

INTERLOCAL AGREEMENT
between the
CITY OF SAN ANTONIO and BEXAR COUNTY
(the SEP-HCP Permittees)
and
TEXAS PARKS AND WILDLIFE DEPARTMENT

This Interlocal Agreement (ILA) is made and entered into by and between the City of San Antonio and Bexar County (the SEP-HCP Permittees) and Texas Parks and Wildlife Department (TPWD), hereinafter collectively referred to as the Parties.

ARTICLE 1. RECITALS

WHEREAS, the Parties have worked cooperatively for several years to manage and conserve habitat in Central Texas for two (2) endangered songbirds and several endangered cave invertebrates, and TPWD's Government Canyon State Natural Area (GCSNA) located in Bexar County, Texas is a critical component of those efforts; and

WHEREAS, in addition to providing resource-based outdoor recreation for the areas, TPWD manages GCSNA for both aquifer health and for endangered species habitat, including some single cave endemic species that are found only within GCSNA; and

WHEREAS, the U.S. Fish and Wildlife Service (USFWS) approved the Southern Edwards Plateau Habitat Conservation Plan (SEP-HCP) brought forth by the SEP-HCP Permittees and on January 18, 2016 issued to the SEP-HCP Permittees the SEP-HCP Endangered Species Act Section 10(a) Incidental Take Permit TE-48571B (ITP); and

WHEREAS, the SEP-HCP facilitates the creation of a large preserve system that would provide permanent protection for endangered species in Central Texas; and

WHEREAS, for the SEP-HCP efforts to proceed, the SEP-HCP Permittees must improve protection for seven (7) SEP-HCP Covered Karst Invertebrate species (Covered Karst Invertebrates) consisting of the: Government Canyon Bat Cave Spider (*Neoleptoneta microps*), Madla Cave Meshweaver (*Cicurina madla*), Braken Cave Meshweaver (*Cicurina venii*), Government Canyon Bat Cave Meshweaver (*Cicurina vespera*), *Rhadine exilis* (a beetle with no common name), *Rhadine infernalis* (a beetle with no common name), and Helotes Mold Beetle (*Batrisodes venyivi*); and

WHEREAS, the SEP-HCP ITP requires Initial Conservation Actions for the SEP-HCP Covered Karst Invertebrates prior to allowing Participants whose projects are located over karst zones to enroll in the SEP-HCP. Per condition T of the ITP and Section 4.5.3 of the SEP-HCP, Karst Participation Certificates will not be offered until the Permittees have secured some level of up-front improved conservation for all of the Covered Karst Invertebrates; and

WHEREAS, because these Initial Conservation Actions must be performed on all

Covered Karst Invertebrates, and because some of those species are found only within GCSNA, the inclusion of TPWD lands becomes a requisite and integral part of achieving these Initial Conservation Actions; and

WHEREAS, the Parties desire to work together in good faith to contribute to the recovery of the Covered Karst Invertebrates;

NOW, THEREFORE, in order to accomplish mutual goals, the Parties agree as follows:

ARTICLE II. PURPOSE AND GOALS

- A. The purpose of this ILA is to set out the intended terms governing and the rights and duties respecting the Parties' coordination, administration, implementation, and funding, and performance of obligations thereunder and in accordance with the SEP-HCP ITP.
- B. It is the goal of the SEP-HCP Permittees to cooperatively work with TPWD to facilitate Initial Conservation Actions required by the SEP-HCP through the use of monitoring and management of certain Covered Karst Invertebrates found only on property within GCSNA. This ILA seeks to have a net benefit on the threatened and endangered species known to occur in the GCSNA Karst Fauna Areas (KFAs). This ILA creates an agreement between the Parties to improve management on the six (6) KFAs established within GCSNA and to fund and monitor such management. Implementing these improved conservation measures is considered part of the SEP-HCP Initial Conservation Actions satisfying condition T of the SEP-HCP ITP, and does not contribute toward the Permittees' mitigation obligation under condition V of the SEP-HCP ITP, which requires establishment of a minimum of one thousand (1,000) acres of new recovery-quality karst habitat in permanently protected preserves at full implementation of the SEP-HCP.
- C. Each Party shares the common goal of facilitating the biological objectives set forth in the SEP-HCP by contributing to the recovery of the seven (7) Covered Karst Invertebrates through the establishment and management of six (6) Karst Fauna Areas (KFAs) within GCSNA and satisfying a component of the SEP-HCPs Initial Conservation Actions requirements.

ARTICLE III. AUTHORITIES

- A. City of San Antonio Ordinance 2017-01-19-0032.
- B. Bexar County, Texas Commissioners Court Approval of the Interlocal Agreement for the implementation of The Southern Edwards Plateau – Habitat Conservation Plan (SEP-HCP) between the City of San Antonio and Bexar County, considered as Agenda Item No. 5.a of its February 21, 2017 public meeting.

- C. SEP-HCP Endangered Species Act Section 10(a) Incidental Take Permit TE-48571B.
- D. Chapter 791 of the Texas Government Code which provides that local governments and political subdivisions of the State may execute interlocal cooperation contracts.

ARTICLE IV. INTENT

- A. The intent of the Parties is to work together to achieve mutual benefits from this ILA. To that end, the Parties intend to implement in perpetuity the management and monitoring requirements of the six (6) GCSNA KFAs as set forth in the USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan.
- B. TPWD currently manages GCSNA karst features according to a Karst Management Plan originally approved by USFWS in 2003 and approved as amended in 2012. While this plan is appropriate for the natural resources the plan includes, it is the intent of the Parties to improve management on the six (6) KFAs established within GCSNA, provided that these improved conservation measures are considered part of the SEP-HCP Initial Conservation Actions and are not counted as part of the one thousand (1,000) acres of new karst preserves that the SEP-HCP ITP requires. The USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan formally replaces the prior USFWS-approved TPWD Karst Management Plan.
- C. It is the intent of the Parties to continue to work together to pursue perpetual commitment of preservation for the KFAs in order to contribute to the recovery of the Covered Karst Invertebrates. The Parties intend and share a good faith expectation that funds committed by the SEP-HCP Permittees within this ILA are sufficient to implement in perpetuity the commitments of the Parties to the management and monitoring requirements of the six (6) GCSNA KFAs as set forth in the USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan.

ARTICLE V. RESPONSIBILITIES

- A. **Responsibilities of the SEP-HCP Permittees.** Beginning on the effective date of this ILA, the SEP-HCP Permittees or their agents will, using funds annually appropriated and dedicated by the SEP-HCP Permittees' respective governing bodies, implement management and monitoring requirements of the six (6) GCSNA KFAs as set forth in the USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan. Such management and monitoring requirements include in-cave monitoring and cave surveys.
- B. **Responsibilities of TPWD.** Beginning on the effective date of this ILA, TPWD

will provide and facilitate the access and coordination necessary for the SEP-HCP Permittees or their agents to carry out management and monitoring requirements of the six (6) GCSNA KFAs as set forth in the USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan and will coordinate with the SEP-HCP Permittees to select any contractor performing work under this ILA on GCSNA property.

C. **Responsibilities of All Parties.** The rights and duties respecting the Parties' coordination, administration, implementation, and funding, and performance of obligations hereunder, and in accordance with the SEP-HCP ITP, are as follows:

- 1) Funding for the management and monitoring requirements of the six (6) GCSNA KFAs as set forth in the USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan and in USFWS-approved amendments, if any, to the Plan will be appropriated annually by the SEP-HCP Permittees in the amount of \$100,000.00 per fiscal year for a period of fifteen (15) years beginning on the effective date of this ILA and ending September 30, 2032. The appropriations will be implemented through the SEP-HCP budget process as described in the Interlocal Agreement for the Implementation of the Southern Edwards Plateau Habitat Conservation Plan and will be paid into a non-wasting endowment account ("GCSNA Endowment Fund") established and managed by the SEP-HCP Permittees. For each year of the fifteen (15) year period, \$35,000.00 of appropriated funds will be allocated to fund that year's management and monitoring activities, and the remaining \$65,000.00 of appropriated funds will be reserved in the GCSNA Endowment Fund to fund required management and monitoring activities implemented on or after October 1, 2032 and in perpetuity.
- 2) Obligations of the SEP-HCP Permittees under this ILA shall be funded subject to the discretion of the City Council for the City of San Antonio and the Commissioners Court for Bexar County whether to appropriate funding for each fiscal year. If the City and/or County fails to appropriate funding for any obligation under this ILA, any Party may terminate this agreement and have no further liability.
- 3) The SEP-HCP Permittees will carry out management and monitoring requirements of the six (6) GCSNA KFAs as set forth in the USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan.
- 4) The SEP-HCP Permittees and TPWD will provide a timely review of any coordination associated with the management and monitoring activities implemented by the SEP-HCP Permittees.
- 5) The SEP-HCP Permittees and TPWD, as applicable, will provide storage and curation of data including but not limited to, paper, electronic,

photographic, videos, and reports.

- 6) The Parties will provide access to property and data necessary to implement management and monitoring activities. Coordination between Parties regarding access will be in writing.
- 7) TPWD will provide the SEP-HCP Permittees any information necessary for the SEP-HCP Permittees to complete the annual report regarding the status of the efforts on GCSNA KFAs as set forth in the USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan and in accordance with the reporting requirements of the SEP-HCP.
- 8) Upon the fifteenth and final annual \$100,000.00 payment by the SEP-HCP Permittees into the GCSNA Endowment Fund, no further payments from the SEP-HCP Permittees will be required and the SEP-HCP Permittees will continue to commit money from the GCSNA Endowment Fund to implement the annual management, monitoring, and reporting activities within the GCSNA KFAs in perpetuity.
- 9) The SEP-HCP Permittees and TPWD will jointly develop the solicitation and scope of work for a Contractor to perform the managing and monitoring requirements of the six (6) GCSNA KFAs as set forth in the USFWS-approved SEP-HCP GCSNA KFAs Management and Monitoring Plan. The SEP-HCP Permittees, in coordination with TPWD, will select the Contractor. The selected Contractor must be insured and must name TPWD as an Additional Insured in the Contractor’s insurance policy. At a minimum, the Contractor must maintain insurance coverage as follows:

Type of Insurance	Each Occurrence/Aggregate
Workers Compensation	Statutory
Employer's Liability Bodily Injury by Accident Bodily Injury by Disease Bodily Injury by Disease	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit

<p>Commercial General Liability General Aggregate Applies Per Project</p>	<p>\$1,000,000 Bodily Injury & Property Damage – Each Occurrence \$2,000,000 Aggregate Limit \$5,000 Medical Expense Each Person \$1,000,000 Personal Injury & Advertising Liability \$2,000,000 Products/Completed Operations Aggregate Limit</p>
<p>Automobile Liability All Owned, Hired and Non-Owned Vehicles</p>	<p>\$500,000 Combined Single Limit</p>
<p>Third Party Liability Combined Single Limit Bodily Injury and Property damage.</p>	<p>\$1,000,000 Each Occurrence</p>
<p>Note: Workers’ Compensation and Liability insurance are required by an “employer” which is defined as “a person who employs one or more employees.” If respondent has no employees, such insurance is not required. If respondent claims they have no employees, TPWD will require a statement to that fact.</p>	

By written agreement of the Parties, minimum insurance requirements may be increased to adjust to future economic conditions; such increases shall be implemented through contract terms and no amendment of this ILA shall be required. Not later than ten (10) days prior to commencement of work to perform the managing and monitoring requirements of the six (6) GCSNA KFAs as set forth in the approved SEP-HCP GCSNA KFAs Management and Monitoring Plan, the Contractor shall furnish to TPWD, for approval, a certificate of insurance as proof that the required insurance is in full force and effect. TPWD, in collaboration with the SEP-HCP Permittees, will develop a Quality Assurance and Quality Control (QAQC) protocol for work performed by the Contractor. In its annual report to the SEP-HCP Permittees, TPWD will include a QAQC evaluation of the Contractor’s performance for the preceding twelve (12) month period.

ARTICLE VI. GENERAL PROVISIONS

- A. **Default.** If a Party defaults in the performance of any of the terms or conditions of this ILA, other than by failure to fund, the defaulting Party shall have thirty (30) days after receipt of written notice of such default

within which to cure the default. If the default is not cured within such period of time, then the non-defaulting Parties shall have the right to terminate this ILA upon written notice thereof to the other Parties.

- B. Amendment of this ILA.** Amendments to this ILA may be proposed by any Party and shall become effective upon the adoption of said amendment by the respective governing bodies or legally authorized representative of all Parties in writing.
- C. Communications.** Communications between Party representatives regarding implementation of this ILA will be in writing, with electronic mail being the preferred means of writing. To be effective, notices regarding matters within Article VI of this ILA must be in writing, copied to all Parties, and directed to the SEP-HCP Coordinating Committee Chair (Chair) and TPWD Government Canyon State Natural Area Superintendent. If a Party changes the contact information for its representative, the Party will notify the other Parties promptly in writing and such change shall be effective upon receipt of such notice by the other Parties and no amendment of this ILA shall be required. Contact information for the Parties and Chair is as follows:

If to the Permittees:
SEP-HCP Coordinating Committee Chair
Attn: Melissa Ramirez
Development Services Department
City of San Antonio
P. O. Box 83966
San Antonio, Texas 78283-3966
Phone: (210) 207-7038
Email: Melissa.Ramirez@sanantonio.gov

If to the TPWD:
Superintendent
Government Canyon State Natural Area
12861 Galm Road
San Antonio, TX 78254
Phone: (210) 688-9055, ext. 2008
Email: chris.holm@tpwd.texas.gov

- D. Governing Law.** This ILA shall be governed by, and construed in accordance with, the laws of the State of Texas. Any action or proceeding brought to enforce the terms of this Interlocal Agreement or adjudicate any dispute arising out of this Interlocal Agreement shall be brought in a court of competent jurisdiction in Bexar County, Texas.
- E. Formal Matters.** In performing the activities and objectives under this ILA, the relationship between the Parties is that of independent contractors, and

not that of partners, joint ventures, or any other relationship. The Parties shall exercise independent judgment in performing the vision and objectives and are solely responsible for setting their own working hours, scheduling or prioritizing the activities and objectives and determining the means and methods of implementing the activities and objectives, subject only to the requirements of this ILA. No term or provision of this ILA shall be construed as making the Parties agents or employees of other Parties, or making the Parties or any of the Parties' employees or agents eligible for fringe benefits from another Party such as the retirement, insurance and worker's compensation benefits a Party provides to its own employees.

- F. **Termination for Convenience.** Whenever a Party in its discretion deems it to be in that Party's best interest, it may terminate this ILA for convenience. Such termination shall be effective thirty (30) days after the terminating Party delivers written notice of termination of convenience to the other Parties. The Parties shall have no additional liability to one another for termination under this Section.
- G. **Assignment or Transfer of Interest.** No Party may assign its rights, privileges and obligations under this ILA in whole, or in part, without the prior written consent of the other Parties. Any attempt to assign without such approval shall be void.
- H. **Legal Construction.** In case any one or more of the provisions contained in this ILA shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalid, illegal, or unenforceable provision shall not affect any other provision hereof; and this ILA shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein. This ILA shall not be construed for or against any Party by reason of the authorship or alleged authorship of any provision, or by reason of the status of the respective Parties.
- I. **Compliance with Laws and Ordinances.** All Parties shall comply with all applicable federal, state, and local laws and ordinances related to the activities performed under this ILA.
- J. **Force Majeure.** No Party shall be responsible for delays or lack of performance by such entity or its officials, agents or employees that result from acts beyond that Party's reasonable control, including acts of God, strikes or other labor disturbances, or delays by federal or state officials in issuing necessary regulatory approvals and/or licenses. In the event of any delay or failure excused by this Section, the time of delivery or of performance shall be extended for a reasonable time period to compensate for delay.
- K. **Multiple Counterparts.** This ILA may be executed in separate identical

counterparts by the Parties and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate identical counterparts will constitute but one and the same instrument.

- L. **No Third Party Beneficiary.** The terms and provisions of this ILA are intended solely for the benefit of each Party hereto, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person or entity.
- M. **Prior Agreements Superseded.** This ILA, including the exhibits, constitute the entire Agreement of the Parties regarding the subject matter of this Agreement and supersede all previous agreements and understandings, whether written or oral, relating to such subject matter.

[Signature Page Follows]

EXECUTED to be effective on the latest date indicated below (the "Effective Date").

**CITY OF SAN ANTONIO
A Texas Municipal Corporation**

COUNTY OF BEXAR, TEXAS

By: _____
Sheryl Sculley
City Manager

By: _____
Nelson W. Wolff
County Judge

Date

Date

ATTEST:

ATTEST:

By: _____
Leticia Vacek
City Clerk

By: _____
Gerard C. Rickhoff
County Clerk

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

By: _____
Andrew Segovia
City Attorney

By: _____
Katherine Ramos
Assistant Criminal District Attorney
Civil Section

**APPROVED AS TO FINANCIAL
CONTENT:**

By: _____
Susan Yeatts
Bexar County Auditor

By: _____
David Smith
Bexar County Manager

**TEXAS PARKS AND WILDLIFE
DEPARTMENT
A State Agency**

By: _____
Carter Smith
TPWD Executive Director

Date

ATTEST:

By: _____

APPROVED AS TO LEGAL FORM:

By: _____
Colette Barron Bradsby
TPWD Attorney