

SPONSORED RESEARCH AGREEMENT NO. UTA08-400

This Sponsored Research Agreement (“Agreement”) is made between The University of Texas at Austin, Austin, Texas (“University”), an institution of higher education created by the Constitution and law of the State of Texas under The University of Texas System (“System”) and Austin Energy, a publicly owned company and a city department of the City of Austin with its principal place of business at 721 Barton Springs Road, Austin, TX 78704 (“Sponsor”).

RECITALS

A. Sponsor desires to support the educational experience of the University’s LBJ School of Public Affairs for students during the 2008/2009 academic year to conduct a Policy Research Project (“PRP”) on the topic of “Steps to Develop a Sustainable Municipal Electric Utility”;

B. The parties have complementary strengths and interests that will further the instructional and research objectives of UT in a manner consistent with its status as a non-profit, state educational institution and may derive benefits for both parties; and

C. Under the direction of Professor David Eaton, University staff and a team of graduate students (hereinafter referred to as the “Research Team”) enrolled in “Sustainable Energy Roadmap for Austin” for two semesters (08-09 academic years) and the course instructor Professor Eaton, will deliver to Sponsor agreed-upon research tools, surveys and performance scorecard as outlined in Attachment A. The Sponsor is willing to advance funds to sponsor this PRP course activity.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the University and Sponsor agree as follows:

ARTICLE 1 RESEARCH PROGRAM AND PRINCIPAL INVESTIGATOR

1.1 The University will use its reasonable efforts to conduct the PRP Research Program as described in Attachment A, Scope of Work, attached herewith and made part of this Agreement. Professor David Eaton (“Principal Investigator”), or his successor as mutually agreed to by the Parties, shall direct the Research Program.

1.2 Sponsor understands that the University’s prime mission is education and advancement of knowledge. Consequently, the Research Program has been designed to carry out this mission. Solely

the Principal Investigator shall determine the manner of performance of the Research Program. University does not guaranty specific results.

1.3 University will keep accurate financial and scientific records relating to the Research Program and will make such records available to Sponsor or its authorized representative throughout the Term of the Agreement during normal business hours upon reasonable notice.

1.4 Sponsor understands that University may be involved in similar research through other researchers on behalf of itself and others. University shall be free to continue such research provided that it is conducted separately and by different investigators from the Research Program hereinafter defined, and Sponsor shall not gain any rights via this Agreement to such other research.

1.5 University does not guarantee that any patent rights will result from the Research Program, that the scope of any patent rights obtained will cover Sponsor's commercial interests, or that any such patent rights will be free of dominance by other patents, including those based upon inventions made by other inventors in The University of Texas System independent of the Research Program.

ARTICLE 2 PERIOD OF PERFORMANCE

The period of performance for the Research Program under this Agreement shall be from the academic period June 5, 2008 and ending August 31, 2009. This Agreement may be extended only upon written agreement from Sponsor.

ARTICLE 3 COMPENSATION

3.1 As consideration for the performance by University of its obligations under this Agreement, Sponsor will pay the University an amount equal to its expenditures, except the University will forgo the overhead in conducting the Research Program subject to a maximum not to exceed expenditure limitation of \$25,000. The Budget listed in Attachment A supporting this expenditure limit is attached hereto and made a part of this Agreement for all purposes. University is authorized to shift funds among line items so long as changes are in accordance with the statement of work agreed upon in Attachment A.

Sponsor will disburse one payment in the amount of \$25,000 after the receipt of an invoice. Payment should be made within 30 days of the receipt of an invoice and payable to The University of Texas at Austin, **make reference to the Principal Investigator, Agreement number and title of the Research Program funded under this Agreement**, and submitted to the following address:

The University of Texas at Austin
Office of Accounting
P.O. Box 7159
Austin, Texas 78713-7159
(512) 471-6231

3.2 University shall maintain all Research Program funds in a separate account and shall expend such funds for wages, supplies, equipment, travel, and other operational expenses in connection with the Research Program. It is understood that funds of the Research Program that are not used in a particular quarter may be used in subsequent quarters, and that the Principal Investigator may transfer funds within the budget as needed without Sponsor's approval, as long as such transfers do not effect a change in the scope of work of the Research Program. It is also understood that subject to Articles 11.3 and 11.4, uncommitted and unexpended funds remaining at the termination of the Agreement shall be returned to Sponsor; provided, however, that the Parties agree that in order to minimize administrative close-out expenses, if funds remaining upon termination or expiration of the Agreement equal \$250.00 or less, such funds shall be retained by the University and disposed of in accordance with University policy.

3.3 University shall retain title to all equipment purchased and/or fabricated by it with funds provided by Sponsor under this Agreement.

ARTICLE 4 CONSULTATION AND REPORTS

4.1 Sponsor's designated representative ("Designated Representative") for consultation and communications with the Principal Investigator shall be Mr. Jeffrey Vice or such other person as Sponsor may from time to time designate in writing to University and the Principal Investigator.

4.2 During the term of the Agreement, Sponsor's representatives may consult informally with University's representatives regarding the Research Program, both personally and by telephone. Access to work carried on in University facilities in the course of these investigations shall be entirely under the control of University personnel but shall be made available to Sponsor on a reasonable basis.

4.3 The Research Team will submit such reports as outlined in Attachment A.

All technical reports should be mailed to:

Mr. Jeffrey Vice, Director
Local Government Issues
Austin Energy
721 Barton Springs Rd
Austin, TX 78704
Phone: 512-322-6087
Email: Jeff.Vice@austinenergy.com

4.4 The Office of Accounting shall also submit a final report within sixty (60) days of termination of the Agreement which will contain information such as:

- a.** A final invoice, if not previously submitted, for expenses of the Research Program for the prior year, which reflects cumulative expenses incurred during the term of the Agreement.

ARTICLE 5 PUBLICITY

Neither Party shall make reference to the other in a press release or any other written statement in connection with the Research Program performed under this Agreement, if it is intended for use in the public media, except as required by the Texas Public Information Act or other law or regulation. University, however, shall have the right to acknowledge Sponsor's support of the investigations under this Agreement in scientific or academic publications and other scientific or academic communications, without Sponsor's prior approval. In any statements, the scope and nature of participation shall be described accurately and appropriately. Sponsor shall not use the University's name in any way that would place the University in a position of endorsing, or appearing to endorse, a commercial product or service of Sponsor or a third party.

ARTICLE 6 PUBLICATION AND ACADEMIC RIGHTS

6.1 University and the Principal Investigator have the right to publish or otherwise publicly disclose information gained in the course of this Agreement, except for Sponsor's Confidential Information furnished to University pursuant to the provisions of Article 7. To protect Confidential Information and in order to avoid loss of patent rights as a result of premature public disclosure of patentable information, University will submit any prepublication materials to Sponsor for review and comment at least sixty (60) days prior to planned submission for publication. Sponsor shall notify University within thirty (30) days of receipt of such materials whether it desires University to file patent applications on any inventions contained in the materials; and, if University agrees to do so, University will proceed to file the patent application(s) in due course. The University's Principal Investigator shall have final authority to determine the scope and content of any publication(s).

6.2 It is understood that the University investigators may discuss the research being performed under this Agreement with other investigators but shall not reveal information which is Sponsor's Confidential Information under Article 7. In the event any joint inventions result, University shall grant to Sponsor the rights outlined in Article 8 to this Agreement, to the extent these are not in conflict with obligations to another party as a result of the involvement of the other investigator(s). In

this latter case, University shall, in good faith, exercise reasonable efforts to enable Sponsor to obtain rights to the joint invention.

ARTICLE 7. CONFIDENTIAL INFORMATION

7.1 The Parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose Confidential Information to each other. Each Party will use reasonable efforts to prevent the disclosure of any of the other Party's Confidential Information to third parties for a period of three (3) years from expiration or termination of this Agreement, provided that the recipient Party's obligation hereunder shall not apply to information that:

- (1) is not disclosed in writing and marked with an appropriate confidentiality legend or, if disclosed orally or visually, is not identified as confidential at the time of oral or visual disclosure and subsequently reduced to writing and labeled with an appropriate confidentiality legend within thirty (30) days of disclosure;
- (2) is already in the recipient Party's possession at the time of disclosure thereof;
- (3) later becomes part of the public domain through no fault of the recipient Party;
- (4) is received from a third party having no obligations of confidentiality to the disclosing Party;
- (5) is independently developed by the recipient Party; or
- (6) is required by law or regulation to be disclosed.

7.2 In the event that information is required to be disclosed pursuant to subsection (6), the Party required to make disclosure shall notify the other to allow that Party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

ARTICLE 8 PATENTS, COPYRIGHTS AND TECHNOLOGY RIGHTS

8.1 Title to all copyrights, inventions or discoveries made solely by University resulting from the research performed under this Agreement shall reside in University, title to all inventions or discoveries made solely by Sponsor shall reside in Sponsor, and title to all inventions and discoveries made jointly by Sponsor and University shall reside jointly in Sponsor and University. University agrees to grant to Sponsor an option to negotiate, a royalty-bearing license, to make, use, or sell under any invention or discovery made and conceived during the term of this Agreement directly resulting from the performance of research hereunder. University reserves for itself a royalty-free, irrevocable license to make and use such University inventions or discoveries for its own research and educational purposes at all times. If such invention or discovery is made resulting from the Research Program, the Principal Investigator shall submit an invention disclosure to University's Office of Technology Commercialization

("OTC") through their website at <http://www.otc.utexas.edu/Inventors/Process/FirstSteps.jsp>. The OTC will then forward the invention disclosure to Sponsor. Sponsor shall have thirty (30) days from receipt of such disclosure of any invention or discovery to notify University of its desire to enter into such a license agreement, and a license agreement shall be negotiated in good faith within a period not to exceed one hundred twenty days (120) from Sponsor's notification to University of its desire to enter into a license agreement, or such period of time as the Parties shall mutually agree. In the event that Sponsor and University fail to enter into an agreement during that period of time, then the rights to such inventions or discoveries shall be disposed of in accordance with University policies, with no obligation to Sponsor. Sponsor agrees to pay a reasonable royalty for the use of the invention or discovery to be negotiated in good faith. Until any such invention or discovery has been presented as set forth above, University shall not offer rights to that invention or discovery to any third party.

8.2 In the event Sponsor elects to exercise its option as to any invention or discovery, in accordance with the procedures detailed above, it shall be obligated to pay all patent expenses for such invention or discovery. This shall include, but not be limited to, the cost of any prior activities investigating patentability of said invention or discovery before exercise of the option, such as search and opinion for patentability, that may have been performed by University pursuant to its arrival at a judgment of commercially exploitable status. It is contemplated that, in the majority of instances, Sponsor will be asked to determine whether it will exercise its option prior to the filing of the first patent application.

ARTICLE 9 LIABILITY

9.1 Sponsor agrees to indemnify and hold harmless System, University, their Regents, officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by University under this Agreement; provided, however, that the following is excluded from Sponsor's obligation to indemnify and hold harmless:

- (a) the negligent failure of University to substantially comply with any applicable Food and Drug Administration or other governmental requirements; or
- (b) the negligence or willful malfeasance of any Regent, officer, agent or employee of University or System.

9.2 Both Parties agree that upon receipt of a notice of claim or action arising out of the activities to be carried out under the Research Program, the Party receiving such notice will notify the other Party promptly. Sponsor agrees, at its own expense, to provide attorneys to defend against any

actions brought or filed against University, System, their Regents, officers, agents and/or employees with respect to the subject of the indemnity contained herein, whether such claims or actions are rightfully brought or filed; and subject to the statutory duty of the Texas Attorney General, University agrees to cooperate with Sponsor in the defense of such claim or action.

ARTICLE 10 INDEPENDENT CONTRACTOR

For the purposes of this Agreement and all services to be provided hereunder, the Parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other Party. Neither Party shall have authority to make any statements, representations nor commitments of any kind, or to take any action which shall be binding on the other Party, except as may be expressly provided for herein or authorized in writing.

ARTICLE 11 TERM AND TERMINATION

11.1 This Agreement and the related Research Program shall be effective during the Period of Performance stated in Article 2 unless sooner terminated in accordance with the provisions of this Article 11.

11.2 This Agreement may be terminated by the written agreement of both Parties.

11.3 In the event that either Party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement may be terminated at the option of the Party not in default upon expiration of the sixty (60) day period.

11.4 This Agreement shall terminate automatically and immediately if Sponsor becomes bankrupt or insolvent and/or enters receivership or trusteeship, whether by voluntary act of Sponsor or otherwise.

11.5 Termination or cancellation of this Agreement shall not affect the rights and obligations of the Parties accrued prior to termination. Upon termination, Sponsor shall pay University for all reasonable expenses incurred or committed to be expended in support of the Research Program, including salaries for appointees for the remainder of their appointment.

11.6 Any provisions of this Agreement which, by their nature, extend beyond termination shall survive such termination.

ARTICLE 12 GOVERNING LAW

12.1 This Agreement shall be governed by, construed, and enforced in accordance with the internal laws of the State of Texas.

12.2 The Parties acknowledges that this Agreement and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data. The Parties agrees to comply with all such laws, regulations and orders, including, if applicable, all requirements of the International Traffic in Arms Regulations (“ITAR”) and/or the Export Administration Act/Regulations (“EAR”), as may be amended. The disclosing Parties agrees to inform the receiving Party if any of it’s technical data is subject to the ITAR or EAR including the related Export Control Classification Numbers (“ECCN”) and/or Munitions List categories. The Parties further agree that if the export laws are applicable, the receiving Party shall not disclose or re-export any technical data received under this Agreement to any countries for which the United States government requires an export license or other supporting documentation at the time of export or transfer unless the disclosing Party has obtained prior written authorization from the Federal authority responsible for such matters.

ARTICLE 13 GENERAL

13.1 This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however, that subject to the approval of University, which may not be unreasonably withheld, Sponsor may assign this Agreement to any purchaser or transferee of all or substantially all of Sponsor’s assets or stock upon prior written notice to University; provided, however, that such assignee shall have expressly assumed all of the obligations and liabilities of Sponsor under this Agreement, and provided, further that, University may assign its right to receive payments hereunder.

13.2 This Agreement constitutes the entire and only agreement between the Parties relating to the Research Program, and all prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the Parties. Terms and conditions which may be set forth (front, reverse, attached or incorporated) in any purchase order issued by Sponsor in connection with this Agreement shall not apply, except for informational billing purposes; i.e., reference to purchase order number, address for submission of invoices, or other invoicing items of a similar informational nature.

Any notice required by this Agreement by Articles 8, 9, or 11 shall be given prepaid, first class, certified mail, return receipt requested, addressed in the case of University to both:

<p>The University of Texas System Office of General Counsel 201 West 7th Street Austin, Texas 78701 Attention: Intellectual Property Section Phone: (512) 499-4462 FAX: (512) 499-4523</p>	<p>And the Vice President for Research The University of Texas at Austin Main Building, Room 302 Austin, Texas 78712 Phone: (512) 471-2341 FAX: (512) 475-6564</p>
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or in the case of the Sponsor to:

<p>Mr. Jeffrey Vice, Director Local Government Issues Austin Energy 721 Barton Springs Rd Austin, TX 78704 Phone: 512-322-6087 Email: Jeff.Vice@austinenergy.com</p>	
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or at such other addresses as may be given from time to time in accordance with the terms of this notice provision.

Notices and other communications regarding the day-to-day administration and operations of this Agreement shall be mailed (or otherwise delivered), addressed in the case of University to:

<p>The University of Texas at Austin Office of Sponsored Projects North Office Building-A, Room 4.308 P.O. Box 7726 Austin, Texas 78713-7726 Attention: Anna Gonzalez Phone: (512) 471-2331 FAX: (512) 471-6564 Email: osp@mail.utexas.edu & angonzalez@austin.utexas.edu</p>	<p>With a copy to: Dr. David Eaton LBJ School - The University of Texas at Austin P.O. Box Y Austin, Texas 78713-8925 Phone: (512) 471-8972 FAX: (512) 471-9686 Email: eaton@mail.utexas.edu</p>
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or in the case of Sponsor to:

Mr. Jeffrey Vice, Director
Local Government Issues
Austin Energy
721 Barton Springs Rd
Austin, TX 78704
Phone: 512-322-6087
Email: Jeff.Vice@austinenergy.com

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

THE UNIVERSITY OF TEXAS AT AUSTIN

SPONSOR

By: _____

By: _____

Date: _____

Date: _____

ATTACHMENT A

The LBJ School of Public Affairs (UTLBJ) will provide a Policy Research Project on the topic of “Steps to Develop a Sustainable Municipal Electric Utility” during 2008-09. The deliverables will include: an initial draft report by 1/15/09; a plan for obtaining public comment on the draft report by 1/15/09; a revised draft report incorporating public comments by 3/31/09; and a final report after comments for Austin Energy by 8/31/09.

The topics of the report will include the following subjects: The concept of a "sustainable" utility; The concept of a zero carbon footprint; AE's current carbon footprint; Austin's future demand for energy; Future energy sources; Future energy efficiency opportunities; Future conservation opportunities; Austin's sustainability in 2020 as measured by carbon footprint; Recommendations; and Plan for implementation.

Austin Energy (AE) shall: pay UTLBJ for appropriate expenditures; facilitate access to appropriate information and data from Austin Energy; and facilitate communication between UTLBJ staff and staff of Austin Energy.

Solar Austin is providing additional funding to the University of Texas at Austin.

Basis for Computing Costs: CA will pay UTLBJ an amount not to exceed \$25,000 based on the budget below. UTLBJ is authorized to shift funds among line items to achieve the purposes of the project.

Item	Amount
Salaries	\$10,000
Fringe Benefits	3,000
Supplies	4,000
Consultants	3,000
Travel	5,000
<i>Total costs</i>	\$25,000