



TEXAS A&M UNIVERSITY-KINGSVILLE

INTERLOCAL CONTRACT/AGREEMENT

TAMU – Kingsville Contract Number: 15-0101

This Interlocal Contract Agreement is entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, by Texas A&M University-Kingsville, a member of The Texas A&M University System, an agency of the State of Texas, (hereinafter referred to as UNIVERSITY or TAMUK) and The City of Corpus Christi, (hereinafter referred to as CITY), having its principal place of business at 1201 Leopard St., Corpus Christi, Texas 78401.

WITNESSETH that the Contractor and CITY, in consideration of the mutual covenants, promises, and agreements herein contained, agree as follows:

1. PURPOSE and SCOPE OF SERVICES

The purpose of this Contract is for UNIVERSITY to develop and deliver a Decision Support Modeling System for Modeling the Water Resources around the Choke Canyon Reservoir region of the Nueces River Basin. The scope of work is outlined in the attached Appendix A for the UNIVERSITY to furnish all services and deliverables listed.

2. TERM OF THE CONTRACT:

This Contract shall commence on or about June 1, 2015 and shall terminate on May 31, 2017.

3. COMPENSATION AND METHOD OF PAYMENT

- A. This Contract is for the not-to-exceed sum of \$59,697.00 (Fifty Nine Thousand, Six hundred and Ninety Seven dollars).
- B. Payment will be made upon submittal and approval by the CITY of the UNIVERSITY's Invoice(s).
- C. The total of all payments made against this contract by the CITY shall not exceed \$59,697.00
- D. Each party paying for the performance of services under this this Interlocal Contract must make those payments from current revenues available to the paying party.
- E. The UNIVERSITY shall contribute in-kind services identified on Appendix A

4. CONTRACT DOCUMENTS:

The contract documents shall consist of the following (listed in order of precedence)

- A. This Signed Contract/Agreement
- B. Scope of Work Appendix A.
- C. CITY Waiver of Liability Appendix B.

5. GOVERNING LAW AND VENUE

This Agreement is construed under and in accordance with the laws of the State of Texas, and is performable in Kleberg County, Texas; however, by statute, mandatory venue for all legal proceedings against TAMUK is to be in the county in which the principal office of the governing officer is located. At execution of this Agreement, such county is Kleberg County, Texas.

6. SEVERABILITY

If any part of this Agreement shall be held illegal, unenforceable, or in conflict with any law, the validity of the remaining portions shall not be affected hereby.

7. ENTIRE AGREEMENT

This document constitutes the sole and entire agreement between CITY and UNIVERSITY. This document supersedes all oral or written previous and contemporary understandings or agreements relating to matters contained herein. This Agreement may not be amended or otherwise altered except by mutual agreement in writing.

8. ASSIGNMENT

This Agreement is not assignable without express written agreement of CITY and UNIVERSITY.

9. INDEMNIFICATION

Subject to the limitations of applicable law relating to Texas governmental entities, UNIVERSITY agrees to defend, indemnify and hold harmless CITY, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, of any nature whatsoever on account of personal injuries, property loss or damage, or any other kind of damage, including expenses of litigation, court costs and attorney's fees, which are arising out of, connected with or resulting from any acts or omissions of UNIVERSITY or any agent, employee or representative of UNIVERSITY in the execution or performance of this Agreement or use or occupancy of any CITY property related to the performance of this Agreement. UNIVERSITY shall at its own expense, investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon, and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage, loss, claims, demands, and actions.

10. FORCE MAJEURE

Neither party will be responsible to the other for losses resulting from the failure to perform any terms or provisions of this Agreement, except for payments of monies owed, if the party's failure to perform is attributable to acts of war, riot, strike, civil disorder, or other work stoppage, fire, flood, acts of God, or any other act not within the

control of the party whose performance is interfered with, and which, by reasonable diligence, such party is unable to prevent.

11. DISPUTE RESOLUTION PROCESS:

- A. To the extent Chapter 2260, Government Code, as it may be amended from time to time (“Chapter 2260”), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by CITY and UNIVERSITY in attempts to resolve any claim for breach of contract made by CITY:
 - (1) CITY’s claim for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, CITY must submit written notice, as required by subchapter B of Chapter 2260, to UNIVERSITY in accordance with the notice provisions in this Agreement. CITY’s notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision allegedly breached, the amount of damages sought by CITY, and the method used to calculate the damages. Compliance by CITY with subchapter B of Chapter 2260 is a required prerequisite to CITY’s filing of a contested case proceeding under subchapter C of Chapter 2260. The officer of UNIVERSITY as may be designated from time to time by UNIVERSITY by written notice thereof to CITY in accordance with the notice provisions in this Agreement, shall examine CITY’s claim and any counterclaim and negotiate with C in an effort to resolve such claims.
 - (2) If the parties are unable to resolve their disputes under subparagraph (1) of this Section, the contested case process provided in subchapter C of Chapter 2260 is CITY’s sole and exclusive process for seeking a remedy for any and all of CITY’s claims for breach of this Agreement by UNIVERSITY.
 - (3) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. The parties specifically agree (i) neither the execution of this Agreement nor any other conduct, action or inaction of any representative of either party relating to this Agreement constitutes or is intended to constitute a waiver of CITY’s or the State of Texas’ sovereign immunity to suit, and (ii) neither party has waived its right to seek redress in the courts.
- B. The submission, processing and resolution of a claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
- C. CITY and Contractor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

12. STATE CONTRACTING REQUIREMENTS

CITY certifies that, upon the effective date of this Agreement, either CITY (1) is not delinquent in payment of State of Texas corporate franchise taxes, or (2) is not subject to the payment of such taxes. CITY agrees that any false statement with respect to franchise tax status shall be a material breach, and CITY may terminate this Agreement upon written notice to Contractor.

13. NOTICES

Any written notice required by this Agreement shall be mailed first class to the address below:

Contractor: Texas A&M University-Kingsville
MSC 212
700 University Blvd
Kingsville, Texas 78363

Attention: Dr. Rebecca A. Davis
(361) 593-3344 Phone
(361) 593-3409 Fax
E-mail: osr@tamuk.edu

CITY: City of Corpus Christi
1201 Leopard St.
Corpus Christi, Texas 78401
Attention: Mark Van Vleck, P.E.
Interim Director of Environmental and Strategic Initiatives
(361) 826-1874 Phone
(361) 826-3815 Fax
E-mail: MarkVV@cctexas.com

14. NON-DISCLOSURE

In connection with performing this agreement, CITY may disclose to UNIVERSITY nonpublic confidential information, business information, technical information and/or ideas identified by CITY as proprietary at the time of disclosure ("Proprietary Information")

- a) UNIVERSITY will hold in confidence or disclose any Proprietary Information except information UNIVERSITY can document (a) is in the public domain through no fault of contractor, (b) was properly known to UNIVERSITY, without restriction, prior to disclosure by CITY, or (c) was properly disclosed to UNIVERSITY by another person without restriction, and UNIVERSITY will not reverse engineer or attempt to derive the composition or underlying information, structure or ideas of any Proprietary Information. The foregoing does not grant UNIVERSITY a license in or to any of the Proprietary Information.
- b) If progress on this contract is in any way terminated, UNIVERSITY will promptly return all Proprietary Information and all copies, extracts and other objects or items in which it may be contained or embodied, except that UNIVERSITY may securely retain one copy for record purposes.
- c) UNIVERSITY will promptly notify CITY of any unauthorized release of Proprietary Information.
- d) UNIVERSITY understands that this statement does not obligate CITY to disclose any information or negotiate or enter into any agreement or relationship.
- e) UNIVERSITY acknowledges and agrees that due to the unique nature of the Proprietary Information, any breach of this Article 14 may cause irreparable harm to CITY for which damages are not an adequate remedy and that CITY shall therefore be entitled to seek equitable relief in addition to all other remedies available at law.
- f) The terms of this Article 14 will remain in effect with respect to any particular Proprietary Information for five years until UNIVERSITY can document that it falls into one of the exceptions stated in Paragraph 1 above, whichever occurs first.
- g) If UNIVERSITY is legally required to disclose Proprietary Information, UNIVERSITY shall, to the extent allowed by law, promptly give CITY written notice of the requirement so as to provide CITY a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If UNIVERSITY complies with the terms of this Section 14g, disclosure by UNIVERSITY of that portion of the Proprietary Information which UNIVERSITY is legally required to disclose will not constitute a breach of this Contract. UNIVERSITY is not required to pursue any claim, defense, cause of action, or legal process or proceeding on CITY's behalf.

15. MISCELLANEOUS

a) The parties shall abide by the requirements of applicable regulations which prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit

discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

b) Either party may terminate this agreement at any time upon 30 days written notice to the other party.

c) Continuation of the Agreement beyond the current fiscal year of the City is subject to City's annual budget process.

16. INTELLECTUAL PROPERTY

a) "Intellectual Property" means all intellectual property, including without limitation, electronic or otherwise, technical information, know-how, copyrights, patents and trade secrets, ideas, thoughts, concepts, processes, techniques, data, development tools, models, drawings, specifications, prototypes, inventions and software.

b) "Project IP" means all Intellectual Property that is authored or conceived and reduced to practice under this Agreement.

c) Title to any Project IP made or conceived solely by UNIVERSITY personnel vests in UNIVERSITY. Title to any Project IP made or conceived solely by employees of CITY vests in CITY. Title to any Project IP made or conceived jointly by employees of both UNIVERSITY and CITY ("Joint IP") vests jointly in UNIVERSITY and CITY. For Joint IP, UNIVERSITY and CITY will be independent owners of any corresponding patent rights under 35 USC 262 with no obligation of accounting to one another, in the absence of a written agreement to the contrary.

d) To the extent UNIVERSITY has the legal right to do so, UNIVERSITY shall grant to CITY a nonexclusive, royalty-free license to any UNIVERSITY Project IP developed under this Agreement for CITY's internal use only.

17. PUBLICATIONS.

UNIVERSITY, as a state institution, engages only in research that is compatible, consistent, and beneficial to its role and mission. Therefore, significant results of research activities must be reasonably available for publication. UNIVERSITY may publish data, information, and results related to the work performed under this Agreement. During the term of this Agreement and for three years after, UNIVERSITY shall submit any such proposed publication to CITY and CITY will have 30 days to review and comment. UNIVERSITY may not include any Proprietary Information without advance approval by CITY.

18. WAIVER.

Prior to accessing CITY property, the UNIVERSITY employee and student shall complete a Waiver of Liability shown in Appendix or other form approved by the CITY ATTORNEY.

In WITNESS WHEREOF, the parties have caused this contract to be duly executed intending to be bound thereby.

CITY OF CORPUS CHRISTI

TEXAS A&M UNIVERSITY-KINGSVILLE:

By: _____

By: Rebecca A. Davis

Name: Mark Van Vleck, P.E.

Name: Dr. Rebecca A. Davis

Date: _____

Date: 2-23-15

Title: Interim Director

Title: Executive Director, ORSP

APPENDIX A

A Decision Support Modeling System for Managing the Water Resources around the Region of Choke Canyon Reservoir of the Nueces River Basin

Proposed by Dr. Jiahong Jennifer Ren and Dr. Tushar Sinha
Department of Environmental Engineering, Texas A&M University-Kingsville
Tel: 361-593-2798, Fax: 361-593-2069, Email: jiahong.ren@tamuk.edu

Introduction

The Nueces River Basin traditionally has complex water management issues related to combined domestic and industrial water supply and demand, prolonged drought conditions, climate induced water management factors, and coastal freshwater inflow management. In recent years, the basin is also experiencing significant unconventional shale development, especially in the Choke Canyon Reservoir area. In addition to the potential threat caused by illegal oil-field waste dumping as has been reported since 2012, concerns about groundwater over pumping to meet the facing water supply demand and its impact on the water volume storage in the Lake Corpus Christi (LCC)/Choke Canyon Reservoir (CCR) System have also been raised. Since the LCC/CCR currently supplies drinking water for more than 500,000 people in the South Texas region, it is very important to adopt a solid science-based water resources management approach to proactively manage the complex water system in the Nueces River Basin.

Proposed Project

The science-based water resources management approach should include timely hydrological, hydrogeological, topographical, climatic, physicochemical, land use/land cover, and biological data coupled with effective decision support modeling tools. With this in mind, this proposed project will focus on developing a decision support modeling system for managing the water resources around the region of Choke Canyon Reservoir of the Nueces River Basin. This modeling system will provide the following functionality to the regional decision makers:

- 1) The model can simulate/predict the interaction of ground water and surface water around the region of the Choke Canyon Reservoir;
- 2) It can be used to estimate groundwater recharge/discharge or channel gain/loss under various hydrological conditions which are directly related to climatic conditions such as precipitation, evapotranspiration and surface runoff and land use/land cover conditions; and
- 3) It can simulate/predict the impact of regional groundwater pumping on the channel loss.

Deliverables

The ultimate goal of this project is to enhance the robustness and reduce uncertainty of water resources management in the Nueces River Basin. Final deliverables include:

- 1) A robust and user friendly decision support modeling tool that can be used in routine water resources management and planning; and
- 2) A final report describing in detail how the tool was developed and how it can be used.

Budget

The itemized budget is provided in the following table. A total of \$59,697 is requested from the sponsor and the fund will be used to support 0.1 months of Dr. Ren and Dr. Sinha's time and

effort for overseeing the proposed project; one half Ph.D. and one half M.S. student support for conducting the proposed project; expenses needed to travel to field sites and meetings with sponsors and other relevant stakeholders; materials and supplies including software licensing fees, report printing, and additional data collection; and 12% indirect costs.

A total of \$62,096 is provided by TAMU-K as matching funds to support the proposed project. This includes 0.25 months of Dr. Ren and Dr. Sinha's time and effort for overseeing the proposed project; one half Ph.D. and one half M.S. student support including student tuition for conducting the proposed project; \$2,000 for materials and supplies; and 26% unrecovered indirect costs.

Items	Requested from City of CC			TAMU-K Matching		
	Year 1	Year 2	Total	Year 1	Year 2	Total
Senior Personnel	\$2,649	\$2,725	\$5,374	\$6,083	\$6,256	\$12,339
Student Support	\$19,663	\$19,663	\$39,327	\$16,950	\$16,950	\$33,899
Travel to Field Sites and Regional Meetings	\$1,300	\$1,300	\$2,600	\$0	\$0	\$0
Materials and Supplies	\$3,000	\$3,000	\$6,000	\$2,000	\$0	\$2,000
Indirect Costs						
<i>12% of Facilities & Administrative Costs</i>	\$3,194	\$3,203	\$6,396	\$0	\$0	\$0
<i>Unrecovered Indirect Costs</i>	\$0	\$0	\$0	\$6,919	\$6,939	\$13,858
Total	\$29,806	\$29,890	\$59,697	\$31,952	\$30,144	\$62,096

Timeline

The detailed timeline is provided below. The project will be completed in 2 years. During the project period, quarterly meetings with sponsors will be conducted to report project progress and discuss the specification of the final modeling tool in a timely manner.

Tasks	Year 1				Year 2			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1: Compile hydrological, hydrogeological, topographical, climatic, and land use/land cover data	=====							
2: Surface water and groundwater model coupling	=====							
3: Model calibration and validation			=====					
4: Model user interface enhancement based on stakeholder's input						=====		
5: Final report preparation								=====
6: Model use demonstration and training								=====

APPENDIX B
REQUEST AND WAIVER OF LIABILITY FORM TO BE EXECUTED BY TAMU-K
STUDENT

In signing this form, I _____, understand and agree to the following:

I am requesting permission to access facilities at the _____ for my participation in an engineering project under supervision of Texas A&M University-Kingsville.

I understand that unauthorized access to City property and unauthorized disclosure of City records and data are strictly prohibited. I acknowledge that unauthorized access to City property or unauthorized disclosure of City records may subject me to civil and criminal penalties.

I fully understand that I am not an employee of the City of Corpus Christi. I agree to abide by policies of the City (including but not limited to safety policies) and all applicable statutes and ordinances. I agree to wear safety equipment as directed by City staff and City safety training coordinator.

I know and realize that my participation in the engineering project may involve exposure to certain risks. I may also be around in fact make use of certain equipment. If any activity presents risks that I do not want to take, it is my responsibility to state that concern and make a decision not to engage in that activity. I **hereby personally accept and assume all risk and responsibility for any harm, injury, or damage that may befall me while I am on City property. I further agree to indemnify and hold harmless the City of Corpus Christi from any lawsuit by me, or my family, heirs, or assigns, arising because of my presence on City owned property or my participation in the engineering project.**

I agree to RELEASE AND FOREVER DISCHARGE the City of Corpus Christi and its elected officers, employees, officials, and agents, from any and all claims, suits, liability, demands or causes of action on account of personal injury, death, or property damage, incurred by me or a third party, that may arise from or in connection of my participation in the engineering project or my presence on City property. In executing this document, I am expressly binding myself, my heirs, executors, administrators, and assigns by the terms of this release for any claim or cause of action of any kind that may arise as a result of my work, whether caused by a negligent, grossly negligent, or reckless act of the City of Corpus Christi, or its employees, elected officers, officials, agents, or caused by the use of any tangible personal property or equipment.

IN SIGNING THIS RELEASE, I ACKNOWLEDGE AND REPRESENT THAT I have read it, understand it, and sign it voluntarily as my own free act and deed; no oral representations, statements or inducements, have been made; and I execute this Release for full, adequate and complete consideration, fully intending to be bound by the same.

Signed by: _____

Date: _____

Printed Name: _____

Address: _____