ELF/mb
10/09/14
Item No. 20

AN ORDINANCE 2014-10-09-0785

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH TEXAS A&M UNIVERSITY'S WATER TECHNOLOGY AND CONSERVATION CENTER, A DIVISION OF THE TEXAS WATER RESOURCES INSTITUTE, TO PREPARE A WATER POLICY STUDY FOR AN AMOUNT NOT TO EXCEED $98,096.00.

* * * * *

WHEREAS, a City Council Communication Request (CCR) received February 2, 2014, discussed the need for an analysis of policies, procedures and regulations pertaining to long term planning to ensure water security including the provision of adequate and affordable water supplies; and

WHEREAS, City Council approved an Extraterritorial Jurisdiction Agreement with the City of Fair Oaks Ranch approved by Ordinance 2014-08-21-0614 and authorized a $100,000 contribution to the City of San Antonio via three payments to assist with the City of San Antonio Water Policy Study; and

WHEREAS, the Water Policy Study project will produce a comprehensive report that assesses San Antonio's and Bexar County's water security by reviewing existing data on city policies, regulations and initiatives involving the cost, quantity and quality of the water from the Edwards Aquifer and other sources; and

WHEREAS, Texas A&M University's Water Conservation and Technology Center, a division of the Texas Water Resources Institute, will prepare a water policy study for an amount not to exceed $98,096.00; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee or the Director of the Department of Planning and Community Development or his designee is authorized to execute a Professional Services Agreement with Texas A&M AgriLife Extension Service, an agency of the State of Texas and an institution of the Texas A&M University system, on behalf of the Water Conservation and Technology Center of the Texas Water Resources Institute for an amount not to exceed $98,096.00. A copy of said agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funds in the amount of $98,096.00 are hereby appropriated in the FY 2015 General Fund Budget, Fund 11001000, Cost Center 7001990081, and General Ledger 5201040. Payment is subject to the conditions set forth in the Extraterritorial Jurisdiction Agreement authorized by Ordinance 2014-08-21-0614.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary for the purpose of this Ordinance.

SECTION 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this of 09th day of October, 2014.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Robert F. Greenblum, City Attorney

Agenda Item:	**20**
Date:	10/09/2014
Time:	09:41:01 AM
Vote Type:	Motion to Approve
Description:	An Ordinance for the City's Water Policy Study authorizing a Professional Services Agreement with Texas A&M Agrilife Extension Service, an agency of the State of Texas and an institution of Texas A&M Univeristy system, on behalf of the Water Conservation and Technology Center of the Texas Water Resources Institute, to prepare a Water Policy Study for an amount not to exceed $98,096.00, from prior City Council approved and budgeted funds. [Peter Zanoni, Deputy City Manager; John Dugan, Director, Planning and Community Development]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				x
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9	x					
Michael Gallagher	District 10		x				

PROFESSIONAL SERVICES AGREEMENT
FOR
WATER POLICY STUDY

STATE OF TEXAS
COUNTY OF BEXAR

This Agreement is made and entered into by and between the City of San Antonio ("City"), a Texas municipal corporation acting by and through its Director of Planning and Community Development and the Texas A&M AgriLife Extension Service an agency of the State of Texas, and an institution of Texas A&M University System, ("Consultant"), on behalf of the Water Conservation Technology Center of the Texas Water Resources Institute, both of whom may be referred to collectively as the "Parties".

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the Parties here severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.

1.2 "Consultant" is defined in the preamble of this Agreement.

II. TERM

2.1 This Agreement shall commence upon execution by the Parties and terminate upon completion of the work defined in Section III. Scope of Services.

III. SCOPE OF SERVICES

3.1 The Scope of Services to be completed by Consultant is as outlined in Exhibit A. The expected date of completion is February 28, 2015.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance of all services and activities set forth in this Agreement, City agrees to pay Consultant a fixed price amount of $98,096 as total compensation, based on Consultant's Scope which is attached as Exhibit A.

4.2 Payments shall be made to Consultant by City on the following basis:

ATTACHMENT I

Percent of Total	Payment Amount	Payment Due Date
34 %	$ 32,700	15 Days after Fully Executed Agreement
33%	$32,698	15 Days after 50% of study is completed
33%	$ 32,698	15 Days after Scope of Services (Exhibit A) has been completed, presented to and accepted by City Council
Total: 100%	**$ 98,096**	

This is a fixed-price Agreement based on the current Statement of Work. Changes that affect costs such as City-requested revisions to the Statement of Work, or marked differences that affect the initial price will be approved in advance by the City. The revisions to the Statement of Work and the additional funds will be added to this Agreement by an amendment signed by the Parties.

Checks should be made to AgriLife and payment forwarded to the following address:

Texas A&M AgriLife Research
Sponsored Research Services
400 Harvey Mitchell Parkway South, Suite 300
College Station, Texas 77845-4375
Attn: Deposits

4.3 City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in Section 4.1.

V. OWNERSHIP OF DOCUMENTS

5.1 Consultant will provide copies to City of all reports created under the terms of the Agreement.

5.2 Ownership of Documents. Pursuant to Texas Local Government Code Chapter 201, any and all Records produced by Consultant pursuant to the provisions of this contract are the exclusive property of City; and no such Record shall be the subject of any copyright or proprietary claim by Consultant. The term "Record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic.

Consultant understands and acknowledges that as the owner of any and all such Records, City has the right to use all such Records as City desires, without restriction. City grants Consultant an irrevocable, royalty free, non-transferable, nonexclusive right and license to use, reproduce, display

and perform any materials produced for or as a result of this agreement. Consultant shall furnish to City a copy of materials to be used or published and give City thirty (30) days to review such materials. City agrees to review such materials within the thirty (30) day period and notify Consultant of any objections to the use of materials. Consultant agrees to consider City objections to use or publication of materials. Acknowledgement of support received from the City will be made in any use of material or published results as desired by the City.

VI. RECORDS

6.1 Consultant shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall notify City promptly in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests, subject to the Texas Public Information Act.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II., Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon 30 days written notice to Consultant. The City will provide written notice in accordance with Article VIII. Notice.

7.3 Consultant may terminate this Agreement if circumstances beyond its reasonable control preclude continuation of the Agreement, including non-payment of invoices, but shall be required to provide City 30 days' written notice in accordance with Article VIII. Notice, and an opportunity to cure the default

7.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.5 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by

City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Notwithstanding the foregoing, City shall compensate Consultant in accordance with Article IV for any time required for transitional work and closeout procedures. Any record transfer shall be completed within ten (10) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant will be provided upon delivery of all such documents, if requested.

7.6 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City a detailed invoice, for the monies owed by City for services performed under this Agreement through the effective date of termination. City shall pay all approved invoices and monies owed within fifteen (15) days of receipt of related invoices. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.7 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

7.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

7.9 For all instances of termination, City shall pay Consultant for the percentage of work completed subject to review, verification and approval by the Planning Director.

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, or by hand delivery, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:
City of San Antonio
Attn: John Dugan
Director of Planning and Community Development
P O Box 839966
San Antonio TX 78238-3966

If intended for Consultant, to:
Technical:
Texas A&M University
Attn: Calvin Finch, Ph.D.
Director of Water Conservation and Technology Center,
Texas Water Resources Institute
9350 South Presa
San Antonio, TX 78233

Contractual:
Texas A&M AgriLife Extension Service

Jane Zuber
Director, Contracts & Grants
Sponsored Research Services
400 Harvey Mitchell Pkwy South,
Suite 300
College Station, TX 77845-4375
E-mail: awards@tamus.edu
Phone: 979-845-6777
FAX: 979-862-3250

IX. INDEMNIFICATION/INSURANCE

9.1 Consultant and the CITY acknowledge they are both governmental entities of the state which are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *el seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

X. ASSIGNMENT AND SUBCONTRACTING

10.1 Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement without the consent of City, as evidenced in writing. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

10.2 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant violate this article, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement.

XI. INDEPENDENT CONTRACTOR

11.1 Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. The doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Consultant. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Consultant under this Agreement and that Consultant have no authority to bind City.

11.2 Furthermore, regardless of where the work shall be performed, what supplies or resources are provided by City, what instruction or direction is provided by City, Consultant shall not be deemed an employee of City, and shall not be entitled to wages or benefits from City, other than the compensation provided herein.

XII. CONFLICT OF INTEREST

12.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

12.2 Pursuant to the subsection above, Consultant represents and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City.

XIII. AMENDMENTS

13.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant.

XIV. SEVERABILITY

14.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including, but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XV. COMPLIANCE

15.1 Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVI. NON-WAIVER OF PERFORMANCE

16.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to

insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XVII. LAW APPLICABLE

17.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

17.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XVIII. ENTIRE AGREEMENT

18.1 This Agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIII. Amendments.

EXECUTED on this _____ day of _____, 2014.

CITY:
CITY OF SAN ANTONIO,
A Texas Municipal Corporation

_____
By: John Dugan, Director
Department of Planning and
Community Development

Approved as to form:

_____
City Attorney

CONSULTANT:

Texas A&M AgriLife Extension Service

_____
By: Jane Zuber
Director, Contracts and Grants
Texas A&M University System

Acknowledgement:
I have read the terms of this Agreement and understand my obligations hereunder.

_____
By: Dr. Calvin Finch
Director of Water Conservation and
Technology Center, Texas Water
Resources Institute

EXHIBIT A – SCOPE OF SERVICES

The Scope of Services will produce a comprehensive long range report that assesses the water security of the City of San Antonio and its ETJ, the City of Fair Oaks Ranch (FOR) and its ETJ to the extent located in Bexar County, Western Comal County, Southern Kendall County, and Bexar County by reviewing existing data on city policies, regulations and initiatives involving the cost, quantity and quality of the water from the Edwards and Trinity Aquifers plus Canyon Lake/GBRA and other sources for the time period 2015-2060:

a) Dr. Calvin Finch, the Senior Investigator will work, with the City of San Antonio, City of Fair Oaks Ranch, FOR Utilities, San Antonio Water System (SAWS) and other participants in the overall program to integrate findings of the various parts of the project. Additional staff support includes an economist and staff support will be provided in areas of risk management and software applications.

b) Describe each of SAWS Water Resources, actual and planned, to include the amount of water produced, cost of water produced, environmental characteristics, regulatory status, sustainability of the source, regulatory agencies involved; relationship to the distribution system, and relationship to drought.

c) Describe each of the City of Fair Oaks Ranch and its ETJ Water Resources, actual and planned, to include the amount of water produced, cost of water produced, environmental characteristics, regulatory status, sustainability of the source, regulatory agencies involved; relationship to the distribution system, and relationship to drought.

d) Describe special characteristics of San Antonio and Fair Oaks Ranch water security including drought management, distribution system, dependence on the Edwards, Trinity Aquifers and GBRA regional status, relationship to municipal utility districts (MUDs), former Bexar Metropolitan Water District, water treatment, geography and water conservation.

e) Use the description in b) to assign a numerical risk value to each water source based on its comparison to obtaining water from the Edwards, Trinity Aquifers and GBRA.

f) Describe and provide a letter grade for each of a number of organization and management characteristics for SAWS, the City of Fair Oaks Ranch, the Edwards Aquifer Authority, the Trinity Glen Rose Groundwater Conservation District, and other state, regional or local entities granted water regulatory authority including:
    1. Governance structures and other policies including urban extension (Certificate of Convenience) and impact fees
    2. Water planning
    3. Water management
    4. Financial management
    5. Rates
    6. Stakeholder communications

g) Prepare a final report that provides an overall risk assessment of the City of San Antonio and the City of Fair Oaks Ranch and their respective ETJ's water structure in terms of meeting water needs, including a summary of the most significant assets of the areas and the issues that detract most from meeting future needs. The report will include recommendations for legislation and practices that will successfully contribute to the Cities of San Antonio and Fair Oaks Ranch Growth Plans.

h) Provide presentation to up to 10 different groups as requested by the City of San Antonio

i) Provide up to two presentations to the City of Fair Oaks Ranch (City Council & Town hall)

j) Provide information for up to 10 different media outlets as identified by the City of San Antonio and the City of Fair Oaks Ranch.

Water Policy

San Antonio City Council

Agenda Item: 20

John Dugan
Director of Planning and Community Development
October 9, 2014

1

Overview

Council Communication Request on Feb. 6, 2014, from Councilman Ron Nirenberg, District 8, to develop a plan to:

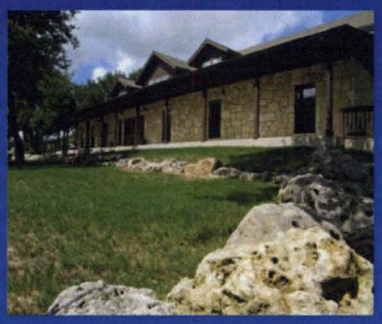
- Provide affordable rates and abundant clean water to San Antonians through year 2060
- Determine how City should protect the Edwards Aquifer
- Determine how growth policies impact the management and operation of SAWS

2

Funding Partnership

Funding Partnership

- City of Fair Oaks Ranch via payment for ETJ Release approved by City Council on August 21, 2014
- Cost – not to exceed $98,096
- Scope includes Fair Oaks Ranch and its ETJ



Work Program

WATER CONSERVATION & TECHNOLOGY CENTER
Securing Our Water Future

Professional Services Agreement
Texas A&M University's Water Conservation and Technology Center, a division of the Texas Water Resources Institute - Dr. Calvin Finch, Principal Investigator

Timeline
Oct 2014 – Mar 2015

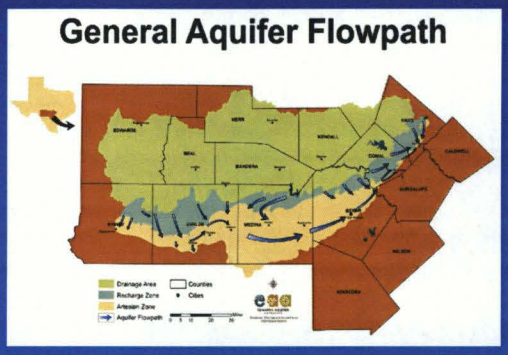
Proposed Scope of Services
Data collection, policy analysis, and strategies to develop a comprehensive water policy

Timeline

Jul-Sep 2014 (DPCD)
Historic and projected population growth; summary of governing bodies; City Code provisions

Nov-Dec 2014 (consultant)

Collect data on historic and projected costs for supplying and delivering water in service area; risk assessment; draft report by December 31



Mar 2015
Final report due

Recommendation

- Governance Committee recommended approval on April 16, 2014.
- Infrastructure and Growth Committee recommended approval on May 19, 2014.
- Staff recommends approval.