

**AGREEMENT BY AND BETWEEN  
THE CITY OF AUSTIN, TEXAS  
AND THE COLORADO RIVER ALLIANCE FOR  
EDUCATIONAL AND ENGAGEMENT ACTIVITIES**

This Agreement is made and entered into on the “Effective Date,” meaning the date of last signature by the last party to execute this Agreement, and is between the City of Austin, a Texas home-rule municipal corporation, acting through Austin Water, its water utility department (“the City”), and the Colorado River Alliance (“the Alliance”), a Texas nonprofit corporation.

**RECITALS**

WHEREAS, The mission of the Alliance is to champion the long-term vitality of the Texas Colorado River and, with a commitment to innovation and collaboration, provide educational and engagement activities that equip Texans with knowledge and tools to protect the Texas Colorado River and ensure its long-term vitality;

WHEREAS, The Texas Colorado River Mobile Learning Experience (“Mobile Learning Experience”) functions as a traveling, interactive science classroom via the Mobile River Trailer, which utilizes hands-on activities and interactive exhibits to teach students vital environmental science concepts such as point-source pollution, water conservation, and natural resource protection;

WHEREAS, The Mobile Learning Experience teaches middle school students, through Texas Essential Knowledge Skills (“TEKS”) aligned curriculum, the importance of water conservation in order to lay the foundation for a life of water conservation awareness and behaviors;

WHEREAS, The Alliance’s YES (Youth Environmental Stewardship) Program is to expand to function as a traveling assembly program to capture the legacy of Austin Water’s Dowser Dan program, which utilizes interactive performances and hands-on activities that teach pre-K through 5<sup>th</sup> grade students vital environmental concepts such as water conservation and natural resource protection;

WHEREAS, The Alliance’s YES Program teaches elementary school students, through TEKS aligned curriculum that is interactive, hands-on, and fun, the importance of water conservation in order to lay the foundation for a life of water conservation awareness and behaviors;

WHEREAS, under 30 Texas Administrative Code § 288, the Texas Commission on Environmental Quality (TCEQ) requires the City to have a program of continuing public education and information regarding water conservation as part of the City’s water conservation plan for municipal uses;

WHEREAS, the City’s support for the Mobile Learning Experience and YES Program helps the City meet its state obligations to provide public education on water conservation, in addition to the public education and information programs provided directly by Austin Water;

WHEREAS, The Mobile Learning Experience has become a feature at community events

throughout the Colorado River Basin;

WHEREAS, The City intends to assist the Alliance in its goals for the Mobile Learning Experience and YES Program by providing cash financial support of \$100,000 per year during the term of this Agreement, which shall last for a period of four (4) years from the Effective Date;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City and the Alliance agree as follows:

## **AGREEMENT**

### **1. STATEMENT OF SERVICES TO BE PERFORMED BY THE ALLIANCE**

- a. Provide overall project management of the Mobile River Trailer, Mobile Learning Experience, and YES Program which includes campus visits, field trips, teaching curriculum, and attending community events.
- b. Coordinate with the Austin, Del Valle, Manor, Pflugerville, Eanes, and Round Rock Independent School Districts for supervisory, administrative, and educator staff to provide the Mobile Learning Experience and YES Program.
- c. Document the curriculum and create a video library of the Dowser Dan program to support sustainability and scalability of the program. Support expansion of the Dowser Dan program with additional performances led by Alliance staff.
- d. Develop and manage evaluation tools for program analysis, such as surveys that provide teacher feedback and water conservation pledge outcomes. Share all data collected with the City in annual impact reports to be submitted to the Austin Water Public Information Office.
- e. Manage fundraising and administrative efforts as necessary to continue the Mobile Learning Experience and YES Program.
- f. Hold title to the Mobile River Trailer, conduct routine repairs and maintenance, and maintain insurance as required by law. Work with Austin Water to identify a permanent home for the Mobile River Trailer and develop strategic plan for continued outreach activities from the permanent site.

### **2. TERM**

The term of this Agreement shall be from the Effective Date for a period of four (4) years, unless terminated earlier in accordance with Section 9.

### **3. PAYMENT**

- a. Under this Agreement, the City's financial obligations for cash support shall be \$100,000 per year that the Agreement is in force. The City shall initiate the processing of the first annual payment of \$100,000 to the Alliance within twenty (20) business days after the Agreement is executed, and each year thereafter the City shall initiate processing of the annual payment within

twenty (20) business days after the City receives an invoice from the Alliance.

b. The Alliance acknowledges that City has provided notice of Article VIII, Section 1 of the Austin City Charter, which prohibits the payment of any money to any person who is in arrears to the City of Austin for taxes, and of Section 2-8-3 of the Austin City Code concerning the right of the City of Austin to offset indebtedness owed to the City of Austin.

c. The Alliance acknowledges that the City's payment obligations are payable solely 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 Alliance with notice of the City's failure to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under this Agreement.

#### 4. REPORTS AND RECORDS

a. On a quarterly basis for each year that the Agreement is in force, the Alliance will provide the City with data reflecting the Mobile Learning Experience and YES Program activities, highlighting accomplishments that may be beneficial to the City in its management of water conservation programs and educational outreach. These quarterly reports should include the demographic data of the students reached by the Mobile Learning Experience and YES Programs.

b. The Alliance and the City will maintain all records and reports related to this Agreement for a period of three years after the termination date, or until all evaluations, audits, and other reviews have been completed and all questions or issues, including litigation, are resolved satisfactorily, whichever occurs later.

#### 5. RIGHT TO AUDIT

The Alliance 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 Alliance related to its performance under this Agreement.

#### 6. INDEMNITY

THE ALLIANCE SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, AND ASSIGNS (THE "INDEMNIFIED PARTIES"), AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTION ("CLAIMS"), TO THE EXTENT ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY THE ALLIANCE, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS, OR ASSIGNS (THE "ALLIANCE PARTIES"), (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE ALLIANCE PARTIES IN THIS AGREEMENT OR IN THE ALLIANCE'S PROPOSAL, OR (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE ALLIANCE PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE

INDEMNIFIED UNDER THIS ARTICLE INCLUDE CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS' COMPENSATION CLAIMS. THE ALLIANCE'S OBLIGATIONS UNDER THIS ARTICLE ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE ALLIANCE (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

#### 7. RIGHT TO ASSURANCE

Whenever one party to the Agreement in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within thirty (30) days after the demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

#### 8. DEFAULT

The Alliance shall be in default under the Agreement if it (a) fails to fully, timely, and faithfully perform any of its material obligations under the Agreement, (b) fails to provide adequate assurance of performance under Section 9, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States. The City shall be in default under the Agreement if it (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, or (b) fails to provide adequate assurance of performance under Section 9.

The Alliance acknowledges that the City's payment obligations to the Alliance 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, and Alliance shall not have the right to recover damages, direct costs, interest, or any other compensation in accordance with Section 9 of this Agreement. The City shall provide the Alliance with notice of the failure of the City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit the City to pay its obligations under the Agreement.

#### 9. TERMINATION FOR CAUSE

If one party defaults, the non-defaulting party shall have the right to terminate the Agreement for cause. To terminate the Agreement, the non-defaulting party must submit written notice delivered by certified mail, which shall become effective thirty (30) days after the date of notice. Notice must be provided in accordance with Section 10(d) of this Agreement. The notice of default shall not become effective if the defaulting party cures the default within thirty (30) days of the non-defaulting party's notice, or if the defaulting party provides evidence sufficient to prove, to the non-defaulting party's reasonable satisfaction, that no default exists. In addition to any other remedy available under law or in equity, the non-defaulting party shall be entitled to recover all actual damages and direct costs incurred as a result of the other party's default, and prejudgment and post-judgment interest at the maximum lawful rate. Each party's rights and

remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

#### 10. MISCELLANEOUS

a. Amendment: This Agreement may only be amended by mutual agreement of the Parties expressed in writing and approved and signed by appropriate representatives of each Party.

b. Jurisdiction and Venue: The Agreement is made under and shall be governed by the laws of the State of Texas. All issues arising from this Agreement shall be resolved in the state courts of Travis County, Texas, and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunction relief from any competent authority as contemplated herein.

c. Independent Contractor: The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Alliance shall be considered an independent contractor.

d. Notices: Any notices given regarding this Agreement shall be provided to the following contacts. A Party may designate an alternative contact or address by sending written notice to the other Party. 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 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. The Parties may make routine communications by first class mail, e-mail, fax, or other commercially accepted means.

Alliance Contact:  
Adrienne Longenecker, CFRE  
Executive Director, Colorado River Alliance  
P.O. Box 50029, Austin, Texas, 78763  
adrienne@coloradoriver.org  
512-983-5979

City Contact:  
Amy Petri, Public Information Office Division Manager, Austin Water  
625 E 10<sup>th</sup> Street, Suite 300, Austin, Texas, 78701  
Amy.Petri@austintexas.gov  
512-972-0422

e. Entire Agreement: This Agreement and its attachments constitute the entire agreement between the parties with respect to the matters contained in this Agreement and supersede all prior negotiations, agreements, representations, and understandings, if any.

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

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

g. Gratuities: The City may, by written notice to the Alliance, terminate the Agreement without liability if the City determines that gratuities were offered or given by the Alliance or any agent or representative of the Alliance to any officer or employee of the City of Austin with a view toward securing this Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to the performing of such agreement. In the event that the City terminates the Agreement pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Alliance in providing such gratuities.

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

The City of Austin  
Austin Water

The Colorado River Alliance

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Shay Ralls Roalson, P.E.

Name: Adrienne Longenecker

Title: Director, Austin Water

Title: Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney