



MEMORANDUM

**City of Austin
Financial Services Department
Purchasing Office**

DATE: August 27, 2020
TO: Memo to File
FROM: Bianca Ontiveros, Procurement Specialist III
RE: MA 2200 NA200000188

This Master Agreement Contract was created and administered by Austin Water. All original documents are located with the department. The Purchasing Office is not responsible for any procurement action for this Master Agreement Contract other than the creation of the payment mechanism for accounting purposes. Accordingly, MA NA200000188 was established for \$70,000.00 that has been approved as funding per the Agreement by and between the City of Austin and the University of Texas at Austin for Pressure Monitors.

Inter Local Agreement Information Sheet

<input type="checkbox"/> RQS <input checked="" type="checkbox"/> RQM	2200	Number: 20062900654
CoSTS Number:	79489	
eCAPRIS Number:	134626	
Date:	06/30/2020	
Description:	Agreement between COA Dist. Eng. and UT Austin (UNI4905750)	
Current Contract Number:	N/A	
Pre-Offer Conference Needed:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
Requested Term & Options of New Contract:	Base: 5 year	Options: 3-12 month extension options (optional)
Estimated Annual Total of New Contract:	\$14,000.00 (payment purposes only)	
Total Do Not Exceed Amount of New Contract:	\$70,000.00 (payment purposes only)	

Contract Manager and Monitors for 0400 and eCapris:

Contract Manager	Phone Number	Email
Andres Ramirez	512-972-0310	andres.ramirez@ausintexas.gov
Contractual Monitor (AW CMS)	Phone Number	Email
Darrell Richmond	512-972-0313	darrell.richmond@austintexas.gov
Operational Monitor (AW End User)	Phone Number	Email
Joe Hoepken	512-972-1168	joe.hoepken@austintexas.gov

Suggested index(s) from BLS:

Series ID	Series ID Description
N/A	N/A

Notes on Additional Site Security Requirements: Standard

Notes on Delivery Requirements: Monday-Friday 7:00am-5:00pm

Distribution Engineering, 3907 South Industrial Blvd. Austin, Texas 78744

Below the Line DRAFT RCA Language: N/A (ILA has been executed)

There is not a current contract.

AGREEMENT BETWEEN
THE CITY OF AUSTIN AND
THE UNIVERSITY OF TEXAS AT AUSTIN

This Agreement is made and entered into by and between the City of Austin, a home rule municipality organized and existing under the laws of the State of Texas and acting through its water utility department, Austin Water (“the City”) and the University of Texas at Austin, an institution of higher education and agency of the State of Texas (“the University”). The City and the University are each a “Party” to this Agreement, and collectively, they are the “Parties.” This Agreement becomes effective on the date executed by the last of the Parties to sign the Agreement (the “Effective Date”).

RECITALS

WHEREAS, the City and the University entered into an agreement in 2017 to participate in distribution system pressure monitoring research, and the City allowed the University to install remote pressure monitors at approximately a dozen locations in or connected to the City’s water utility system;

WHEREAS, the University provided the pressure monitors, the data monitoring service, and the cellular service needed to collect the data, and the University utilized the data to work toward developing predictive main break algorithms;

WHEREAS, the previous pressure monitor agreement between the City and the University expired in 2019;

WHEREAS, the City’s own remote pressure monitors have become obsolete, and the University has offered use of the University’s currently installed pressure monitors to the City in exchange for funding for data and cellular service;

WHEREAS, the data from the University’s pressure monitors is only available from one source, and the City cannot access the data from the installed pressure monitors from any other source;

NOW, THEREFORE, for the good and valuable consideration contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

- 1. Purpose.** This Agreement enables the City to obtain and use data from University pressure monitors already installed in the City water utility system, and enables the University to continue research based on data from those pressure monitors. This

Agreement enables the City to take advantage of technological advancement in sensory and communication technologies for the purposes of increasing operational efficiency, improving pressure management, and minimizing the risk of system damage or failure due to hydraulic transients. This Agreement enables the University to conduct and continue research using data from the City's water utility system.

- 2. Sole Source Agreement.** The Parties acknowledge that this is a sole source agreement exempt from competitive bidding requirements under Chapter 252 of the Local Government Code because the data from the University's pressure monitors is available from only one source, and the City cannot access data from the hardware already installed from any other source.
- 3. Term of Agreement.** This Agreement shall be effective on the Effective Date for a term of five (5) years unless terminated earlier in accordance with the terms of this Agreement. The Parties may renew this Agreement for up to three (3) additional one-year terms upon a written agreement signed by an authorized representative of each Party. If the initial term of this Agreement and any authorized renewal periods expire, the University agrees to hold over under the terms and conditions of this Agreement for a period of time as may be reasonably necessary, not to exceed sixty (60) days, in order to renew this Agreement.
- 4. Payment and In-Kind Contribution.** The University shall provide the pressure monitors and related hardware and software ("the pressure monitors") as needed for the City to investigate and manage water pressures throughout the City's water distribution system. The City shall reimburse the University on a quarterly basis in an amount equal to its expenditures related to data management and software subscription costs, not to exceed \$14,000 each year that this Agreement is in effect. As data management and software subscription costs may vary year to year based on industry standard, the University shall notify the City of any projected increase to costs, and the parties agree to work together to amend this Agreement to revise the annual not to exceed amount, as necessary. For avoidance of doubt, the costs addressed herein do not include potential costs for hardware maintenance. The University shall submit invoices to the City via e-mail to the following address: awinvoices@austintexas.gov. Each invoice shall be marked "ATTN: Division Manager, Austin Water/Distribution System Engineering." The City shall make payment to University within thirty (30) days of receipt of a University invoice. The City may also provide in-kind goods and services to support the University in obtaining the pressure data from the City's water utility distribution network. The total value of the City's cash and in-kind contribution, including staff time, shall not exceed \$61,000 per year.
- 5. Scope of Collaboration.**

 - a. City's Use of the Pressure Monitors.** The City may use the pressure monitors for the purpose of monitoring and otherwise conducting water utility operations.

- b. University's Use of the Pressure Monitors.** The University may use the pressure monitors for the purpose of research on: algorithms for the real-time detection and classification of damaging transient events; pressure-induced stress indicators and characterization of stressed areas in the distribution system to support pressure management; data-driven models to understand and assess the impact of pressure variations and pressure transients on pipe failures to extend the life of utility assets; and related research described in Exhibit A of this Agreement.

6. Intellectual Property.

- a. Ownership of Intellectual Property.** In accordance with U.S. patent and copyright law, the University shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all materials, inventions, discoveries, and technology developed exclusively by the University in the performance of this Agreement. The City shall have the same ownership of any intellectual property developed exclusively by the City in the performance of this Agreement. Jointly developed intellectual property shall be jointly owned by the Parties.
- b. License of Intellectual Property.** The City shall retain a perpetual, non-exclusive, royalty-free, worldwide, and non-commercial license to use any intellectual property developed in performance of this Agreement.
- c. Background Intellectual Property.** Any background intellectual property owned by a Party prior to the execution of this Agreement shall remain the property of that Party. Such background intellectual property includes any data that may be provided to the other Party for the purpose of performing under this Agreement.

7. Data, Publication, and Publicity. Data shared, collected, produced, published, and publicized pursuant to this Agreement shall be handled in accordance with Exhibit A.

8. Liability. Neither Party shall be liable to the other for any indirect, special, punitive, or consequential damages arising in connection with a breach of this Agreement. The Parties acknowledge that each Party is responsible for any claims or losses from personal injury, death, or property damage that were caused by the acts or omissions of that Party, its agents, employees, or representatives in the performance of the activities under this Agreement.

9. Notice and Routine Communications. The Parties may make routine communications by first-class mail, e-mail, or other commercially accepted means.

When this Agreement requires the Parties to provide notice to each other, the notice must be in writing and mailed, hand-delivered, or e-mailed to the person designated for receipt of notice. A mailed notice shall be considered delivered three (3) business days after

postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested, postage prepaid. Hand-delivered notices are considered delivered only when the addressee actually receives those notices. Notices delivered by e-mail are considered delivered three (3) business days after transmittal or when received by the addressee, whichever is earlier.

Notices and routine communications to the City and University shall be addressed as follows:

For the City:

Name: Matt Cullen, P.E.

Title: Division Manager, AW Distribution System Engineering

Address: 3907 South Industrial Drive, Austin, TX 78741

E-mail: matt.cullen@austintexas.gov

Telephone Number: 512-972-1241

For the University:

Name: Polina Sela, PhD

Title: Assistant Professor, Dept. of Civil, Architectural, and Environmental Engineering

Address: 301 E. Dean Keaton St. Stop C1786, Austin, TX 78712

E-mail: linasela@utexas.edu

Telephone Number: 512-232-6879

10. Amendments. This Agreement may not be amended except by a written amendment signed by both Parties. Neither any representation or promise made after execution of this Agreement, nor any modification or amendment of this Agreement, shall be binding on the Parties unless made in writing and properly executed by each of the Parties.

11. University's Acknowledgment of City Funding and Offset for Taxes Owed Requirements.

- a. Acknowledgment of Offset for Taxes Owed.** The University acknowledges that the City has provided notice of Article VII, Section 1 of the Austin City Charter, which prohibits the payment of any money to any person who is in arrears to the

City for taxes, and § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed to the City.

- b. Acknowledgment of Appropriated Funds Requirement.** The University acknowledges that the City has provided notice that the City's payment obligations to the University are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. The City shall provide the University with notice of the City's failure to make adequate appropriation for any fiscal year to pay the amounts due under this Agreement or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement.
- 12. City's Right to Audit.** The University 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 University related to the performance under this Agreement at the City's expense. The City agrees to protect from disclosure University's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act (Chapter 552 of the Texas Government Code). The University agrees to maintain all records related to this Agreement for a period of three (3) years after this Agreement ends.
- 13. Right to Assurance.** When one Party to this Agreement in good faith has reason to question the other Party's intent to perform, that Party may, by written notice, make a demand on the other Party for assurance of the intent to perform. The Party who is asked for assurance has ten (10) business days to provide written notice of its assurance of intent to perform. If the Party fails to provide this assurance, the demanding Party may treat this failure as an anticipatory repudiation of the Agreement.
- 14. Default.** A Party shall be in default under this Agreement if the Party (a) fails to fully, timely, and faithfully perform any of its material obligations under the Agreement, and following receipt of notice of such failure in the other Party's demand for assurance, the Party fails to timely cure the failure within the time period allowed for providing assurance; or (b) fails to provide adequate assurance of performance in response to the other Party's demand for assurance.
- 15. Termination for Cause.** In the event of default by a Party, the other Party shall have the right to terminate this Agreement for cause, by giving written notice delivered by certified mail to the Party in default. Unless the Party giving notice specifies a different time in the notice, the Agreement is terminated thirty (30) calendar days after the date of the termination for cause notice.

- 16. Termination for Convenience.** This Agreement may be terminated by either Party at its convenience by giving at least sixty (60) days' advance notice in writing to the other Party.
- 17. Applicable Laws and Venue.** This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles which would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement, either administrative or judicial, shall be proper and lie exclusively in Travis County, Texas.
- 18. Assignment.** A Party to this Agreement may not assign or transfer its interests under this Agreement.
- 19. Insurance.** Each Party is self-insured and therefore an insurance policy is not required. Each Party will provide proof of self-insurance upon request. To the extent allowed by Texas law, each Party agrees to be responsible for its own proportionate share of liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury, and death, arising out of or connected to this Agreement and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.
- 20. Complete Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all previous agreements, understandings, discussions, or representations concerning its subject matter.
- 21. Severability.** If a court of competent jurisdiction determines that a term or provision of this Agreement is void or unenforceable, the remainder of this Agreement remains effective to the extent permitted by law.
- 22. Survival of Obligations.** All provisions in this Agreement that impose continuing obligations on the Parties shall survive the expiration or termination of this Agreement.
- 23. Independent Contractor.** This Agreement shall not be construed as creating an employer/employee relationship, a partnership, a joint enterprise, or a joint venture between the Parties. The City and the University are independent contractors. The University agrees and understands that the Agreement does not grant to the City or its employees any rights or privileges established for employees of the City.
- 24. No Third-Party Rights.** This Agreement is intended solely for the benefit of the Parties and is not intended to confer any benefits on, or create any rights in favor of, any third party.

25. Prohibition Against Personal Interest in Contract. The University acknowledges that if the University takes action, directly or indirectly, that results in a violation of City Code § 2-7-61 through 2-7-67 by any person with respect to the performance of this Agreement, the City at its sole discretion may void this Agreement.

26. Force Majeure and Notice Thereof.

- a. Force Majeure.** Each Party to this Agreement agrees to excuse the failure of another Party to perform its obligations under this Agreement to the extent, and for a period of time during which, the failure is caused by an event of Force Majeure. An event of Force Majeure is any event or circumstance which prevents or delays performance of any obligation arising under this Agreement, but only if and to the extent the event or circumstance is not within the control of the Party seeking to have its performance obligation excused thereby and which the Party was unable by exercise of due diligence to avoid or prevent. Events of Force Majeure include acts of God, riots, sabotage, civil disturbances, epidemics, pandemics, acts of sovereign, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Events of Force Majeure do not include economic or market conditions which affect a Party's cost but not its ability to perform.
- b. Notice of Force Majeure.** The Party invoking Force Majeure shall give timely and adequate notice to the other Party, by e-mail or telephone confirmed promptly in writing, and shall use due diligence to remedy the effects of an event of Force Majeure as soon as reasonably possible. In the event a Party's performance of an obligation under this Agreement is delayed due to a Force Majeure event, then the time for completion of the Party's obligation will be extended day-for-day, provided that an event of Force Majeure shall not extend the time for performance beyond 180 days. If an event of Force Majeure affecting the University's performance continues for more than 180 days, the City shall have the right to terminate the Agreement upon written notice to the University delivered prior to the date that the University resumes performance.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple copies, each of which shall constitute an original, effective on the Effective Date, on the dates set forth below:

UNIVERSITY OF TEXAS AT AUSTIN, a Texas institution of higher education

By: _____
Mark Featherston, Assistant Director, Office of Sponsored Projects

Date: **5 June 2020**

CITY OF AUSTIN, TEXAS, a Texas home rule municipality

By: _____
Greg Meszaros, Director, Austin Water

Date: **June 11, 2020**

EXHIBIT A - DATA MANAGEMENT PLAN

1. Definitions.

- a. **“Authorized Persons”** mean (i) the University’s employees; and (ii) the University’s subcontractors and agents who have a need to know or otherwise access City Data to enable the University to perform its obligations under this Agreement, and who are bound in writing by confidentiality and other obligations sufficient to protect City Data in accordance with the terms and conditions of this Agreement.
- b. **“City Data”** means any data that the City shares with the University that is not available to the general public, including but not limited to the data that the University’s pressure monitors collect from the City’s water utility system.
- c. **“De-identification”** means ensuring that data cannot be identified as City Data, including by anonymizing the data or otherwise removing information that would enable the data to be associated or linked with the City.
- d. **“University Work Product”** means the University’s research results, models, methods, algorithms, codes, software, publications, and other products that have been created, derived from, or developed using City Data. University Work Product may include, but is not limited to, transient network models, analytical methods, algorithms, programming codes, and research codes, including optimization models, event detection algorithms, and visualization techniques.

2. The City’s Data.

- a. **Pressure Monitor Data.** The City agrees to allow the University to extract data from the City’s water utility system via the University’s pressure monitors, which are installed in and around the City’s water utility system. The University’s pressure monitors will transmit the data from the City’s water utility system to the University’s servers as described in this Agreement.
- b. **Additional Data.** The City may share additional City data with the University or allow the University to access additional City data in accordance with the terms of this Agreement. The additional data that the City may share includes, but is not limited to, data on the water utility system’s network layout, pipe characteristics, pumping stations, and customer connections, as needed for the University to develop and refine a transient network model and conduct other research.

3. University Collection and Uses of City Data.

- a. **Installation of Pressure Monitors.** The University’s pressure monitors and other sensory technology are currently installed or will be installed on City hydrants and tapping points, or inside secure enclosures or belowground chambers near

City hydrants and tapping points. The University must obtain the City's written permission before installing new pressure monitors or other sensory technology in and around the City's water utility system.

- b. University Collection of City Data.** The University's pressure monitors will automatically send data from the City's water utility system to the University's secure cloud server. Data sent to the server will be available to the University for real-time analysis, investigation, and visualization.
 - c. University Access to the Data.** Only Authorized Persons shall have access to the University's secure server and the raw City Data contained on the server. Authorized Persons will only receive access to the City Data after their access credentials are authenticated by the University server's security system.
 - d. University Use of City Data.**
 - i. University Research and Work Product.** The University may use City Data for the purposes of (a) research and (b) the development of University Work Product. The University may use City Data and University Work Product for the purposes of teaching, conference presentations, graduate student theses, and application for awards, grants, and other funding opportunities.
 - ii. City Data.** If City Data will be made available to persons other than Authorized Persons, the University agrees to follow the requirements for de-identification and publication of City Data as required in this Agreement.
- 4. The University's Obligations to Secure and Manage City Data.**
- a. Standard of Care.** The University acknowledges and agrees that, during the term of this Agreement, the University has certain obligations in regard to securing and managing City Data. The University shall comply with this Agreement in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of City Data and shall be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of City Data under its control or in its possession by all Authorized Persons. The University shall be responsible for, and shall remain liable to, the City for the actions and omissions of all Authorized Persons concerning the treatment of City Data.
 - b. The University agrees and covenants that it shall:**
 - i. Keep and maintain all City Data in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;**

- ii. Not create, collect, receive, access, or use City Data in violation of law;
 - iii. Use and disclose City Data solely and exclusively for the purposes for which the City Data, or access to it, is provided pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available City Data for the University's own purposes or for the benefit of anyone other than the City, in each case, without the City's prior written consent; and
 - iv. Not, directly or indirectly, disclose City Data to any person other than Authorized Persons, without the City's prior written consent.
- c. De-identification of City Data.** The University agrees to de-identify any City Data that the University shares with any person who is not an Authorized Person. The City has the right to review de-identified City Data. If the City determines that the City Data has not been sufficiently de-identified, the University agrees to work with the City to further de-identify the data to the extent that the City reasonably believes is necessary in order to prevent or mitigate security risks to the City's water utility system or other critical infrastructure.

5. University Publication of City Data and Related Research.

- a. City's Prior Approval of University Publication of City Data.** The University shall be free to publish results or findings developed from research pursuant to this Agreement in scientific or academic publications and communications, provided that such publications or communications do not include any raw City Data. The University agrees to provide the City with a copy of any manuscript or other proposed publication document at least thirty (30) days before the document is submitted for publication, to allow the City to provide prior review and comment before the document is submitted for publication.
- b. Reference to the City or Austin Water in a Publication or Other Publicly Available Materials.** The University will not name the City of Austin or Austin Water, or identify data as the City's data or Austin Water's data, in a publication or other publicly available materials unless the City has provided prior approval in writing.
- c. Publication of De-identified Data.** Prior to publishing de-identified City Data, the University agrees to share the de-identified City Data with the City, in accordance with the terms of this section, so the City can determine that the City Data has been sufficiently de-identified to mitigate or prevent security risks to the City's water utility system or other critical infrastructure.

6. Publicity. Neither Party shall make reference to the other Party in a press release or any other written statement in connection with this Agreement, if such statement is intended for use in the public media, without first obtaining the other Party's written consent.

7. Data Sharing between the City and the University.

a. University Sharing of City Data. Upon the City's request, the University shall provide the City with any and all data collected from the City's utility system by the University's pressure monitors.

b. University Sharing of Unpublished Work. To the extent allowed under state law, including Chapter 552 of the Texas Government Code, the University has the right not to release its Work Product until after publication in order to protect the ability of the University's researchers and students to publish their work. The University may, in its sole discretion, share unpublished Work Product with the City.

c. University Sharing of Published Work. After publication, the University agrees to provide the City with University Work Product developed pursuant to this Agreement.

8. Archiving. The University agrees to archive the City Data and Work Product developed pursuant to this Agreement for a period of at least three (3) years following the termination of this Agreement.