

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

This Memorandum of Understanding (MOU) 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 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 ventyivi*); and

WHEREAS, the SEP-HCP ITP requires the completion of 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 mitigation 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 this initial step; 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 MOU 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 for the period of time beginning on the effective date of this MOU and ending on September 30, 2017.
- B. It is the goal of the SEP-HCP Permittees to cooperatively work with TPWD to facilitate the Initial Conservation Actions required by the SEP-HCP. This MOU seeks to have a net benefit on the threatened and endangered species known to occur in the GCSNA Karst Fauna Areas (KFAs). This MOU creates an understanding for an agreement between the Parties to improve management on the six (6) KFAs established within GCSNA. Implementing these improved conservation measures are 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. It is the goal of the parties to enter into a subsequent agreement to supersede this MOU on or before September 30, 2017 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 for a period of time beginning on October 1, 2017 and continuing through September 30, 2032.
- D. 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.

ARTICLE IV. INTENT

- A. The intent of the Parties is to work together to achieve mutual benefits from this MOU. To that end, the Parties intend to 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 for 2017.
- 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 in the future to pursue perpetual commitment of preservation for the KFAs in order to contribute to the recovery of the Covered Karst Invertebrates.

ARTICLE V. RESPONSIBILITIES

- A. **Responsibilities of the SEP-HCP Permittees.** For the period of time beginning on the effective date of this MOU and ending on September 30, 2017, the SEP-HCP Permittees or their agents will, using funds previously 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 SEP-HCP GCSNA KFAs Management and Monitoring Plan for 2017. Such management and monitoring requirements include in-cave monitoring and cave surveys.
- B. **Responsibilities of TPWD.** For the period of time beginning on the effective date of this MOU and ending on September 30, 2017, TPWD will provide and facilitate the access 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 SEP-HCP GCSNA KFAs Management and Monitoring Plan for 2017.

- C. **Responsibilities of All Parties.** The Parties shall work cooperatively to develop and execute an agreement on or before September 30, 2017 to supersede this MOU. Such agreement shall 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.

The Parties agree that the subsequent agreement shall include, but not be limited to, terms to assign responsibilities as follows:

- 1) Subsequent funding from the SEP-HCP Permittees for the management and monitoring requirements of the six (6) GCSNA KFAs as set forth in the approved SEP-HCP GCSNA KFAs Management and Monitoring Plan and in USFWS-approved amendments, if any, to the Plan will be appropriated 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 an endowment account to be established by TPWD.
- 2) Obligations of the SEP-HCP Permittees under the subsequent agreement 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. If the City and/or County fails to appropriate funding for any obligation under the subsequent agreement, the SEP-HCP Permittees may terminate the agreement and have no further liability.
- 3) TPWD will carry out management and monitoring requirements of the six (6) GCSNA KFAs as set forth in the approved SEP-HCP GCSNA KFAs Management and Monitoring Plan.
- 4) The SEP-HCP Permittees will provide a timely review of any coordination associated with the management and monitoring activities carried out by TPWD.
- 5) TPWD 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 an annual report regarding

the status of the efforts on GCSNA KFAs as set forth in the approved SEP-HCP GCSNA KFAs Management and Monitoring Plan and in accordance with the reporting requirements of the SEP-HCP,

- 8) TPWD will establish a non-wasting endowment fund to be administered by the Texas Parks and Wildlife Foundation for which contributions will be made to by the SEP-HCP Permittees, subject to agreed conditions, and
- 9) Upon final endowment payment by the SEP-HCP Permittees, as determined and specified by the Parties, no further payments from the SEP-HCP Permittees will be required and TPWD will continue to commit the endowment funds to carry out the annual management, monitoring, and reporting activities within the GCSNA KFAs in perpetuity.

ARTICLE VI. GENERAL PROVISIONS

- A. **Default.** If a Party defaults in the performance of any of the terms or conditions of this MOU, 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 MOU upon written notice thereof to the other Parties.
- B. **Amendment of this MOU.** Amendments to this MOU may be proposed by any Party and shall become effective upon approval of all Parties in writing.
- C. **Communications.** Communications between Party representatives regarding implementation of this MOU will be in writing, with electronic mail being the preferred means of writing. To be effective, notices regarding matters within Article VI of this MOU 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. Contact information for the Parties and Chair is as follows:

If to the Permittees:
SEP-HCP Coordinating Committee Chair
Attn: Mellissa 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 MOU shall be governed by, and construed in accordance with, the laws of the State of Texas.
- E. **Formal Matters.** In performing the activities and objectives under this MOU, 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 MOU. No term or provision of this MOU 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 MOU 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 MOU 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 MOU 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 MOU shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein. This MOU 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 MOU.

- 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 MOU 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 MOU 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.

[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: _____

By: _____

Date

Date

ATTEST:

ATTEST:

By: _____

By: _____

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: _____

TPWD Executive Director

Date

ATTEST:

By: _____

APPROVED AS TO LEGAL FORM:

By: _____

TPWD Attorney