



INTERLOCAL COOPERATION CONTRACT No. 18-899-EX
BETWEEN THE
EDWARDS AQUIFER AUTHORITY
AND
TEXAS A&M UNIVERSITY-SAN ANTONIO
FOR EDWARDS AQUIFER CONSERVANCY STRATEGIC PLANNING

This INTERLOCAL COOPERATION CONTRACT ("Contract") is made and entered into under the Texas Interlocal Cooperation Act ("ICA"), Chapter 791, Texas Government Code, by and between the EDWARDS AQUIFER AUTHORITY, ("EAA"), a conservation and reclamation district and a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy Street, San Antonio, Texas 78215, and TEXAS A&M UNIVERSITY-SAN ANTONIO ("TAMU-SA"), an institution of higher education, with its principal place of business located at One University Way, San Antonio, Texas 78224-3134. Each of these entities is, at times, referred to in this Contract individually as a "Party," and both are referred to collectively as "Parties."

RECITALS

WHEREAS, the EAA was created by the Edwards Aquifer Authority Act, Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350, as amended ("Act"); and

WHEREAS, under Section 1.02 of the Act, the EAA is a conservation and reclamation district created by virtue of Article XVI, Section 59 of the Texas Constitution, and is a governmental agency and body politic and corporate vested with the full authority to exercise the powers and to perform the functions specified in the Act; and

WHEREAS, under Section 1.08(a) of the Act, the EAA has all the powers, rights and privileges necessary to manage, conserve, preserve, and protect the Edwards Aquifer ("Aquifer") and to increase the recharge of, and prevent the waste or pollution of water in, the Aquifer; and

WHEREAS, under Section 1.11(d)(2) of the Act, and other applicable law, the EAA may enter into contracts; and

WHEREAS, the EAA and TAMU-SA have recently entered into a Memorandum of Agreement pertaining to water resources science and technology, education, research, and outreach to help further goals to manage, conserve, preserve, and protect the Aquifer and to increase the recharge of, and prevent the waste or pollution of water in the Aquifer; and

WHEREAS, TAMU-SA is an institution of higher learning with capabilities to perform strategic planning and development work for collaborating organizations that may involve efforts to improve overall organizational management, conduct investigations about the Aquifer, promote

stakeholder involvement, develop educational curricula, and develop collaborations on means of funding project work about the Aquifer and related water sustainability and quality matters to help achieve goals in support of the greater missions of the EAA and TAMU-SA; and

WHEREAS, this Contract is an interlocal contract entered into under the authority of the Interlocal Cooperation Act ("ICA"), Chapter 791, Texas Government Code; and

WHEREAS, under Section 791.003(4) and (5) of the ICA, the EAA is a local government; and

WHEREAS, under Section 791.011(b)(1) of the ICA, TAMU-SA is a state agency as that term is defined by Section 771.002, Texas Government Code; and

WHEREAS, under Section 791.003(3) of the ICA, the activities that are the subject of this Contract are governmental functions and services in that they involve the public health and welfare, planning, administrative functions, and/or other governmental functions in which the Parties are mutually interested; and

WHEREAS, the Edwards Aquifer Conservancy ("EAC") is a non-profit corporation supporting the activities of the EAA and has a need for certain strategic planning and developmental services to be conducted; and

WHEREAS, the EAA Board of Directors approved this Contract on August 14, 2018, and authorized the EAA General Manager to execute the Contract; and

WHEREAS, it is in the public interest that the EAA enter into this Contract to pursue strategic planning and developmental services for the EAC.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth in this Contract, the sufficiency of which is hereby acknowledged, the EAA and TAMU-SA agree as follows:

ARTICLE I – TERM; DESCRIPTION OF WORK

Section 1.1. Term. This Contract is effective and commences on September 1, 2018, ("Effective Date"), and terminates on August 31, 2019, ("Expiration Date").

Section 1.2. Services. Subject to the terms and conditions of this Contract, the EAA engages TAMU-SA to perform, for the benefit of the EAA, the work set forth and described in this Contract and in the following documents ("Services"): (1) the Scope of Work which is attached hereto as Exhibit A ("Scope of Work"); (2) the Budget Estimate which is attached hereto as Exhibit B ("Budget Estimate"); and (3) the Labor Categories Rates & Personnel Chart which is attached hereto as Exhibit C ("Labor Categories Rates & Personnel Chart"). TAMU-SA accepts such engagement and agrees to devote its reasonable efforts and abilities, and furnish all necessary

labor, machinery, equipment, tools, and transportation necessary in furtherance thereof.

Section 1.3. Commencement and Completion of Services. TAMU-SA will commence performing the Services immediately upon the date of receipt of the written notice to proceed issued by the EAA's General Manager. All Services will be completed and delivered to the EAA by the Expiration Date and shall be completed in compliance with the schedules, budgets, descriptions and specifications contained herein and in the Exhibits attached hereto. It shall be TAMU-SA's responsibility to ensure that the completion times for the Services are met. At the sole option of the EAA, this Contract may be renewed and extended for up to two periods of one additional year each, with such election made by the EAA giving TAMU-SA written notice to renew and extend this Contract prior to the end of the then Contract period. Time is of the essence in the performance of this Contract.

ARTICLE II – AMENDMENTS

Section 2.1. Amendments. This Contract may be amended only by written agreement of the Parties.

Section 2.2. Amendments by the General Manager. The Board of Directors of the EAA delegates the authority to the General Manager to enter into amendments to this Contract without further authorization by the Board consistent with the General Manager's authority to enter into contracts under Section 4.01 of the EAA's Bylaws.

ARTICLE III – COST SHARING

Section 3.1. Fees and Expenses. TAMU-SA agrees to be directly responsible for the payment of any invoices, costs, or expenses incurred by it or its subcontractor(s) in the performance of the Services rendered in accordance with the Scope of Work and Budget Estimate. The EAA agrees to reimburse TAMU-SA an amount up to and not to exceed \$100,710.43 for a portion of the invoices, costs, or expenses which are directly incurred by TAMU-SA in the performance of the Services. TAMU-SA will be responsible for the payment of any invoices, costs, or expenses that exceed this amount.

Section 3.2. Payment. All "invoice packets" from TAMU-SA to the EAA for the Services for each previous month's activities shall be sent no later than the 15th day of each month beginning October 15, 2018, and shall provide an itemization of the Services rendered, costs and expenses incurred during the billing cycle. Documentation in the invoice packet must be sufficiently itemized and detailed and include invoices and/or receipts for all purchases and expenses (summary credit card charge receipts are not acceptable) which allow the EAA to clearly discern purchases made. Purchases and expenses documented with lost receipt forms are not eligible for reimbursement. Receipts without purchase details or are not legible are not acceptable at any time. Alcohol purchases will NOT be reimbursed under any circumstances. Mileage will be reimbursed at the current IRS approved rate, if submitted. The monthly invoice packet will be submitted electronically in Adobe Acrobat (pdf) format via email to the Deputy General Manager at bc Curry@edwardsaquifer.org. If TAMU-SA utilizes subcontractors (see Article V), TAMU-SA shall submit a Subcontractor Utilization Report with each invoice submitted to the EAA for

payment. The terms of each invoice shall be net thirty (30) days upon EAA receipt and approval of that invoice.

ARTICLE IV – INDEPENDENT CONTRACTOR

Section 4.1. No Employment Relationship. The Parties understand and agree that this Contract does not create a fiduciary relationship between them, that they are separate entities, that TAMU-SA is an independent contractor with respect to the performance of the Services and is not subject to the direct or continuous control or supervision of the EAA, and that nothing in this Contract is intended to make either Party a subsidiary, joint venture, partner, employee, agent, servant or representative of the other Party for any purpose whatsoever. TAMU-SA shall provide any and all equipment, materials, and personnel necessary for the performance of the Services. The EAA shall have no right of direction or control of TAMU-SA, or its employees and agents, except in the results to be obtained, and in a general right to order the performance of the Services to start or stop as agreed to herein, to inspect the progress of the Services, and to receive reports. TAMU-SA shall accommodate reasonable requests from the EAA to allow EAA employees, agents or representatives to accompany and observe TAMU-SA personnel in carrying out the Services.

ARTICLE V – CONTRACTOR PERSONNEL AND SUBCONTRACTORS

Section 5.1. Personnel. TAMU-SA will provide any and all personnel necessary for its performance of the Services. TAMU-SA will be responsible for its employees and agents in all respects, including, without limitation, their compliance with applicable laws and their safety, including without limitation, all applicable standards, requirements, and regulations. To the extent permitted by Texas law, TAMU-SA indemnifies and holds harmless the EAA, and its directors, officers, employees and agents, from and against any claims brought by any employee, subcontractor or other agent of TAMU-SA relating in any way to the Services except to the extent that EAA negligently or intentionally caused those claims. To the extent allowed by law, each Party agrees to be solely responsible for the wrongful or negligent acts of its own employees and agents. However, nothing contained herein shall constitute a waiver by either Party of its sovereign immunity.

Section 5.2. Subcontractors. In performing the Services, TAMU-SA may retain and utilize as its subcontractors those individuals identified to and approved in writing by the EAA, in advance. The EAA, after consultation with TAMU-SA, shall have the right to terminate, limit, or alter, at any time, the participation of any subcontractor utilized by TAMU-SA. No additional subcontractors may be retained by TAMU-SA to perform any Services without the prior written consent of the EAA, provided that no such consent shall be necessary for the retention of any subcontractor previously approved by the EAA and identified by TAMU-SA in writing on the Effective Date of this Contract. TAMU-SA will be responsible for its subcontractors in all respects including their compliance with applicable laws and their safety, including without limitation, all OSHA standards, requirements, and regulations.

ARTICLE VI – TERMINATION

Section 6.1. Termination for Convenience. Either Party may terminate this Contract at any time, including at the expiration of each budget or payment period during the term of this Contract, without cause, upon ten (30) days prior written notice to TAMU-SA.

Section 6.2. Termination for Cause. If the Services are not being carried out in a manner satisfactory to the EAA, the EAA may terminate this Contract upon the failure of TAMU-SA to cure the unsatisfactory condition within ten (10) days after receipt of written notice from the EAA. If reimbursements are not being made by the EAA according to Article III, TAMU-SA may terminate this Contract upon the failure of the EAA to cure the unsatisfactory condition within ten (10) days after receipt of written notice from TAMU-SA.

Section 6.3. Actions in the Event of Early Termination. Upon receipt of an EAA notice of termination, or upon the giving of a TAMU-SA notice of termination, TAMU-SA shall immediately stop all work in progress, including all work performed by its employees, agents, or subcontractors. Insofar as possible, all work in progress will be brought to a logical termination point. Within thirty (30) days of the final invoice following termination, the EAA shall pay TAMU-SA all moneys then due and owing for the Services rendered, and costs and expenses reasonably incurred up to the time of termination.

ARTICLE VII – OWNERSHIP OF MATERIALS

Section 7.1. Ownership. All information, documents, property, or materials produced, created, or supplied under this Contract by the Contractor, its employees, agents, or subcontractors or anyone else, and whether finished or unfinished or in draft or final form, will be the property of the EAA. The EAA shall have unlimited rights to technical and other data resulting directly from the performance of the Services. The EAA hereby grants to TAMU-SA a non-revocable, perpetual, royalty-free, fully paid license to use project intellectual property as needed.

Section 7.2. Delivery of Documents upon Termination. Upon expiration or the termination of this Contract under Sections 1.1, 1.3, 6.1, or 6.2, TAMU-SA will promptly deliver to the EAA all information, documents, property, or materials not already in the possession of the EAA.

Section 7.3. Disclosure of Documents. Except as provided below, the information, documents, property, or materials produced, created, or supplied under this Contract by TAMU-SA, its employees, agents, or subcontractors or anyone else, including preliminary technical reports and studies, shall not be disclosed by TAMU-SA to any third-party without the prior written consent of the EAA. This restriction will not apply to any information that is or becomes publicly known or available other than as a result of a breach of this Section 7.3 by TAMU-SA. However, both Parties recognize that each Party is subject to the provisions of Chapter 552, Texas Government Code. If a request for public information is filed with one of the Parties under Chapter 552, any information, property, or materials produced, created, or supplied under this Contract that is subject to disclosure under Chapter 552 may be disclosed by the Party to the requesting third-party without the prior written consent of the other Party. If such a request is filed, the Party receiving the request shall promptly give notice to the other Party of the request, and provide a

schedule of the documents provided.

Section 7.4. Record Copies. TAMU-SA shall retain a record copy of all information, documents, property, or materials developed in the course of performing the Services for a minimum of three (3) years. Upon request of the EAA, such information, documents, property, or materials will be promptly supplied to the EAA, including after the Expiration Date or the termination of this Contract. The EAA will reimburse TAMU-SA for the actual cost of time and expenses of reproduction of such materials when requested.

ARTICLE VIII –PERFORMANCE

Section 8.1. Performance of Services. TAMU-SA warrants that it will use reasonable efforts to perform all Services in a good and workmanlike manner, strictly in accordance with the standards of TAMU-SA's profession, the Scope of Work, and as otherwise provided in this Contract and the Exhibits hereto. TAMU-SA's failure to timely perform the Services as agreed shall constitute a breach of this Contract and shall be subject to all applicable remedies at law or equity.

ARTICLE IX – LIQUIDATED DAMAGES

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ARTICLE X – BOND COVERAGE

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ARTICLE XI – INSURANCE

Section 11.1. Insurance Coverages. Under the law of the State of Texas, TAMU-SA, is unable to obtain Employer's Liability, Comprehensive General or Public Liability, and Comprehensive Automobile Insurance. In lieu of this, remedies against TAMU-SA for potential liability for the tortious conduct of its employees and agents brought by claimants for personal injuries or death is provided solely by the provisions in Chapter 101, Texas Civil Practice and Remedies Code. TAMU-SA is self-insured with respect to Worker's Compensation Insurance pursuant to Chapter 502, Texas Labor Code, and, therefore, Workers' Compensation Insurance coverage for its employees is as provided therein.

The liability of TAMU-SA and its members for personal injury and property damage is controlled by the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101, Section 101.021. The limits of liability are \$250,000 for each person, \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. TAMU-SA is self-insured up to these limits.

ARTICLE XII – ASSUMPTION OF RISK AND INDEMNIFICATION

Section 12.1. Risk. To the extent permitted by Texas law, each Party shall assume all risks

associated with each Party's or its subcontractors' performance under this Contract and shall waive any claim against the other Party for damages arising out of the performance of the Services by its personnel, agents, or subcontractors.

Section 12.2. Indemnification. To the extent permitted by Texas law, TAMU-SA shall defend, indemnify, and hold harmless the EAA, and its directors, officers, employees, and agents from any and all damages, loss, or liability of any kind whatsoever, including the costs and attorneys' fees of litigation or any other proceeding, arising from: (a) contracts or any other arrangements between TAMU-SA and any third parties entered into to perform the Services; or (b) any claims brought by any person alleging negligence or intentional misconduct by TAMU-SA in the performance of the Services; except to the extent that EAA negligently or intentionally caused those damages, losses, or liabilities. Nothing herein shall constitute a waiver of either Party's sovereign immunity.

ARTICLE XIII – NOTICES

Section 13.1. Notices to the EAA. All notices or communications under this Contract to be mailed or delivered to the EAA shall be in writing and shall be sent to the EAA's principal place of business as follows, unless and until TAMU-SA is otherwise notified:

EDWARDS AQUIFER AUTHORITY
900 E. Quincy Street
San Antonio, Texas 78215
ATTENTION: ROLAND RUIZ, GENERAL MANAGER

Section 13.2. Notices to TAMU-SA. All notices or communications under this Contract to be mailed or delivered to TAMU-SA shall be in writing and shall be sent to the address of TAMU-SA as follows, unless and until the EAA is otherwise notified:

TEXAS A&M UNIVERSITY SAN ANTONIO
Central Academic Building, Suite 435
One University Way
San Antonio, Texas 78224
ATTENTION: DR. BRENT SNOW,
DIRECTOR OF GRADUATE STUDIES AND OFFICE OF RESEARCH

Section 13.3. Effective Date of Notice. Any notices or communications required to be given in writing by one Party to the other shall be considered as having been given to the addressee on the date the notice of communication is posted by the sending Party.

ARTICLE XIV – MISCELLANEOUS

Section 14.1. Entire Agreement. This Contract and the attached Exhibits constitute the entire agreement between the Parties regarding the Services to be performed by TAMU-SA and there are no representations, warranties, agreements or commitments between the Parties except as set forth herein. Unless otherwise authorized herein, no amendments or additions to this

Contract shall be binding on the Parties unless in writing and signed by the Parties.

Section 14.2. Non-Waiver. No delay or failure by either Party to exercise any right under this Contract, nor any partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein. Nothing in this Contract will constitute a waiver of either Party's sovereign immunity.

Section 14.3. Headings. Headings in this Contract are for convenience only and shall not be used to interpret or construe its provisions.

Section 14.4. Governing Law. This Contract shall be deemed to have been executed and performed in the State of Texas and shall be construed in accordance with and governed by the laws of the State of Texas. Venue for any disputes or claims arising from this Contract shall be exclusively in the proper courts in Bexar County, Texas.

Section 14.5. Counterparts. This Contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 14.6. Binding Effect. The provisions of this Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. However, TAMU-SA may not assign any of its rights nor delegate any of its duties hereunder without the EAA's prior written consent.

Section 14.7. Validity. The invalidity of any provision or provisions of this Contract shall not affect any other provision of this Contract, which shall remain in full force and effect, nor shall the invalidity of a portion of any provision of this Contract affect the balance of such provision.

Section 14.8. Non-Waiver of Immunity. Nothing in this Contract is intended as any waiver by either Party of any immunity from suit to which they may be entitled under Texas law.

Section 14.9. Survival. Termination of this Contract for breach shall not constitute a waiver of any rights or remedies available at law or in equity to a Party to redress such breach. All remedies, either under this Contract or at law or in equity or otherwise available to a Party, are cumulative and not alternative and may be exercised or pursued separately or collectively in any order, sequence or combination. In addition, to these provisions, applicable provisions of this Contract shall survive any termination of this Contract.

Section 14.10. Attachments. The Exhibits, schedules and/or other documents attached to or referred to in this Contract are incorporated herein and made a part hereof for all purposes. As used herein, the expression "Contract" means the body of this Contract and such Exhibits, schedules and/or other documents, and the expressions "herein," "hereof," and "hereunder" and other words of similar import refer to this Contract and such attachments, exhibits, schedules and/or other documents as a whole and not to any particular part or subdivision thereof.

Section 14.11. Costs. If any legal action or any other proceeding is brought by a Party for the enforcement of this Contract or because of an alleged breach or default of this Contract, the prevailing Party shall be entitled, to the extent authorized under Texas law, to recover reasonable costs incurred, including but not limited to the attorneys' fees arising from such action or proceeding in addition to any other relief to which the prevailing Party may be entitled.

Section 14.12. Authority to Contract. (a) Each Party represents and warrants for the benefit of the other Party that: (1) it has the legal authority to enter into this Contract under Section 791.011(a), Texas Government Code, and/or other applicable law; (2) it has the legal authority to provide the Services contracted for under this Contract; (3) this Contract has been duly approved by its governing body as provided by Section 791.011(d), Texas Government Code, and has been duly and properly executed; (4) no other authorizations or approvals are or will be necessary in order to approve this Contract and to enable that Party to enter into and comply with the terms and conditions of this Contract; (5) the person executing this Contract on behalf of each Party has the authority to bind that Party; and (6) the Party is empowered by law to execute any other agreement or documents and to give such other approvals, in writing or otherwise, as are or may hereafter be required to implement and comply with this Contract.

(b) TAMU-SA represents and warrants that it believes that the contractual payment to be made under this Contract is in an amount that fairly compensates it for the Services to be performed as required by Section 791.011(e), Texas Government Code,

Section 14.13. Officers or Agents. No officer or agent of the Parties is authorized to waive or modify any provision of this Contract. No amendment to or rescission of this Contract may be made except by a written document signed by the Parties' authorized representatives.

Section 14.14. Payment from Current Revenues. As required by Section 791.011(d)(3), Texas Government Code, the EAA, which is the Party paying for the performance of the Services, is making all payments required under this Contract from current revenues available to the EAA.

Section 14.15 Texas Government Code Requirement. Pursuant to the provisions of Section 2270.002, Texas Government Code, TAMU-SA hereby certifies to the EAA that TAMU-SA, including its parent, subsidiary and affiliated companies, (1) does not boycott Israel, and (2) will not boycott Israel during the term of this contract. The term "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. Failure to comply with this certification shall be considered a breach of this Contract by TAMU-SA.

IN WITNESS WHEREOF, this Contract is executed as of the day and date first written above, in Section 1.1.

EDWARDS AQUIFER AUTHORITY

TEXAS A&M UNIVERSITY-SAN ANTONIO

By: _____
Roland Ruiz
General Manager

By: _____
Dr. Michael O'Brien
Provost & Vice President for Academic Affairs

ATTEST:

ATTEST:

By: _____
Jennifer Wong-Esparza
Assistant to the Board Secretary

By: _____
Name _____
Title _____

APPROVED AS TO FORM:

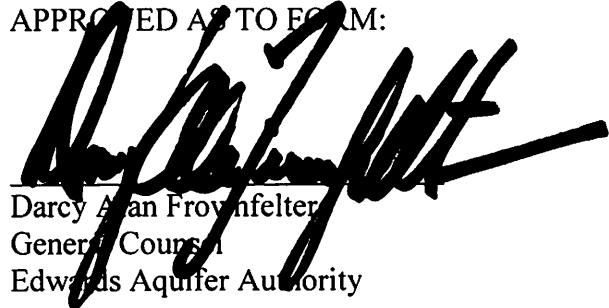

Darcy Alan Froynfelter
General Counsel
Edwards Aquifer Authority



EXHIBIT A SCOPE OF WORK

The purpose of this Contract is for TAMU-SA to provide strategic planning and developmental services for the Edwards Aquifer Conservancy.

TAMU-SA will facilitate strategic planning with the EAC board of directors. This planning will involve two or more meetings with the board and outreach to stakeholders to establish goals for the EAC that better define and deepen EAC's programmatic focus, increase philanthropic priorities, and implement a functional operating model. Based on this planning, TAMU-SA will prepare a strategic and operational planning document that includes EAC's mission, goals, objectives, and an operational plan that describes specific activities the EAC should perform to meet its goals. In furtherance of this effort and during the aforementioned planning period, TAMU-SA will work closely with the EAC Chair, President and EAA Executive Director to provide support as needed, including the following possible activities:

1. Develop collaborations, funding opportunities, and proposals mutually beneficial to EAC/EAA and TAMU-SA on water resources science and technology, education, research, and outreach related to the Aquifer and its management, enhancement, and protection;
2. Provide specialized training on nonprofit board functions, leadership, roles, responsibilities, compliance with applicable rules, and liabilities in nonprofit practice;
3. Support developing, and implementing where appropriate, fundraising, events, education, branding, and communications strategies and actions to build the overall vision and strategic direction of the EAC, and;
4. Develop, if necessary, and support an organizational budgeting process, operational systems, procedures, and policies that will ensure the EAC functions in an operationally sound fashion.

EXHIBIT B
BUDGET ESTIMATE

Dr. Rudolph Rosen will serve as the Principal Investigator for this Contract. Dr. Rosen's hourly rate, which accounts for 50% of his annual salary, fringe benefits, and health insurance, is \$47.00 per hour and will be billed according to the terms of Section 3.2 of the Contract.

Travel will be limited to travel expenses authorized for state employees by the General Appropriations Act, Tex. Leg. Regular Session, 2017, Article IX, Part 5, as amended or superseded. Receipts will be required for lodging, as well as copies of invoices or tickets for transportation costs. Vehicle mileage will be reimbursed at the IRS reimbursement rate at the time of travel, not to exceed \$3,000 over the course of this Contract.

The total amount to be paid to TAMU-SA over the period of the Contract shall not exceed \$100,710.43.