

STATE USE CONTRACT BETWEEN
CITY OF SAN MARCOS AND EASTER SEALS CENTRAL TEXAS
THROUGH WORKQUEST
220-249

This Contract for vegetation and litter control is entered into by and between the City of San Marcos, “City” and the Contractor, Easter Seals – Central Texas “Contractor”, based upon negotiated price and specifications and certified by WorkQuest, as a contract under the provisions of Chapter 122 of the Human Resources Code.

AGREEMENT

In consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

ARTICLE 1. CONTRACTING PARTIES

City: City of San Marcos, Texas, “City”
 Contractor: Easter Seals – Central Texas, “Contractor”
 Certifying Party: WorkQuest

ARTICLE 2. CONTRACT PERIOD

The contract period for this Agreement begins on October 1, ~~2019~~2020, and will end on September 30, ~~2020~~2021.

ARTICLE 3. SERVICES TO BE PERFORMED

The Contractor will perform the following services:

| Services To Be Performed | Annual Cycles |
|--|---------------|
| a) Downtown Alleys – mow, trim, and litter pickup | 12 |
| b) San Marcos Consolidated School District Right of Way (“ROW”) – mow, trim, and litter pickup | 12 |
| c) City Wide Alleys/ROW (exclusive of the downtown alleys) – mow, trim, and litter pickup | 6 |
| d) City Lots – mow, trim, and litter pickup | 12 |
| e) Craddock Avenue Medians – mow, trim, and litter pickup | 12 |
| f) City Property Behind Sam’s Club/Davis Lane – mow | 4 |
| g) City Wide Drainage/Easements – mow, trim, and litter pickup | 5 |
| h) City Wide Flower Beds (billed by the man hour as requested) | |
| i) Downtown Sweeping (billed by the man hour as requested) | |
| j) Downtown Trash Receptacles – empty all trash and recycle cans (4 days per week) | 52 |
| k) Litter pickup at Rio Vista Dam and Capes Dam Summer Litter Pickup in River Parks (billed by the man hour as requested) | |
| l) San Marcos Roadway Area litter pickup (per acre) | 24 |
| m) McCarty Lane – mow, trim, litter pickup, and flower bed | 12 |
| n) Wonder World Drive – mow, trim, and litter pickup | 4 |
| o) Interstate Highway 35 (inside city limits) – mow, trim, and litter pickup | 10 |

| | |
|---|----|
| p) Neighborhood Parks – mow, trim, and litter pickup | 18 |
| q) Blanco Shoals Natural Area – tractor mowing | 6 |
| r) San Marcos River Parks (109) mow, trim, litter (includes Dolly St. 6 times annually) | 20 |
| s) Dolly Street — mow, trim, litter | 6 |
| t) RM 12 Water Quality Ponds (5) <u>and Hwy 80 Monument</u> - mow, trim, and litter pickup | 4 |
| u) <u>Mowing and Flower Bed maintenance by request (billed by man hour)</u> | |
| u) CARTS Bus Transit Shelters (12) - litter and empty trash/recycle cans (4 sites on Monday & all 12 on Friday) | 52 |

The Contractor will observe all safety requirements established by the Texas Department of Transportation during the pick-up process. In addition, the Contractor will haul all trash to the City’s facility on River Road and will provide all necessary equipment to accomplish its services. In those areas that require the use of a mower, the height of the blades will be set at a maximum of two (2) to three (3) inches. For those areas requiring the use of weed-eaters, the Contractor will strive to maintain a uniform height of approximately four (4) inches. In addition, the Contractor will chip all wooded material at the City’s compost site and make use of the existing roll-off container provided by the City. These services are to be performed in locations identified by the City. The Contractor will perform all services in accordance with the descriptions contained in this Agreement and as further detailed in Attachment A. The schedule for work identified in this Agreement is tentative. Should the City wish to modify this schedule, the Contractor will adjust the schedule to meet the City’s needs.

ARTICLE 4. CONTRACT AMOUNT

The total amount to be paid by the City to the Contractor for services under this contract will be the annual sum of ~~\$1,140,507.33~~ \$1,149,388.24, in accordance with **Attachment A**. Should the Contractor be required to haul materials to a disposal location other than the City’s compost site, the City will be billed at a rate of ~~\$16.50~~ \$18.00 per cubic yard.

ARTICLE 5. PAYMENT FOR SERVICES

The City will pay WorkQuest, as assignee and servicing agent of the Contractor’s interest in the payment under this contract (as directed) for goods and services received. Upon receipt of a proper invoice or voucher submitted by WorkQuest, such payment will be made within thirty (30) calendar days from receipt of same.

Payment by the City to WorkQuest as assignee to the Contractor will be based upon bills presented monthly, with billing based upon the actual performance of the specified work by location.

ARTICLE 6. TERMINATION

This Agreement may be terminated under any one of the following conditions:

- a) By mutual agreement and consent of both parties.
- b) By the City giving written notice to the Contractor and the Certifying Party as a consequence of failure by the Contractor to satisfactorily perform the services and obligations set forth in this Agreement, with proper allowances being made for circumstances beyond the control of the Contractor.
- c) By either party upon thirty (30) calendar days written notice to the other.

ARTICLE 7. REMEDIES

Violation or breach of contract terms by the Contractor will be grounds for termination of this Agreement, and any increased costs arising from the Contractor's default, breach of contract, or violation of terms will be paid by the Contractor. This Agreement will not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and will be cumulative.

ARTICLE 8. SUBLETTING

The Contractor will not sublet or transfer any portion of its responsibilities and obligations under this Agreement unless specifically authorized to do so in writing by the City.

ARTICLE 9. SUCCESSORS AND ASSIGNS

The Contractor will not assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the City.

ARTICLE 10. LEGAL CONSTRUCTION

In the event that any one or more of the provisions contained in this Agreement will for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions thereof and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE 11. GOVERNING LAWS AND VENUE

This Agreement will be construed under and in accordance with the laws of the State of Texas. Any legal actions regarding the parties' obligations and any matters whatsoever arising from this Agreement will be filed and maintained in Hays County, Texas.

ARTICLE 12. PRIOR AGREEMENTS SUPERSEDED

This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting to this subject matter.

ARTICLE 13. FUNDING OUT

As applicable to this Agreement, the Contractor understands that funds for the payment for work performed by the Contractor under this Agreement have been provided through the City's budget approved by the 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 this Agreement only to the extent such funds are made available. The Contractor acknowledges and agrees that it will have no recourse against the City for its failure to appropriate funds for the purposes for this Agreement in any fiscal year other than the year in which this 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.

ARTICLE 14. INSURANCE AND INDEMNITY

The Contractor will hold harmless, indemnify, and defend the City and its employees, agents, officers, and servants from any and all lawsuits, claims, demands, and causes of action of any kind arising from the negligent or intentional acts, errors, or omissions of the Contractor, its officers, employees, or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City in favor or any party, including the amounts of any damages or awards resulting from claims, demands, and causes of action for personal injuries, death, or damages to property.

The Contractor will procure and maintain, at its expense, insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by the Contractor or its agents, subcontractors, or employees. Before commencing the work, the Contractor will furnish to the City a certificate or certificates in a form satisfactory to the City showing that the Contractor has complied with this paragraph. All certificates will provide that the policy will not be changed or cancelled until at least thirty (30) calendar days written notice will have been given to the City. Commercial general liability insurance and motor vehicle insurance will be written with the City of San Marcos, Texas, as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance: In accordance with the provisions of the Workers' Compensation Act of the State of Texas.

Liability Insurance: (1) Commercial general liability insurance with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate; and (2) motor vehicle liability insurance in an amount not less than \$1,000,000 for injuries to any one person, \$1,000,000 on account of any one accident, and in an amount of not less than \$1,000,000 for property damage.

The stated limits of insurance required by this Paragraph are **minimum only** and it will be the Contractor's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release the Contractor from compliance with these requirements.

ARTICLE 15. NOTICE TO PARTIES

Notice to be effective under this contract must be in writing and received by the party against whom it is to operate. Notice is received by a party as follows: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address specified in this Article 15 and signed on behalf of the party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address specified in this Article 15. Any party may change its address by providing notice of such change in accordance with the requirements of this Article 15.

The City's address is as follows:

Drew Well, Director
Parks and Recreation
City of San Marcos
630 East Hopkins Street
San Marcos, Texas 78666

Office of the Purchasing Manager
Finance Department
630 East Hopkins Street, Building 4
San Marcos, Texas 78666

The Contractor's address is as follows:

Richard Fogelson, Senior Director of Paid Job Training
Easter Seals Central Texas
8505 Cross Park
Austin, Texas 78754

The Certifying Party's address is as follows:

Abby Monk, Regional Marketing Manager
WorkQuest
1011 East 53 ½ Street
Austin, Texas 78751

ARTICLE 16. MISCELLANEOUS

Each individual signing this contract on behalf of a party warrants that he or she is legally authorized to do so and that the party is legally authorized to perform the obligations undertaken.

This Agreement represents the entire Agreement of the parties, and an amendment to it is not effective for any purpose unless in writing and signed by all parties.

This contract is binding on and inures to the benefit of the parties' successors in interest.

IN WITNESS WHEREOF, the parties have signed duplicate originals of this Agreement as follows:

THE UNDERSIGNED PARTIES do hereby certify that (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected parties of Local and State Government, and (2) the services, goods on contract are not supplied by Section 21 of Article XVI of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder.

The undersigned signatory for the Contractor hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this contract, and that such officer has full and complete authority to enter into this contract on behalf of the Contractor, and the Contractor has legal authority to perform the activities provided for herein.

CONTRACTOR:
EASTER SEALS CENTRAL TEXAS

By: _____
Authorized Signature

Gretchen Nelson, Chief Operating Officer
Printed Name, Title

City further certifies that it has authority to contract for the above services by authority granted by Chapter 122, Human Resources Code.

CITY OF SAN MARCOS, TEXAS

By: _____
Authorized Signature

Bert Lumbreras, City Manager
Printed Name, Title

The undersigned signatory for the Certifying Party hereby represents and warrants that he or she is an officer of the organization for which he or she has executed this contract, and that such officer has full and complete authority to enter into this contract on behalf of the Certifying Party, and the Certifying Party has legal authority to perform the activities provided for herein.

**CERTIFYING PARTY:
WORKQUEST**

By: _____
Authorized Signature

Abby Monk, Regional Marketing Manager
Printed Name, Title