

**MEMORANDUM OF AGREEMENT BETWEEN
THE CITY OF SAN MARCOS AND SAN MARCOS RIVER FOUNDATION**

The City of San Marcos, a home rule municipality ("City") and San Marcos River Foundation, Inc. ("SMRF"), a 501(c)(3) nonprofit organization, enter into this Memorandum of Agreement in recognition of the mutual benefits it will achieve for them.

Background

- SMRF is eligible to apply for the \$10,000,000 Lyda Hill Foundation Lone Star Prize and desires to fund critical greenspace and trail corridor acquisitions with the participation of the City for the purposes of habitat/water quality protection and trail connectivity over a 5-year period.
- The City of San Marcos adopted the San Marcos Parks, Recreation, and Open Space Master Plan 2019 ("Master Plan") on May 21st, 2019.
- Key action plan items from the Master Plan include:
 - Action GRP-1.1. Evaluate opportunities to proactively pursue additional greenspace property acquisitions in and around the City.
 - Action GRP-1.6. Continue to coordinate with and support efforts by the SMGA and the San Marcos River Foundation (SMRF) to acquire, protect, and maintain new greenspace and/or riverfront park properties.
 - Action T-1.7 "The City should identify and prioritize any trail extension which could connect additional outlying areas to the river front parks system."
 - Action T-1.13. Add a green belt loop around the City to increase connectivity.
- From August 2016 to July 2017, approximately 100,000 people visited Purgatory Creek Natural Area.
- The City owns various parks and natural areas which nearly creates a contiguous natural area trail and loop around the city.
- Proposed acquisitions will complete critical gaps in the green belt loop.
- The City currently partners with the San Marcos Greenbelt Alliance ("SMGA") to plan, construct, and maintain natural trails and other activities in the city's natural areas.
- The City's management objective for the natural areas is to protect the natural habitats and ecology of the areas, balanced with a sustainable level of public access via a system of trails.
- The City wishes to limit recreation in natural areas to activities that have a low level of impact on the natural habitats and ecology of the areas.
- SMRF has a mission to protect and preserve a clean, flowing and accessible San Marcos River through water and land conservation, advocacy, and community engagement.

- SMRF intends to acquire two tracts commonly known by the parties as the Geiger and Elsik tracts and will endeavor to acquire a trail corridor between the Geiger tract and another tract commonly known by the parties as the Early tract.
- SMRF may consider retaining whole or partial ownership of the Elsik tract for a SMRF/SMGA shared headquarters adjacent to the proposed trail corridor.

Purpose of Agreement

The purpose of this agreement is to establish roles and responsibilities of the City and SMRF in applying for the Lone Star Prize, together with planning, acquiring, and distributing funds for the 5-year period of the Lone Star Prize, if awarded.

1. Article 1. City of San Marcos commitments:

- 1.1. Accept ownership, by gifted deed, of any natural areas or trail corridors acquired by SMRF for this project, including any properties with conservation provisions reserved by SMRF, such as a conservation easement, and without the right to sell or transfer the gifted properties except back to SMRF, all being subject to terms and conditions approved by the City in its sole discretion.

2. Article 2. San Marcos River Foundation commitments:

- 2.1. Apply for the Lyda Hill Lone Star Prize, subject to the City's review and approval of all applications and representations made on behalf of the City in connection therewith.
- 2.2. Manage and disburse funds for the project including all land acquisitions, trail building, and other facilities.
- 2.3. Acquire the Geiger and Elsik tracts and will endeavor to acquire a trail corridor between the Geiger and Early tracts.
- 2.4. Transfer partial and/or whole segments of acquisitions to the city by gifted deed.
- 2.5. Fund and manage construction of multi-use trails on Geiger, Early, and Elsik tracts and the tracts commonly known by the parties as the Millican, and Buie tracts.
- 2.6. Build ADA trails where possible or legally required.
- 2.7. Keep the City informed of project progress and grant management and compliance.

3. Article 3. City of San Marcos and San Marcos River Foundation mutual commitments:

- 3.1. The City will contract with SMGA to plan and build natural surface trails when deemed appropriate by the City.
- 3.2. SMRF will not require the City to fund any part of the project during the initial 5-year term.
- 3.3. The main multi-use corridor of the trail will be accessible to park rangers in all-terrain-vehicles.
- 3.4. Eminent domain will not be pursued or considered for any land or easement acquisitions necessary for the project.

- 3.5. All activities, grants awarded or funds expended for the project shall be subject to the terms and conditions of any pre-existing grant of funding restrictions in place on any land owned by the City that is part of the project.
- 3.6. All forms of conveyance, deeds, easements, terms and conditions regarding management of activities, maintenance, construction and similar activities, including the allocation of risk, and provisions concerning liability, insurance and indemnification shall be negotiated and agreed upon in writing before acceptance of the Lone Star Prize.

4. Article 4. City-retained Authority and Responsibility

- 4.1. The City may collect parking fees and other means of revenue to be used for the City of San Marcos Parks and Recreation Department during the initial 5-year period and beyond.
- 4.2. Mutual approval of trail locations.
- 4.3. Approval, in its sole discretion, of the final terms and conditions of the Lone Star Prize or any grant awarded for the project to the extent such final terms and conditions affect property owned or controlled by the City, or the expenditure of City funds.
- 4.4. Provide customary enforcement of park rules on tracts owned by the City.

5. Article 5. SMRF-retained Authority and Responsibility

- 5.1. Mutual approval of trail locations.
- 5.2. To cease the grant application process at any time.
- 5.3. Retain ownership of acquired tracts if desired.

6. Article 6. Miscellaneous Provisions

- 6.1. **Term.** Subject to either party's right to terminate earlier under 6.3, the term of this Agreement will be for the period of the project Lone Star Prize.
- 6.2. **Renewal.** This Agreement may be renewed for additional five-year periods thereafter upon mutual agreement of the parties.
- 6.3. **Termination.** Notwithstanding any other provision in this Agreement regarding the term or default and termination, this Agreement may only be terminated: a) up until the time the parties agree to the terms and conditions of the Lone Star Prize and the Lone Star Prize is accepted, this Agreement may be terminated for convenience by either party upon providing 30 days' written notice of termination to the other party; and b) for failure of the other party to comply with its obligations herein.
- 6.4. **Severability.** If any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable, it is the intention of the parties that the remainder of this Agreement will not be affected, and the parties declare that this Agreement would have been entered into without the unenforceable portion.
- 6.5. **Amendments.** This Agreement 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 agreement 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.

- 6.6. **Waiver.** One or more waivers of any provision of this Agreement by the City or SMRF will not be deemed to waive the authority to enforce strict compliance with this Agreement in the future.
- 6.7. **No Joint Venture.** Nothing in this Agreement will be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent or of partnerships or of joint venture between the parties. The only relationship between the parties is that of independent contractors.
- 6.8. **No Discrimination.** Parties agree not to discriminate on the basis of race, creed, color, religion, age, sex or national origin in its activities under this Agreement.
- 6.9. **Notices.** Notices required by this Agreement will be provided by the parties to one another by certified mail, return receipt requested, or by email, to the following addresses:

City Manager
City of San Marcos
630 East Hopkins
San Marcos, TX 78666
citymanagerinfo@sanmarcostx.gov

Executive Director
San Marcos River Foundation
PO Box 1393
San Marcos, TX 78667-1393
virginia@sanmarcosriver.org

- 6.10. **Assignment.** Parties agree to not assign or transfer this Agreement without prior written consent of the other party. This agreement is executive to be effective on the Effective Date first written above.
- 6.11. **Subject to Appropriations.** All expenditures by the City necessary for the performance of its obligations under this MOU are subject to the appropriation of lawfully available funds by the San Marcos City Council as part of its budget and appropriations process for the fiscal year in which the expenditure is to be made.

City of San Marcos

By: _____
Bert Lumbreras, City Manager

Date: _____

San Marcos River Foundation

By: Virginia P. Condie
Virginia Condie, Executive Director

Date: 7/1/20