

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

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."

BACKGROUND:

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 a 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 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

Section 4. Term

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

The term of this Modification 2 will commence on January 1, 2021 and will end on March 28, 2028 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.

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.

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.

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

City of San Marcos

Texas State University

By: _____

By: _____

Date: _____

Date: _____

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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:

TSU 217-077