

**AMENDMENT NO. 1
INTERLOCAL COOPERATION AGREEMENT
For Removal of Non-Native Plants, Texas Wild Rice Enhancement
and Management of Key Recreation Areas**

Contract Number: 217-077

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.

RECITALS:

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

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

SECTION I. SCOPE OF SERVICES

A. University Agreements:

The University agrees to:

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) .
- c) 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..

- 4) **Objective #4 - Removal of Floating Vegetation Mats;**
 - a) Remove floating vegetation mats out of the San Marcos River in work area to facilitate ability to remove and/or plant rooted submergent aquatic plants;
 - b) Shake removed mats prior to loading on transport vehicle to dislodge biota. Return biota to the river and document species found. Also document volume of plant material removed with measurements, location and photos;

c) Transport mats to composting site out of San Marcos River floodplain; and

d) Floating mats can be removed from Spring Lake to Stokes Island.

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, 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.

B. City Agreements:

The City agrees to:

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

2) Monitor, for compliance the University's work against the EAHCP work plan requirements.

3) Designate Melani Howard, Habitat Conservation Plan Manager as the City's representative in all matters related to this Agreement.

Section 3. Compensation

The City agrees to pay the University a total fee not-to-exceed \$2,128,000.00 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	<u>\$ 30,000.00</u>
Objective #4 – Management of Recreation	<u>\$56,000.00</u>

Total Revised Amount per year \$266,000.00

Total Not To Exceed Amount for renewal 1-1-2020 through 12-31-2027: \$2,128,000.00
\$

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

The term of this Agreement will commence on January 1, 2017 and will end on December 31, 2019 unless terminated by either party in accordance with Section 5) G). 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

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
Support Services Programs

Eric Algoe, Vice President for Finance and
Finance and Support Services
Texas State University
601 University Drive, JCK 920
San Marcos, TX 78666-4684

City of San Marcos:

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

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 _____ 2019.

City of San Marcos

Texas State University

By: _____
Jared Miller, City Manager

By: _____

Date: _____

Date: _____

EXHIBIT 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: _____
Jared Miller, City Manager