrades	-6,000.00	0.0%
6015.0 · IT Monthly Maintenance	-18,234.70	39.22%
6016.0 · Meeting Expense	-3,337.92	25.82%
6017.3 · Sponsorships	-5,000.00	0.0%
6019.0 · Subscriptions/Publications	-4,736.57	5.27%
6020.0 · Advertising	-1,793.81	55.16%
6021.0 · MISCELLANEOUS EXPENSES		
6022.0 · Accounting System Operation	-6,802.00	9.31%
6023.0 · MAINTENANCE	-16,663.51	29.09%
6030.0 · CAPITAL OUTLAY-over 5,000	-40,000.00	0.0%
6040.0 · LEASES	-6,420.20	33.47%
6065.0 · DIRECTOR EXPENSES	-2,444.84	2.21%
6066.0 · Directors Compensation	-19,150.00	23.4%
6075.0 · DUES & MEMBERSHIPS	-3,610.00	40.82%
6080.0 · COMMUNICATIONS AND OUTREACH		
6080.0 · COMMUNICATIONS AND OUTREACH	-20,052.43	1.22%
6081.0 · REGULATORY COMPLIANCE	-6,814.00	9.15%
6084.92 · GENERAL MANAGEMENT	-24,539.12	1.84%
6089.0 · AQUIFER SCIENCE	-13,170.37	12.2%
6095.0 · CONTRACTED SUPPORT	-99,631.83	23.8%
6100.0 · INSURANCE - DISTRICT	-4,785.20	32.1%
6150.0 · INSURANCE - GROUP	-95,619.51	28.99%
6160.0 · LEGAL SERVICES	-67,352.75	20.76%
6170.0 · PROFESSIONAL SERVICES	-60,360.04	45.7%
6179.0 · LEGISLATION	-9,000.00	25.0%
6180.0 · PROFESSIONAL DEVELOPMENT	-23,998.53	4.01%
6199.0 · SALARIES AND WAGES	-433,643.28	42.28%
6203.0 · TAXES & BENEFITS	-65,277.57	42.0%
6690.0 · Reconciliation Discrepancies		
6800.0 · PROJECTS	<u>36,647.90</u>	<u>1,565.92%</u>

## Barton Springs Edwards Aquifer Profit & Loss Budget vs. Actual September 2023 through January 2024

	<b>\$ Over Budget</b>	<b>% of Budget</b>
Total Expense	-1,061,140.30	36.48%
<b>Other Income</b>		
9000.00 · Transfer from Reserves	-105,375.00	0.0%
<b>Total Other Income</b>	-105,375.00	0.0%
<b>Other Expense</b>		
9001.00 · Transfer to Reserves	-135,000.00	0.0%
<b>Total Other Expense</b>	-135,000.00	0.0%
<b>Net Other Income</b>	29,625.00	0.0%
<b>Net Income</b>	<b>501,379.51</b>	<b>66,684.26%</b>

## **2. Profit and Loss Previous Year Comparison**

September 1, 2023 through January 31, 2024

## Barton Springs Edwards Aquifer Profit & Loss Prev Year Comparison September 2023 through January 2024

	<u>Sep '23 - Jan 24</u>	<u>Sep '22 - Jan 23</u>
<b>Ordinary Income/Expense</b>		
<b>Income</b>		
4400.0 · Interest Income	29,700.86	26,031.88
4625.0 · MISCELLANEOUS INCOME	676.03	41,638.09
4800.0 · USAGE AND PRODUCTION FEES	934,418.82	889,554.40
4810.0 · OTHER FEES	146,731.50	53,529.76
<b>Total Income</b>	<u>1,111,527.21</u>	<u>1,010,754.13</u>
<b>Expense</b>		
6000.0 · UTILITIES	8,592.90	8,123.03
6005.0 · Print/Copy/Photo Services	29.17	1,147.89
6007.0 · Postage/Freight/Shipping	104.04	615.70
6010.0 · Office Supplies	3,101.47	2,607.90
6011.0 · Comp Hardware-Plotter Supplies	9,773.23	4,704.35
6014.0 · Software Acquisition & Upgrades	0.00	649.37
6015.0 · IT Monthly Maintenance	11,765.30	10,959.70
6016.0 · Meeting Expense	1,162.08	3,036.16
6019.0 · Subscriptions/Publications	263.43	1,288.48
6020.0 · Advertising	2,206.19	332.00
6021.0 · MISCELLANEOUS EXPENSES	268.95	844.08
6022.0 · Accounting System Operation	698.00	1,718.20
6023.0 · MAINTENANCE	6,836.49	11,576.66
6040.0 · LEASES	3,229.80	3,904.80
6065.0 · DIRECTOR EXPENSES	55.16	60.25
6066.0 · Directors Compensation	5,850.00	3,250.00
6075.0 · DUES & MEMBERSHIPS	2,490.00	2,635.00
6080.0 · COMMUNICATIONS AND OUTREACH	247.57	2,183.03
6081.0 · REGULATORY COMPLIANCE	686.00	3,250.00
6084.92 · GENERAL MANAGEMENT	460.88	0.00
6089.0 · AQUIFER SCIENCE	1,829.63	1,316.44
6095.0 · CONTRACTED SUPPORT	31,118.17	6,204.40
6100.0 · INSURANCE - DISTRICT	2,261.80	4,148.84
6150.0 · INSURANCE - GROUP	39,030.49	49,401.12
6160.0 · LEGAL SERVICES	17,647.25	19,075.00
6170.0 · PROFESSIONAL SERVICES	50,789.96	29,892.47
6179.0 · LEGISLATION	3,000.00	10,000.00
6180.0 · PROFESSIONAL DEVELOPMENT	1,001.47	2,056.05
6199.0 · SALARIES AND WAGES	317,695.72	366,133.27
6203.0 · TAXES & BENEFITS	47,271.43	38,382.48
6690.0 · Reconciliation Discrepancies	780.22	790.08
6800.0 · PROJECTS	39,147.90	0.00
<b>Total Expense</b>	<u>609,394.70</u>	<u>590,286.75</u>
<b>Net Income</b>	<u><u>502,132.51</u></u>	<u><u>420,467.38</u></u>

## Barton Springs Edwards Aquifer Profit & Loss Prev Year Comparison September 2023 through January 2024

	<u>\$ Change</u>	<u>% Change</u>
<b>Ordinary Income/Expense</b>		
<b>Income</b>		
4400.0 · Interest Income	3,668.98	14.09%
4625.0 · MISCELLANEOUS INCOME	-40,962.06	-98.38%
4800.0 · USAGE AND PRODUCTION FEES	44,864.42	5.04%
4810.0 · OTHER FEES	93,201.74	174.11%
<b>Total Income</b>	<u>100,773.08</u>	<u>9.97%</u>
<b>Expense</b>		
6000.0 · UTILITIES	469.87	5.78%
6005.0 · Print/Copy/Photo Services	-1,118.72	-97.46%
6007.0 · Postage/Freight/Shipping	-511.66	-83.1%
6010.0 · Office Supplies	493.57	18.93%
6011.0 · Comp Hardware-Plotter Supplies	5,068.88	107.75%
6014.0 · Software Acquisition & Upgrades	-649.37	-100.0%
6015.0 · IT Monthly Maintenance	805.60	7.35%
6016.0 · Meeting Expense	-1,874.08	-61.73%
6019.0 · Subscriptions/Publications	-1,025.05	-79.56%
6020.0 · Advertising	1,874.19	564.52%
6021.0 · MISCELLANEOUS EXPENSES	-575.13	-68.14%
6022.0 · Accounting System Operation	-1,020.20	-59.38%
6023.0 · MAINTENANCE	-4,740.17	-40.95%
6040.0 · LEASES	-675.00	-17.29%
6065.0 · DIRECTOR EXPENSES	-5.09	-8.45%
6066.0 · Directors Compensation	2,600.00	80.0%
6075.0 · DUES & MEMBERSHIPS	-145.00	-5.5%
6080.0 · COMMUNICATIONS AND OUTREACH	-1,935.46	-88.66%
6081.0 · REGULATORY COMPLIANCE	-2,564.00	-78.89%
6084.92 · GENERAL MANAGEMENT	460.88	100.0%
6089.0 · AQUIFER SCIENCE	513.19	38.98%
6095.0 · CONTRACTED SUPPORT	24,913.77	401.55%
6100.0 · INSURANCE - DISTRICT	-1,887.04	-45.48%
6150.0 · INSURANCE - GROUP	-10,370.63	-20.99%
6160.0 · LEGAL SERVICES	-1,427.75	-7.49%
6170.0 · PROFESSIONAL SERVICES	20,897.49	69.91%
6179.0 · LEGISLATION	-7,000.00	-70.0%
6180.0 · PROFESSIONAL DEVELOPMENT	-1,054.58	-51.29%
6199.0 · SALARIES AND WAGES	-48,437.55	-13.23%
6203.0 · TAXES & BENEFITS	8,888.95	23.16%
6690.0 · Reconciliation Discrepancies	-9.86	-1.25%
6800.0 · PROJECTS	39,147.90	100.0%
<b>Total Expense</b>	<u>19,107.95</u>	<u>3.24%</u>
<b>Net Income</b>	<u><u>81,665.13</u></u>	<u><u>19.42%</u></u>

### **3. Balance Sheet Previous Year Comparison**

As of January 31, 2024 (compared to January 31, 2023)



**Barton Springs Edwards Aquifer**  
**Balance Sheet Prev Year Comparison**  
As of January 31, 2024

	<u>Jan 31, 24</u>	<u>Jan 31, 23</u>	<u>\$ Change</u>
<b>ASSETS</b>			
<b>Current Assets</b>			
<b>Checking/Savings</b>			
1000.0 · Cash in Bank-Checking Truist	64,100.42	49,935.43	14,164.99
1010.0 · Cash in Bank - Payroll Truist	9,125.61	29,835.27	-20,709.66
1030.0 · TexPool Funds - General			
1030.1 · AqProtectRes-Well Pluggings	53,750.00	53,750.00	0.00
1030.12 · AqProtectRes -Drought Mgmt	160,365.00	0.00	160,365.00
1030.21 · Cash Flow Reserve	175,000.00	175,000.00	0.00
1030.0 · TexPool Funds - General - Other	1,251,328.64	930,875.29	320,453.35
<b>Total 1030.0 · TexPool Funds - General</b>	<u>1,640,443.64</u>	<u>1,159,625.29</u>	<u>480,818.35</u>
1040.0 · TexPool Funds - Contingency	641,544.31	615,265.07	26,279.24
1045.0 · TexPool Funds - Reserve	68,638.39	65,826.72	2,811.67
<b>Total Checking/Savings</b>	<u>2,423,852.37</u>	<u>1,920,487.78</u>	<u>503,364.59</u>
<b>Accounts Receivable</b>			
1200.0 · Accounts Receivable			
1200.1 · A/R DMF	3,140.00	950.00	2,190.00
1200.0 · Accounts Receivable - Other	31,246.86	41,212.75	-9,965.89
<b>Total 1200.0 · Accounts Receivable</b>	<u>34,386.86</u>	<u>42,162.75</u>	<u>-7,775.89</u>
<b>Total Accounts Receivable</b>	<u>34,386.86</u>	<u>42,162.75</u>	<u>-7,775.89</u>
<b>Other Current Assets</b>			
1100.0 · Petty Cash	544.51	300.00	244.51
1300.0 · Pre-paid Expenses	7,770.69	9,953.82	-2,183.13
1499.0 · Undeposited Funds-A/R payments	39,264.37	0.00	39,264.37
<b>Total Other Current Assets</b>	<u>47,579.57</u>	<u>10,253.82</u>	<u>37,325.75</u>
<b>Total Current Assets</b>	<u>2,505,818.80</u>	<u>1,972,904.35</u>	<u>532,914.45</u>
<b>Fixed Assets</b>			
1400.0 · Field Equipment	376,487.89	376,487.89	0.00
1410.0 · Office Equipment & Furniture	19,722.90	19,722.90	0.00
1410.1 · Computer Hardware & Software	19,329.69	19,329.69	0.00
1420.0 · Vehicles	52,363.03	52,363.03	0.00
1430.0 · Accumulated Depreciation	-608,852.24	-608,852.24	0.00
1440.0 · Land (Antioch Cave)	165,415.00	165,415.00	0.00
1445.0 · Office Building	268,588.04	268,588.04	0.00
<b>Total Fixed Assets</b>	<u>293,054.31</u>	<u>293,054.31</u>	<u>0.00</u>
<b>Other Assets</b>			
1500.0 · Organizational Costs	300,783.26	300,783.26	0.00
1510.0 · Accumulated Amortization	-326,324.26	-326,324.26	0.00
1600.0 · Deposits Paid (Utilities)	71.00	71.00	0.00
<b>Total Other Assets</b>	<u>-25,470.00</u>	<u>-25,470.00</u>	<u>0.00</u>
<b>TOTAL ASSETS</b>	<u><u>2,773,403.11</u></u>	<u><u>2,240,488.66</u></u>	<u><u>532,914.45</u></u>
<b>LIABILITIES &amp; EQUITY</b>			
<b>Liabilities</b>			
<b>Current Liabilities</b>			

**Barton Springs Edwards Aquifer**  
**Balance Sheet Prev Year Comparison**  
As of January 31, 2024

	<u>Jan 31, 24</u>	<u>Jan 31, 23</u>	<u>\$ Change</u>
<b>Accounts Payable</b>			
2000.0 · Accounts Payable	-0.76	0.00	-0.76
<b>Total Accounts Payable</b>	-0.76	0.00	-0.76
<b>Credit Cards</b>			
2007.0 · Truist VISA	-4,807.77	117.99	-4,925.76
<b>Total Credit Cards</b>	-4,807.77	117.99	-4,925.76
<b>Other Current Liabilities</b>			
2010.0 · Rebates Payable - Cons Credits	0.00	0.01	-0.01
2100.0 · Deferred Revenue	75,741.00	75,741.00	0.00
2110.0 · Direct Deposit Liabilities	1,035.01	1,035.01	0.00
2200.0 · Fica & Medicare Withheld	1,735.71	-11.31	1,747.02
2220.0 · Federal Income Tax Withheld	1,528.55	-1,065.01	2,593.56
2230.0 · Employer Fica & Med Payable	1,596.46	-150.56	1,747.02
2250.0 · TWC Unemployment Tax Payable	51.88	64.09	-12.21
2260.0 · Retirement Withheld	1,253.18	0.00	1,253.18
2270.0 · Payroll Liabilities	1,912.87	0.09	1,912.78
2300.0 · Accrued Vacation Payable	42,511.01	49,232.20	-6,721.19
<b>Total Other Current Liabilities</b>	127,365.67	124,845.52	2,520.15
<b>Total Current Liabilities</b>	122,557.14	124,963.51	-2,406.37
<b>Total Liabilities</b>	122,557.14	124,963.51	-2,406.37
<b>Equity</b>			
3000.0 · Fund Balance	1,783,286.20	1,329,630.51	453,655.69
3000.3 · Invested in Capital Assets	365,127.26	365,127.26	0.00
3110.0 · Reserve for Petty Cash	300.00	300.00	0.00
<b>Net Income</b>	502,132.51	420,467.38	81,665.13
<b>Total Equity</b>	2,650,845.97	2,115,525.15	535,320.82
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>2,773,403.11</u></u>	<u><u>2,240,488.66</u></u>	<u><u>532,914.45</u></u>

**Barton Springs Edwards Aquifer  
Balance Sheet Prev Year Comparison  
As of January 31, 2024**

	<b>% Change</b>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
1000.0 · Cash in Bank-Checking Truist	28.37%
1010.0 · Cash in Bank - Payroll Truist	-69.41%
1030.0 · TexPool Funds - General	
1030.1 · AqProtectRes-Well Pluggings	0.0%
1030.12 · AqProtectRes -Drought Mgmt	100.0%
1030.21 · Cash Flow Reserve	0.0%
1030.0 · TexPool Funds - General - Other	34.43%
<b>Total 1030.0 · TexPool Funds - General</b>	<b>41.46%</b>
1040.0 · TexPool Funds - Contingency	4.27%
1045.0 · TexPool Funds - Reserve	4.27%
<b>Total Checking/Savings</b>	<b>26.21%</b>
<b>Accounts Receivable</b>	
1200.0 · Accounts Receivable	
1200.1 · A/R DMF	230.53%
1200.0 · Accounts Receivable - Other	-24.18%
<b>Total 1200.0 · Accounts Receivable</b>	<b>-18.44%</b>
<b>Total Accounts Receivable</b>	<b>-18.44%</b>
<b>Other Current Assets</b>	
1100.0 · Petty Cash	81.5%
1300.0 · Pre-paid Expenses	-21.93%
1499.0 · Undeposited Funds-A/R payments	100.0%
<b>Total Other Current Assets</b>	<b>364.02%</b>
<b>Total Current Assets</b>	<b>27.01%</b>
<b>Fixed Assets</b>	
1400.0 · Field Equipment	0.0%
1410.0 · Office Equipment & Furniture	0.0%
1410.1 · Computer Hardware & Software	0.0%
1420.0 · Vehicles	0.0%
1430.0 · Accumulated Depreciation	0.0%
1440.0 · Land (Antioch Cave)	0.0%
1445.0 · Office Building	0.0%
<b>Total Fixed Assets</b>	<b>0.0%</b>
<b>Other Assets</b>	
1500.0 · Organizational Costs	0.0%
1510.0 · Accumulated Amortization	0.0%
1600.0 · Deposits Paid (Utilities)	0.0%
<b>Total Other Assets</b>	<b>0.0%</b>
<b>TOTAL ASSETS</b>	<b>23.79%</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	

**Barton Springs Edwards Aquifer  
Balance Sheet Prev Year Comparison  
As of January 31, 2024**

	<b>% Change</b>
<b>Accounts Payable</b>	
2000.0 · Accounts Payable	-100.0%
<b>Total Accounts Payable</b>	-100.0%
<b>Credit Cards</b>	
2007.0 · Truist VISA	-4,174.73%
<b>Total Credit Cards</b>	-4,174.73%
<b>Other Current Liabilities</b>	
2010.0 · Rebates Payable - Cons Credits	-100.0%
2100.0 · Deferred Revenue	0.0%
2110.0 · Direct Deposit Liabilities	0.0%
2200.0 · Fica & Medicare Withheld	15,446.68%
2220.0 · Federal Income Tax Withheld	243.52%
2230.0 · Employer Fica & Med Payable	1,160.35%
2250.0 · TWC Unemployment Tax Payable	-19.05%
2260.0 · Retirement Withheld	100.0%
2270.0 · Payroll Liabilities	2,125,311.11%
2300.0 · Accrued Vacation Payable	-13.65%
<b>Total Other Current Liabilities</b>	2.02%
<b>Total Current Liabilities</b>	-1.93%
<b>Total Liabilities</b>	-1.93%
<b>Equity</b>	
3000.0 · Fund Balance	34.12%
3000.3 · Invested in Capital Assets	0.0%
3110.0 · Reserve for Petty Cash	0.0%
<b>Net Income</b>	19.42%
<b>Total Equity</b>	25.3%
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>23.79%</b>

## Item 4

# General Manager's Report Discussion and possible action topics

### Topics

- a. Review of key team activities/projects.
  - i. Trinity Sustainable Yield Study
  - ii. Database Update
  - iii. Administrative Program Review/Activities
- b. Aquifer Status Update
- c. Upcoming Events of Possible Interest

# Summary of February 2024 Team Activities and On Deck for February/March 2024

## **Aquifer Science Team**

### February Activities

- Finalize Trinity drought synoptic water level study.
- Creedmoor Trinity aquifer test plan review
- FY2024 HCP MAC Meeting
- Scientific monitoring well drilling at Barton Springs
- Field measurements of Barton Springs and Blanco River to verify USGS gauges.

### On Deck:

- Barton Springs discharge measurements with USGS and COA.
- Begin Phase II of TAS in-house numerical model
- Potential Barton Springs multipoint installation

## **Administration Team**

- All administrative processes and procedures are under new review as we maintain obligations.

## **Regulatory Compliance Team**

### February Activities:

- Staff continues to work on new applications and assisting permittees with drought compliance.
- Staff continuing to work through enforcement process with non-compliant permittees including Roy Seiders.
- Staff working with AS team on review of Creedmoor-Maha's new Middle Trinity well aquifer testing plan.
- Staff continuing to provide input to database project on relevant modules.
- Staff will meet with Rules & Enforcement Committee to continue discussion on enforcement plan update.

### On Deck:

- Very early preparations of District-wide UDCP/UCP update in FY 24 will begin.
- Awaiting application to drill a new well to supply water to a make-up pond in Anthem development.

## **Policy and Project Team**

### February Activities:

- Finalize phase 1 database project with LRE.
- HCP MAC meeting
- Buda ASR application/Board meeting prep
- Ruby Ranch ASR discussions

### On Deck:

- Ongoing sustainable yield data compilation, research, and decision-making framework.
- Helping with regulatory compliance duties when asked.

## **Communications and Outreach Team**

### February Activities:

- Get footage on Zilker well installation and disseminate information to the public on the project.
- Confirm date and location of Groundwater Symposium and permittee event.
- Begin developing March communications materials with AquaTexas

### On Deck

- Prepare for Groundwater Awareness Week
- Coordinate another Well Water Checkup

# **Status Report Update February 8, 2024 Board Meeting**

**Summary of Significant Activities – Prepared by Staff Leads**

## **Upcoming Dates of Interest**

- Texas Groundwater Association (TWGA) Annual Convention – January 23-26, 2024, San Marcos, TX
- Texas Alliance of Groundwater Districts (TAGD) Business Meeting – January 30-31, 2024, Round Rock, TX

# DROUGHT MANAGEMENT

## Drought Status and Water-Level Monitoring (*Justin*)

In January, Central Texas experienced substantial rainfall. Notably, area creeks, such as Onion and Barton, saw significant flow for the first time since 2022. Most importantly, this flow occurred over the recharge zone. While the recent rain is already having a positive impact on groundwater levels and spring flow, it may take up to two weeks to observe its full effect. However, the District anticipates remaining in drought conditions due to two consecutive years of below-average rainfall and consistently high summer temperatures.

The Austin area is concluding January, currently ranking as the fifth-wettest January on record with an average 6.6 inches of rain across the District. This surpasses the monthly average by 4.4 inches. It seems that El Niño, along with the anticipation of a wet winter, has indeed made its presence felt.

As of February 1, the 10-day average reading from the real-time USGS gauge at Barton Springs indicates a flow of 69 cubic feet per second (cfs). January's widespread rainfall across the recharge zone had an immediate effect on spring flow. Barton Springs discharge elevated from 23 cubic feet per second (cfs) on January 22 to as high as 73 cfs on January 26. BSEACD staff will conduct a manual field measurement in mid-December to verify the accuracy of the USGS gauge reporting.

On February 1, the Lovelady well recorded a 10-day average water level of 461.4 feet above mean sea level (ft-msl). Groundwater levels have seen a positive response to the recent rains, with water levels rising by approximately 5 feet so far. Groundwater levels were as low as 456.7 feet-mean sea level (ft-msl) on January 20, reached 461.4 ft-msl on February 1, and continue to climb. Anticipated ongoing increases in groundwater levels are linked to the continued flow of creeks, allowing water to enter recharge features such as fractures, caves, and sinkholes. It could take another week or two to see the full impact of January rains. Forecasted rainfall later this week will also have a positive impact on Lovelady levels as a result of soils being saturated and primed for additional recharge.

Water levels in the Upper Trinity have finally seen a significant rise, with an increase of nearly 20 feet. Meanwhile, the Middle Trinity continues to rise due to late 2023 rains. It could take a couple of weeks before we observe the Middle Trinity's full response to January rainfall.

In other news, Jacobs Well flow returned reaching as high 30 cfs. Flow quickly decreased to 4 cfs as of January 30. The Blanco River at Wimberley also experienced a surge in flow and is currently reporting 21 cfs.



## DISTRICT PROJECTS

### **GMA Joint Planning**

➤ ***GMA 10 Coordination (Tim)***

The GMA 10 joint-planning group is working with Alyson McDonald of Collier Consulting. The fourth joint-planning process, culminating in February 2027 with the presentation of final explanatory reports, is estimated to cost \$110,081. The estimated cost to the District is \$24,000 over the next three to four fiscal years beginning with FY 2024. An ILA between the six GMA 10 planning members has been slow to materialize due to slow responses from some GCD members. The District has approved the latest draft language. It is expected that the ILA will be brought before the Board for approval during the 1<sup>st</sup> quarter of 2024. The next planning meeting is scheduled for January 22, 2024. All meetings are hosted by the Edwards Aquifer Authority in San Antonio.

### **Trinity Aquifer Sustainable Yield Study & Planning**

➤ ***Policy Concepts and Advisory Workgroup Planning (Kendall)***

An RFQ for a well-impact analysis was issued and closed on November 1. The District received three statements of qualification and interest from Collier Consulting, LRE Water, and Robert Gailey Consulting Hydrogeologist PC (RMG). Staff requested a detailed proposal and presentation from LRE water and Robert Gailey Consulting. Staff initially were hoping to work with both firms and divide task based on each firm's expertise but has since decided to go with LRE. Staff plans to have scope of work presented to the Board in February. Staff will meet with Community Consulting to talk about facilitation and rational/structured decision-making processes.

### ***Technical Evaluations (Jeff)***

Aquifer Science staff continue to collect data on the geology and hydrogeology related to the Trinity Aquifers. We are continuing to collect and evaluate water level data from our network of Trinity monitoring wells. In September staff completed data collection for our Trinity Aquifer synoptic drought study which will produce a water level map of the aquifer under the present drought conditions. A draft report has been completed and circulated among local hydrogeologic experts for review and comment and will be finalized shortly. This study will provide valuable data and insights on how the Trinity has responded to the current severe drought in different locations, which will be important for informing the Trinity Sustainable Yield project.

The first phase of work on the Trinity Aquifer Sustainability (TAS) model (previously called the "in-house model) has been completed. A comprehensive report with technical details of model construction has been published on the District website. An executive summary was also published summarizing key model findings for non-technical audiences, and is available for download in PDF format on the District website. The next phase of modeling will involve building a series of predictive models from the calibrated TAS model to provide quantitative estimates of impacts of various pumping scenarios on Trinity Aquifer water levels and spring flow. These predictive models will incorporate stakeholder input to identify key questions of interest for the model to answer. Staff met with INTERA to discuss their review of the TAS on November 20, 2023 and suggestions for the model improvements during the next phase of modeling, which is currently being planned.

### **Habitat Conservation Plan (Staff)**

- **Planning for Technical Tasks:** Aquifer Science staff are coordinating studies at Barton Springs with COA staff. These studies include measurement of dissolved oxygen (DO) in the Barton Springs pool and the installation of a monitor well within Zilker Park and south of the pool. Deployment of this equipment will take place after the monitor well is installed. Staff submitted an application for a grant from the City of Austin in February which would help pay for the conversion of a standard monitor well to a multiport well. As of May 2023, there is tentative approval of the grant request and AS staff are preparing details of the project with COA staff. The purpose of the monitor well is to understand how groundwater flows from the deeper portions of the Edwards Aquifer to the springs and how DO is distributed vertically in the aquifer. The HCP identified low levels of DO as a threat to the endangered salamanders. A potential remedy for low DO during severe drought is augmentation of DO in the shallow aquifer so that the threat of low DO is reduced. Drilling of the monitoring well borehole began on February 1, 2024.
- **Barton Springs Flow Measurements:** On Monday, October 2, 2023 Staff met with collaborating agency staff from US Fish and Wildlife, the US Geological Survey, and the City of Austin to discuss options for improving Barton Springs flow measurements, which have been shown to have lower accuracy during low flow drought conditions. Also on Monday, October 2, AS staff met with Brian Hunt at the Bureau of Economic geology to test a new flow measurement instrument at Barton Springs. Data collected from this field outing will be compared with flow data collected from other BSEACD and other agencies using the old method, to evaluate if the new instrument (which is called an Acoustic Doppler Current Profiler) can provide higher accuracy flow data. AS staff will continue to work with staff from collaborating agencies to explore solutions for improving flow data accuracy.
- **Annual Report:** Staff has prepared the HCP annual report and has sent it to the MAC members. The District will hold the MAC meeting on February 7<sup>th</sup>.

### **Database Management System – LRE Water (Kendall, Tim)**

LRE is still working to finalize the first phase of the database. The phase 1 punch list is 99% complete and staff will have to do some final QA/QC before the database is ready to be used for compliance assessment. We are hoping to have a usable database by mid-February. Staff is working with LRE to identify the scope and deliverables for “Phase 2” database project.

### **ILA Commitments (Staff)**

The District has an ILA with COA to coordinate studies for the respective HCPs such as scientific feasibility studies and monitoring evaluations; to collaborate on the planning of future Kent Butler Summits; and to exchange technical information regularly on an annual basis. An annual technical meeting is held between the District and COA in December each year to discuss each organization’s activities related to their respective HCPs. The next meeting will be held in December 2023.

### **Region K Planning Activities (Tim, Kendall)**

The next meeting is scheduled for February 13, 2024 at the LCRA facility in LaGrange, Texas.

### **New Maps, Publications, or Reports**

A list of recent publications can be found at: <https://bseacd.org/scientific-reports/>

# RULEMAKING, PERMITTING, AND ENFORCEMENT

## Rulemaking (*Tim, Erin, District Counsel, R and E Committee*)

Rules have been updated during the past two consecutive Public Hearings in October and November and will be updated a third time at the December Public Hearing.

## Drought (*Erin*)

- Will continue working with Aqua Texas, Creedmoor – Maha, Monarch Utilities, and Tindol Restaurant Group to ensure compliance per their Agreed Orders.
- Will continue monthly pumpage analysis to determine all permittee’s compliance status of drought curtailments.
- Will continue to assist permittees in ensuring they successfully comply with their UDCPs and Stage IV drought curtailments for February.

## Enforcement and Compliance Matters (*Erin*)

<b>Compliance/Enforcement</b>			
<b>Permittee or Entity Name</b>	<b>Aquifer</b>	<b>Use Type</b>	<b>Notes</b>
Aqua Texas – Bear Creek Park	Edwards	PWS	Agreed Order Executed.
Aqua Texas – Bliss Spillar (Edwards)	Edwards	PWS	Agreed Order Executed.
Creedmoor-MAHA	Edwards	PWS	Agreed Order Executed.
Monarch Utilities, Inc.	Edwards	PWS	Agreed Order Executed.
Tindol Restaurant Group, LLC	Middle Trinity	Commercial	Agreed Order Executed.
Aqua Texas – Sierra West	Middle Trinity	PWS	Extension granted; awaiting signature on Agreed Order.
Seiders, Roy	Middle Trinity	Irrigation	Enforcement Action before the Board at 2/8/2023

## Permitting Activity (*Erin, Jacob*)

<b>Upcoming</b>					
<b>Precinct</b>	<b>Application Type</b>	<b>Aquifer</b>	<b>Applicant Name</b>	<b>Use Type</b>	<b>Volume Request (GPY)</b>
1 - Pickens	LPP	Middle Trinity	Martinez, Sergio	Domestic	500,000
2- Stansberry	Plugging	TBD	Rangel, Alonso	Plugging	0
1-Pickens	WDA	Middle Trinity	LandSea Homes	Irrigation	TBD
	ASR	Middle Trinity/Edwards	City of Buda	ASR/PWS	133,660,000

<i>In Review</i>					
<b>Precinct</b>	<b>Application Type</b>	<b>Aquifer</b>	<b>Applicant Name</b>	<b>Use Type</b>	<b>Volume Request (GPY)</b>
1 - Pickens	LPP	Upper Trinity	Pena, Estrella	Domestic	500,000
1 - Pickens	Volume Increase	Middle Trinity	Tindol Restaurant Group	Commercial	2.5 million?
1 - Pickens	WDA	Middle Trinity	Whiskey Ridge	Commercial	0 - Monitoring
1 - Pickens	LPP	Middle Trinity	Martin, Stephen	Commercial	500,000
<i>Recently Approve and/or Admin Complete</i>					
<b>Precinct</b>	<b>Application Type</b>	<b>Aquifer</b>	<b>Applicant Name</b>	<b>Use Type</b>	<b>Volume Request (GPY)</b>
1 - Pickens	WDA	Middle Trinity	Paradis Vineyard and Winery, LLC	Irrigation and Commercial	~2.4 Million
1 - Pickens	Plugging	Middle Trinity	Schonefeld, Joey	Domestic	0 - Plugging
1 - Pickens	Replacement	Middle Trinity	Schonefeld, Joey	Domestic	17 GPM - Exempt

# **AQUIFER STUDIES**

*(Jeff, Justin, and Tim)*

## **Permitting Hydrogeologic Studies:**

Working with Regulatory Compliance on permitting issues as needed. AS staff continue to review geophysical logs of wells prior to final completion of the wells on an as-needed basis. In April, 2023 AS staff reviewed a drilling proposal submitted by Creedmoor-Maha for a Trinity well to be installed in their Edwards well field off of Twin Creeks Road. The Board of Directors approved a well drilling permit in May and drilling operations began in November. In December 2023, AS staff worked with Reg Comp team and drillers to evaluate geophysical logs and ensure accurate aquifer picks for well completion. A review of the City of Buda ASR permit application by AS staff is underway.

## **Groundwater Studies: *Dye Tracing, Water Quality, Aquifer Characterizations***

- Coleman’s Canyon- continuing to collect water-level data from the multiport well every month to 6 weeks. Groundwater sampling of these two wells was performed in May and June as part of the TWDB summer sampling program.
- There are no dye-trace studies planned at this time because of minimum to no flow in streams and springs.
- A synoptic water level study characterizing the Trinity Aquifer during severe drought conditions is underway. Data collection for this study was finished in September 2023 and data evaluation is currently underway. We plan to publish results of the synoptic drought study soon.
- Aquifer science staff are working with the GM, City of Austin staff, and others to drill two new Edwards Aquifer wells in January 2024: one next to Barton Springs Pool in Zilker Park and one at Garrison Park in south Austin. The Garrison Park well was completed on January 31, 2024. Drilling of the Zilker Park well began on February 1, 2024.

## **Field Activities:**

- Cooperating with USGS and City of Austin staff to confirm accurate real-time gauge reporting at Barton Springs and Lovelady. Conducting bi-weekly to monthly field measurements. AS staff tested a new flow measurement instrument to measure Barton Springs flow on 10/2/23. Data from this instrument will be compared with flow measurements using the traditional method to determine if it can provide a more accurate flow measurement, especially during low-flow periods. A follow-up field visit occurred on 12/14/23 to collect another set of Barton Springs flow data with the new instrument. AS staff will produce a technical memorandum summarizing findings of this field work.
- Cooperating with USGS staff to confirm accurate real-time gauge reporting at Jacob’s Well and the Blanco River at Wimberley.
- Calibrating telemetry monitoring equipment at the Needmore index well (Amos) and reviewing pumping and water-level data as drought worsens.
- Antioch- Continuing to maintain the system and to collect data on flow into the vault (when there is flow). A recent visit to Antioch Cave to assess operating components and electronics indicated the need to recondition most electrical systems.

- Well monitoring- Because of drought, staff are increasing the amount of time maintaining equipment in numerous monitor wells and downloading and interpreting data; and occasionally checking on wells that have been reported as “dry”.
- City of Austin monitor well drilling to begin in January 2024.
- Texas Water Development Board annual water chemistry sampling (20 wells).
- Magellan Pipeline annual sampling.

**Trinity Aquifer Modeling Development:**

- Trinity Aquifer Sustainability model (TAS): The first phase of modeling has been completed and a report has been published on the District website detailing specifics of model construction. Planning for the second phase of modeling is underway, and is set to begin in 2024.
- BRAAT modeling: Staff was informed during an October 2023 meeting that the BRAAT modeling project has stalled due to a variety of issues related to contracting, budgeting, and technical challenges related to model development. It is unclear at this point if a model useful to BSEACD will arise from the BRAAT project.
- New TWDB Southern Trinity GAM model: In July 2023 staff participated in a kickoff meeting hosted by TWDB modeling staff for the Southern Trinity GAM model. This regional model will cover the BSEACD portion of the Trinity Aquifer. AS will be in regular contact with the TWDB modeling team to provide data and technical guidance on model construction.

# COMMUNICATIONS AND OUTREACH

(Shay)

## Drought Communications

### Press Coverage for Stage IV Drought

- [Conservation District declares historic Stage IV Drought](#) - Hays Free Press – 1/3/24
- [Texas Weather: Will forecasted rain put a dent in drought?](#) – Fox 7 – 1/22/24
- [Another hot dry summer may push water supplies in parts of Texas to the brink](#) – Inside Climate News/Texas Tribune – 1/22/4
- [Rain fails to boost Lake Travis but will likely help aquifer levels](#) - KXAN – 1/22/4
- [Will this week’s rainfall make an impact on severe drought?](#) - KEYE – 1/22/24

### Permittees

- **Creedmoor Maha:** planned on hosting an outreach event on February 22 to discuss Stage IV Drought with end-users but decided to hold off because of late January rainfall.
- **Aqua Texas:** Met with permittee to discuss informational communications campaign with end-users. Anticipating a March start during Groundwater Awareness month and continuation through October. The communication materials will explain what the District is, reasoning for curtailments, and ways for customers to reduce water consumption.

### Drought Update

The District’s January newsletter included a [Drought Update](#) that discussed aquifer levels and the status of Barton Springs flow and Lovelady levels. It was also published on the District website and across social media channels.

## Newsletter

The [latest newsletter](#) was sent out on January 31. It included a [Letter from the General](#) Manager, which discusses the impact of recent rains along with other positive occurrences in the District. It also featured the Inside Climate News article that quotes the District and discusses what another hot, dry summer could mean for various parts of Texas.

## Zilker and Garrison Parks Monitor Well Communications

### Press Release

This press release was sent to 10 local media contacts on January 11, 2024. The following articles have resulted:

- [Barton Springs/Edwards Aquifer Conservation District installing two monitoring wells at Garrison and Zilker parks](#) - Austin Monitor – 1/12/4
- [New Austin monitoring wells to study aquifers, effects on endangered salamanders](#) - Community Impact – 1/18/24
- [New Wells in Austin to Monitor Oxygen Levels for Endangered Species](#) - Austin Chronicle – 1/26/24

### **New Website**

Staff are now reviewing some webpages with the General Manager and making final edits with the web consultant. A last round of edits will be made before the website is likely made live during before the end of February.

### **Collaborative Groundwater Event**

- **Summary:** This collaborative event will bring together groundwater organizations from throughout the Texas Hill Country to engage and educate community members about the Edwards and Trinity aquifers. The purpose of it is to provide people with a better understanding of local hydrogeology, how groundwater is managed in the region, and what individuals can do to help conserve it.
- **Time and Place:** Actively working on reservations for a ballroom in the Lyndon B Johnson Student Center at Texas State on Thursday, April 4. Considering the event going from 6-9pm.
- **Event Potential Flow:** The event will break down into two parts. The first will be a tabling event featuring a couple dozen relevant water organizations. They will educate and engage participants in various aspects of local water conservation, biology, hydrogeology, etc. The second half of the event will feature speakers from EAA, HTGCD, and BSEACD.
- Participating partners so far: Texas State University Geology Department, Meadows Center, and Office of Sustainability, Hill Country Alliance, Edwards Aquifer Authority, Hays Trinity Groundwater Conservation District, and San Marcos River Foundation.

### **Permittee Event with Hill Country Alliance**

Hill Country Alliance reached out to District staff about partnering on an invite-only event for permittees. HCA is willing to coordinate the event, reserve the space, and gather applicable resources for permittees. The District would do the bulk of the presentation and provide relevant resources permittees could use to inform customers about the aquifers, conservation, and the District itself. This event is expected in May but is still in the early planning stages.



## ADMINISTRATION

Following the retirement of Tammy Raymond (last day 12/15/23) and the resignation of Dana Wilson (last day 1/2/24), the administrative team is in transition. Hannah Riggs joined the District on January 2, 2024 as the new Administrative Coordinator. Tina Cooper with the Austin Alliance Group is providing admin support with the help of the Admin. Coordinator and General Manager.

A vacancy announcement for a new Bookkeeper was released last month but is being withdrawn until the task load and work-flow processes, including potential for new efficiencies to be gained, is better understood by the current team. At the same time, the position will be (re)considered in light of other staffing needs (e.g., assistant to the GM, office manager, etc.).

*The Administration Team typically has repetitive monthly tasks e.g. monthly bank reconciliations, monthly adjusting journal entries, accounts payable, payroll, contract/grant/project tracking, office maintenance and repairs, budget monitoring, bi-weekly payroll journal updates, directors' compensation, pre-paids, DMFs, posting public meetings, preparing meeting backups, etc. These types of tasks are not listed in this report because they are repetitive. Administration status reports are generally more summarized than the other teams, as we list our extra-ordinary tasks outside of our routine tasks, while supporting all other teams.*

## Item 5

### Board Discussion and Possible Action

- a. Discussion and possible action on EEOC No. 451-2024-00138 charge of discrimination by Brian Smith against the District.

## Item 5

### Board Discussion and Possible Action

b. Discussion and possible action related to a Report of Investigation, Notice of Alleged Violation, and Draft Agreed Order for initiation and resolving enforcement proceeding concerning Roy Seiders for failure to reduce pumping during District declared drought.

## Item 5

### Board Discussion and Possible Action

- c. Discussion and possible action on contract with City of Austin for installation of Multiport Monitor Well in Zilker Park.



**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)  
and  
Barton Springs-Edwards Aquifer Conservation  
District (“Contractor”) for  
Installation of Multiport Monitor Well in Zilker Park  
  
Contract Number: CT 6300 24012300206**

The City accepts the Contractor’s Offer for the above requirement and enters into the following Contract. This Contract is between Barton Springs-Edwards Aquifer Conservation District having offices at 1124 Regal Row, Austin, TX, 78748 and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

**1.1 This Contract is composed of the following documents in order of precedence:**

- 1.1.1 This Document
- 1.1.2 Standard Terms and Conditions dated 1/24/2024.
- 1.1.3 Contractor’s Offer, updated 1/9/2024, incorporated herein and attached as Exhibit A hereto.
- 1.1.4 Signed Employer Certification Wage Theft Ordinance – Responsibility Criteria form.

**1.2 Term of Contract.**

This Contract shall become effective on the date executed by the City (“Effective Date”) and shall remain in effect until the earliest of when the deliverables set forth in the Contract are complete or the City terminates the Contract.

**1.3 Designation of Key Personnel.** The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor shall promptly notify the City and obtain approval for the replacement.

**1.4 Invoices.** The City’s preference is to have invoices emailed to [WDPinvoices@austintexas.gov](mailto:WDPinvoices@austintexas.gov) or mailed to the below address:

	City of Austin
Department	Watershed Protection - Billing
Attn:	Accounts Payable
Address	PO BOX 1088
City, State, Zip Code	Austin, TX, 78767

For questions regarding your invoice/payment please contact the City Contract Manager.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

**Barton Springs-Edwards Aquifer**

**CITY OF AUSTIN**

\_\_\_\_\_  
Printed Name of Authorized Person

\_\_\_\_\_  
Printed Name of Authorized Person

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

Attest: \_\_\_\_\_

Christy Williams  
Board Secretary

Approved as to form:

By: \_\_\_\_\_

William D. Dugat III  
General Counsel

Date: \_\_\_\_\_

**Table 1. Monitoring Wells: Project Partners Budget**

Personnel	Magellan Midstream Partners, L.P.*	BSEACD in-kind	COA / USFWS BSSCF grant	Total Project Cost
Communications & Outreach Coordinator		2,583.50		2,583.50
Staff Hydrogeologist/PG	-	8,943.75	-	8,943.75
Hydrogeologic Technician	-	7,022.50	-	7,022.50
General Manager		2,083.40		2,083.40
avg fringe @ 43%		8,872.25		8,872.25
<b>total personnel</b>	-	29,505.40	-	29,505.40
<b>Contractor Costs</b>				
well-drilling comp.	84,800.00			84,800.00
site restoration	3,000.00			3,000.00
adv. borehole geophysics-BS well			4,700.00	
<b>total contractor costs</b>	87,800.00	-	4,700.00	92,500.00
<b>Equipment Costs</b>				
geophysical logs (2)	3,500.00			3,500.00
multiport			69,000.00	69,000.00
pump, accessories, etc.	4,875.40			
<b>total equipment costs</b>	8,375.40	-	69,000.00	77,375.40
<b>Travel</b>				
in-state mileage				-
in-state conference				-
<b>total travel costs</b>	-	-	-	-
<b>Total Direct Costs</b>	96,175.40	29,505.40	73,700.00	199,380.80
<b>Admin. Overhead 5%</b>		9,969.04		-
<b>Total Project Costs</b>	<b>96,175.40</b>	<b>39,474.44</b>	<b>73,700.00</b>	<b>209,349.84</b>

updated on 1/9/2024, costs subject to change prior to final execution of any agreement or contract

Admin overhead is charged against Total Direct Costs

\* Magellan was acquired by ONEOK, Inc. ("ONEOK"), and as of 9/25/23 Magellan is a wholly owned, indirect subsidiary of ONEOK.

**EMPLOYER CERTIFICATION  
WAGE THEFT ORDINANCE – RESPONSIBILITY CRITERIA  
CITY OF AUSTIN**

*Any Employer that submits an offer to the City seeking award of a city contract prior to awarding a contract are required to certify that they have not been adjudicated for certain offenses related to wage theft. See City of Austin Ordinance No. 20221201-031. "Wage theft" and "adjudicated" are to be understood per the definitions set forth in Austin City Code Chapter 4, § 4-22-1 (G) and (H).*

Solicitation or Agreement Title: \_\_\_\_\_

Solicitation Posting Date or Agreement Start Date: \_\_\_\_\_

***All Employers are required to complete the City of Austin Wage Theft Training within 30 days of being awarded a contract with the City.  
Contact the Wage Compliance Team to register for a class.***

I hereby certify, under penalty of perjury under the laws of the State of Texas, that the below certification is true and correct and that I am authorized to make the following certification on behalf of the firm listed herein.

**CERTIFICATION:**

This firm has NOT been adjudicated for wage theft related incidents as defined in Austin City Code Chapter 4, § 4-22-1 (G) & (H) within five (5) years prior to the above-stated date. Furthermore, this firm agrees to abide by the items outlined in Section 4-22-5 (B) and Section 4-22-6 (A) of the Austin City Code.

**Firm Name:** \_\_\_\_\_

Name of Employer - Print Full Legal Entity Name of Firm

**Signed:** \_\_\_\_\_  
Signature of Authorized Person

\_\_\_\_\_  
Print Name of Person Making Certification for Firm

**Title:** \_\_\_\_\_  
Title of Person Making Certificate

**Place:** \_\_\_\_\_  
Print City and State Where Signed

**Date:** \_\_\_\_\_



The Contractor agrees that the Contract shall be governed by the following terms and conditions.

## **1 GENERAL**

### **1.1 TERM OF CONTRACT:**

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, unless specified otherwise in the Scope of Work, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

### **1.2 INDEFINITE QUANTITY:**

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

### **1.3 INVOICES:**

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, the master agreement number (if applicable), the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall include a tabulation of work-hours at the appropriate rates and grouped by work Order number. Time billed for labor shall be limited to hours actually worked.
- D. **Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontracting and other authorized expenses at actual cost without markup.**
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the Invoiced amount. The City will furnish a tax exemption certificate upon request.

### **1.4 PAYMENT:**

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.

- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - i. Delivery of defective or non-conforming Deliverables by the Contractor;
  - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
  - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - iv. Damage to the property of the City or the City's agents, employees or Contractors, which is not covered by insurance required to be provided by the Contractor;
  - v. Reasonable evidence demonstrates that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
  - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds appropriated and available for this Contract. The absence of appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of notice of non-appropriation.

**1.5 FINAL PAYMENT AND CLOSE OUT:**

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:

- i. A waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
- ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**1.6 SPECIAL TOOLS & TEST EQUIPMENT:**

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**1.7 AUDITS AND RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance, including security audits, under this Contract, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. Records Retention:
  - i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
  - ii. The Contractor shall retain all records for a period of three years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.

**1.8 FINANCIAL DISCLOSURES AND ASSURANCE:**

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

**1.9 RIGHT TO ASSURANCE:**

Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. If no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**1.10 STOP WORK NOTICE:**

The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**1.11 DEFAULT:**

The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or Deliverable required to be submitted by the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

**1.12 TERMINATION FOR CAUSE:**

In the event of a default by either party, the non-defaulting party shall have the right to terminate the Contract for cause, by written notice effective ten 10 calendar days, unless otherwise specified, after the date of such notice, unless the defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

**1.13 ATTORNEY'S FEES:**

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

**1.14 TERMINATION WITHOUT CAUSE:**

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 30 calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed, and obligations incurred prior to the date of termination in accordance with the terms hereof. In the event of termination of the Contract under this Section, the Contractor shall handover all complete and partially complete Work Products and Documentation developed under this Contract.

**1.15 FRAUD:**

Fraudulent Statements by the Contractor on any Offer or in any report or Deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

**1.16 DELAYS:**

The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an

adjustment within 30 calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

**1.17 FORCE MAJEURE:**

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

**1.18 INDEMNITY:**

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- (1) "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
- (2) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
- (3) THE INDEMNIFYING PARTY SHALL, TO THE EXTENT PERMITTED BY LAW, INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
  - i. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
  - ii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
  - iii. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
  - iv. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
  - v. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

B. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.

- C. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
  - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS REASONABLE COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
  - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- D. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- E. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

**1.19 NOTICES:**

Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to: City of Austin, Financial Services Department-Central Procurement, 505 Barton Springs Road, Ste 330, Austin, TX 78704 and marked to the attention of the assigned Procurement Specialist.

**1.20 CONFIDENTIALITY:**

The Parties may be granted access to certain of the other Party's or Licensor's Confidential Information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the Party or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Parties acknowledge and agree that the Confidential Information is the valuable property of the disclosing Party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing Party and its licensors. The receiving Party (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of disclosing Party, or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an Order of a court or other governmental authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the receiving Party agrees to promptly notify the disclosing Party before disclosing Confidential Information to permit the disclosing Party reasonable time to seek an appropriate protective Order. The receiving Party agrees to use protective measures no less stringent than the receiving Party uses in its business to protect its own most valuable information. In all circumstances, the receiving Party's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. The Parties agree: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, and (iii) to promptly notify the disclosing Party of any request for

Confidential Information to be disclosed under any law or order of any court or other governmental authority with proper jurisdiction, so as to permit disclosing Party reasonable time to seek an appropriate protective order.

- B. All Confidential Information and derivations thereof shall remain the sole and exclusive property of disclosing Party, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of disclosing Party, the receiving Party shall promptly return to disclosing Party all tangible items of Confidential Information furnished by disclosing Party and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- C. No expiration or termination of the Contract shall affect either Party's rights or obligations with respect to Confidential Information.
- D. The Parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.
- E. The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.

**1.21 TEXAS PUBLIC INFORMATION ACT:**

- A. All material submitted by the Contractor to the City related to the Contract may become subject to public disclosure upon receipt by the City. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
  - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
  - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
  - iii. On completion of the Contract, either:
    - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or
    - (2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.
- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

**1.22 PUBLICATIONS:**

All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**1.23 ADVERTISING:**

The Contractor shall not advertise or publish, without the City's prior written consent, the fact that the City has entered into the Contract, except to the extent required by law.

**1.24 NO CONTINGENT FEES:**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**1.25 GRATUITIES:**

The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were Offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**1.26 PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:**

No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any Solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that Solicitation. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

**1.27 INDEPENDENT CONTRACTOR:**

The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent Contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**1.28 ASSIGNMENT DELEGATION:**

The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this Paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third-party beneficiaries to the Contract.

**1.29 WAIVER:**

The claim or right arising out of a breach of the Contract cannot be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**1.30 MODIFICATIONS:**



The Contract can be modified or amended only in writing and signed by both parties. No pre-printed or similar terms on any Contractor Invoice, Order, clickwrap agreement or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**1.31 INTERPRETATION:**

The Contract is intended by the parties as a final, complete and exclusive Statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**1.32 DISPUTE RESOLUTION:**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this Section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within 14 calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within 30 calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 30 calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to consider qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a Contract interpretation expert. If the parties fail to agree on a mediator within 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**1.33 JURISDICTION AND VENUE:**

The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another State or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**1.34 INVALIDITY:**

The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**1.35 HOLIDAYS:**

Dates for the holidays observed by the City can be found here  
<https://www.austintexas.gov/department/official-city-holidays>

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

**1.36 SURVIVABILITY OF OBLIGATIONS:**

All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**1.37 COOPERATIVE CONTRACT:**

- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, for the purpose of accessing their cooperative contracts and making available our cooperative contracts, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions of this cooperative contract to other eligible governmental agencies that have entered into an interlocal agreement with the City for the purpose of accessing the City's cooperative contracts.
- B. The City does not accept any responsibility or liability for the purchases by other governmental entities made under a separate contract based on this cooperative contract.

**1.38 EQUAL OPPORTUNITY:**

- A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Contract and the Contractor's suspension or debarment from participation on future City Contracts until deemed compliant with Chapter 5-4.
- B. **Non-Retaliation:** The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.
- C. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

**1.39 INSURANCE:**

**A GENERAL INSURANCE REQUIREMENTS:**

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and the Certificate of Insurance shall be mailed to the following address:  
City of Austin Financial Services Department-Central Procurement  
505 Barton Springs Road, Ste 330  
Austin, TX 78704  
OR  
[PURInsuranceCompliance@austinTexas.gov](mailto:PURInsuranceCompliance@austinTexas.gov)
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all Subcontractors prior to the Subcontractors commencing work on the project.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
- xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the

date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.

- xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. **Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

- (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
  - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.

ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).

- (1) The policy shall contain the following provisions:
  - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
  - b. Independent Contractors coverage (Contractor/Subcontracted work);
  - c. Products/Completed Operations Liability for the duration of the warranty period;
  - d. If the project involves digging or drilling, provide Explosion, Collapse, and Underground (X, C, & U) Coverage.
- (2) The policy shall also include these endorsements in favor of the City of Austin:
  - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
  - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

iii. **Business Automobile Liability Insurance:** Coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.

- (1) The policy shall include these endorsements in favor of the City of Austin:
  - a. Waiver of Subrogation, Endorsement CA0444, or equivalent coverage;
  - b. 30 Days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage;
  - c. The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

iv. **Property Insurance:** The Contractor shall provide All Risk (Special Form) Property coverage including, but not limited to, fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned by the City and in the care, custody, and control of the Contractor. The City shall be added to the property policy as a Loss Payee as their interest may appear.

- v. **Environmental Impairment/Pollution Liability Insurance:** with a minimum limit of \$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages including bodily injury; property damage, cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims by reason of sudden and accidental or non-sudden and accidental pollution arising out of the transportation, storage, or permanent disposal of hazardous and non-hazardous wastes, including wastes subject to the Toxic Substances Control Act (TSCA).

With respect to sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a treatment, storage and disposal facility must demonstrate financial responsibility for bodily injury and property damage to third parties and clean-up costs of at least \$1,000,000 per occurrence.

With respect to non-sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a surface impoundment, landfill or land treatment facility that is used to manage hazardous wastes, including wastes subject to the Toxic Substances Control Act (TSCA), must demonstrate financial responsibility for bodily injury and property damage to third parties and clean-up costs of at least \$1,000,000 per occurrence. The amounts of coverage must be exclusive of legal defense costs.

Policy shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

## 2 SERVICES

### 2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables or Services. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

### 2.2 WORKFORCE:

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, Subcontractors, and Subcontractor's employees may not while engaged in participating or responding to a Solicitation or while in the course and scope of delivering goods or services under a City of Austin Contract or on the City's property:
  - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or

- ii. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has illegally possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

### **2.3 GUARANTEE – SERVICES:**

The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from Final Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within 30 calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this Section.
- C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

### **2.4 PLACE AND CONDITION OF WORK:**

The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and Specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

### **2.5 NON-SOLICITATION:**

- A. During the term of the Contract, and for a period of 6 months following termination of the Contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City Department that engages or uses the services of a Contractor employee.

- B. If a breach of Paragraph A occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one year of the employee's annual compensation; or (ii) seventy percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.
- C. During the term of the Contract, and for a period of six months following termination of the Contract, a Department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a Contract with the City unless the City first obtains the Contractor's approval.
- D. Notwithstanding the foregoing, this provision shall be waived in the event an employee initiates an unsolicited action based on public advertisements in newspapers, trade publications, or electronic job boards.

**2.6 WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Access to the Office of Sustainability Department building by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Office of Sustainability Department building at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Office of Sustainability Department building and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

### 3 DEFINITIONS

1. **"Affiliate"** – including but not limited to, (i) Contractor's parent, subsidiaries, sister companies, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of Contractor as they may change from time to time and (ii) Users, as they may change from time to time.
2. **"Amendment"** – a written document executed by both Parties that modifies the terms of this Contract, including referenced attachments.
3. **"Authorized Persons"** – the Contractor personnel (including subcontractor personnel) located in the contiguous United States having successfully completed the required background check and related requirements of the Contract.
4. **"Change Order Request"** – the written document provided by the City to Contractor requesting changes to Contractor's obligations under this Contract.
5. **"Change Order Response"** – the written document provided to the City by Contractor in response to City's Change Order Request.
6. **"City Confidential Information"** – (a) information provided by the City that is marked or identified as confidential, (b) information, including software, computer programs, documentation, processes, procedures, techniques, technical, financial, customer, personnel and other business information of a non-public nature that would reasonably be understood to be confidential whether or not marked or identified as confidential, (c) information generated by Contractor (or subcontractor) that contains, reflects, or is derived from Confidential Information, (d) Personal Identifying Information, (e) Restricted Data, and (f) all other information made confidential by federal, state or local law or regulation. City Confidential Information is part of City Data.
7. **"City Data"** – data or information (in any form) regarding the City or its customers that is created, collected, provided, obtained, or otherwise made available in connection with this Contract to an Authorized Person.
8. **"City Identified Contact"** – the person or persons designated in writing by the City to receive security incident notifications.
9. **"City"** – the City of Austin, Texas, a municipal corporation and subdivision of the State of Texas, or a department of same.
10. **"Cloud Service"** – any Service made available to Users via the Internet from a provider's servers as opposed to being provided from the City's own on-premises servers. In this instance, it would mean such Services provided by the Contractor.
11. **"Confidential Information"** – all written or oral information, which may be disclosed by either Party to the other, related to the business operations of either Party or a third party that has been identified as



confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential; **“City Confidential Information”** is a subsets of Confidential Information.

12. **“Contract”** – the final general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor and any attachments and appendices attached thereto.
13. **“Contract Price”** – the total amount to be paid to Contractor under any Purchase Order as it may be adjusted or changed in accordance with the terms of the final Contract.
14. **“Contractor”** – the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.
15. **“Contractor Information”** – all techniques, algorithms and methods or rights thereto owned by or licensed to Contractor during the term of this Contract and employed by Contractors in connection with the Services provided to City.
16. **“Contractor Software”** – software that was developed or licensed to Contractor independent of this Contract and which Contractor utilizes to provide the Subscription Services or the Non-subscription Services.
17. **“Data Breach”** – the unauthorized access by a non-authorized person(s) that results in the use, disclosure or theft of City’s or City’s customers’ unencrypted Personally Identifiable Information or City Confidential Information.
18. **“Documentation”** – the documentation created by the Contractor for the Services provided but does not include customized documentation prepared under the Contract and which are Deliverables under the Contract, including the Statement of Work; such Deliverables are wholly owned by City and Contractor shall make no claim to such Deliverables.
19. **“Facility”** – the City designated facility or location set forth in the Purchase Order where Services are to be performed by Contractor or Supplier or software installed.
20. **“FACTA”** – the Fair and Accurate Credit Transactions Act, 15 U.S.C. §§ 1681-1681x.
21. **“Final Acceptance Date”** – the date upon which the City confirms that all Services and Work Products have been completed and tested and function in accordance with the terms of the Contract.
22. **“IaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the IaaS services.
23. **“Infrastructure-as-a-Service” (IaaS)** – the capability provided to the consumer to provision processing, storage, networks and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not

manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications and possibly limited control of select networking components (e.g., host firewalls).

24. **“Non-Public Data”** – data typically considered internal and used for city business or mission needs. All information is considered Non-Public unless otherwise classified or explicitly defined through the Information Governance Program or official policy or procedural documents.
25. **“Public Data”** means data typically created for public release or released to the public through management decision and/or a public information request.
26. **“Restricted Data”** means data typically exempt from public disclosure requirements under the provisions of applicable state or federal law. Examples of restricted information are regulated and confidential data.
27. **“Non-Subscription Services”** – the Services provided to City by Contractor under this Contract that are not included in the definition of Subscription Services. Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to City by Contractor under this Contract, together with all documentation provided by or otherwise required of Contractor for any of the consulting, implementation, customization or other Services it provides.
28. **“PaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the PaaS services.
29. **“Party”** or **“Parties”** – the City and Contractor, individually or together, as applicable.
30. **“Personally Identifiable Information”** – information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. PII includes, but is not limited to, personal information and/or personal data. Some forms of PII are considered Restricted Data and require additional protection, including, but not limited to, Sensitive Personal Information (SPI), Sensitive and/or Protected PII, and Protected Health Information (PHI).
31. **“Platform-as-a-Service” (PaaS)** – the capability provided to the City to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure, including network, servers, operating systems or storage, but has control over the deployed applications and possibly application hosting environment configurations.
32. **“Purchase Order”** – the general authorizing document (including Change Orders thereto) utilized by the City to procure Services from Contractor under this Contract and any attachments and appendices attached thereto.

33. **“SaaS Software Application”** and **“SaaS Software”** – the computer software listed on a SaaS Subscription Schedule to which Contractor has granted City access and use as part of the Subscription Services. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Contractor develops or deploys during the term of this Contract, together with all documentation provided by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
34. **“SaaS Subscription Schedule”** – the document, part of the Contract, executed by both Parties that sets out the Parties’ rights and obligations with respect to City’s access to and use of the SaaS Software Application.
35. **“Security Incident”** – any actual or potential unauthorized disclosure of, or unauthorized access to, City Confidential Information; or a violation or imminent threat of violation of computer security policies, acceptable use policies, or violation or imminent threat of violation of industry standard security practices.
36. **“Service Level Agreement” (SLA)** – a written agreement between both the City and the Contractor that is subject to the terms and conditions of the Contract that, unless otherwise agreed, includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures by or otherwise required of Contractor for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.
37. **“Service Levels”** – the performance specifications for work performed by the Contractor under a SaaS Subscription Schedule or Statement of Work.
38. **“Services”** – work, direction of work, installation services, technical information, technical consulting, software programming and development, software maintenance and support services, or other professional and technical services furnished by Contractor as described in detail in the final Contract.
39. **“Software”** – the computer programs in source code, object code or binary form or in any other form, including any related or included computer programs, whether owned by Licensor or licensed to Licensor by a third party which has authorized Licensor to sublicense such computer programs, and including any documentation or related materials concerning the application, use, training of users, theory of operation, maintenance or any other aspect of the Software.
40. **“Software-as-a-Service” (SaaS)** – the Services provided to the City to use the Contractor’s offering running on non-City owned infrastructure. The User does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

41. **“Specifications”** – those technical specifications attached to the Contract and to which the Services and Work Products supplied by Contractor must conform.
42. **“Statement/Scope of Work”** – a written statement of Deliverables including Services and, ultimately, the Contract, which describes the City’s Service needs and expectations.
43. **“Subscription Services”** – City’s access to and use of and Contractor’s provision of the SaaS Software Applications and other Services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule and Contract documents, as appropriate.
44. **“Third Party”** – any natural person or legal entity other than Contractor and City.
45. **“Transition Date”** – the date upon which it is established to City’s satisfaction that the SaaS Software Application is stable enough to support City’s production processing.
46. **“User Information”** – all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Contractor or by any of its employees, representatives, agents or any Third Parties having contractual privity with Contractor or who are under Contractor’s supervision or control.
47. **“User”** – City’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by City to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for City.
48. **“Wage Theft”** – any action by an employer that secures performance of a service by agreeing to provide compensation for the service and, after the service is rendered, fails to make full payment.
49. **“Work Product”** – all deliverables and other materials, products or modifications developed or prepared for City by Contractor under this Contract, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Contractor under or in support of the performance of its obligations under this Contract, including manuals, training materials and documentation, but excluding the Contractor’s Software.

## Item 5

### Board Discussion and Possible Action

d. Discussion and possible action on well-impact analysis award solely to LRE Water and approve new scope of work under existing Master Service Agreement.

## Item 5

### Board Discussion and Possible Action

- e. Discussion and possible action related to the performance and compliance of District permittees with their User Drought Contingency Plan curtailments.

## Item 5

### Board Discussion and Possible Action

- f. Discussion and possible action on declaring drought-stage change.

## Item 5

### Board Discussion and Possible Action

- g. Discussion and possible action on the District's general counsel and transition to new lead attorney by end of the calendar year.



## Item 5

### Board Discussion and Possible Action

- h. Discussion and possible action on Hill Country developments outside of the District's territory (e.g., Blizexas LLC - Rockingwall Ranch Proposed Permit No. WQ0016111001)

January 29, 2024

Office of the Chief Clerk  
Texas Commission on Environmental Quality MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087



VIA ELECTRONIC FILING

**RE: Water Quality Permit No. WQ0016111001**

Dear Chief Clerk:

The following comments by the Hays Trinity Groundwater Conservation District (“District”) are in response to the proposed DRAFT Texas Land Application Permit (TLAP) amendment of TCEQ Permit No. WQ0016111001 as filed by Blizexas LLC. Please accept these comments as a request for a contest case hearing on the issue presented.

The Draft Amended Permit authorizes an irrigation site. The new proposed surface irrigation site is in close proximity to Barton Creek, and sits atop and recharges the Trinity Aquifer.

The Hays Trinity Groundwater Conservation District is a state agency authorized by Chapter 8843 Special District Local Laws Code (SB 1147), and Chapter 36 of the State Water Code to protect and manage the quality and quantity of the Trinity Aquifer within the boundaries of its jurisdiction, which include all of the proposed new irrigation sites.

Barton Creek is a recharge feature for the Trinity and Edwards Aquifers eastward. Studies document that Barton Creek recharges the aquifers that supply many public and private water wells with water for domestic potable use, agriculture, and commercial use.

**Western Hays County and Effluent Disposal**

The Hays Trinity Groundwater Conservation District recognizes Blizexas LLC’s need to dispose of treated effluent. The District favors Blizexas LLC’s practice of land application and/or reuse. However, because of the karst geology of the region, and the interchange between surface and groundwater in losing streams and other land based recharge features, land application must be executed with extreme care and with thorough knowledge of the land characteristics, especially where conduits result in the interface and exchange of surface water and groundwater.

Dye Trace studies conducted by the District illustrate the porous and transmissive nature of karst landscapes, allowing for a connectivity between local creeks and the Trinity Aquifer (Watson et al., 2019)<sup>1</sup>. When clay soils associated with karst and decaying limestone are saturated, they are unable to absorb irrigation<sup>2</sup> and are prone to run-off into creeks and/or recharge features. This threat is serious to landowners who have an investment-backed expectation of clean, clear water<sup>3</sup> in Barton Creek, and well owners who have similar expectations regarding their water wells.

<sup>1</sup> Watson, J.A., Broun, A.S., Hunt, B.B., Simth, B.A., Johns, D.A., Camp, J., Weirman, D.A., 2018, Summary of Findings: Upper Onion Creek Dye Trace, Hays County, Texas, Winter 2017.

<sup>2</sup> Land-Applied Wastewater Effluent Impacts on the Edwards Aquifer, by Dr. Lauren Ross, available at: <http://www.aquiferalliance.net/Library/GEAAPublications/GlenroseEdwardsWastewaterReport20111103.pdf>.

<sup>3</sup> Nitrate concentrations and potential sources in the Barton Springs segment of the Edwards aquifer and its contributing zone, Central Texas; USGS Fact Sheet 2011-3035; <https://doi.org/10.3133/fs20113035>

**STAFF & BOARD**

**Charlie Flatten**  
*General Manager*

**Radu Boghichi, P.G.**  
*Hydrogeologist*

**Keaton Hoelscher**  
*Geo-Technician*

**Laura Thomas**  
*Asst. Gen. Mgr.*

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**District 1**  
David Smith  
*Treasurer/Secretary*

**District 2**  
Bruce Moulton  
*President*

**District 3**  
Carlos Torres-Verdin

**District 4**  
Linda Kaye Rogers  
*Vice President*

**District 5**  
Armond “Doc” Jones

It is imperative that this permit require a thorough field study of the site by a licensed professional geoscientist which should be completed and reviewed before permit approval.

### **Comments on the Specifics of Draft Permit No. WQ0016111001**

The Draft Permit should contain the following provisions. The irrigation field is located over the Trinity Aquifer outcrop, which is designated by the Texas Water Development Board as a major aquifer of the State and part of a Priority Groundwater Management Area as defined by the TCEQ.

- Recharge-feature identification methodology is inadequate. Irrigation areas must be carefully inspected by a licensed professional geoscientist to assure adequate soils and the absence of recharge or other features that could result in channelizing irrigated wastewater into surface or ground water.
- A TCEQ Professional Geoscientist staff member should conduct a field-study investigation of karst features. Alternatively, the District requests field site access to look for recharge features for the Trinity Aquifer.
- The location of the irrigation fields creates a risk for groundwater contamination. There is a relatively high number of wells in the vicinity of the proposed irrigation fields, according to maps prepared by the Texas Water Development Board. Thus, many people are using groundwater as a domestic water supply, and it is important that irrigation practices not contaminate that groundwater.
- The draft permit should set effluent limitations on nitrate and total nitrogen, given the potential risk to contaminate groundwater. Disposal of wastewater effluent with high nitrate concentrations will increase naturally low nitrogen concentrations in existing groundwater. Groundwater concentrations in the area are naturally low in nitrate, often not detectible, usually less than 1 milligram per liter. Nitrates are a public health concern. The U.S. Environmental Protection Agency's (EPA) National Primary Drinking Water Regulations establish a maximum contaminant level for Nitrate (measured as Nitrogen) in drinking water at 10 mg/L. Long-term exposure above the MCL has the potential to cause serious illness and death in infants<sup>5</sup>.

The Hays Trinity Groundwater Conservation District is happy to provide relevant data and technical support.

Thank you for considering these concerns. If you have any questions regarding these comments, please contact me at 512- 858 9253.

Sincerely,



Charlie Flatten, General Manager  
Hays Trinity Groundwater Conservation District

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<sup>5</sup> <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>

## Item 5

### Board Discussion and Possible Action

- i. Discussion and possible action on holding a March Board meeting.

## Item 6

### Director Reports

Directors may report on their involvement in activities and dialogue that are of likely interest to the Board, in one or more of the following topical areas:

- Meetings and conferences attended or that will be attended
- Board committee updates
- Conversations with public officials, permittees, stakeholders, and other constituents
- Commendations
- Issues or problems of concern

Item 7

Adjournment