

MEMORANDUM OF AGREEMENT
Between
TEXAS PARKS & WILDLIFE DEPARTMENT
And
OKLAHOMA STATE UNIVERSITY

This Memorandum of Agreement is made and entered into by and between Texas Parks and Wildlife Department, hereinafter referred to as TPWD, and Oklahoma State University, a non-profit, educational institution 501(c)(3) organization, under the authority granted by Texas Parks and Wildlife Code, Section 11.017(a)(1)(C).

I. CONTRACTING PARTIES:

The Receiving Agency: Texas Parks and Wildlife Department (TPWD)

The Performing Entity: Oklahoma State University (OSU)

II. STATEMENT OF SERVICES TO BE PERFORMED (WORK):

OSU shall conduct a project entitled *Genetic Status of San Felipe Gambusia* as outlined in the attached proposal, Attachment A, attached hereto and incorporated herein for all purposes.

At least one (1) TPWD employee will serve as a project advisor and co-author of all publications resulting from this research. The project advisor shall 1) Serve on any graduate committee as an official or unofficial member, 2) Serve as a co-author on all publications resulting from this project, and 3) Monitor progress of the project.

All publications arising from this research shall acknowledge TPWD and OSU funds or such fund as may supersede it in funding this project.

All data and analyses resulting from this project, and all information regarding the project, becomes the property of TPWD, and will be presented to TPWD in an electronic format determined by TPWD upon request, and not later than 28 February 2011. TPWD agrees to refrain from publishing any results or analysis of this study for two (2) years after the termination date of contract, after which TPWD may publish with no restriction.

With respect to such Intellectual Property as is (i) incorporated in the Work, or (ii) produced by TTU or TTU employees, subcontractors, or subcontractor's employees during the course of performing the Work, TTU hereby grants to TPWD a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish, and modify such Intellectual Property, and allow others to do so for TPWD purposes. TTU shall secure all necessary intellectual property licenses from third parties and warrants that the Work and the intended use of the Work will not infringe any property rights of any third party.

Equipment and supplies purchased under this Agreement shall be used, managed, and disposed of in accordance with the Texas Uniform Grant Management Standards.

III. BASIS FOR CALCULATING REIMBURSABLE COSTS:

See Budget in Attachment A for details.

Funds must be directed to completing tasks outlined in Attachment A to qualify for reimbursement.

For payment purposes, the Performing Entity (entity receiving payment) shall submit to the Receiving Entity (agency making payment) an invoice with the Performing Entity's RTI (for funds transfer at the Treasury) or a Purchase Voucher (for deposit in local bank account). The Receiving Agency will enter payment information into USAS.

SEND VOUCHERS TO:

Luci Cook-Hildreth
Special Projects Coordinator – Inland Fisheries
Texas Parks and Wildlife Department

4200 Smith School Road
Austin, TX 78744

Expenditures for travel and travel-related expenses will be reimbursed at the official rate authorized by the State of Texas.

The Performing Entity may make adjustments up to **ten percent (10%)** within cost categories without prior approval from TPWD, provided that the total reimbursable costs do not exceed total annual costs.

IV. AGREEMENT AMOUNT:

The total amount of this Agreement shall not exceed: \$ 50,208.00 (Fifty Thousand Two Hundred Eight Dollars)

This contract is subject to cancellation, without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature, or otherwise made available, to the Texas Parks and Wildlife Department.

V. PAYMENT FOR SERVICES:

Receiving Agency shall pay for services received from appropriation items or accounts of the Receiving Agency from which like expenditures would normally be paid, based upon vouchers drawn by the Receiving Agency payable to Performing Entity.

Payments for service performed shall be billed: Monthly. Invoices shall include appropriate documentation for expenses incurred and details of work completed during the invoiced period as well as a summary of cost share, if Match is required.

The cost of materials and supplies should be charged at their actual prices. Proper documentation is required for reimbursement.

All invoices and reports must be received within 60 days of end of each fiscal year or termination of contract. Invoices not received within this time frame may not be paid.

\$10,041.60, which is twenty percent (20 %) of Federal Share funds, will be held until receipt and acceptance of annual/final report by TPWD.

Payments received by the Performing Agency shall be credited to its current appropriation item(s) or account(s) from which the expenditures of that character were originally made.

Budgeted monies not spent in a given fiscal year may not be eligible to be rolled over to the following fiscal year(s).

Any excess costs over the TPWD contribution toward one awarded contract cannot be submitted for reimbursement against another contract.

Reimbursements are conditioned on the Agreement activities being performed in compliance with the Agreement.

VI. CONTACT INFORMATION

TPWD PI Name & Contact Info

Gary P. Garrett
Texas Parks and Wildlife Department
Heart of the Hills Research Station
5103 Junction Hwy.
Mountain Home, TX 78058
830-866-3356 ext. 212
gary.garrett@tpwd.state.tx.us

TPWD Contract Point of Contact

Tammy Dunham
Contract Specialist
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744
512-389-4752 office
512-389-4677 fax
tammy.dunham@tpwd.state.tx.us

Vendor PI Name & Contact Info

Anthony A. Echelle
Zoology Department
Oklahoma State University
Stillwater, OK 74078
anthony.echelle@okstate.edu

Vendor Contract Point of Contact Info

VII. TERM OF AGREEMENT:

This Agreement is to begin Upon Signature by Both Parties, and
shall terminate February 28, 2011

An extension to this Agreement may be granted with prior written approval by TPWD

VIII. MISCELLANEOUS PROVISIONS:

Termination: This Agreement is subject to cancellation, without penalty, either in whole or in part, if

1. Funds are not appropriated by the Texas Legislature, or otherwise made available, to TPWD;
2. Performing Entity fails to comply with the terms and conditions of this Agreement; or
3. Performing Entity fails to comply with the provisions of applicable state or federal laws or regulations.

Audit: Performing Entity understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, TPWD or any successor agency, to conduct an audit or investigation in connection with those funds. Performing Entity further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including providing access to any information the state auditor considers relevant to the investigation or audit. Performing Entity shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Performing Entity and the requirement to cooperate is included in any subcontract it awards. In Agreements involving federal funds, the right to audit provision of the Agreement includes the right for the applicable federal agencies and the federal Office of Inspector General to audit.

Dispute Resolution: In accordance with Chapter 2261 of the Texas Government Code, the following Schedule of Remedies applies to this Agreement in the event of substandard performance or other failure to conform to the requirements of the Agreement or applicable law.

- (a) Reject the substandard performance and request corrections without charge to TPWD.
- (b) Issue a notice of substandard performance or other non-conforming act or omission.
- (c) Request and receive the return of any over payments or inappropriate payments.
- (d) Reject associated reimbursement requests and suspend payments, pending accepted revision of substandard performance or non-conformity. Note: Funds may be retained by TPWD for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law.
- (e) Suspend all or part of the Agreement, pending accepted revision of substandard performance or non-conformity.
- (f) Terminate the Agreement, and demand and receive return of all equipment purchased of contract funds, return of all unexpended funds, and repayment of expended funds.

TPWD may avail itself of any remedy or sanction provided in this Agreement or in law to recover any losses arising from or caused by Performing Entity's substandard performance or any non-conformity with the Agreement or the law.

Performing Entity shall carry on the Agreement Activities and adhere to the progress schedule during all disputes or disagreements with TPWD unless ordered to stop the Agreement Activities. No Agreement Activities shall be delayed or postponed pending resolution of any disputes or disagreements.

Neither payment by TPWD nor any other act or omission other than an explicit written release constitutes a release of Performing Entity from liability for losses under this Agreement.

Other Law: Performing Entity shall give all notices and comply with all laws and regulations applicable to the Agreement and the grant of federal funds, including but not limited to 43 CFR 12, 2 CFR 215, 2 CFR 230, 40 CFR 34 (New Restrictions on Lobbying), OMB Circular A-133 and A-122, E.O.s 12549 and 12689, the National Environmental Policy Act, and Section 7 of the Endangered Species Act. As part of this Agreement, Performing Entity further agrees to comply with state and federal assurances attached hereto as Attachments C and D, respectively, and incorporated herein for all purposes.

Indemnification: In the conduct of research under this contract, Contractor is acting in the capacity of an independent contractor, and neither party shall by reason of this contract be obligated to defend, assume the cost of defense, hold harmless or indemnify the other from any liability to third parties for loss or damage to property, death, or bodily injury; arising out of or connected with the research under this contract.

Assignment: The Performing Entity shall not assign or subcontract the whole or any part of the Agreement without TPWD' prior written consent.

Entire Agreement; Modifications: The Agreement supersedes all prior agreements, written or oral, between Performing Entity and TPWD and will constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by TPWD and Performing Entity.

RECEIVING AGENCY

PERFORMING ENTITY

TEXAS PARKS AND WILDLIFE DEPARTMENT

OKLAHOMA STATE UNIVERSITY

By: Gene McCarty
Scott Boruff *Administration*
Deputy Executive Director of Operations

By: Joni Duckley
Authorized Signature

Date: 12-29-08

Title
Date: 12/17/08