



City of San Marcos

Work Session - Final City Council

Tuesday, May 4, 2021

3:00 PM

Due to COVID-19, this will be a virtual meeting. To view the meeting please go to <http://sanmarcostx.gov/421/City-Council-Videos-Archives> or watch on Grande channel 16 or Spectrum channel 10.

I. Call To Order

II. Roll Call

PRESENTATIONS

1. Receive a Staff update on the proposed Interlocal Local Agreement / Memorandum of Understanding with Hays County regarding Cape's Dam, and provide direction to the City Manager.

EXECUTIVE SESSION

2. Executive Session in accordance with:
 - A. Section §551.071 of the Texas Government Code: Consultation with Attorney - to receive advice of legal counsel regarding the pending application to discharge wastewater from Fleming Farms Wastewater Treatment Facility proposed to be constructed 1.2 miles east of the intersection of Farm-to-Market 1978 and State Highway 123 in Guadalupe County under the following case name and docket numbers: Application by Regal, LLC for a new TPDES Permit No. WQ0015817001; TCEQ Docket No. 2020-0973-MWD; SOAH Docket No. 582-21-0576.
 - B. Section §551.072 of the Texas Government Code: Real Property - for deliberations regarding the possible acquisition of property for parks purposes and the possible lease of existing park property to a third party.

III. Adjournment.

POSTED ON FRIDAY, APRIL 23, 2021 @3:00PM

TAMMY K. COOK, INTERIM CITY CLERK

Notice of Assistance at the Public Meetings

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 855-461-6674 or sent by e-mail to ADArequest@sanmarcostx.gov



Legislation Text

File #: ID#21-352, **Version:** 1

AGENDA CAPTION:

Receive a Staff update on the proposed Interlocal Local Agreement / Memorandum of Understanding with Hays County regarding Cape's Dam, and provide direction to the City Manager.

Meeting date: May 4, 2021

Department: Parks and Recreation

Amount & Source of Funding

Funds Required: N/A

Account Number: N/A

Funds Available: \$174,628

Account Name: Cape's Dam Project

Fiscal Note:

Prior Council Action: Please refer to background information.

City Council Strategic Initiative: [Please select from the dropdown menu below]

N/A

Choose an item.

Choose an item.

Comprehensive Plan Element (s): [Please select the Plan element(s) and Goal # from dropdown menu below]

- Economic Development - Choose an item.
- Environment & Resource Protection - Choose an item.
- Land Use - Choose an item.
- Neighborhoods & Housing - Choose an item.
- Parks, Public Spaces & Facilities - Choose an item.
- Transportation - Choose an item.
- Core Services
- Not Applicable

Master Plan: *[Please select the corresponding Master Plan from the dropdown menu below (if applicable)]*

Choose an item.

Background Information:

January 15, 2013, City Council approved Planned Development District (PDD) zoning for The Woodlands of San Marcos development project, and received 20 acres of dedicated parkland along the San Marcos River, which includes Cape's Dam and the Mill Race.

September 23, 2014, the Parks and Recreation Advisory Board received a presentation from Dr. Thom Hardy regarding work done by the Meadows Center in regards to a study of the safety and environmental issues associated with Cape's Dam. Scientific evaluation was completed which recommended the removal of Cape's Dam and filling of the Mill Race.

February 22, 2016, City Council held a Cape's Dam Workshop where they received a presentation from Dr. Thom Hardy, and provided direction to Staff to bring back an action item that would approve the removal of the dam and the filling of the mill race. Click to read minutes [here](#).
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/02222016-805>>

March 15, 2016, City Council approved a motion to remove Cape's Dam. Click [here](#).
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/03152016-820>> to read minutes.

June 21, 2016, a stakeholder meeting was held at fish hatchery, including US Fish and Wildlife Service (USFWS), Texas Historical Commission (THC), US Army Corps of Engineers (USACE), Hays County Historical Commission, and the City. THC stated that the dam, mill race and associated structures retain sufficient historic integrity to remain eligible for listing in the National Register. USFWS stated that leaving the dam in place, in whole or in part, would make the City ineligible for USFWS funding for the project.

August 16, 2016, Council received a presentation from USFWS regarding the Cape's Dam removal planning and permitting process. The USFWS report states that the dam, "acts as a barrier to fish and other aquatic species" and "is in severe disrepair and poses a safety hazard to recreational users." Due to the conflicting positions of USFWS and THC, and the competing interests of other interested stakeholders, the City determines that the best course of action is to suspend the UFWS permit process and further investigate removal, repair and replacement options. Click [here](#)
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/08162016-851>> to read minutes.

October 4, 2018: Historic Preservation Commission recommended approval of designating Thompson/Cape Dam and Ditch Engineering Structure as a local historic landmark (4-2). Click [here](#)
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/10042018-1482>> to read minutes.

November 27, 2018: Planning and Zoning Commission recommended denial of designating Thompson/Cape Dam and Ditch Engineering Structure as a local historic landmark (5-4). Click [here](#)
<<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/11272018-1536>> to read minutes.

January 15, 2019: City Council was briefed in executive session to discuss possible partnership opportunities with Hays County and the Hays County Historical Commission.

January 29, 2019: City Council considered an item designating Cape's Dam as a historic landmark. This action was postponed for up to 6 months while staff gathered more information related to the project. Click [here](https://san-marcos-tx.legistar.com/View.ashx?M=M&ID=651926&GUID=D6B73902-0C86-4E25-A305-9B354DF051FA) <<https://san-marcos-tx.legistar.com/View.ashx?M=M&ID=651926&GUID=D6B73902-0C86-4E25-A305-9B354DF051FA>> to read minutes.

June 18, 2019: City Council was briefed in Work Session on status of possible partnership opportunities with Hays County and the Hays County Historical Commission. Presentation from County on proposed project anticipated in fall 2019. Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/06182019-1757). <<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/06182019-1757>> to read minutes

October 15, 2019: City Council received a presentation from Vista Planning & Design on behalf of Hays County and the Hays County Historical Commission regarding a visioning study for Cape's Dam, the Mill Race, Thompson's Island & San Marcos River. Council provided consensus for staff to seek what permissions and permits would be needed from State and Federal agencies to remove or repair the dam. Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/10152019-1896). <<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/10152019-1896>> to read minutes.

January 7, 2020: City Council was briefed in Work Session regarding the possible permitting process depending on the direction of Council to remove, rehab or rebuild the dam. Council provided direction for Staff to conduct further studies and provided a number of items to be addressed. Click [here](http://san-marcos-tx.granicus.com/player/clip/1445?view_id=9) <http://san-marcos-tx.granicus.com/player/clip/1445?view_id=9> to view the video of that meeting.

August 18, 2020: City Council formally adopted Resolution 2020-177R directing the City Manager to begin negotiating an interlocal agreement with Hays County that provides for the repair and rehabilitation of Cape's Dam and the mill race on the San Marcos River. Click [here](http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/08182020-2209) <<http://sanmarcostx.gov/AgendaCenter/ViewFile/Minutes/08182020-2209>> to read the minutes.

October 7, 2020: City Council was briefed in Work Session regarding the progress of the negotiations of an Interlocal Agreement with Hays County that provides for the repair and rehabilitation of Cape's Dam and Mill Race on the San Marcos River. Council provided consensus to allow the project to move forward as proposed with all the issues previously identified by Council and a draft ILA will be brought before Council to allow for further input regarding all parties that will be involved. Click [here](http://san-marcos-tx.granicus.com/player/clip/1571?view_id=9&redirect=true) <http://san-marcos-tx.granicus.com/player/clip/1571?view_id=9&redirect=true> to view the video of that meeting.

Council Committee, Board/Commission Action:

Click or tap here to enter text.

Alternatives:

Click or tap here to enter text.

Recommendation:

Click or tap here to enter text.



City of San Marcos

City Council Work Session

Cape's Dam Interlocal Agreement/ Memorandum of Understanding with Hays County

May 4, 2021



Presentation Item 1

- Receive a Staff update on the proposed Interlocal Local Agreement / Memorandum of Understanding with Hays County regarding Cape's Dam, and provide direction to the City Manager.
- Today we will review the following:
 - Brief Overview of Progress to Date
 - Review of proposed ILA/MOU
 - Hold discussion and provide direction



Progress to date

- **August 18, 2020** – City Council formally adopted Resolution 2020-177R directing the City Manager to begin negotiating an interlocal agreement with Hays County
- **August 24, 2020** – Meeting between City Staff and Hays County to discuss next steps. County provided that some preliminary assessments will need to be completed before an interlocal agreement can be crafted.
- **September 29, 2020** – Update from County that they have been having discussions regarding permitting and diligence to develop a plan for moving forward.



Progress to date

- **October 7, 2020** – Update from the City Manager regarding the progress of the negotiations of the ILA/MOU with Hays County. Council consensus was to continue to move forward as proposed with all the previously identified issues to be addressed in the draft ILA/MOU.
- **October 13, 2020** – A meeting between City Staff and Hays County Staff was held to discuss interlocal agreement (ILA) components of interest to the city. Essential items discussed for inclusion in the ILA included environmental, historical, recreational, hydrology, and endangered species impacts. Other items discussed were financial participation, operations and maintenance, and project planning, design, permitting, and construction phases.



Cape's Dam Complex

- For purposes of this agreement the “Cape’s Dam Complex” is defined as Cape’s Dam and the Mill Race, which provides water to the waterfall at Stoke’s Park, owned by Texas Parks and Wildlife and managed by the City of San Marcos.
- The “Cape’s Dam Complex” will be conceptualized under Phase 2 and approved by both parties.



The Values Defined

Upon receiving Council direction regarding priorities for this project, City staff and Hays County have had discussions to determine the best way to accommodate and balance the values of **environmental conservation**, **public safety**, **historic preservation**, and **public recreation** (“the Values”).



Proposed ILA/MOU Components

- **Article 1. Purpose** - Provide a framework for collaboration and cost-sharing for the proposed rehabilitation of the Cape's Dam Complex. This framework would begin with (a) due diligence and analysis of the current condition of the Cape's Dam Complex and its impact(s) on the Values, as well as how the proposed rehabilitation would impact the Values, (b) due diligence and analysis of what permitting would be needed to perform work on the Cape's Dam Complex, (c) development of a plan, which would include permitting for work on the Cape's Dam Complex, and (d) implementation of that plan.



Proposed ILA/MOU Components

- **Article 2. Phased Approach** - The Parties agree to utilize a phased approach to fulfill the Purpose cited above, beginning with exploration of alternatives, with full consideration given to each of the Values. This phased approach shall be utilized by way of Task Orders.
 - **Task Order:** means a contractual document, containing a scope of work, negotiated costs, and schedule, which the Authority issues to a professional services consultant, pursuant to a term agreement.



Phases

- **Phase 1** - The Parties agree that they shall engage the services of subject matter experts and professionals specializing in Biology, Endangered Species Protection, Historical Preservation, Parks and Open Space Planning and/or Structural Engineering.
- **Phase 2**- The Parties agree that they shall engage the services of subject matter experts equipped with training and experience to create a conceptual plan for proposed work on the Cape's Dam Complex, as well as those professionals experienced in attaining the needed permits to perform the proposed work.



Phases

- **Phase 3** - The Parties agree that they shall engage the services of contractors qualified to perform the work conceptualized and permitted by Phase 2 operations.
- **Phase 4**- The Parties agree that they shall implement an operational plan to ensure proper protection and maintenance of the Cape's Dam Complex.



Funding and Procurement

- **Section 2.6** - The Parties agree to discuss and mutually agree how each Task Order shall be funded, on a task-by-task basis; and to each make a diligent effort to secure third-party funding (e.g. grants, etc.) to assist in fulfillment of the Purpose stated in Article 1. Likewise, procurement of the work described in a particular Task Order shall be performed by either Party, on a task-by-task basis, and shall fully comply with federal and state law, as well as the policies of the entity performing the procurement.



Task Order Execution

- **Section 2.7** - Each Party shall be responsible for establishing its own protocols for the execution of Task Orders under this MOU. The Parties agree that any staff member executing Task Orders under this MOU shall be duly authorized by Council or Court, as appropriate.



Article 3. Public Engagement

- **3.1 Phase 1 Engagement:** The agreement with the contractor for Program Management Services shall include the responsibility of receiving and organizing Public Comments for consideration by the Parties, during Phase 1 activities.
- **3.2 Phase 2 Engagement:** The Parties agree to prioritize public engagement as part of Conceptual Planning during Phase 2 activities. Such public engagement may include in-person or virtual community meetings designed to provide an opportunity for citizen feedback before finalization of a conceptual plan.



Article 4. Term and Time of Performance

- **4.1** The effective date of this MOU shall be the date last executed by the Parties, below (the “Effective Date”). The term of the MOU shall continue from the Effective Date until September 30, 2025, or until the Parties have fulfilled all obligations under this MOU.



Updates to Council

- Staff will provide the City Council with periodic project updates, and will schedule work sessions to present major milestones so that Council may provide direction to Staff.



Next steps

- **May 18, 2021** – City Council consideration of ILA / MOU.
- **June 1, 2021** – Hays County consideration of ILA / MOU.
- Work begins on Phase 1, Task Order #1

Questions



Legislation Text

File #: ID#21-353, Version: 1

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