

**TWO YEAR INTERLOCAL AGREEMENT BETWEEN
THE CITY OF AUSTIN
AND
UNIVERSITY OF TEXAS
FOR
CONSULTANT SERVICES**

This agreement is made on the _____ day of August 2008 by and between the City of Austin (City), a home-rule municipality incorporated by the State of Texas, and the University of Texas (Consultant or Contractor) having offices at 101 E. 27th Street, Suite 4.308, Austin Texas

SECTION I. GRANT OF AUTHORITY, SERVICES AND DUTIES

- 1.1 **Engagement of the Consultant.** Subject to the general supervision and control of the City, as exercised by the Designated Representative, and subject to the provisions of the Terms and Conditions contained herein, the Consultant is engaged to provide the services forth in Section II, the Scope of Work. The Consultant shall begin work on the project immediately upon Contract award.
- 1.2 **Designation of Key Personnel.** The Consultant's Principal Investigator for this engagement shall be Dr. Desmond Lawler (512)471-4595. The City's Designated Representative for the engagement shall be Jane Burazer (512)972-0133.
- 1.3 **Responsibilities of the Consultant.** The Consultant shall be responsible for providing all personnel, personal office space, and other resources required for providing the services described in Section II, the Scope of Work. The Consultant will be available to the Designated Representative to discuss and resolve any contractual issues that might arise during the term of this Agreement, and shall participate regularly in conference calls or meetings for status reporting. The Consultant shall promptly inform the Designated Representative of any problems encountered that might threaten the timely completion or the adequacy of results obtained in executing the Scope of Work. In the event that the need arises for the Consultant to perform services beyond those stated in the Scope of Work, the Consultant and the Designated Representative will negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.4 **Responsibilities of the Designated Representative.** The Designated Representative will be responsible for exercising general oversight of Consultant's efforts in completing the Scope of Work. Specifically, The Designated Representative will be available to the Consultant to discuss and resolve any contractual issues that might arise during the term of this Agreement, shall participate regularly in conference calls or meetings for status reporting, and shall promptly review any reports or deliverables submitted by the Consultant.

SECTION II. SCOPE OF WORK. Consultant will provide the following to the City.

2.1 The Consultant will research, study, summarize findings, and give recommendations to the City (Austin Water Utility) on the causes and effects of changes in the quality of the wastewater influent flow to Walnut WWTP and SAR WWTP and the change in the quality of the wastewater biosolids that go to Hornsby Bend biosolids plant, specifically the volatile solids reduction. One aspect of the study will be to look at the effects of the water plant discharges into the system, and how changes in those discharges will affect the wastewater and biosolids plants. After investigation of the changes in the influent quality UT will make recommendations on the treatment of the wastewater and biosolids and the water plant discharges.

2.2 The Consultant will make up to four oral report(s) each year as requested by the Designated Representative. At the conclusion of each quarter, the Consultant shall submit to the Designated Representative a written report summarizing the work and, as soon as possible thereafter, the Consultant and the University's Office of Accounting will submit a financial report of expenses relating to the Research Program. The Consultant shall also submit a comprehensive final report within one hundred twenty (120) days of termination of the Agreement which shall contain, but which need not be limited to, the following information:

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 (Office of Accounting).

b. A report of all activities undertaken and accomplishments achieved through the Research Program during the prior year.

2.3 PROJECTED START DATE: Start date for this project will be August 15, 2008.

SECTION III. FEES:

3.1 COMPENSATION. As consideration for the performance by Consultant of its obligations under this Agreement, City will pay the Consultant an amount equal to its expenditures and reasonable overhead in conducting the project subject to a maximum expenditure limitation of \$119,000.

3.2 Invoices. The Consultant shall submit invoices for fees and expenses monthly or within a month following submission of the final deliverable product for this project. Invoices shall be mailed to: City of Austin, ATTN: Jane Burazer, Austin Water Utility, 625 E. 10th Street, Suite 315, Austin, Texas 78701.

3.3 Payment. All proper invoices received by the Designated Representative will be paid within 30 days of receipt of the invoice. The Designated Representative may withhold or set off the entire payment or part of any payment otherwise due the Consultant to such extent as may be necessary on account of:

3.3.1 third party claims are filed or reasonable evidence indicating probable filing of such claims;

3.3.2 damage to City property by the Consultant;

3.3.3 failure of the Consultant to submit proper invoices with all required attachments and supporting documentation; or

3.3.4 failure of the Consultant to comply with any material provision of this Agreement.

3.3.5 Payments should be made 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
Phone: (512) 471-6231

3.4 Insurance Requirements. City agrees that Consultant is an agency of the State of Texas and as such is precluded from granting full indemnity in an agreement with another entity based on the Texas Constitution and the doctrine of sovereign immunity for the State of Texas.

- 3.4.1** Employees of the Consultant are provided worker's compensation insurance coverage under a self-insured, self-managed program as authorized by the Texas Labor Code, Chapter 503.
- 3.4.2** Consultant purchases automobile liability insurance for all Consultant owned, hired, and non-owned vehicles with limits of \$250,000 per person and \$500,000 per accident for bodily injury and \$100,000 for property damage. These damage limits are set by the Texas Tort Claims Act (the Act), Chapter 101 of the Texas Civil Practice and Remedies Code.
- 3.4.3** Consultant does not purchase general liability or employer's liability insurance for its general operations. However, the Act does provide a limited waiver of the State's sovereign immunity. The Act may provide a remedy for claimants who make tort claims that fall under its provisions. These claims fall into two general categories: (i) injuries arising out of use of publicly owned motor vehicles and motor-driven equipment and (ii) injuries arising out of conditions or use of property. Consultant's liability is limited under the Act. Liability in cases of personal injuries or death is limited to a maximum amount of \$250,000 per person and \$500,000 for each single occurrence. The maximum amount of liability for injury to or destruction of property is \$100,000 for each single occurrence.

SECTION IV. MISCELLANEOUS TERMS AND CONDITIONS

- 4.1 Term.** This Agreement shall become effective on the date first stated above and shall expire August 15, 2010.
- 4.2 Interpretation.** This Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Although this Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in this Agreement, the UCC definition shall control, unless otherwise defined in this Agreement.

- 4.3 Invalidity.** The invalidity, illegality, or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of this Agreement be determined to be void.
- 4.4 Modifications.** This Agreement can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any Consultant invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of this Agreement.
- 4.5 Waiver.** No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Consultant or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under this Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 4.6 Independent Consultant.** This Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Consultant's services shall be those of an independent Consultant. The Consultant agrees and understands that this Agreement does not grant any rights or privileges established for employees of the City.
- 4.7 Confidentiality.** 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) is or 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.

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.

4.8 Workforce.

Consultant shall employ only orderly and competent workers, skilled in the performance of the services they will perform under the Contract.

Consultant, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

- i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract, or
- ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

If the City or the City's representative notifies the Consultant that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Consultant shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

4.9 Indemnity.

4.9.1 Definitions:

4.9.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, and judgments, including all costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

- (i) damage to or loss of the property of any person (including, but not limited to the City, the Consultant, and their respective agents, officers, and employees); and/or
- (ii) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers, and employees of the City and the Consultant).

4.9.1.2 "Fault" shall include negligence willful misconduct, or a breach of any legally imposed strict liability standard.

4.9.2 To the extent allowed by the Constitution and laws of the State of Texas, Consultant shall defend (at the option of the City), indemnify, and hold the City, its successors, assigns, officers, employees and elected officials harmless from and against all Indemnified Claims to the extent they resulted from the Fault of the Consultant, or the Consultant's agents, employees or subcontractors, in the performance of the Consultant's obligations under this Agreement. Nothing herein shall be deemed to limit the rights of the City or the Consultant (including, but not limited to, the right to seek contribution) against any third party who may be liable for an Indemnified Claim.

4.10 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for

written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of this Agreement.

- 4.11 Default.** The Consultant shall be in default under this Agreement if the Consultant fails to fully, timely, and faithfully perform any of its material obligations under this Agreement, becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 4.12 Termination for Cause.** In the event of a default by the Consultant, the City shall have the right to terminate this Agreement for cause, by written notice effective fifteen (15) days, unless otherwise specified, after the date of such notice, unless the Consultant, within such fifteen (15)-day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. All rights and remedies under this Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.13 Termination Without Cause.** The City shall have the right to terminate this Agreement, in whole or in part, without cause any time upon fifteen (15) days' prior written notice. Upon receipt of a notice of termination, the Consultant shall promptly cease all further work pursuant to this Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay Consultant, to the extent of funds Appropriated or otherwise legally available for such purposes, for all work in progress, OEM charges that cannot be recovered, goods delivered and services performed, obligations incurred prior to the date of termination, and reasonable project shut down costs, in accordance with the terms hereof.
- 4.14 Notices.** Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Routine communications may be made by first class mail, facsimile or other commercially accepted means. Notices to the Contracting Agency and the Consultant shall be addressed as follows:

to the City:

City of Austin
Austin Water Utility
Attn: Jane Burazer
625 E. 10th Street, Suite 315
Austin, Texas 78701
Phone: (512)972-0133
FAX: (512)972-0138

to the Consultant:

The University of Texas at Austin
Office of Sponsored Projects
Attn: Associate Director
North Office Building-A, Room 4.308
Post Office Box 7726
Austin, Texas 78713-7726
Phone: (512) 471-6424
FAX: (512) 471-6564

with a copy to:

Dr. Desmond Lawler
The University of Texas at Austin

Dept of Civil, Architectural, and Environmental Engineering, College of Engineering
1 University Station C1786
Austin, Texas 78712
Phone: (512) 471-4595
FAX: (512) 471-5870

4.15 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

4.16 Fraud. Fraudulent statements by the Contractor on any Offer shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

4.17 Dispute Resolution.

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they may proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally to the extent allowed by the Constitution and the laws of the State of Texas. Nothing in this Agreement shall preclude either party from pursuing any remedies existing at law and in equity as may be available through a court of competent jurisdiction.

4.17 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the

purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

4.18 Assignment-Delegation. The Contract shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

4.19 Right to Audit.

- a. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- b. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

4.20 Publications. All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

4.21 Rights Contractual Material. Copies of all materials developed and used for this proposal shall be provided to the City. Determination of the public nature of the material is subject to the Public Information Act, Chapter 552, Texas Government Code.

4.21 Ownership and Use of Deliverables.

Contractor owns the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all materials, inventions, discoveries, and technology developed solely by Contractor in performance of each Research Program under this Agreement ("Contractor Technology") for its non-commercial research and educational purposes. The Parties jointly own the entire right, title and interest, including all patents, copyrights and other intellectual property rights, in and to all inventions, discoveries and technology developed jointly by Contractor and City in performance of this Agreement ("Joint Technology"). City is hereby granted a non-exclusive, royalty-free license to any of Contractor's copyrights in Contractor Technology subject to third party rights if any.

4.22 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and

addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to Law Department, City Hall, 302 W. Cesar Chavez, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767

4.23 Jurisdiction and Venue. This Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts.

This Agreement is executed in duplicate originals to be effective as of August 15, 2008.

UNIVERSITY OF TEXAS :

THE CITY OF AUSTIN:

Signature: _____

Signature: _____

Name: Susan Wyatt Sedwick, Ph.D.
Associate Vice President for Research

Name: Rudy Garza

Title: Office of Sponsored Projects

Title: Assistant City Manager

Date: _____

Date: _____