

INTERLOCAL COOPERATION AGREEMENT
For Removal of Non-Native Plants, Texas Wild Rice Enhancement, Floating Plant Mat
Removal
and Management of Key Recreation Areas

Contract Number: 217-077, Modification 2

STATE OF TEXAS

COUNTY OF HAYS

~~The City of San Marcos (“City”) and the Texas State University (the “University”) through the Meadows Center for Water and the Environment (MCWE), collectively referred to as the “Parties” enter into this Interlocal Agreement (the “Agreement”) under the authority of the Interlocal Cooperation Act (the “Act”), Chapter 791 of the Texas Government Code, as amended.~~ **THIS INTERLOCAL MODIFICATION is made by and between the State of Texas acting by and through the City of San Marcos (“City”) and Texas State University (“University”) and shall become effective when fully executed. Each of these entities is, at times, referred to in this Contract and Modification individually as a "Party," and both are referred to collectively as "Parties."**

RECITALSBACKGROUND:

~~**WHEREAS**, the City of San Marcos is undertaking a program to remove non-native plants in the San Marcos River and replant with Texas Wild Rice and other native aquatics. Additionally, education of river users and maintenance activities will be accomplished (the “Project”).~~

~~— **WHEREAS**, this Project is being accomplished in accordance with a Section 10(a) permit/Edwards Aquifer Habitat Conservation Plan (“EAHCP”) and is funded through the Edwards Aquifer Authority (EAA).~~

~~— **WHEREAS**, the average long-term biological goal for TWR in the HCP is 12,000 m² and achieving this goal will require an 8000 m² increase over the first phase (7 years) of the HCP period with an annual goal of approximately 1100 m² of TWR restoration each year.~~

~~— **WHEREAS**, it is in the interest of economy and efficiency, that the Parties enter into a cooperative program; and~~
~~The City and University executed Contract 217-077 on December 29, 2016 and Modification 1 on February 12, 2020.~~

~~The Parties initially entered into a Memorandum of Understanding (“MOU”) in May, 2001 under which the Parties would jointly fund the compensation of a person employed by the City to manage the habitat conservation planning efforts on behalf of both Parties (the “Plan Manager”).~~

Among other activities in connection with the Edwards Aquifer Habitat Conservation Plan (EAHCP), the City contracted with the University to remove non-native plants in the San Marcos River and replant with Texas Wild Rice (“TWR”) and other native aquatics. Additionally, education of river users and maintenance activities will be accomplished (the “Project”). This Project is being accomplished in accordance with ta Section 10 (a) permit and is funded by the Edwards Aquifer Authority (EAA).

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree to modify Contract 217-077, including Modification 1, as follows:

MODIFICATIONS

SECTION I. SCOPE OF MUTUAL SERVICES shall be replaced in its entirety with the following:

A. University Agreements Regarding the Plan Manager:

The University agrees to:

- A. On or before September 1 immediately preceding the applicable fiscal year of the City, contribute one-half of the salary and benefits for the Plan Manager, subject to the University’s advance approval each year of such amount as provided below. Because the Plan Manager will be a full-time City employee, the University acknowledges that it will not have day-to-day or task-specific access to or oversight over the Plan Manager.
- B. Cooperate with the City in developing and, by September 1 of each year, agreeing in writing to the projects in which the Plan Manager will be involved during the next twelve-month period.
- C. Within 30 days of being presented with the proposed amount to be allocated by the City for the salary and benefits of the Plan Manager in the City’s upcoming applicable fiscal year budget, provide the City with its written acceptance or rejection of such amount.

B. University Agreements Regarding the Project:

1) Objective #1 - Non-Native Plant Removal

- a) Remove non-native aquatic plants in association with native plant enhancement/restoration. This removal includes non-native plants from Spring Lake to Stokes Park. Prior to plant removal, the University will disturb the Project area to remove

fountain darters and other native species. University divers will then remove non-native aquatic plants for disposal at the University's Composting Center; before leaving the river site, native fauna within the removed vegetation will be returned to the river by the University. The University will plant Texas Wild-Rice (TWR) or selected native species within the denuded areas.

- b) Monitor replanted areas monthly to evaluate the success rate and remove unwanted plant species from the planted areas and replant as needed to meet target area coverage. Conduct an annual river inventory to identify the presence and location of new non-native vegetation establishment.

2) Objective #2 – TWR and native plant installation

- a) Enhance and restore TWR by focusing on selective gardening of non-native vegetation in mixed stands of TWR and removal of non-native vegetation in areas adjacent to existing TWR stands. In addition, include selective TWR planting in areas where non-native vegetation and sediment is removed. In mixed stand areas, the University will remove the non-natives and monitor the original TWR stand for expansion. Similarly, for the TWR stands occupying optimal areas with adjacent non-native vegetation, remove the non-native plants and monitor the TWR for expansion. Finally, in optimal areas for TWR that are unoccupied by TWR, the University will remove any non-native vegetation that is present, plant TWR and monitor to assess the success of transplants.
- b) Monitor replanted areas monthly to evaluate success rate and weed the treatment areas as needed.

3) Objective #3 – Manage the Key Recreation Measure

Hire and manage a team of seasonal workers for the purpose of educating river users and assisting with the monitoring and continuance of all San Marcos EAHCP measures. The minimum work schedule will be Thursday-Sunday and all holidays for calendar years 2017, 2018 and 2019.

4) Objective #4 – Remove Floating Plant Mats Measure

Removed mats of floating vegetation and litter contained within, that are impacting the growth of native macrophytes. These mats may be removed or pushed, but all litter must be removed. Removed plants will be placed at a compost site to be determined by HCP Program Manager.

- 4) **Permits.** Comply with all federal and state permits acquired by the EAA as necessary to implement the scope of work included in this Agreement and incorporate any restrictions within these permits as part of the Objectives' protocols. In addition, the University will obtain local permits as needed.

5) **Deliverables:** Submit monthly reports to the City for review which will include details of all restoration efforts in terms of area of non-native vegetation removed, number of plants and area of TWR and native aquatic plants planted, observation of effectiveness of non-native plant removal and native planting efforts and volume of plant material removed/pushed. These reports will include specific recommendations on plant removal, and planting or gardening techniques as necessary to address effectiveness of these efforts.

6) **Qualified Personnel.** The Parties understand and expect that the work specified in this Agreement will be performed by scientists with education and experience in modeling and field studies who are able to determine the optimal conditions for TWR and other native plant success.

B. City Agreements as to Plan Manager:

The City agrees to:

A. Employ one full-time employee of the City as the Plan Manager who coordinates the EAHCP planning effort on behalf of both Parties, together with any other employees the City deems appropriate to assist the Plan Manager.

B. Provide the Plan Manager with office space and make the Plan Manager available to the University at reasonable times for consultation regarding matters involving the San Marcos River and associated watersheds.

C. Supervise the Plan Manager, with the understanding that the City will have sole discretion in the hiring and termination of persons for the Plan Manager position and may change the responsibilities, reporting structure, job title or classification of the Plan Manager

D. Provide to the University by March 1 of each year the amount of the salary and benefits for the Plan Manager proposed to be allocated by the City in the City's upcoming fiscal year budget for the applicable year.

E. Cooperate with the University so that the Plan Manager provides an active and constructive role in assisting the University in achieving its HCP obligations and by September 1 of each year, agree in writing as to the projects in which the Plan

Manager will be involved during the next twelve-month period.

D. City agrees as to the Project:

The City agrees to:

1) Provide specific guidelines for the work to be performed in accordance with the HCP and other protective federal and state permit requirements.

- 2) Monitor, for compliance the University's work against the EAHCP work plan requirements.
- 3) Designate ~~the Melani Howard, Habitat Conservation~~ Plan Manager as the City's representative in all matters related to this Agreement.

Section 3. Compensation

Section 3. Compensation shall be replaced in its entirety with the following:

The City shall reimburse University a total fee not-to-exceed \$2,852,316.56 for the University's performance of Services. The University shall submit invoices to the City on a monthly basis and the City will pay the University within thirty (30) days of the City's receipt of the invoices. Neither party to this Agreement expects that there will be a need for the provision of additional services. The City and the University will negotiate the compensation for additional services in the event those services become necessary. Upon acceptance, the City shall forward an Authorization of Change In Service (ACIS) for execution by both Parties. Attachment B to this Contract is part of this Modification 2 replacing the annual compensation schedule in its entirety

~~The City agrees to pay the University a total fee not to exceed \$672,316.56 for the University's performance of Services on a monthly basis upon the City's receipt and approval of appropriate invoices. Neither party to this Agreement expects that there will be a need for the provision of additional services. The City and the University will negotiate the compensation for additional services in the event those services become necessary. The following is a breakdown of the University's compensation per year:~~

— Objective #1 — Non Native Plant Removal	\$ 170,000.00
— Objective #2 — TWR Planting	\$10,000.00
— Objective #3 — Removal of Floating Plants	\$ 30,000.00
— Objective #4 — Management of Recreation	\$56,000.00

~~Total Revised Amount per year ————— \$266,000.00~~

~~Total Not To Exceed Amount : ————— \$266,000.00~~

~~The City will make payment based upon the percentage complete within each Objective. Reimbursable expenses are included in the not to exceed fee for each Objective.~~

Section 4. Term

Section 4. Term shall be replaced in its entirety with the following:

The term of this ~~Modification 2 Agreement~~ will commence on January 1, 2021~~17~~ and will end on ~~March 28~~~~December 31, 2028~~~~19~~ unless terminated by either party in accordance with Section 5) G Termination below). The Contract 217-077 spans from January 1, 2017 thru March 31, 2028.

~~In the event the City wishes to extend this Agreement it will do so by the issuance of an Authorization of Change in Service attached as Attachment A no sooner than 30 calendar days prior to the termination date and no later than the actual date of termination. This contract is extended from January 1, 2020 through December 31, 2027~~

Section 5. Miscellaneous Provisions

Section 5, Miscellaneous Provisions shall replace the following clauses in their entirety with the following clauses:

G. Termination: Either party may terminate this Agreement for convenience and without cause by giving a 120 calendar day advance written notice to the other party. This Agreement shall terminate effective as of the end of any fiscal year in which the University rejects in writing the proposed salary and benefits for the Plan Manager under Section I, A(3), except that the City, in its sole discretion, may continue this Agreement as to the Project. Each party shall be entitled to all payments due from the other for work or services completed up to the date of termination. each Party shall return any funds paid in advance for the performance of the uncompleted services or work.

I. Notice: Unless otherwise specified, written notice will be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein.

A. Interlocal Cooperation: ~~The City and the University agree to cooperate with each other in good faith at all times during the term of this Agreement in order to achieve the purposes and intent of this Agreement. Each party to this Agreement acknowledges and represents that this Agreement has been executed by its duly authorized representative.~~

B. Entire Agreement: ~~This Agreement, including appendices and referenced attachments represents the entire and integrated agreement between the Parties and supersedes all prior proposals, negotiations, representations, understandings and agreements either written or oral between the Parties. This Agreement may not be modified or amended except by written amendment or an authorization of change form executed by both Parties. Neither Party may assign this Agreement without the written consent of the other party except that the Parties reserve their constitutional, statutory and common law rights, privileges, immunities and defenses.~~

C. Invalid Provisions: ~~Should any provision in this Agreement be found or deemed to be invalid, this Agreement will be construed as not containing the provision and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.~~

~~**D. Applicable Law:** This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising under this Agreement is in Hays County, Texas.~~

~~**E. Interpretation:** The parties acknowledge and confirm that this Agreement has been entered into pursuant to the authority granted under the Act. All terms and conditions are to be construed and interpreted consistently with the Act.~~

~~**F. Public Information Act:** The parties understand that the City is governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this Agreement may be subject to release under the Act.~~

~~**G. Termination:** Either party may terminate this Agreement for convenience and without cause by giving a 30-calendar day advance written notice to the other party. However, the University will complete all work assigned under this Agreement or will return the funds paid in advance for the performance of the uncompleted work.~~

~~**H. Funding:** The City and the University acknowledge that funds for the payment for work performed by the University under the Agreement have been provided through the City's budget approved by City Council for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. The City cannot guarantee the availability of funds, and enters into the Agreement only to the extent such funds are made available. The University acknowledges and agrees that it will have no recourse against the City for its failure to appropriate funds for the purposes of the Agreement in any fiscal year other than the year in which the Agreement was executed. The fiscal year for the City extends from October 1st of each calendar year to September 30th of the following calendar year.~~

~~**I. Notice.** Unless otherwise specified, written notice will be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein.~~

Texas State University
Director, Post-Award Research & Support Services
Office of Research & Sponsored Programs
601 University Drive, JCK 420
San Marcos, TX 78666-4684
Email: grants@txstate.edu
Phone: 512-245-2102

With a copy to:
Thomas Heard
Meadows Center for Water & the Environment
Email: TH39@txstate.edu
Phone: 512-245-3553

City of San Marcos:
City Manager
City of San Marcos
630 E. Hopkins
San Marcos, TX 78666

With a copy to:
Melani Howard
Email: MHoward@sanmarcostx.gov
Phone: 512-395-5942

N. **Dispute Resolution:** To the extent required by law, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used to resolve a dispute arising under this Agreement.

Texas State University _____ Scott Erwin, Director of Sponsored Programs
_____ Office of Sponsored Programs
_____ Texas State University
_____ 601 University Drive, JCK 420
_____ San Marcos, TX 78666 4684

City of San Marcos: _____ Jared Miller, City Manager
_____ City of San Marcos
_____ 630 E. Hopkins
_____ San Marcos, Texas 78666

Section 5, Miscellaneous Provisions shall replace the following clauses in their entirety with the following clauses:

P. **Sovereign Immunity:** Notwithstanding any provision of this Agreement, nothing herein shall be construed as a waiver by either party of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this Agreement, the terms of this paragraph shall control

Q. **Force Majeure:** Except as otherwise provided, neither the City nor the University, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Agreement caused by Force Majeure, incidents of force majeure will include but not limited to the following: acts of God, strikes, pandemics and epidemics, war, riots, flood, drought, fire, sabotage, or any other circumstances of like character. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing Party exercises all reasonable due

diligence to perform.

R. Force Majeure: Except as otherwise provided, neither the City nor the University, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Agreement caused by Force Majeure, incidents of force majeure will include but not limited to the following: acts of God, strikes, pandemics and epidemics, war, riots, flood, drought, fire, sabotage, or any other circumstances of like character. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing Party exercises all reasonable due diligence to perform.

S. In accordance with Texas Education Code, Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, any provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:

(1) Whether the provision appears on the face of the Agreement or Contract; or

(2) Whether the Agreement or Contract includes any provision to the contrary.

Binding Effect: This Modification 2 will take effect immediately upon execution by both parties hereof and will inure to the benefit and be binding upon the administrators, successors and assigns of the parties hereto.

CITY OF SAN MARCOS:

By: _____

Bert Lumbreras, City Manager

_____ Date

TEXAS STATE UNIVERSITY:

By: _____
Walter E. Horton, Jr., Ph.D. Date

Chief Research Officer

TSU 2016

J. Binding Effect. ~~This Agreement will take effect immediately upon execution by both parties hereof and will inure to the benefit and be binding upon the administrators, successors and assigns of the parties hereto.~~

_____ Agreed to and accepted this _____ day of _____ 2016.

City of San Marcos

Texas State University

By: _____

By: _____

~~Jared Miller, City Manager~~

Date: _____

Date: _____

11-11-16

ATTACHMENT A

**AUTHORIZATION OF CHANGE IN SERVICES
CITY OF SAN MARCOS, TEXAS**

SERVICES: Removal of Non-Native Plants, Texas Wild Rice
Enhancement and Management of Key Recreation Areas
CONSULTANT: Texas State University
CONTRACT NUMBER: 217-077
AUTHORIZATION NO.:
ORIGINAL CONTRACT DATE:
AUTHORIZATION DATE:

WORK TO BE ADDED TO OR DELETED FROM SCOPE OF SERVICES

Previous contract amount: \$ _____
Net increase/decrease in contract amount: \$ _____
Revised contract amount: \$ _____

Texas State University

By: _____

Date: _____

Printed name, title

City of San Marcos:

Date: _____

By: _____

ATTACHMENT B
Budget

January 1, 2017 through March 31, 2028

Total amount not to exceed for this Interlocal Cooperation Contract 217-077 is \$2,852,316.56 as described below:

—~~Jared Miller, City Manager~~

Jared Miller