

## **Memorandum of Understanding Between the City of San Marcos and the San Marcos River Foundation**

The City of San Marcos (City) and the San Marcos River Foundation (SMRF) enter into this Memorandum of Understanding (MOU) in recognition of the mutual benefits it will achieve for them.

### **I. Background**

1. The City is currently conducting the Purgatory Creek Improvements Project (CIP 679 and CIP 748) (the "Project").
  - a. The purpose of the Project is to provide flood mitigation utilizing natural channel designs, riparian and prairie restoration, and vegetation management, while also improving water quality, and adding shared-use trails providing connectivity to adjacent park space and residential accessibility. The Project also includes hydrologic and hydraulic analysis, bridge, road, and utility modifications, coordination with the Union Pacific Railroad; permitting with various federal and state agencies; and the acquisition of easements and or right-of-way.
  - b. The Project designs are being conducted in two phase areas. Phase 1 is for the Purgatory Creek channel reach located between its confluence with the San Marcos River to an area near Johnson Avenue and Phase 2 is for the channel reach starting at Johnson Avenue to Wonder World Drive.
  - c. In regard to the Phase 2 area trails
    - i. The City is in the process of acquiring easements and right-of-way as part of the flood mitigation project.
    - ii. The trail area is located adjacent to the Purgatory Creek south banks between Hunter Road and Mitchell Street.
    - iii. During large rain events, these trails may be inundated by Purgatory Creek floodwaters.
    - iv. Initial trail designs will be constructed with the use of natural materials.
  - d. The trail system improves the transportation connectivity, recreational opportunities, and quality of life for citizens and visitors to San Marcos.
2. SMRF is a nonprofit organization with a mission "to protect public access and preserve the San Marcos River, focusing on protecting the flow from aquifer-fed springs, improving the water quality and protecting the beauty of the area with parks and regular clean-ups."
3. SMRF has encouraged and sought out collaborative partnerships and assists in the formation of other community groups to expand protection of the watershed and endangered species.
4. The City and SMRF:
  - a. Have and wish to continue to work in partnership regarding the Project.
  - b. Collaborated regarding the design and construction of Phase 2 trails including trail alignment.
  - c. Conducted meetings with impacted property owners and other nonprofit groups.

- a. Collaborated regarding the removal of invasive vegetation identified along the trail alignment.
- 5. SMRF applied and received a Recreational Trail Grant from the Texas Parks and Wildlife Department (TPWD) with funds to be used to plan, design and construct a natural surface trail system within the Purgatory Creek corridor.
  - a. The total grant amount is \$200,000, the "Grant Amount").
  - b. The trail construction design will consist of natural materials.
  - c. The grant application included a City Letter of Support.
  - d. The grant provides an opportunity for the City to leverage the efforts of a community partner to enhance the Project.

## II. Purpose of MOU

The purpose of this MOU is to establish roles, responsibilities and procedures of the City and SMRF in planning and constructing trails as part of the Project using the Recreational Trail Grant funds awarded to SMRF by TPWD.

## III. MOU

1. City of San Marcos Commitments. The City will:
  - a. Acquire and establish easements and rights-of-way including areas for trails;
  - b. Designate via email one person as the City's point of contact to SMRF for matters related to this MOU;
  - c. If required, assist SMRF in obtaining needed permits and approvals for project;
  - d. Waive any fees associated with plan review, permits or approvals of proposed projects, to the extent permitted by and in accordance with applicable ordinances and polices of the City;
  - e. The City will purchase trail construction materials, not to exceed the Grant Amount.
    - i. Prior to the purchase of materials, the material type, quantity and cost will be approved in writing by both the City and SMRF;
    - ii. City staff must adhere to the City Purchasing policy for procurement, which may require obtaining bids for larger purchases.
  - f. Maintain completed and accepted trails following a maintenance schedule and after flooding events;
  - g. Provide technical assistance to SMRF related to the trails, such as mapping and engineering review and assistance;
2. San Marcos River Foundation Commitments. SMRF will:
  - a. Plan and construct natural trails including identifying construction materials quantities and costs, subject to the consent and approval by the City and SMRF;
  - b. Reimburse the City for the cost of purchasing materials for the project.
  - c. Designate via email one person as SMRF's point of contact to the City for matters related to this MOU;
  - d. Provide and coordinate volunteer work through SMRF's members, other groups, and individuals for construction of trails;
  - e. **Defend, indemnify and hold harmless City, its officers, employees and agents, from and against all damages, claims, losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses** to the extent caused by the negligence of SMRF, its officers, agents and volunteers;

3. City of San Marcos and San Marcos River Foundation Mutual Commitments.
  - a. Protocols and Guidelines for Purchase of Materials. The City and SMRF will jointly follow the protocols and guidelines for the purchase of materials to construct trails as indicated below:
    - i. Identifying materials to be purchased including quantities, cost, and the vendor in which materials will be purchased;
    - ii. City Staff will purchase the materials following the current City Purchasing Policy; which may include requesting quotes, bidding, and/or City Council approval.
    - iii. Any materials SMRF purchases directly will be deducted from the Grant Amount.
    - iv. City Staff will submit a reimbursement request to SMRF every quarter of the fiscal year.
    - v. SMRF Staff will submit reimbursement to the City within 30 days of receiving a City reimbursement request.
    - vi. SMRF staff will maintain a log of all requests and the statuses.
4. Miscellaneous.
  - a. The obligations of the City are subject to the appropriation of funds by the San Marcos city council for the purposes of this MOU during the fiscal year in which the obligation arises.
  - b. This MOU may not be assigned by either party without the written consent of the other party.
  - c. To the extent permitted by law, by entering into this MOU, the City does not waive its immunity from suit or liability that may be provided under applicable statutes, the Texas Constitution or law. Total expenditures by the City under this MOU may not exceed \$50,000.00 without the approval of the San Marcos City Council.
  - d. This MOU may be executed in one or more counterparts. PDF or digital copies of this executed MOU will be deemed to be effective and enforceable as if originals.
  - e. Subject to either party's right to terminate earlier herein, the term of this MOU will be for the duration of the period for SMRF's performance under the grant funding agreement with TPWD.
  - f. Notwithstanding any other provision in this MOU regarding the term or default and termination, either party may terminate this agreement by giving at least 90 days' advance written notice of termination to the other party. The notice will state the date of the termination.
  - g. If any clause or provision of this MOU is determined to be illegal, invalid or unenforceable, it is the intention of the parties that the remainder of this MOU will not be affected, and the parties declare that this agreement would have been entered into without the unenforceable portion.
  - h. This MOU may not be altered, changed, or amended, except by a written document signed by both parties. The terms, provisions, covenants and conditions contained in this MOU will apply to, inure to the benefit, and be binding upon the parties, and upon their respective successors in interest and legal representatives, except as otherwise expressly provided.

- i. Nothing in this MOU will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is that of independent contractors.
- j. SMRF agrees not to discriminate on the basis of race, creed, color, religion, age, sex, national origin or similar nondiscrimination laws in its activities under this MOU.
- k. Contact Information
  - San Marcos River Foundation
  - P.O. Box 1393
  - San Marcos, Texas 78667-1393

EXECUTED to be effective as of the date of the last signature below.

**CITY:**

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

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

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

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

**SMRF:**

By: Virginia Parker

Name: Virginia Parker

Title: Executive Director

Date: 3/14/25