

**RESTATED AND AMENDED INTERLOCAL
COOPERATION AGREEMENT
For Habitat Conservation Planning, Including Removal of
Non-Native Plants, Texas Wild Rice Enhancement and
Management of Key Recreation Areas**

Contract Number: 217-077-1

STATE OF TEXAS

COUNTY OF HAYS

The City of San Marcos ("City") and the Texas State University (the "University"), 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.

RECITALS:

WHEREAS, pursuant to their respective incidental take permits from the Edwards Aquifer Authority ("EAA") the City and the University have worked cooperatively to achieve their common objectives under the Edwards Aquifer Habitat Conservation Plan ("EAHCP").

WHEREAS, the Parties initially entered into a Memorandum of Understanding ("MOU") in May 2001 (the "MOU") 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").

WHEREAS, among other activities in connection with the EAHCP, the Parties entered into an Interlocal Agreement ("Contract No. 217-077") in December 2017, as amended in December 2019 under which 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").

WHEREAS, this Project is being accomplished in accordance with a Section 10(a) permit and is funded by the EAA.

WHEREAS, the average long-term biological goal for TWR in the EAHCP 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, the Parties have identified necessary amendments to the MOU and to Contract No. 217-077 and determined that it is in the interest of economy and efficiency that the mutual obligations of the Parties in relation to both such agreements be consolidated into this Restated and Amended Interlocal Cooperation Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

**SECTION I. SCOPE OF MUTUAL SERVICES AND
AGREEMENTS OF THE PARTIES**

A. University Agreements Regarding the Plan Manager:

The University agrees to:

1. 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.
2. 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.
3. 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:

The University agrees to:

1. Objective #1 - Non-Native Plant Removal

1. 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 TWR or selected native species within the denuded areas.
2. 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**

1. 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.

2. 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 from May 1st through September 20th for calendar years 2021 through March 31, 2028.

4. **Objective #4 Removal of Floating Plants.** Remove 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.

5. **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.

6. **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, and observation of effectiveness of non-native plant removal and native planting efforts. These reports will include specific recommendations on plant removal, and planting or gardening techniques as necessary to address effectiveness of these efforts.

7. **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.

C. City Agreements as to Plan Manager:

The City agrees to:

1. 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.
2. 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.
3. 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
4. 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.
5. 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 Agreements 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 Plan Manager as the City's representative in all matters related to this Agreement.
4. Pay the University a total fee not-to-exceed \$2,830,316.56 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. 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 – Managing Key Recreation Measure	\$ 56,000.00
Objective #3 – Removal of Floating Plants	<u>\$ 30,000.00</u>
Annual Amount Per Year:	\$266,000.00

Total Not To Exceed Amount: \$2,830,316.56

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 2. Term

The term of this Agreement will commence on January 1, 2021 and will end on March 31, 2028, unless terminated sooner by either party in accordance with Section 4.9, below.

Section 3. Miscellaneous Provisions

1. **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.
2. **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.
3. **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.
4. **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.
5. **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.

6. **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.
7. **Public Information Act:** It shall be the independent responsibility of the City and University to comply with the provisions of Chapter 552, Texas Government Code (the “Public Information Act”), as those provisions apply to the Parties’ respective information. The City is not authorized to receive public information requests or take any action under the Public Information Act on behalf of University. Likewise, the University is not authorized to receive public information requests or take any other action under the Public Information Act on behalf of the City.
8. **Nondiscrimination:** In their execution of this Agreement, the Parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the Parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans’ status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this Agreement.
9. **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.
10. **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.
11. **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.
12. **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.

13. **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**

Mr. Eric Algoe,
Vice President, Finance and Support Services
Texas State University
601 University Drive San
Marcos, TX 78666

**City of San
Marcos:**

City Manager City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666

14. 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.

15. **Approval:** Consent from the San Marcos City Council and The Texas State University Board of Regents is necessary as a condition precedent to the legal effect of this Agreement.

16. **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.

{Signatures to follow on next page}

CITY OF SAN MARCOS:

By: _____
Stephanie Reyes, Interim City Manager

Date

TEXAS STATE UNIVERSITY:

By: Denise M. Trauth
Denise M. Trauth, President

12-18-2020
Date

THE TEXAS STATE UNIVERSITY SYSTEM:

Reviewed and Recommended:

Daniel Harper
Daniel Harper
Vice Chancellor and Chief Financial Officer

Date

Approved as to legal form:

Nelly R Herrera
Nelly R Herrera
Vice Chancellor and General Counsel

Date

ATTEST:

APPROVED by the Board of Regents of The Texas State University System on
12/7/2020, at Austin, Texas.

Brian McCall
Brian McCall, PhD, Chancellor
Secretary to the Board

Date