

**INTERLOCAL COOPERATION AGREEMENT
BETWEEN
UNIVERSITY OF NORTH TEXAS
AND
THE CITY OF CORPUS CHRISTI**

WHEREAS, University of North Texas (“UNT”) and the City of Corpus Christi (“City”) are authorized by Chapter 791 of the Texas Government Code to enter into an interlocal cooperation contact;

WHEREAS, UNT has been a partner in the City’s air quality assessment and planning activities for the Coastal Bend Region;

WHEREAS, the City desires to continue its partnership with UNT in this effort;

WHEREAS, the air quality assessment and planning activities include identifying, inventorying, and monitoring of current pollution levels; modeling future pollution levels and the identification and quantification of potential pollution reduction through voluntary control, and other action plans for improving the Corpus Christi area air quality and maintain compliance with federal ozone standards;

WHEREAS, the 83rd Texas legislature in Article VI.8 of the General Appropriation Act (“Rider 8”) made funds available to the Texas Commission on Environmental Quality (“TCEQ”) to conduct air quality planning activities in areas considered to be near non-attainment;

WHEREAS, the CITY entered into a State Funded Grant Agreement (“Grant”), Contract No. 582-14-40055 with the Texas Commission on Environmental Quality (“TCEQ”) for air quality planning activities in areas considered to be near non-attainment for the ozone standard under the Federal Clean Air Act Amendments of 1990, which activities may include without limitation identifying, inventorying, and monitoring of current pollution levels; modeling future pollution levels and the identification and quantification of potential pollution reduction through voluntary control, and which activities will be consistent with TCEQ monitoring, inventory and modeling approaches and infrastructure, and conduct air quality planning activities in the Coastal bend Region;

WHEREAS, an element of the City’s proposal for the Grant was UNT’s proposed “Corpus Christi Air Quality Monitoring Activities” as a continuation of the City’s Regional Air Quality Program;

WHEREAS, the grant provides funding for Corpus Christi Air Quality Monitoring Activities and other types of air quality planning activities and projects that the City, in cooperation with its partners, will complete by August 31, 2015 (and possibly later if the Grant is extended based on authority received from the Texas Legislature to carry forward near non-attainment contract related monies

from the 2014-2015 biennium into the 2016-2017 biennium) detailed in a Work Plan approved by the TCEQ as Attachment B to TCEQ Contract No. 582-14-40055 (copy available upon request); and

WHEREAS, the technical support contemplated by this agreement is of mutual interests and benefit to UNT and City; it will further the instructional and research objectives of UNT, in a manner consistent with its status as an agency of the State of Texas; and it will help the city accomplish objectives of its “OZONE Advance Intergovernmental Agreement” with the United States Environmental Protection Agency (“EPA”) and TCEQ;

NOW, THEREFORE, the parties hereto agree as follows:

1. GRANT SUBCONTRACT. Both the City and UNT acknowledge that this agreement is a subcontract to the City’s Grant from TCEQ (TCEQ Contract Number 582-14-40055), and that the terms and conditions of the Grant control the administration and execution of this contract.

- a. The TCEQ Grant No. 582-14-40055 is incorporated into this agreement by reference and is available upon request.
- b. In the event any provision of this agreement of this agreement conflicts with terms of the Grant, the terms of the Grant control the administration an execution of this agreement.
- c. UNT agrees to comply with all requirements imposed by TCEQ that are applicable to subcontractors.
- d. UNT agrees to conduct all of its activities in compliance with the terms of the Grant, and not to take any action that would cause or contribute to the City to defaulting upon the terms of the Grant.
- e. UNT shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all services and other work furnished by UNT under this agreement. UNT must perform the work in conformity with the standards and guidance documents provided by the TCEQ. The City and TCEQ may withhold reimbursement for costs of non-conforming work.

2. STATEMENT OF WORK. UNT agrees to use its best efforts to execute the Work Plan document that describes down to the task level (Tasks 1 through 3) the projects in support of the State Implementation Plan (SIP) development process and other types of air quality planning activities and projects that the City, in cooperation with its partners, will complete by August 31, 2015, as described in the Rider 8 Funding Request Work Plan, Attachment B to TCEQ Contract No. 582-14-40055.

3. PRINCIPAL INVESTIGATORS. The program will be supervised by Dr. Kuruvilla John of the College of Engineering. If, for any reason, he is unable to continue to serve as Principal Investigator, and a successor acceptable to both UNT and the City is not available, the agreement shall be terminated as provided in paragraph 7.

4. PERIOD OF PERFORMANCE. The program shall be conducted from the execution date of the contract through August 31, 2015.

5. PRICE AND PAYMENT. As compensation for the performance of the agreement, the City agrees to reimburse UNT up to Three Hundred Thirty-Nine Thousand Nine Hundred Four dollars (\$339,400) for expenses authorized under the Grant.

- a. This agreement is funded exclusively from funds made available to the City by the Grant. The City's obligation is limited by the provisions of the Grant. The City is not liable to make payment to UNT, if funding is not available from TCEQ through the Grant. Payments may not exceed Three Hundred Thirty-Nine Thousand Nine Hundred Four dollars (\$339,400) from the execution of this Agreement to August 31, 2015.
- b. All contractual expenditures reimbursed with funds provided under this agreement shall meet all procurement laws and regulations applicable to UNT and the UGMA and the UGMS. Note that competitive bidding will generally be required for contracts with entities other than local governments and state and federal agencies. Note also that the Common Rule of OMB Circular A-102, as adopted in the UGMS, precludes the use of the cost plus a percentage of cost of contracting.
- c. UNT shall forward any proposed subagreement providing for the performance of services under this agreement to the City prior to execution of the subagreement. Neither the City's or TCEQ's failure to question a subagreement nor its subsequent withdrawal of any questions raised regarding subagreement shall in any way imply the City of TCEQ's approval of the subagreement's purpose or method of procurement of the subagreement. Further, the terms of this provision do not in any way restrict the City's and TCEQ'S rights under this agreement or the Grant to subsequently refuse reimbursement for expenses incurred pursuant of the subagreement. UNT may require a bid bond to protect the local and state interests by assuring that the bidder will, upon acceptance, execute all required contractual documents within the time period specified.
- d. Invoices for compensation shall be submitted to the following address:

City of Corpus Christi
Attn: Sharon Bailey Lewis
P.O. Box 9277
Corpus Christi, TX. 78469-9277

- e. The City agrees to reimburse UNT for the costs billed within thirty (30) days of receipt of invoice. All payment shall be sent to:

Office of Research Services
University of North Texas
1155 Union Circle #305250
Denton, Texas 76203-5017

6. DELIVERABLES. The deliverables required under this agreement are specified in the Work Plan (Attachment B to TCEQ Contract No. 582-14-40055).

7. TERMINATION. Performance under this agreement may be terminated by the City upon sixty days of written notice. Performance may be terminated by UNT, if circumstances beyond its control preclude continuation of Program. Upon termination, UNT will be reimbursed as specified in paragraph 5 of all costs and non-cancelable commitments incurred in the performance of the program, that are reimbursable under the Grant. However reimbursement may not exceed the total estimated cost specified in paragraph 5.

8. INTELLECTUAL PROPERTY.

- a. Royalties and patent fees. UNT shall pay all license fees royalties and assume all costs incident to the use or possession in performance of the Work or incorporation in Work of any Intellectual Property.
- b. Disclosure of Intellectual Property Produced during the Work. UNT shall promptly notify the City and TCEQ of all Intellectual Property that UNT or UNT's employees, subcontractors, or subcontractor's employees may produce, either solely or jointly with others, during the course of Work. In addition, UNT shall promptly notify the City and TCEQ of all intellectual property which UNT may acquire in connection with the performance of the work. Any notification under this paragraph shall contain sufficient technical detail to convey a clear understanding of the intellectual property, and shall identify any publication, sale, public use, or impending publication. Promptly upon request UNT shall supply additional information as the City and TCEQ may request.
- c. Failure to Protect Intellectual Property. If UNT fails to protect any intellectual property right in the intellectual property produced in the course of performing the work, the City and TCEQ shall have full authority to protect, assume and retain all intellectual property rights in any and all intellectual property.
- d. Non-Interference with Intellectual Property Rights of City and TCEQ. UNT agrees that UNT, its agents and its employees shall not in any manner use, sell, distribute, disclose or otherwise communicate any portion of intellectual property owned by or licensed to the City of TCEQ, except in the course of performing the work, unless UNT has independent intellectual property rights to the intellectual property.
- e. Grant license. With respect to any intellectual property as is (i) incorporated in the work (other than intellectual property for which the City and TCEQ already possess equal or greater intellectual property right by virtue of this agreement or otherwise) or (ii) produced by UNT or UNT's employees, subcontractors, or subcontractor's employees

during the course of performing the work UNT hereby grants to the city and TCEQ (i) a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, or otherwise use the intellectual property and associated use documentation, and (ii) a nonexclusive, perpetual, irrevocable, enterprise-wide license to authorize others to reproduce, publish, or otherwise use Intellectual Property for the City's and TCEQ's purposes.

- f. **Modification; Derivative Works.** The City and TCEQ shall have the right at their own discretion, to independently modify any intellectual property to which license is granted for the City and TCEQ's own purposes and use, through the services of its own employees or independent contractors. The City and TCEQ shall own all intellectual property right to the modifications. UNT shall not incorporate any modifications into its intellectual property for distribution to third parties unless it first obtains a license from the City and TCEQ.
- g. **Compliance with Applicable Laws and Regulations.** UNT shall comply with all laws and regulations relating to intellectual property.
- h. **Representations Relating to Intellectual Property Rights.** UNT represents and warrants to the City and TCEQ that UNT will not infringe any intellectual property right of any third party. UNT further represents and warrants to the City and TCEQ that in the course of performing the work it will not use or possess any intellectual property owned by a third party without paying any required royalty or patent fees. UNT warrants that it has full title in and ownership of intellectual property and any enhancements, updates or other modifications, or that it has full power and authority to grant all license granted in this agreement, and that the license use by City and TCEQ will in no way constitute an infringement or other violation of any intellectual property right of any third party. The UNT warrants that it shall have, throughout any applicable license term under this agreement, free and clear title to, or the right to possess, use sell, transfer, assign, license, or sublicense products that are licensed or provided to the City and TCEQ by UNT. Except as permitted in this agreement and the Grant, UNT shall not create or permit the creation of any lien, encumbrance, or security interest in the work or any part thereof, or any product licensed or provided to the City and TCEQ for which title has not yet passed to the City and TCEQ, without prior written consent of the City and TCEQ. UNT represents and warrants to the City and TCEQ, that neither it nor any other company or individual performing work is under any obligation to assign or give to any third party any intellectual property rights granted or assigned to the City and TCEQ, or reserved by the City and TCEQ, under this agreement and the Grant.

9. RELEASE OF INFORMATION. UNT shall acknowledge the City and TCEQ, the UNT investigator, the nature of the program, and the dollar value of the agreement in UNT records and reports. Any reports and other documents completed as part of this agreement, other than documents prepared exclusively for internal organizational use by UNT, shall carry the following notation on the front cover or title page:

“PREPARED IN COOPERATION WITH TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE CITY OF CORPUS CHRISTI”

10. TITLE TO EQUIPMENT. Subject to the obligations and conditions set forth in this agreement and the Grant, title to all equipment acquired under this agreement shall vest, upon acquisition or construction, in UNT.

- a. UNT agrees to conduct physical property inventories, to maintain property records and necessary control procedures, and to provide adequate maintenance with respect to all equipment acquired under this agreement.
- b. UNT may develop and use its own property management system which must conform to all applicable State and local laws, rules, and regulations. If an adequate system for accounting for personal property owned by UNT or its subcontractors is not in place or currently in use, UNT shall contact the State of Texas Comptroller of Public Accounts and request the State Property Accounting User’s Guide (#96-418) and the State Property Class Code List. UNT agrees to use these as guides for establishing a property management system
- c. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and the cost of the property, percentage of federal participation in the cost of property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- d. A physical inventory of all equipment acquired or replaced with funds provided under this agreement having an initial purchase price of One Thousand Dollars (\$1,000) or more, shall be conducted no less frequently than once every two years and the results of the inventories reconciled with the appropriate property records. Property control procedures utilized by UNT shall include adequate safeguards to prevent loss, damage, or theft of acquired property. Any loss, damage or theft shall be investigated. UNT agrees to develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event the equipment is sold.
- e. Use of Equipment Acquired with Funds Provided Under this Agreement.
 - (1) Equipment shall be used by UNT or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project program continues to be supported by state funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a federal or state agency.
 - (2) UNT or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the federal or state government, providing the use will not interfere with the Work on the projects or program for

which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency.

- (3) When acquiring replacement equipment, UNT or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

f. **Disposition of Equipment Acquired with Funds Provided Under this Agreement.** When the original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal or state agency, disposition of the equipment may be made as follows:

- (1) Equipment with a current per-unit fair market value of less than \$1,000 may be retained, sold or otherwise disposed of with no further obligation to the TCEQ. Methods used to determine per-unit fair market value must be documented, kept on the file and made available to the TCEQ upon request.
- (2) Equipment with a current per-unit fair market value of \$1,000 or more must be disposed of as follows:
 - (A) Prior to the termination date of this Agreement, UNT and subgrantees must notify the TECQ. TECQ may require UNT or subgrantees to transfer title and possession to the equipment to the TECQ or a third party named by the TECQ or may alternatively authorize disposition by sale, transfer or in another manner.
 - (B) If, within six years of the initiation date of the Agreement, equipment is sold or transferred, UNT must remit to TCEQ a share of the proceeds from the sale, provided the fair market, per-unit value of the property at the time of the sale is in excess of one thousand dollars (\$1,000). The TCEQ's share of the sale proceeds shall be the same percentage as was the funding provided under this Agreement that enabled the original purchase in question.

11. NOTICES. All notices to the parties under this Agreement shall be in writing and sent to the names and address stated. Either party to the Agreement may change such name and address by notice to the other in accordance herewith, and any change shall take effect immediately upon receipt of the notice.

UNT:

University of North Texas
Office of Research and Economic Development
Attention: Barbara Lindley
1155 Union Circle #305250
Denton, TX 76203-5017
Telephone: 940-565-3939
Fax: 940-565-4277

City:

City of Corpus Christi
Attn: Sharon Bailey Lewis
P.O. Box 9277
Corpus Christi, TX. 78469-9277
Telephone: (361) 826-4066
Fax: (361) 880-3501

12. Export Administration.

- a. It is understood that UNT is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, and that its obligations under this agreement are contingent upon compliance with applicable United States export laws and regulations. Furthermore, it is understood that the transfer of certain technical data and commodities may require a license from one or more agencies of the United States Government.
- b. Both UNT and City hereby agree and warrant that the program and development contemplated under this agreement, and any exchange of technical data, computer software or other commodities resulting from this agreement, shall be conducted in full compliance with the export control laws of the United States.

13. LIABILITY. IT IS UNDERSTOOD THAT THE CITY SHALL NOT BE LIABLE FOR ANY CLAIMS AGAINST UNT, ITS EMPLOYEES, OR THIRD PERSONS, OTHER THAN CITY'S EMPLOYEES, FOR DAMAGE RESULTING FROM OR ARISING OUT OF THE ACTIVITIES OF UNT PERSONNEL UNDER THIS AGREEMENT, AND UNT AGREES, TO THE EXTENT PERMITTED BY SECTION 49, ARTICLE III OF THE CONSTITUTION OF THE STATE OF TEXAS, TO HOLD CITY HARMLESS FROM ANY AND ALL CLAIMS. IT IS ALSO UNDERSTOOD THAT UNT SHALL NOT BE HELD LIABLE FOR ANY CLAIMS AGAINST CITY'S EMPLOYEES, OF DAMAGE RESULTING FROM OR ARISING OUT OF ACTIVITIES OF THE CITY, ITS EMPLOYEES, OR THIRD PERSONS, OTHER THAN UNT EMPLOYEES, AND CITY AGREES, TO THE EXTENT PERMITTED BY SECTION 49, ARTICLE III OF THE CONSTITUTION OF THE STATE OF TEXAS, TO HOLD UNT HARMLESS FROM ANY AND ALL CLAIMS.

14. INDEPENDENT CONTRACTOR. For the purposes of the agreement and all services to be provided under this agreement, the parties shall be, and shall be deemed to be, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for in this agreement or authorized in writing.

15. AMENDMENTS AUTHORIZED.

- a. The representatives who were authorized to sign this agreement are authorized to execute minor amendments to this agreement, such as changes in deadlines and minor changes in the scope of work.
- b. Any amendments to this agreement resulting from amendments to the Grant that increases the scope of work under this agreement due to TCEQ's award of additional funding to the City as a result of the work plan prepared by UNT under this agreement must be authorized by the City Council and the funds appropriated before an amendment to this agreement is executed.
- c. Any amendments to this agreement increasing or decreasing the amount the City is obligated to pay UNT by \$25,000 or more must be authorized by the City Council before an amendment to this agreement is executed.

16. SEVERABILITY. If any of the provisions of the agreement in the application thereof to any person or circumstance, is rendered or declared illegal for any reason, or shall be invalid or unenforceable, the remainder of the agreement and the application of the provisions to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent by applicable law. The City and UNT agree that this agreement shall be reformed to replace the stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

17. DISPUTE RESOLUTION PROCESS.

- a. To the extent applicable, the dispute resolution procedures provided in Chapter 2260 of the Texas Government Code will be used to resolve contract claims under this contract.
- b. If the Chapter 2260 procedures are utilized both parties agree the TCEQ may intervene in the proceedings as an interested party.
- c. The Director of Purchasing, UNT, is designated as the officer designated under §2260.052, Texas Government Code, to examine claims and counterclaims, negotiate, and resolve any claims on behalf of UNT.

18. VENUE. UNT acknowledges and agrees that because this agreement has been executed, and will be administered in Nueces County, Texas, the agreement is to be performed in Nueces County. UNT acknowledges and agrees that any permissible cause of action involving this agreement will arise solely in Nueces County. If a legal action relating to this claim is permissible and there are two (2) or more counties or proper venue under the rules of mandatory, general, or permissive venue, and one of the counties is Nueces County, UNT agrees to venue in Nueces County. This provision does not waive the City's sovereign immunity.

19. MISCELLANEOUS. This agreement constitutes the entire agreement between the parties relative to the subject matter, and may only be modified or amended by a written agreement signed by both parties. It shall be construed in accordance with the laws of the State of Texas.

20. AUTHORIZATION OF GOVERNING BODIES. The individuals executing this agreement certify that this interlocal agreement has been authorized by the Governing Body for their, as required by Section 791, Texas Government Code.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their authorized representative.

UNIVERSITY OF NORTH TEXAS

By: _____
Jean R. Bush
Senior Associate Vice President for Finance

Date: _____

CITY OF CORPUS CHRISTI

By: _____
Ron Olson
City Manager

Date: _____

ATTEST

Armando Chapa
City Secretary