

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
ATMOS Research and Consulting
For
Climate Consulting Professional Service
Contract Number: PA160000047**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and ATMOS Research and Consulting ("Contractor"), having offices at P.O. Box 16578, Lubbock, Texas 79490.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Exhibit A-Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Laura James, Phone: (806) 438-6559, Email Address: LJJames@atmosresearch.com. The City's Contract Manager for the engagement shall be Gary Gold, Phone: (512) 972-0139, Email Address: Gary.Gold@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described herein and as detailed in Exhibit A-Scope of Work, the Contractor shall provide climate consultant services to provide future climatic and hydrologic projections as an essential component of the Integrated Water Resource Plan to assist the City of Austin in evaluating potential effects of climate change on water supply and demand.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated in Exhibit B upon successful completion of the tasks as indicated in the Scope of Work, attached hereto as Exhibit A. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$115,613 for all fees and expenses.

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax**

identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be emailed to the below address:

	City of Austin
Department	Austin Water
Attn:	Gary Gold
Address	P.O. Box 1088
City, State, Zip Code	Austin, Texas 78767
Email Address	Gary.Gold@austintexas.gov

3.2.2 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.2 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.3 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.4 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.4.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.4.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.4.3 equipment;

3.3.4.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.4.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

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

3.3.4.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.5 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.6 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation

to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 Reimbursable Expenses. Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.5.2 Administrative. The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.5.3 Travel Expenses. All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 Final Payment and Close-Out.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 Term of Contract. This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect until the earliest of when the tasks and deliverables set forth in Exhibit A-Scope of Work are complete, or thirty-six (36) months, whichever is earlier, or until the City terminates the Contract.

4.2 Right To Assurance. Whenever one party to the Contract 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 the Contract.

4.3 Default. The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 Termination For Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) 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. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default

by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 Termination Without Cause. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 Fraud. Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance: Reserved.

5.2 Equal Opportunity.

5.2.1 Equal Employment Opportunity. No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 Americans With Disabilities Act (ADA) Compliance. No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 Interested Parties Disclosure. As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.4 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.5 **Delays.**

5.5.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.6 **Ownership And Use Of Deliverables.** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

5.7 **Rights to Proposal and Contractual Material.** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.8 **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.

SECTION 6. WARRANTIES

6.1 **Warranty – Services.** The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.1.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.1.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.1.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor

acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

7.2 Workforce.

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

7.2.2 The Contractor, 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:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 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.

7.2.3 If the City or the City's representative notifies the Contractor 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 Contractor 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.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.4 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.4.1 disposal of major assets;

7.4.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.4.3 any significant termination or addition of provider contracts;

7.4.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.4.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

- 7.4.8 known, planned or anticipated stock sales;
- 7.4.9 any litigation against the Contractor; or
- 7.4.10 significant change in market share or product focus.

7.5 **Right To Audit.**

7.5.1 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.

7.5.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.6 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.7 **Indemnity.**

7.7.1 Definitions:

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

7.7.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.7.1.1.2 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, the Contractor, the Contractor's subcontractors, and third parties),

7.7.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.7.2 **THE CONTRACTOR 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 DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.8 **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 effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar 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 City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract 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. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

ATMOS Research and Consulting

ATTN: Laura James, Contract Manager

P.O. Box 16578

Lubbock, Texas 79490

7.10 Confidentiality. In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.11 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 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.

7.13 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 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.

7.14 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee

guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 **Assignment-Delegation.** The Contract shall be binding upon and enure 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.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract 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 Contractor 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 the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract 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 the Contract. Although the Contract 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 the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 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 will 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.

7.20.2 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 mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 **Jurisdiction And Venue.** The Contract 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 Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.23 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract 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 Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.24 **Holidays.** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

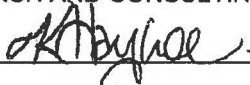
If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.25 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.26 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

ATMOS RESEARCH AND CONSULTING

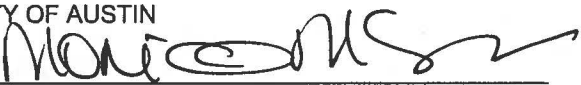
By: 
Signature

Name: Katharine Hayhoe
Printed Name

Title: CEO

Date: 6-9-16

CITY OF AUSTIN

By: 
Signature

Name: Monica McClure
Printed Name

Title: Corporate Contract Administrator

Date: June 16, 2016

List of Exhibits

Exhibit A	Scope of Work
Exhibit B	Task and Price Proposal
Exhibit C	Non Discrimination Certification, Section 0800
Exhibit D	Non-Suspension or Debarment Certification

EXHIBIT A

AWU-179

CITY OF AUSTIN SCOPE OF SERVICES FOR CLIMATE CONSULTANT

Background

Austin Water Resource Planning Task Force (AWRPTF) was created by City Council in April 2014 to evaluate the City's water needs, to examine and make recommendations regarding future water planning, and to evaluate potential water resource management scenarios for Council consideration.

One of the key recommendations of the AWRPTF was the development of an Integrated Water Resource Plan (IWRP) and Independent Conservation Potential Assessment (ICPA). In December 2014, Mayor and Council passed a resolution to create a new task force, the Austin Integrated Water Resource Planning Community Task Force (AIWRPCTF), to provide support for the IWRP. Included in the recommendations by the AWRPTF was for the IWRP to evaluate the water supply under various climate scenarios as well as to assess the impact of climate change on water demand.

The City of Austin (COA) is contracting for Climate Consultant services to provide future climatic and hydrologic projections as an essential component of the IWRP to assist COA in evaluating potential effects of climate on water supply and demand. Hydrologic projections of streamflow and evaporation will be used in water availability modeling efforts to analyze water supply under various climate scenarios. Future climatic projections will also be instrumental in assessing potential impacts of climate change on water demand.

Services and Scope of Work

ATMOS Research and Consulting (ATMOS), through a separate contract with City of Austin Office of Sustainability, conducted a pilot study to quantify the relationships between climate, weather and streamflow. This study built and utilized statistical models to correlate observed streamflow to multiple weather indicators for six sample gauges. COA is contracting for Climate Consultant (Consultant) services to build upon this previous work in order to: 1) develop future naturalized streamflow projections under different climate scenarios for additional gauges in the Austin area and other locations in the Colorado River Basin, and 2) project net evaporation (evaporation depth minus precipitation depth) under different climate scenarios at gauges in the Austin area and other locations in the Colorado River Basin, and 3) analyze changes in correlations between weather indicators and hydrologic parameters (streamflow and net evaporation) at identified gauges through different historical time periods.

TASK 1: OBTAIN HISTORICAL STREAMFLOW, EVAPORATION, AND PRECIPITATION DATA FOR THE GAUGES CORRESPONDING TO THE 43 PRIMARY CONTROL POINTS

Consultant will download U.S. Geological Survey (USGS) historical daily streamflow data, where data is available, for gauges corresponding to the 43 Primary Control Points in the Colorado River Basin Water Availability Model (WAM). The 43 Primary Control Points are used in the WAM for the Colorado River Basin developed by the Texas Commission on Environmental Quality (TCEQ). The majority of these 43 Primary Control Points correspond to USGS gauges. Consultant will coordinate with the City and the City's Hydrologist/WAM Consultant on the streamflow analyses. Consultant will also download the monthly precipitation and lake evaporation quadrangle data from the Texas Water Development Board (TWDB) for quadrangles covering and adjacent to the Colorado River Basin.

TASK 2: NATURALIZE DAILY HISTORICAL STREAMFLOW FOR ALL GAUGES

Consultant will be provided monthly naturalized streamflow for each gauge from the TCEQ WAM. Using naturalized monthly streamflow data, Consultant will adjust daily streamflow data to account for human modifications. The daily gauged streamflow data will be adjusted to replicate the mean of the monthly naturalized streamflow data from the TCEQ WAM. No adjustments are required for the TWDB monthly precipitation and lake evaporation quadrangle data.

TASK 3: IDENTIFY WEATHER STATIONS AND OBTAIN OBSERVED DAILY WEATHER DATA

Consultant will coordinate with the City and the City's Hydrologist/WAM Consultant to identify appropriate long-term weather stations at locations near the 43 Primary Control Points. Consultant will obtain daily historic weather data (temperature, precipitation) from these weather stations to use in historical analysis and in future downscaling.

TASK 4: CALCULATE OBSERVED CLIMATE PREDICTORS

For the weather stations identified in TASK 3, Consultant will calculate climate predictors (e.g. number of dry days, average precipitation, number of hot days, etc.) that will be used to analyze correlations between these predictors and hydrologic parameters (i.e. streamflow and evaporation).

TASK 5: QUANTIFY OBSERVED STATISTICAL CORRELATIONS BETWEEN CLIMATE PREDICTORS AND HYDROLOGIC PARAMETERS AT THE SELECTED GAUGES

Consultant will quantify and analyze statistical correlations between climate predictors and hydrologic parameters at the 43 Primary Control Points and the TWDB quadrangle data. Correlations will be quantified for the entire period of record from 1940 to 2013, and will then be analyzed on a decadal basis (e.g. 1940-1949, 1950-1959, etc.) and by grouping time periods with similar patterns of natural variability (e.g. El Niño versus La Niña years and/or other such periods as identified by the project team in discussion with

the consultant), as appropriate. Consultant will coordinate with the City and the City's Hydrologist/WAM Consultant to identify appropriate time periods to analyze correlations as well as to assess historical changes in these correlations.

In quantifying correlations, Consultant will use monthly naturalized flows, sub-monthly (i.e. weekly and daily) naturalized flows, or a combination of monthly and sub-monthly naturalized flows, as appropriate at each gauge depending on correlation strengths. Consultant will coordinate with the City's Hydrologist/WAM Consultant and the City to determine which time aggregation of data (i.e. monthly, sub monthly, or a combination of monthly and sub monthly) is applicable for each gauge.

Consultant will coordinate with the City and City's Hydrologist/WAM Consultant to identify appropriate weather stations where climate models will be downscaled.

TASK 6: PREPARE SUMMARY OF RESULTS AND DISCUSS WITH CITY

Consultant will prepare a summary of preliminary results and discuss these results, and the proposed methodology for proceeding with future tasks based on correlations quantified in TASK 5, with the City and the project team. Consultant and City staff will consider strength of correlations and compare correlation trends over historical time periods. Based on correlation strength and trends over time, Consultant and City staff will determine appropriate time periods for projecting hydrologic parameters using correlations with weather indicators.

TASK 7: DEVELOP CLIMATE PROJECTIONS FOR WEATHER STATIONS AND CALCULATE FUTURE CLIMATE PREDICTORS

Using simulations from between 9 and 15 global climate models from the Coupled Model Intercomparison Project Phase 5, Consultant will develop daily temperature and precipitation projections for appropriate weather station locations in the Colorado River Basin. These projections will be downscaled using the Asynchronous Regional Regression Model. Climate projections are planned to use two different carbon emission scenarios, which may include the Intergovernmental Panel on Climate Change lower Representative Concentration Pathway (RCP) 4.5 scenario and the higher RCP 8.5 scenario. Coordination on climate scenarios will occur with the Climate Consultant, the Main WRP Consultant, and the City.

TASK 8: CALCULATE AND SUMMARIZE FUTURE CLIMATE INDICATORS

Using the daily temperature and precipitation projections developed in Task 7, Consultant will calculate a set of 10 climate indicators. Climate projections and the corresponding indicators will be summarized centered on the years 2020, 2040, and 2070. End-of-century quantitative results will also be summarized and qualitatively

extrapolated to 2115 using explicit expert judgment (since the majority of climate model simulations end at 2100).

TASK 9: BUILD AND UTILIZE STATISTICAL MODEL TO PROJECT FUTURE HYDROLOGIC PARAMETERS

Using correlations quantified in TASK 5 and climate projections developed in TASK 7, Consultant will build statistical models to develop future streamflow projections from projected future climate predictors. These statistical models will be used to project future streamflow at the 43 Primary Control Points.

Consultant will provide daily streamflow simulation results and projections for each of the 43 Primary Control Points for all years 1950 through 2100, as indicated in the "Deliverables" section. End-of-century quantitative results will also be summarized and qualitatively extrapolated to 2115 using explicit expert judgment (since the majority of climate model simulations end at 2100).

TASK 10: DEVELOP DAILY PRECIPITATION AND EVAPORATION PROJECTIONS FOR TWDB QUADRANGLES

Daily precipitation, as simulated by the same global climate models and for the same two future scenarios described in Task 7, will be downscaled to a 1/16th degree grid covering the Colorado River basin in Texas. These high-resolution gridded projections will then be spatially averaged to generate daily precipitation projections for the nineteen TWDB one-degree quadrangles that cover and are adjacent to the Colorado River Basin.

Daily evaporation for the same nineteen TWDB quadrangles will be calculated using a similar approach to that of streamflow. Specifically, customized evaporation formulae will be calculated for each quadrangle, based on observed historical temperature and precipitation predictors and these will be driven by future climate predictors to quantify projected changes in evaporation under a changing climate.

Consultant will provide daily precipitation and daily evaporation simulation results and projections for each of the TWDB quadrangles covering and adjacent to the Colorado River Basin for all years 1950 through 2100, as indicated in the "Deliverables" section. End-of-century quantitative results will also be summarized and qualitatively extrapolated to 2115 using explicit expert judgment (since the majority of climate model simulations end at 2100).

TASK 11: PROVIDE CLIMATE PROJECTIONS FOR WATER DEMAND FORECASTING

To assist in water demand forecasting, consultant will provide climate simulation results and projections (daily temperature and daily precipitation) for each weather stations

identified in in TASK 3 for all years 1950 through 2100 in the form of clearly labeled comma-separated CSV text files. Consultant will provide this data to other consultants involved in the IWRP as well as Austin Water for time periods centered on 2020, 2040, and 2070. End-of-century quantitative results will also be summarized and qualitatively extrapolated to 2115 using explicit expert judgment (since the majority of climate model simulations end at 2100).

TASK 12: SUMMARIZE RESULTS AND RECOMMENDED FUTURE WORK

Consultant will prepare graphs, charts, spreadsheets and presentations to be used by and discussed with the City, the AIWRPCTF, the Main IWRP Consultant and the City's Hydrologist/WAM Consultant. Consultant will be available to make up to 4 presentations on results at public meetings.

Consultant will coordinate with City staff to ensure that deliverable results are formatted to fit the City's needs (for instance, ensure the units of the data correspond to units used in the WAM system).

Consultant will identify and discuss limitations of the current analysis as planning tool, and how future analyses may address these limitations. Discussion shall include 1) the current analysis's ability (or inability) to quantify probabilities and characteristics of outlier climatic events like the heat and drought of Summer 2011; and 2) options for, and the potential significance of, extending the time-series data using proxy sources (tree rings or speleothems) for paleohydrologic and paleotemperature data.

TASK 13: COORDINATE WITH PROJECT TEAM AND CONSULTANTS WORKING ON THE IWRP

Consultant will coordinate with the project team, including the Main IWRP Consultant, the City's Hydrologist/WAM Consultant, and other consultants working on the IWRP, to support incorporation of climatic projections and hydrologic forecast data into the evaluation of water supply options and into the evaluation of disaggregated demand modeling and forecasting.

Coordination will include project check-ins on an approximately two month basis along with written project status updates provided during the check-ins.

Consultant will be available for approximately 6 virtual meetings to coordinate with the City and IWRP Consultants. This coordination is anticipated to include discussion of results, models, methodologies, etc. to facilitate incorporating climate change projections and hydrologic forecasts into the IWRP.

Additionally, consultant should be available for up to 4 in-person meetings to facilitate incorporation of the work described in this Scope of Services into the IWRP. Consultant

may be meeting with other IWRP consultants and City Staff as well as presenting at AIWRPCTF or other public meetings at appropriate times as determined by City Staff during the IWRP development. Currently, the Main IWRP Consultant team is projected to begin work mid-2016 and culminate in late 2017.

Deliverables

Deliverables will consist of the following:

1. Graphs, charts, data files, and presentations to summarize results for climate and hydrology simulations and projections as follows:
 - a. Simulation results and projections for daily streamflow for locations corresponding to the 43 Primary Control points in the Colorado River Basin WAM for all years 1950 through 2100.
 - b. Simulation results and projections for daily evaporation and daily precipitation for TWDB quadrangles covering and adjacent to the Colorado River Basin for all years 1950 through 2100.
 - c. Simulation results and projections for daily temperature and daily precipitation at weather gauges selected in Task 3 for all years 1950 through 2100.

Spatially distributed times-series data should be provided for streamflow so that entire WAM period of record (1940-2013) can be adjusted to reflect potential climate change impacts for time periods centered on the years 2020, 2040, and 2070.

End-of-century quantitative results will also be summarized and qualitatively extrapolated to 2115 using explicit expert judgment (since the majority of climate model simulations end at 2100).

2. As necessary to document the modeling and analysis described above, memoranda supporting the work described in this Scope of Services.

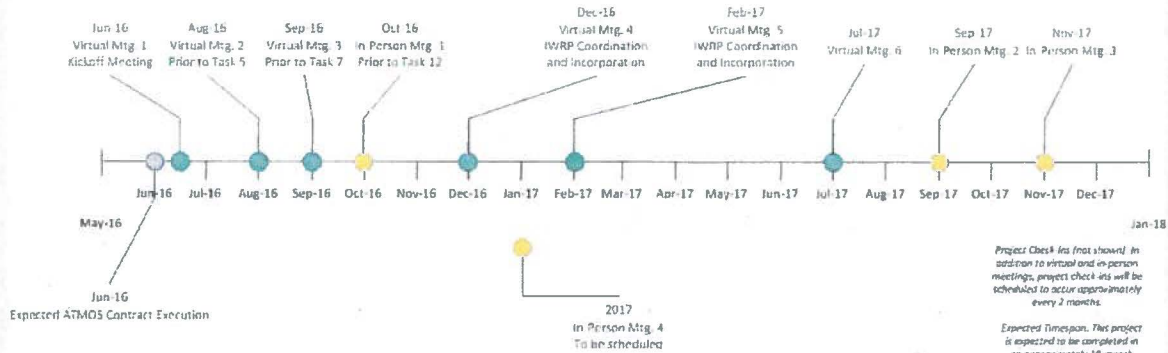
Time, Schedule, and Cost Estimate

This contract for these services is expected to be a 36-month contract with total billings expected to be \$115,613 including travel costs. Note: the planned schedule for this project is shown in the attached preliminary project schedule outline, which is subject to change. The majority of the tasks are anticipated to be completed in the first 6 months with some work on the later tasks to be completed over the subsequent 13 months.

Preliminary Schedule
Subject to Revision

ATMOS-COA Climate and Hydrology Study Preliminary Project Schedule

In addition to ATMOS Research and Consulting, attendees for meetings shown in this schedule will include City of Acacia staff, the City's WAM/Hydrology Consultant, and the Main WRP Consultant, as needed depending on meeting subject matter.



Note: Dates shown above represent the first of each month.

**EXHIBIT B
TASK AND PRICE PROPOSAL**

TASK 1: OBTAIN HISTORICAL STREAMFLOW, EVAPORATION, AND PRECIPITATION DATA FOR THE GAUGES CORRESPONDING TO THE 43 PRIMARY CONTROL POINTS	\$	2,425
TASK 2: NATURALIZE DAILY HISTORICAL STREAMFLOW FOR ALL GAUGES	\$	2,350
TASK 3: IDENTIFY WEATHER STATIONS AND OBTAIN OBSERVED DAILY WEATHER DATA	\$	5,045
TASK 4: CALCULATE OBSERVED CLIMATE PREDICTORS	\$	2,772
TASK 5: QUANTIFY OBSERVED STATISTICAL CORRELATIONS BETWEEN CLIMATE PREDICTORS AND HYDROLOGIC PARAMETERS AT THE SELECTED GAUGES	\$	10,770
TASK 6: PREPARE SUMMARY OF RESULTS AND DISCUSS WITH CITY	\$	5,360
TASK 7: DEVELOP CLIMATE PROJECTIONS FOR WEATHER STATIONS AND CALCULATE FUTURE CLIMATE PREDICTORS	\$	8,102
TASK 8: CALCULATE AND SUMMARIZE FUTURE CLIMATE INDICATORS NEW TASK	\$	14,994
TASK 9: BUILD AND UTILIZE STATISTICAL MODEL TO PROJECT FUTURE HYDROLOGIC PARAMETERS	\$	2,772
TASK 10: DEVELOP MONTHLY PRECIPITATION AND EVAPORATION PROJECTIONS FOR TWDB QUADRANGLES NEW TASK	\$	12,613
TASK 11: PROVIDE CLIMATE PROJECTIONS FOR WATER DEMAND FORECASTING EXPANDED TASK	\$	9,765
TASK 12: SUMMARIZE RESULTS AND RECOMMENDED FUTURE WORK (INCLUDES UP TO 4 IN-PERSON MEETINGS + TRAVEL EXPENSES) EXPANDED TASK	\$	22,265
TASK 13: COORDINATE WITH PROJECT TEAM AND CONSULTANTS WORKING ON THE IWRP (INCLUDES UP TO 6 VIRTUAL MEETINGS AND FOLLOW-UP) EXPANDED TASK	\$	16,380
TOTAL	\$	115,613

EXHIBIT C
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 9 day of June, 2016

CONTRACTOR

Authorized
Signature

Title

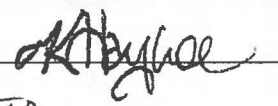
Atmos Research Consult

CEO

EXHIBIT D
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Contractor hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State or City of Austin Contracts.

Laura James

Signature of Officer or Authorized Representative

Printed Name: *Laura James*

Title: *Administrator*

Date: *6-9-16*

ATMOS RESEARCH AND CONSULTING



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 12/18/2015

DEPT: Austin Water

TO: Purchasing Officer or Designee

FROM: Gary Gold

BUYER: Irene Sanchez-Rocha

PHONE: (512) 972-0139

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)

- ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
- ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
- ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
- ☒ a procurement for personal, professional, or planning services
- ☐ a procurement for work that is performed and paid for by the day as the work progresses
- ☐ a purchase of land or right-of-way
- ☐ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for

equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits

- ☐ a purchase of rare books, papers, and other library materials for a public library
- ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
- ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Please see attached supporting information: "Attachment 1".

4. Please attach any documentation that supports this exemption.

5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).


Please see attached supporting information: "Attachment 2".

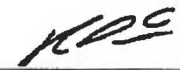
6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Atmos Research and Consulting which will cost approximately \$ 116,000.00 (Provide estimate and/or breakdown of cost).
36-month contract with no extension options

Recommended
Certification

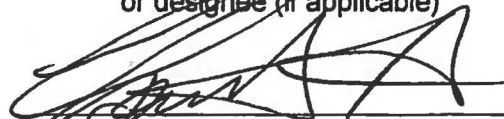
 12/12/15
Originator Date

Approved
Certification

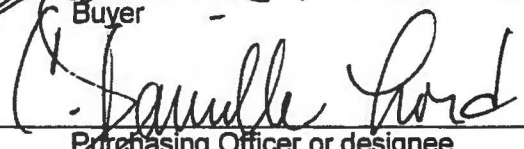
 12/18/2015
Department Director or designee Date

 12/21/15
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

 12/29/15 CPH
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

 12/30/15
Purchasing Officer or designee Date

02/26/2013

Attachment 1: Supporting Information for Certificate of Exemption Section 3

The Austin Water Resource Planning Task Force (AWRPTF) was created by City Council in April 2014 to evaluate the City's water needs. One of the key recommendations of the AWRPTF was the development of an Integrated Water Resource Plan (IWRP), including a recommendation by the AWRPTF to evaluate water supply under various climate scenarios as well as to assess the impact of climate change on water demand as part of the IWRP. To fulfill this recommendation, City staff must obtain future climate change projections including temperature and precipitation forecasts. Climate change projections are only obtained from atmospheric scientists and climate researchers who run high resolution global climate models on super computers at universities. One of the foremost climate researchers in the United States is Dr. Katharine Hayhoe from Texas Tech University who also runs a consulting group called ATMOS Research and Consulting. Dr. Hayhoe is a lead author of the 2014 Third US National Climate Assessment. The National Climate Assessment (NCA) is being conducted under the auspices of the Global Change Research Act of 1990, which requires a report to the President and the Congress that evaluates, integrates, and interprets the findings of the \$2.6 billion USGCRP every four years. The 2014 Third U.S. National Climate Assessment compares climate changes under both the SRES and the new RCP scenarios (2009) based on the CMIP5 global climate models. Dr. Hayhoe proposes to pull from those existing computer model runs, to summarize those existing projections for the southern Great Plains region and supplement them by downscaling and analyzing projections for a number of weather stations in the Lower Colorado River Basin based on RCP/CMIP5 projections for the region. Projections will be downscaled using the Asynchronous Regional Regression Model (ARRM) as used in the Second and Third U.S. National Climate Assessments. Additionally, Dr. Hayhoe proposes to use these climate projections to evaluate the impact of climate change on hydrologic including streamflow and evaporation in the Lower Colorado River Basin. Future climatic projections will also be instrumental in assessing potential impacts of climate change on water demand.

Attachment 2: Supporting Information for Certificate of Exemption Section 5

Previously, City staff researched vendors and companies that offer climate modeling services, of which none were found. The most recent and complete data found was from the National Climate Assessment, of which Dr. Hayhoe is a lead author. It was determined that since Dr. Hayhoe has computer model results from her work on the National Climate Assessment, these results could be downscaled, analyzed, and used to evaluate climate change impacts on hydrology. This would be the most effective and efficient way to evaluate climate change impacts on water supply and demand as part of the Integrated Water Resources Plan.

TASK 1: OBTAIN HISTORICAL STREAMFLOW, EVAPORATION, AND PRECIPITATION DATA FOR THE GAUGES CORRESPONDING TO THE 43 PRIMARY CONTROL POINTS

TASK 2: NATURALIZE DAILY HISTORICAL STREAMFLOW FOR ALL GAUGES

TASK 3: IDENTIFY WEATHER STATIONS AND OBTAIN OBSERVED DAILY WEATHER DATA

TASK 4: CALCULATE OBSERVED CLIMATE PREDICTORS

TASK 5: QUANTIFY OBSERVED STATISTICAL CORRELATIONS BETWEEN CLIMATE PREDICTORS AND HYDROLOGIC PARAMETERS AT THE SELECTED GAUGES

TASK 6: PREPARE SUMMARY OF RESULTS AND DISCUSS WITH CITY

TASK 7: DEVELOP CLIMATE PROJECTIONS FOR WEATHER STATIONS AND CALCULATE FUTURE CLIMATE PREDICTORS

TASK 8: CALCULATE AND SUMMARIZE FUTURE CLIMATE INDICATORS NEW TASK

TASK 9: BUILD AND UTILIZE STATISTICAL MODEL TO PROJECT FUTURE HYDROLOGIC PARAMETERS

TASK 10: DEVELOP MONTHLY PRECIPITATION AND EVAPORATION PROJECTIONS FOR TWDB QUADRANGLES NEW TASK

TASK 11: PROVIDE CLIMATE PROJECTIONS FOR WATER DEMAND FORECASTING EXPANDED TASK

TASK 12: SUMMARIZE RESULTS AND RECOMMENDED FUTURE WORK (INCLUDES UP TO 4 IN-PERSON MEETINGS + TRAVEL EXPENSES) EXPANDED TASK

TASK 13: COORDINATE WITH PROJECT TEAM AND CONSULTANTS WORKING ON THE IWRP (INCLUDES UP TO 6 VIRTUAL MEETINGS AND FOLLOW-UP) EXPANDED TASK

TOTAL



MEMORANDUM

To: James Scarboro, Purchasing Officer, Financial Serv
From: Greg Meszaros, Director, Austin Water
Date: December 18, 2015
Subject: Climate Consulting Professional Services

CONTRACTING MATERIALS
WITH INFORMATION FOR
REFERENCE.

Austin Water declares these professional services to assist with an analysis of the Impact of climate change on water supply and demand in the Lower Colorado River Basin in support of the Integrated Water Resources Plan project (IWRP) for the City of Austin to be a professional service exempt under Texas Local Government Code, Chapter 252.022 (a) (4) since the service being provided is of an intellectual nature, requiring special knowledge, experience, skills and education.

Austin Water seeks to contract with ATMOS Research and Consulting (ATMOS) to assist with developing projections for precipitation, temperature, streamflow and evaporation under potential climate scenarios for the IWRP. The requested firm, ATMOS, will develop climate projections and utilize statistical models based on correlations between climate predictors and hydrologic parameters to develop forecasts for streamflow and evaporation. This work will be managed by Austin Water in coordination with the Austin Integrated Water Resource Planning Community Task Force (AIWRPCTF) and other IWRP consultants (to be procured through separate processes).

ATMOS Research and Consulting has recently worked on previous climate and hydrology related projects for the COA including:

- a. Climate Change Projections for the City of Austin:
 - Conducted an assessment of how global climate change might affect Austin's climate, using the Camp Mabry weather station as an example.
 - Provided an analysis to compare historical observations to projected changes under a higher and lower future scenario for three future time periods centered on the 2020s, 2050s, and 2080s.
 - Modeled potential changes in temperature and precipitation resulting from potential climate scenarios using nine global climate models and advanced downscaling techniques.
- b. ATMOS Research and Consulting is conducting a project for the City of Austin in quantifying the relationship between Austin climate, weather, and streamflow:
 - Analyzing statistical correlations between 120 climate weather indicators and daily streamflow for the 6 sample gages.
 - Determining specific climate indicators to use as predictors of streamflow based on statistical correlations.

Memorandum to James Scarboro
December 18, 2015

- Developing climate projections for each weather station and calculating 120 climate indicators for these weather stations.
- Building and utilizing statistical models to project future streamflow.
- The pilot project is analyzing the relationship between Austin climate, weather, and streamflow for 6 sample gages. The requested services described in the Scope of Services would extend the analysis to additional gages in the Austin area and other locations in the Lower Colorado River Basin. Additionally, the analysis will develop evaporation projections for the region based on statistical correlations between climate predictors and evaporation.

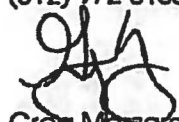
ATMOS Research and Consulting has previous experience developing climate change projections for the City of Austin as well as quantifying the relationship between Austin climate, weather and streamflow. As a result, ATMOS has unique knowledge of:

- i. the City's previous efforts in analyzing potential temperature and precipitation projections under a number of climatic scenarios;
- ii. previous work in downscaling global climate models to the Austin Camp Mabry weather station;
- iii. the City's previous analysis of the relationship between climate, weather, and streamflow in the Lower Colorado River Basin in the aforementioned study.

Katharine Hayhoe, CEO and Senior Scientist at ATMOS Research and Consulting, possesses a Doctor of Philosophy (Ph.D.) in Atmospheric Sciences from the University of Illinois at Urbana-Champaign. Dr. Hayhoe is considered an expert in quantifying the impacts of climate change at the local and regional scale and is also well regarded by her peers in the field of atmospheric sciences.

It is expected that billings for this professional service direct contract with this consultant will not exceed \$116,000 for a period of 24 months after the contract is executed.

Should you have any questions or comments, please do not hesitate to contact me at (512) 972-0108 or Gary Gold at (512) 972-0139.



Greg Meszaros, Director
Austin Water

cc: Daryl Slusher, Assistant Director, Austin Water
Kevin Critendon, P.E., PMP, Assistant Director, Austin Water
Teresa Lutes, P.E., Managing Engineer, Austin Water
Steve Aden, Manager, Purchasing Department