

**RESOLUTION NO. MFC \_\_\_\_\_**

**AUTHORIZING THE ACCEPTANCE OF THE RESPONSIBILITIES FOR THE CITY'S CONTINUATION OF THE EDWARDS AQUIFER PROTECTION PROGRAM THROUGH EXECUTION OF A PROGRAMMATIC AND FINANCING AGREEMENT BY THE CITY OF SAN ANTONIO, TEXAS MUNICIPAL FACILITIES CORPORATION, PURSUANT TO WHICH THE CITY OF SAN ANTONIO, TEXAS WILL ASSIGN TO THE CORPORATION, AND THE CORPORATION WILL ACCEPT, EDWARDS AQUIFER PROTECTION PROGRAM RESPONSIBILITY; AUTHORIZING THE RECEIPT BY THE CORPORATION OF CERTAIN LAWFULLY AVAILABLE CITY REVENUES TO FINANCE THE COSTS OF ADMINISTERING SUCH PROGRAM; APPROVING THE ISSUANCE AND INCURRENCE OF INDEBTEDNESS TO FUND THE PROGRAM; RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO; AND PROVIDING AN EFFECTIVE DATE**

\* \* \* \* \*

**WHEREAS**, the City Council (the *City Council*) of the City of San Antonio, Texas (the *City*) previously created the City of San Antonio, Texas Municipal Facilities Corporation (the *Corporation*), a valid and existing local government corporation duly organized under Subchapter D of Chapter 431 Texas Transportation Code, as amended (the *LGC Act*), for the purpose of aiding and acting on behalf of the City to accomplish certain governmental purposes of the City, including the acquisition, construction, equipping, financing, operation, and maintenance of land and other municipal facilities for the City, and which Corporation is vested with all powers and privileges of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act and Chapter 22, Texas Business Organizations Code, as amended (together, the *Non-Profit Acts*); and

**WHEREAS**, the City has, on May 6, 2000, May 7, 2005, November 2, 2010, and May 9, 2015, conducted special elections (such elections, individually, an *Election* and, collectively, the *Elections*) pursuant to Chapter 334, Texas Local Government Code, as amended (*Chapter 334*), to establish, fund and maintain for the benefit and protection of the Edwards Aquifer a watershed protection and preservation project, a recharge, recharge area, or recharge feature protection project, a conservation easement, and an open-space preservation program intended to protect water under Section 334.001(1)(F), as amended, Texas Local Government Code (the *Edwards Aquifer Protection Program* or the *EAPP*); and

**WHEREAS**, the Edwards Aquifer Protection Program provides the City with a mechanism to protect the environmentally sensitive land sustaining the Edwards Aquifer, the City's primary source of water and a critical component to the City's continuing economic viability through accomplishment of Program Objectives, pursuit of which City voters have, at the Elections, approved and funded on four separate occasions; and

**WHEREAS**, at each Election, City voters authorized funding the Edwards Aquifer Protection Program, in specified amounts, from the proceeds of a sales and use tax equal to 1/8 of

1% imposed and collected in the City (the *Sales Tax*), the proceeds from which represent, to date, the primary source of Edwards Aquifer Protection Program funding; and

**WHEREAS**, the Election conducted on May 9, 2015 (the *2015 Election*) specified that the Sales Tax will continue until it generates proceeds of \$100,000,000 in support of the current iteration of the Edwards Aquifer Protection Program (the *2015 EAPP*), after which the Sales Tax, as a source of EAPP funding, expires by its terms; and

**WHEREAS**, the City projects that Sales Tax proceeds will reach the aforementioned \$100,000,000 threshold by the end of the second calendar quarter of 2021 and such Sales Tax proceeds will be exhausted in pursuit of Program Objectives under the 2015 EAPP by the end of the City's 2022 fiscal year; and

**WHEREAS**, the onset of the 2020 COVID-19 global pandemic resulted in a local economic crisis, and on August 13, 2020, the City Council approved an ordinance placing on the November 3, 2020 ballot for City voter consideration (such election, the *2020 Election*) the redirection, after reaching the aforementioned \$100,000,000 EAPP funding threshold, of the Sales Tax for the purpose of funding the costs of effectuating various workforce development training and higher education initiatives; and

**WHEREAS**, notwithstanding its determination to request that City voters redirect the Sales Tax at the 2020 Election as described above, the City Council, pursuant to an ordinance adopted currently herewith (the *Ordinance*), determined that (i) continuation of the Edwards Aquifer Protection Program beyond the expiration of the 2015 EAPP is of critical importance to the City's future sustainability, (ii) a new iteration of the EAPP, causing its continuation beyond the 2015 EAPP's expiration, is in the best interests of the City and its residents, and (iii) the City shall continue the Edwards Aquifer Protection Program beyond the expiration of the 2015 EAPP, to include a dedicated source of funding from lawfully available City revenues identified in the Ordinance (such continued EAPP, as further described herein and in the Ordinance, the *Continued EAPP*); and

**WHEREAS**, in the Ordinance, the City assigned to the Corporation the duties of and responsibilities for maintaining, continuing, and implementing the Continued EAPP in the manner therein and herein described; and

**WHEREAS**, the City, in the Ordinance, memorialized its intent and commitment to pay Program Costs of the Continued EAPP in an amount equal to the Program Capacity, generally funded in equal amounts from the City sources of revenue identified and in the manner further described in the Ordinance over the 10-year period beginning October 1, 2022 and ending September 30, 2032, plus Program Expenses (funded by the City as ongoing operation and maintenance expenses thereof); and

**WHEREAS**, the City and the Corporation intend that Program Costs shall be satisfied (i) by the Corporation on a "pay-go" basis, (ii) through the Corporation's incurrence of indebtedness in the form of Corporation Program Debt secured by a lien on and pledge of Pledged Revenues, or (iii) some combination of the foregoing; and

**WHEREAS**, in the Ordinance adopted concurrently herewith, the City found and determined that Pledged Revenues are primarily comprised of the SAWS City Revenue Transfer, being those revenues transferred by SAWS to the City's general fund and, immediately upon transfer, belonging to the City and available for use thereby for any general or special purpose, all pursuant to the SAWS Bond Ordinances and Section 1502.059; and

**WHEREAS**, the initial Corporation Program Debt shall be in the form of an interim financing program designated as the "City of San Antonio, Texas Municipal Facilities Corporation EAPP Commercial Paper Program" (the *Commercial Paper Program*), pursuant to which the Corporation will from time to time issue, by private placement or pursuant to a public sale, Notes the proceeds from which will be used to initially pay for certain eligible Program Costs or to refund Notes previously issued to initially pay for such eligible Program Costs; and

**WHEREAS**, the City's assignment of Continued EAPP administration responsibility and dedication of source of payment of Program Costs resultant therefrom to the Corporation, and the Corporation's acceptance of the same, shall be memorialized in the Programmatic and Financing Agreement between such parties, in the form attached hereto as Exhibit A (the *Program Agreement*); and

**WHEREAS**, the Board of Directors of the Corporation (the *Board*) hereby affirms that the organizational purposes of the Corporation align with the Program Objectives, and the efforts employed to accomplish the Program Objectives constitute permissible Corporation undertakings within the meaning of, and as authorized by, the LGC Act, the Non-Profit Acts, and the Corporation's creation documentation (including the Articles and Bylaws); and

**WHEREAS**, the Board is now approving this Resolution to (i) accept from the City the assignment of responsibility for pursuit and accomplishment of Project Objectives under the Continued EAPP, (ii) authorize the Corporation's execution of the Program Agreement and all documentation necessary or incidental thereto, (iii) to receive for the funding necessary for the Corporation's payment of Program Costs incurred in pursuit of Program Objective accomplishment, (iv) approve the Corporation's pledge of Pledged Revenues as a source of security and payment of the initial Corporation Program Debt, (v) approve the Corporation's entering into the Indenture and the Credit Agreement and acceptance of its obligations thereunder, and (vi) other matters in connection with each of the foregoing; and

**WHEREAS**, the Board hereby finds and determines that the adoption of this Resolution is in the best interests of the residents of the City served by the Corporation; NOW, THEREFORE,

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF SAN ANTONIO, TEXAS MUNICIPAL FACILITIES CORPORATION THAT:**

**SECTION 1.** Acceptance of the Responsibilities for the Continuation of the Edwards Aquifer Protection Program. The Corporation hereby accepts the City's assignment of responsibility for administering the Continued EAPP (to include pursuit of accomplishment of Program Objectives) as described in the Ordinance. Such acceptance of responsibility shall continue in the manner and for the duration specified in the Ordinance.

**SECTION 2.**        Authorization to Enter into Program Agreement; Acceptance of City Funding. As evidence of the City's assignment to the Corporation (including dedication of funding source), and the Corporation acceptance, of Continued EAPP administration responsibility, as well as specifying the terms and provisions by which the Corporation shall administer and the City shall fund the Continued EAPP, the City and the Corporation have agreed to enter into the Program Agreement. The Board hereby approves and authorizes the Corporation to enter into the Program Agreement. In connection therewith, the Board also approves the Corporation's (i) executing and entering into any documentation related to the Continued EAPP (including the Program Agreement) and (ii) acceptance and use of the City funds identified in the Ordinance and described in the Program Agreement as a source of direct payment of Program Costs or as security for Corporation Program Debt. Funds received by the Corporation in furtherance of the Continued EAPP (to include City funding under the Program Agreement and proceeds of Corporation Program Debt) shall be used by the Corporation solely in pursuit of Program Objectives under the Continued EAPP.

**SECTION 3.**        Approval of Initial Corporation Program Debt; Receipt of Funding of Program Costs. The Board hereby approves the Corporation's incurring the initial Corporation Program Debt, in the form of the Commercial Paper Program (which may be re-designated based on the Commercial Paper Program's final structure), pursuant to which Notes are from time to time sold in a maximum principal amount of \$30,000,000 at any one time outstanding and having a stated maturity not later than October 1, 2052. In connection with the foregoing, the Board also hereby authorizes and approves the Corporation's (i) entering into the Indenture and the Credit Agreement, the forms of which are hereby approved, and (ii) further pledging the Pledged Revenues as security for the repayment of the obligations set forth in the Indenture and the Credit Agreement (and other Corporation obligations arising under either of the foregoing)

As specified in the Indenture, proceeds of the Notes shall be used to finance eligible Program Costs (or refinance Notes initially issued to finance eligible Program Costs) and to pay legal, financial, and other administrative fees incurred in connection with the establishment of the Commercial Paper Program and the issuance of Notes thereunder.

**SECTION 4.**        Creation of Accounts; Segregation of Funds. The Board hereby authorizes the creation of all funds and accounts (including funds and accounts required or provided to be created pursuant to the Indenture and the Credit Agreement) necessary to receive and hold funds received by the Corporation pursuant to the Program Agreement or from any other source and to segregate such Continued EAPP funds separate and apart from all other Corporation funds and accounts so that no Continued EAPP funds held by the Corporation are commingled with other Corporation funds.

**SECTION 5.**        Authorization to Execute and Effectuate Program Documentation. The Board hereby authorizes its President, Vice President, Secretary, and Treasurer, as well as the Mayor, City Manager of the City, the City's Chief Financial Officer, and the City's Deputy Chief Financial Officer (each, an *Authorized Official*) to execute, on behalf of and as the act and deed of the Corporation, the Program Agreement, any document related to Corporation Program Debt (including the Indenture and the Credit Agreement), any other document, instrument, or certificate to evidence, provide notice of, or perfect the pledge of Pledged Revenues as security for the City's obligations under the Program Agreement or the Corporation's obligations under any Program

Debt, any approvals, consents, certificates, notices, or other instruments pertaining to the Corporation's entrance into the Indenture or the Credit Agreement, amendments to any of the foregoing determined by an Authorized Official to be in the best interests of the City and the Corporation, and any other documentation determined by an Authorized Official to be necessary or incidental to any matter that is the subject of this Resolution. Each Authorized Official, from time to time and after consultation with the City Attorney or outside legal counsel, is authorized to approve any modifications or amendments to such documentation to effectuate the transactions hereunder or thereunder contemplated without further action of the Board or City Council being necessary or required.

Any Authorized Official is hereby authorized and directed, jointly and severally, to do any and all things necessary and to execute and deliver any and all documents (which include any dealer agreement, offering memorandum, issuing and paying agency agreement, and any additional documents related thereto) deemed necessary or advisable in order to effectuate any matter that is the subject of this Resolution, to include establishment of the Commercial Paper Program and consummation of the issuance, sale and delivery of the Notes thereunder and effectuation of agreements related thereto. Each Authorized Official is further authorized to select the qualified service providers related to the foregoing and implement the services set forth therein. In addition, and by the adoption of this Resolution, the Board hereby authorizes the payment of the fees and expenses incurred and to be paid by the Corporation in connection with the establishment of the Commercial Paper Program, the issuance, sale, and delivery of the Notes and the execution and delivery of the Credit Agreement, any dealer agreement, issuing and paying agency agreement, fee letter, and any additional agreements related to the Notes, as well as amendments to each of the foregoing, and as otherwise provided in this Resolution.

**SECTION 6:**        Defined Terms. For the purposes of this Resolution, the following terms have the meanings ascribed thereto:

a.        *Applicable Law* means, as applicable when and as such term is used, the Constitution and general laws of the State, including Section 1502.059, the LGC Act, the Non-Profit Acts, the City's Home Rule Charter, the Articles, and the Bylaws.

b.        *Articles* means the Corporation's Articles of Incorporation, filed with the Texas Secretary of State's Office on February 27, 2001, as the same may be amended from time to time.

c.        *Board* means the Corporation's Board of Directors, which (pursuant to the Articles) is the Mayor and City Council.

(a)        *Bylaws* means the Corporation's Bylaws, adopted and approved by the Board on March 1, 2001, which may be amended from time to time pursuant to the provisions thereof.

(b)        *Conservation Easement* means an easement on real property restricting in perpetuity the right to prospectively develop such property, voluntarily conveyed by the fee owner of such property at the time of conveyance (but binding on such fee owner and

all subsequent fee owners, trustees, occupants, tenants, or other users of the subject property).

(c) *Corporation Program Debt* means any indebtedness from time to time lawfully incurred by the Corporation to pay eligible Program Costs, which debt is secured by Pledged Revenues and payable from all or any portion of Dedicated Revenues from time to time received or to be received by the Corporation from the City pursuant to the Ordinance and the Program Agreement. Corporation Program Debt includes the Commercial Paper Program, any Notes, and the Corporation's obligations arising under the Indenture and the Credit Agreement.

(d) *Credit Agreement* means that credit agreement pursuant to which the liquidity provider thereunder will provide credit and/or liquidity support to the Notes, a form of which is attached hereto as Exhibit C.

(e) *Dedicated City Staff* has the meaning ascribed thereto in the Program Agreement.

(f) *Dedicated Revenues* means those City revenues derived from one or more sources other than ad valorem tax collections, identified by City finance staff and thereby determined to be lawfully used for and available in sufficient amount to satisfy the City's funding obligations arising under the Ordinance. Dedicated Revenues shall include Pledged Revenues and additional City revenues identified by City staff and thereby made a part of and constituting Dedicated Revenues. Dedicated Revenues shall also include (but are not additionally limited to) any additional revenues, incoming receipts or other resources, any grants, donations, appropriations, revenues, or income received or to be received from the United States Government, the State of Texas, or any other lawfully available public or private source whether pursuant to an agreement or otherwise, which may be used, or are not prohibited from use, by the City to satisfy its funding obligations under the Ordinance.

(g) *Gross Revenues* means the revenues derived by SAWS from the operation and management of the System.

(h) *Indenture* means the Indenture of Trust, dated as of September 17, 2020 (but effective as of a later date), between the Corporation and the Trustee, in the form attached hereto as Exhibit B and pursuant to which the Commercial Paper Program is established.

(i) *Maintenance and Operating Expenses* has the meaning ascribed thereto in the SAWS Bond Ordinances.

(j) *Net Revenues* means, for any period, Gross Revenues after deducting Maintenance and Operating Expenses.

(k) *Notes* means notes from time to time issued by the Corporation under the Commercial Paper Program.

(l) *Pledged Revenues* means (i) SAWS City Revenue Transfer in an amount sufficient and necessary (after taking into account any other funding source, including any funds hereinafter identified in clause (ii) of this definition) to satisfy the payment and security obligations of any Corporation Program Debt, and (ii) any additional revenues, incoming receipts or other resources including without limitation, any grants, donations, appropriations, revenues, or income received or to be received from the United States Government, the State of Texas, or any other lawfully available public or private source whether pursuant to an agreement or otherwise and that may at any time be pledged to the payment of the Corporation Program Debt.

(m) *Program Capacity* means an aggregate amount of \$100,000,000 herein identified by the City to accomplish Program Objectives by payment of Program Costs under the Continued EAPP.

(n) *Program Costs* means all costs of Real Property Acquisitions (including all commissions to land acquisition agents, legal, title, survey, appraisal, and recordation costs incurred in connection with such acquisitions, and City costs (including costs of Dedicated City Staff) incurred in connection with the identification, negotiation of terms of, and acquisition of Real Property Acquisitions that are properly allocable by the City as capital costs in accordance with Generally Accepted Accounting Procedures), in an aggregate amount not to exceed Program Capacity.

(o) *Program Expenses* means all costs and expenses, other than Program Costs, necessary and incidental to the continuation of the Continued EAPP, including (but not limited to) costs of updates to the SET Model made after commencement of the Continued EAPP, interest on Corporation Program Debt, professional costs incurred by the Corporation in connection with the establishment or incurrence of Corporation Program Debt, costs of Dedicated City Staff (other than Dedicated City Staff costs properly allocable as Program Costs), costs of ongoing monitoring of compliance with terms of Real Estate Acquisitions as identified in the Program Agreement, and costs for third party consultants to provide Continued EAPP technical assistance and ongoing monitoring, as described in the Program Agreement (but excluding third party costs properly allocable as Program Costs).

(p) *Program Objectives* means action taken for the purpose of preserving and protection of the Edwards Aquifer watershed, to include a recharge, recharge area, or recharge feature protection project, a conservation easement, and an open-space preservation program.

(q) *Real Property Acquisitions* means the Corporation's acquisition of interests in real property, whether by Conservation Easement or in fee simple, in furtherance of accomplishment of Program Objectives in accordance with the Ordinance and pursuant to the terms of the Program Agreement.

(r) *SAWS* means the San Antonio Water System Board of Trustees.

(s) *SAWS Bond Ordinances* means those City ordinances authorizing the issuance, from time to time, of evidences of indebtedness secured by and payable from Net Revenues.

(t) *SAWS Debt* means “Debt”, as defined in the SAWS Bond Ordinances.

(u) *SAWS City Revenue Transfer* means the up to 5% of the Gross Revenues after payment of all Maintenance and Operating Expenses and debt service requirements on any outstanding SAWS Debt, which portion of Gross Revenues is transferred to the City, for use thereby for any lawful purpose (including the pledge thereof hereunder granted) pursuant to the applicable terms of the SAWS Bond Ordinances and Section 1502.059. Currently, the City receives a revenue transfer from SAWS in the amount of 4% of Gross Revenues.

(v) *Section 1502.059* means Section 1502.059, Texas Government Code, as amended.

(w) *SET Model* has the meaning ascribed thereto in the Program Agreement.

(x) *System* means the City’s municipally-owned water and wastewater system, the management, operation, and maintenance of which is the responsibility of SAWS.

(y) *Trustee* means the trustee under the Trust Indenture.

**SECTION 7:** Applicable Law. Corporation action is hereunder taken in accordance with and pursuant to Applicable Law.

**SECTION 8:** Governing Law. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**SECTION 9:** Severability. If any provision of this Resolution or the application thereof to any person or circumstance shall be held to be invalid by a court of competent jurisdiction, the remainder of this Resolution and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Board hereby declares that this Resolution would have been enacted without such invalid provision.

**SECTION 10:** Incorporation of Preamble Recitals. The recitals contained in the preamble hereof are hereby found to be true, and such recitals and other statements therein are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Board.

**SECTION 11:** Public Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the



time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Chapter 551, Texas Government Code, as amended.

**SECTION 12:**        Effective Date. This Resolution shall be in force and effect from and after its passage on the date shown below.

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**PASSED AND APPROVED** by the Board of Directors of the City of San Antonio, Texas  
Municipal Facilities Corporation this 17<sup>th</sup> day of September, 2020.

CITY OF SAN ANTONIO, TEXAS  
MUNICIPAL FACILITIES  
CORPORATION

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President, Board of Directors

**ATTEST:**

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Secretary, Board of Directors

**EXHIBIT A**  
**PROGRAM AGREEMENT**

See Tab \_\_\_\_

**EXHIBIT B**  
**INDENTURE**

See Tab \_\_

**EXHIBIT C**  
**CREDIT AGREEMENT**

See Tab \_\_