

## Classen-Steubing Conservation Easement

**Date:** \_\_\_\_\_, 2016

**Grantor:** The City of San Antonio (the “City”), a Texas municipal corporation, P.O. Box 839966, San Antonio, Texas 78283-3966

**Grantee:** The Edwards Aquifer Authority (the “EAA”), 900 E. Quincy Street, San Antonio, Bexar County, Texas 78215

### Authorizing Ordinance:

**Easement Area:** 159.786 acres of the Classen-Steubing Ranch, as more particularly described in Exhibit A.

**Consideration:** \$10.00 and other good and valuable consideration.

**Conveyance:** The City grants, conveys, and warrants to the EAA a conservation easement (“Easement”) in perpetuity over, across, and within the Easement Area. This Easement is created under and is governed by Chapter 183 of the Texas Natural Resources Code, as amended, or its recodification. The terms of this conservation easement are as follows:

1. The Purposes of this Easement. Easement Area is in a substantially undisturbed natural condition and the City and the EAA desire to protect the integrity of the Easement Area from waste or residential, industrial, agricultural, or commercial development (as more specifically defined in Paragraph D below), except as otherwise permitted by this Easement, in order to minimize the chance of materially impairing the quantity or quality of aquifer recharge. The purposes of this Easement are as follows:
  - A. To protect the natural condition of the Easement Area and that portion of the Edwards Aquifer underlying it;
  - B. To protect the Easement Area’s natural resources, recharge water quality, and ecological integrity;
  - C. To provide for the research, educational, and monitoring activities of the EAA (as more specifically defined in Section 2 below);
  - D. To restrict the development and use of the Easement Area consistent with the following:
    - (i) to limit activities that result in soil erosion or the pollution of surface water or groundwater;
    - (ii) to prohibit the subdivision of the Easement Area;

- (iii) to prohibit the conduct of any residential, commercial, agricultural, or industrial use or activity;
- (iv) to prohibit the construction of any buildings or improvements except as expressly allowed in paragraph 3, or otherwise in furtherance of the purposes of this Easement;
- (v) to prohibit the development of any ball fields, playgrounds, picnic areas or other similar facilities typically associated with municipal parks except as expressly allowed in paragraph 3, or otherwise in furtherance of the purposes of this Easement;
- (vi) to prohibit surface uses related to the extraction of minerals or hydrocarbons or other materials on or below the surface, or the storage thereof;
- (vii) to prohibit any activity that diminishes the aquifer recharge capabilities of the Easement area;
- (viii) to prohibit the generation, storage, collection, transportation, disposal, dumping, or release of hazardous waste or materials, whether they be in liquid, solid, semi-solid, or semi-liquid state, and to prohibit the disposal or dumping of non-hazardous waste or materials;
- (ix) to prohibit the storage, use, or application of herbicides, pesticides, fertilizers, or any other similar chemicals or agents, in a manner that could negatively impact the quality of the receiving surface water in the Easement Area; and
- (x) to prohibit the use of motor vehicles by persons other than the officers or employees of the City or the EAA, or their agents or other authorized representatives.

2. Rights and Duties of the EAA. The City confers the following rights upon the EAA in connection with the Easement:

- A. Ingress and Egress. The EAA and its officers, agents, invitees, employees and contractors will have a right of ingress, egress and access to the Easement Area as needed to exercise the rights and carry out the purposes set forth hereunder. In so doing, EAA must not interfere unreasonably with City's permitted uses of the property. EAA shall notify City 24 hours in advance of accessing the Easement Area, and shall use its reasonable efforts to ensure that its entry corresponds with a time that is both timely and convenient for City.
- B. Monitoring Equipment. The EAA may install, operate, and maintain various types of monitoring equipment, including a continuous recording rain gauge and weather station, at locations that are mutually agreeable to the parties. The

EAA may install, operate, and maintain fences and other devices at locations mutually agreeable to the parties to provide security for the monitoring equipment.

- C. Monitoring Wells. The EAA may drill, operate, and maintain up to two monitoring wells at locations that are mutually agreeable to the parties. The EAA may install, operate, and maintain fences and other devices at locations mutually agreeable to the parties to provide security for the monitoring wells.
- D. Research and Educational Activities: The EAA may conduct research activities with appropriate research entities related to watershed management, water quality protection or other similar purposes consistent with the purposes of this Easement. The EAA may also use the Easement Area for educational purposes, including field trips related to natural science education. The EAA shall coordinate all such activities with the City.
- E. Caves - Approval by the Authority: The Authority will have a right of review and approval for all plans of the City involving excavation and maintenance activities associated with known cave structures in the Easement Area.
- F. Recharge Structure Construction: With the mutual consent of the City, the EAA may construct, operate, and maintain one or more recharge structures within the Easement Area, at locations mutually agreed upon by the EAA and the City and other facilities reasonably associated there with, and such mutual consent may not be unreasonably withheld.
- G. Notice of Noncompliance; Cure Period; Right of Enforcement: If the EAA determines that the City is not complying with this Easement, the EAA will provide written notice to the City. The notice will identify the noncompliance and request action by the City to stop or correct the noncompliance within a reasonable period of time specified in the notice. If the Easement Area has been damaged, the notice will require the City to restore the Easement Area to the fullest extent practicable. If the City does not cease a noncompliance or complete corrective action as requested in the notice within a reasonable period of time, the EAA shall have the right to enjoin the noncompliance and to enforce the restoration of any portions or features of the Easement Area that may be damaged by such noncompliance.

Upon completion by the EAA of any activity under B, C, D or F of this paragraph, the EAA agrees to restore the Easement Area to its condition preceding the activity, insofar as practicable. This includes the restoration of fences, and the abandonment and plugging of wells in accordance with applicable laws and regulations. The EAA will be responsible for maintenance of any area fenced by it.

3. City's Retained Rights; Covenant and Restriction:

- A. The City retains the right to use the Easement Area in all ways, subject to the restrictions imposed by the purposes of this Easement and the EAA's rights as described above. The City agrees to provide the EAA with plans to implement any of the retained uses at least 90 days prior to construction. The EAA may use the Procedures in Section 2.G if it determines any of the planned use would violate the provision or purposes of this Easement. The retained uses include the following:
- (i) The right to construct, operate, and maintain storage buildings and facilities related to the maintenance of the Easement Area;
  - (ii) The right to construct, operate, and maintain trails.
  - (iii) The right to enter into a temporary grazing lease with adjacent landowners to allow for livestock access and grazing on the Easement Area. City will provide EAA with copy of any grazing lease.
  - (iv) The right to engage in other open space natural area park purposes, or other such uses as to be mutually agreed upon by the parties.
- B. This Easement shall constitute a covenant and restriction running with the title to the Easement Area, binding on the City and City's successors and assigns to the benefit of the EAA and the EAA's successors and assigns. In the event that the City desires or intends to transfer ownership of the Easement Area, or any portion of it, 90 days prior written notice of such transfer shall be given to the EAA.
- C. Within 24 months of the execution this Easement, the City and the EAA shall establish an easement documentation report ("Report"), which accurately reflects the goals of this Easement and the current condition of the Easement Area at the time the Easement is executed. The Report will be incorporated by reference into the terms of this Easement.
- D. Within 24 months of the execution this Easement, the City and the EAA shall establish a maintenance schedule ("Schedule") for the purposes of brush clearing and range management to protect the ecological integrity of site and prevent erosion. The Schedule will likely be adapted from current land management plans in-use by the City at other natural areas. Such Schedule, which may be amended from time to time, will be incorporated by reference into the terms of this Easement.
- E. Upon acquisition of additional adjacent property, the City may determine it is in the best interest of the property and aquifer protection to redefine the boundaries of the Easement Area, such that the overall acreage of the Easement Area is not diminished in size. Any future boundary revision shall be approved by the City's Director, Parks and Recreation Department, in consultation with EAA staff. Any new Easement Area must be defined with the same degree of specificity require

for identifying real property for conveyance, and will be recorded as an amendment to the Easement in the Real Property Records of Bexar County, Texas.

4. Miscellaneous Provisions:

- A. Termination: This Easement may be terminated only upon the mutual written consent of the City and the EAA in an instrument recorded in the Official Records of Bexar County, Texas.
- B. Amendment: This Easement may be amended only with the written consent of both Grantor and Grantee. Any amendment must be consistent with the Purposes of this Easement and must comply with applicable law, including Chapter 183 of the Texas Natural Resources Code, as amended from time to time.
- C. Governing Law; Construction: Texas law will govern this Easement. This Easement is granted and accepted pursuant to Texas Natural Resource Code, Chapter 183, amended.
- D. Severability: if any portion of this Easement is determined to be invalid, the remaining provisions will remain in full force and effect if they can be given effect without the invalid portion.
- E. Entire Agreement: This Easement sets forth the entire agreement of the parties and there are no other persons or entities with third party rights of enforcement. This Easement is intended to supersede all prior discussions or understandings between the City and the EAA with regard to the substance hereof.
- F. Notices: Notices under this Easement must be given by certified mail, return receipt requested, or by personal delivery. Each party will notify the other of any change in its address.
- G. Effective Date: The effective date of this Easement will be the date this Easement is recorded in the Official Records of Bexar County, Texas.

**In Witness Whereof**, the parties have caused their representatives to set their hands. By the signature of its representative below, Grantee manifests its acceptance of this Easement.

**Grantor:**

**City of San Antonio**, a Texas municipal corporation

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

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

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

**Grantee:**

Edwards Aquifer Authority, a conservation and reclamation district

Signature: \_\_\_\_\_

Printed

Name: \_\_\_\_\_

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

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

**Approved As To Form:**

\_\_\_\_\_  
City Attorney

**Approved As To Form:**

\_\_\_\_\_  
General Counsel

STATE OF TEXAS       §

COUNTY OF BEXAR    §

This Easement was acknowledged before me this date by \_\_\_\_\_,  
\_\_\_\_\_ of the City of San Antonio, a Texas municipal corporation, in the  
capacity therein stated and on behalf of such entity.

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

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_

STATE OF TEXAS       §

COUNTY OF BEXAR    §

This Easement was acknowledged before me this date by \_\_\_\_\_,  
\_\_\_\_\_ of the Edwards Aquifer Authority, in the capacity therein stated and  
on behalf of such entity.

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

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_

Exhibit A

Legal Description

DRAFT