

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN THE CITY OF DENTON AND THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ON BEHALF OF THE UNIVERSITY OF TEXAS AT ARLINGTON ("UTA") RELATED TO MONIES PAID BY DENTON TO UTA FOR SOLID WASTE RESEARCH AND RELATED ACTIVITIES AT DENTON'S ECO-W.E.R.C.S. RESOURCE RECOVERY FACILITY AND INCLUDING DENTON'S MEMBERSHIP IN UTA'S SOLID WASTE INSTITUTE OF SUSTAINABILITY; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO EFFECTUATE THE SETTLEMENT; AND, PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council approves the proposed settlement between the City of Denton and the Board of Regents of The University of Texas System on behalf of the University of Texas at Arlington ("UTA") related to monies paid by Denton to UTA for solid waste research and related activities at Denton's ECO-W.E.R.C.S. Resource Recovery Facility and including Denton's membership in UTA's Solid Waste Institute for Sustainability.

SECTION 2. The City Manager and City Attorney, or their designees, are authorized to act on behalf of the City in approving and executing a settlement agreement in substantially similar form to the same attached hereto.

SECTION 3. The City Manager and City Attorney, or their designees, are authorized to execute any and all other documents necessary and appropriate to effectuate the terms of the settlement and to take other actions necessary to finalize the settlement, in accordance with the settlement agreement.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

Mayor Chris Watts:	_____
Gerard Hudspeth, District 1:	_____
Keely G. Briggs, District 2:	_____
Don Duff, District 3:	_____
John Ryan, District 4:	_____
Dalton Gregory, At Large Place 5:	_____
Sara Bagheri, At Large Place 6:	_____

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

BY:  \_\_\_\_\_

## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** between The Board of Regents of The University of Texas System on behalf of the University of Texas at Arlington (“**UTA**”), and the City of Denton, a Texas home-rule municipal corporation (“**COD**”). The Settlement Agreement is effective the latter of the dates the Parties execute the same (“**Effective Date**”).

The parties to this Settlement Agreement are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

### **WITNESSETH**

**WHEREAS**, the Parties entered into the following agreements wherein UTA provided services for COD:

a. Interagency Cooperation Contract between the Parties executed by UTA on April 4, 2009 and COD on April 21, 2009 (Ordinance No. 2009-096) for several technical tasks including, generally, the Performance Monitoring of Leachate Recirculation (“Project No. 1”). Project No. 1 was conducted during the May 1, 2009, through April 30, 2012 timeframe.

b. Interagency Cooperation Contract between the Parties executed by UTA on August 22, 2012 and COD on September 18, 2012 (Ordinance No. 2012-239) for several technical tasks including, generally, the Performance Monitoring of Landfill Gas Collection System and Estimation of Landfill Gas Emission (“Project No. 2”). Project No. 2 was conducted during the May 1, 2012, through April 30, 2015 timeframe.

c. Interagency Cooperation Contract between the Parties executed by UTA on January 13, 2014 and COD on February 19, 2014 (Ordinance No. 2014-048) for several technical tasks including, generally, the Installation and Performance Monitoring of Evapotranspiration Cover System (“Project No. 3”). Project No. 3 was conducted during the period February 1, 2014, through January 31, 2017 timeframe.

d. Interagency Cooperation Contract between the Parties executed by UTA on June 12, 2015 and COD on August 4, 2015 (Ordinance No. 2015-225) for several technical tasks including, generally, the Feasibility of Landfill Mining Operation and Monitoring (“Project No. 4”). Project No. 4 was conducted during the May 1, 2015, through April 30, 2018 timeframe.

e. Collectively, the above agreements are referred to as “Agreements”; the above projects are referred to as “Projects”.

**WHEREAS**, disagreements have arisen between the Parties regarding the Agreements, the Projects and COD’s membership (“Membership”) in UTA’s Solid Waste Institute for Sustainability (“SWIS”); and

**WHEREAS**, the parties desire to resolve any and all disagreements regarding the Agreements, Projects and the SWIS Membership.

**NOW THEREFORE**, for and in consideration of the mutual releases and agreements herein contained, the promises of payment herein provided, the sufficiency of which are hereby acknowledged and confessed, the Parties hereto have agreed, and do hereby agree, to the following:

1. **Unexpended Funds.** UTA agrees to return unexpended funds to COD in the amount of Six Hundred Thousand Dollars (\$600,000.00) (the “**Unexpended Funds**”) from the amounts paid by COD to UTA under the Agreements, the Projects and for its SWIS Membership. This amount reflects all changes, payments, credits, claims, contract balances, retainage, costs of completion and any and all other disagreements between the Parties and is not subject to further audit.
2.
  - a. **Project No. 4 Additional Unexpended Funds.** UTA will retain Twenty Six Thousand Dollars (\$26,000.00) in COD payments received for Project No. 4, which expired on April 30, 2018, in order to complete normal and customary contract financial closeout and resolve all current or pending obligations related to Project No. 4. Upon final closeout on or before July 31, 2018, UTA will return any unexpended funds from this retained amount (“**Project 4 Additional Unexpended Funds**”). UTA will provide COD with an accounting of how it determined the Project No. 4 Additional Unexpended Funds amount. The Unexpended Funds and the Project 4 Additional Unexpended Funds are referred to herein as the “**Settlement Amount**”.
3. **Payment of Settlement Amount.**
  - a. **Unexpended Funds.** UTA agrees to pay the Unexpended Funds to COD within thirty (30) days of the full execution date of this Settlement Agreement.
  - b. **Project No. 4 Additional Unexpended Funds.** UTA agrees to pay the Project No. 4 Additional Unexpended Funds to COD by July 31, 2018.
4. **Personal Property Located on COD Property.**
  - a. The attached Exhibit “A” is a list of personal property located at or on real property owned by COD (“**Personal Property**”).
  - b. UTA has until 5:00 pm thirty days from the Effective Date to provide documentation satisfactory to COD that it owns some or all of this Personal Property,
  - c. If UTA provides documentation satisfactory to COD that UTA owns some or all of this Personal Property then the Parties will make arrangements for UTA to pick up the same by close of business forty-five (45) days from the Effective Date.

d. If UTA does not comply with paragraphs 4.a. and 4.b. then UTA, by having executed this Settlement Agreement, is deemed to have conveyed all right, title and interest it may have in and to any and all personal property, including but not limited to that listed in Exhibit "A" attached hereto, located at or on any real property owned by COD (collectively, the "Property").

e. UTA agrees to cooperate with COD in the identification and return of personal property to COD that was purchased by COD on behalf of UTA and/or SWIS but is not located at the Property.

5. **Release.** With the exception of the reserved rights and obligations set forth in the immediately following Section (the "Reserved Rights"), and subject to the timely payment and receipt of the Settlement Amount, both Parties fully, finally, and mutually release, acquit, and forever discharge each other and each other's respective employees, officers, partners, members, affiliates, subsidiaries, principals, regents, council members, directors, sureties, insurers, guarantors, additional insurers, excess insurers, successors, and all other persons and entities in privity with any of them, of and from any and all disputes, claims, demands, claims of subrogation or indemnity, claims to any contract or subcontract balances or retainage, claims for delay, consequential damages, and causes of action of any kind whatsoever, whether known or unknown, whether heretofore or hereafter accruing or arising, whether held by assignment or otherwise, and whether sounding in tort, intentional tort, contract, warranty, or trespass, or arising by operation of law or statute, that either Party has, had, or may ever have against the other Party, in any way related to the Agreements, the Projects and/or SWIS Membership. The Parties agree that this release is strictly limited to the Agreements, the Projects and/or SWIS Membership. The Parties further agree that this release does not include any other agreement, project or matter not specifically addressed herein.
6. **Reserved Rights.** The following Reserved Rights are not released hereby and shall survive the execution of this Settlement Agreement:
  - a. The obligations specifically undertaken or reaffirmed by either Party in this Settlement Agreement.
  - b. The reservation by any Party entitled to receive funds hereunder, of claims against any Party failing to make payment as provided herein,
7. **Compromise and Settlement/No Admission of Liability.** This Settlement Agreement is a compromise and settlement of disputed claims and is being entered into solely to avoid the time, expense, uncertainty, and inconvenience of continued dispute, discussion, and litigation. Neither the execution of this Settlement Agreement nor anything stated herein, nor any amount paid or returned hereunder, is to be construed or deemed as an admission of default, liability, culpability, error or wrongdoing on the part of either Party to this Settlement Agreement.

8. **Ownership of Claims.** The Parties represent and warrant that they own the claims released herein and have not assigned or otherwise transferred any claim or cause of action that they may have possessed against another Party to any person or entity not a Party to this Settlement Agreement.
9. **Authority to Sign.** The signatories hereto warrant and represent that they have the full power and authority to bind the Party entity for which they have signed.
10. **Integrated Agreement.** This Settlement Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the Parties. The terms of the Settlement Agreement are contractual and not merely recitals. There is no other agreement, written or oral, expressed or implied, between the Parties with respect to the subject matter of this Settlement Agreement. The Parties declare and represent that no promise, inducement or other agreement not expressly contained in this Settlement Agreement has been made by any other Party.
11. **Each Party Represented by Counsel.** Each Party adopts this Settlement Agreement as the product of a group drafting effort of counsel for all Parties, not to be construed more favorably for or against any Party to this Settlement Agreement.
12. **No Waiver of Sovereign Immunity.** Nothing in this Settlement Agreement shall be construed as a waiver of sovereign immunity, except for the purpose of adjudicating a claim for breach of an express provision of this Settlement Agreement.
13. **Law and Venue.** The laws of the State of Texas will govern the interpretation of this Settlement Agreement. The courts of Denton County, Texas will have jurisdiction over any disputes arising under this Settlement Agreement.
14. **Multiple Counterparts.** This Settlement Agreement may be executed in multiple facsimile counterparts, and with facsimile signatures, and all such counterparts shall together be deemed to constitute one final agreement, as if each Party had signed one document. Each such counterpart or a facsimile copy thereof shall be deemed to be an original, binding the Parties subscribed thereto.

**CITY OF DENTON**

\_\_\_\_\_  
Todd Hileman, City Manager

\_\_\_\_\_  
Date

Attest:  
Jennifer Walters, City Secretary

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

Approved as to Legal Form:  
Aaron Leal, City Attorney

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

**THE UNIVERSITY OF TEXAS AT ARLINGTON:**

\_\_\_\_\_  
Vistasp M. Karbhari  
President

\_\_\_\_\_  
Date

**FOR THE UNIVERSITY OF TEXAS SYSTEM, SIGNIFYING APPROVAL BY THE  
UNIVERSITY OF TEXAS SYSTEM BOARD OF REGENTS:**

\_\_\_\_\_  
Dan Sharphorn  
General Counsel & Vice Chancellor  
The University of Texas System

\_\_\_\_\_  
Date

## EXHIBIT "A" - Personal Property

Item Description	Part/Serial #	Qty	Location	Picture File Name
Black office chairs	PO 289818	40	1001, Training Room	1
Fisher Isotemp Oven	Model 215F	1	SWIS Building	2
Assorted lab glass		Est. 50	SWIS Building	3
Autoclave pipet tools		1 Box	SWIS Building	4
Assorted tubing		1 Box	SWIS Building	5
Hach Company Model #45300-01		1	SWIS Building	6
Veridian Tubing rolls			SWIS Building	7
Micro-Measurements Model P3	Serial #195642	1	SWIS Building	8
Graduated Cylinders Pipets		1 Box	SWIS Building	9
Sampling equipment and Scoops		1 Box	SWIS Building	10
Wheaton Instruments Unispense dispenser Dose Counter	Serial #1788	1	SWIS Building	11
Nuova Stir Plate Barnstead Thermolyne	Serial #757970161251	1	SWIS Building	12
Larger lab glass		2 Large Boxes	SWIS Building	13
Corrugated plastic tube		4	SWIS Building	14
Fernco 4" Fittings		2	SWIS Building	15
Gas Well parts		2	SWIS Building	16
2" HTPE Pipe fittings		1 Bag	SWIS Building	17
Well head		1	SWIS Building	18
gas well fittings		1 small box	SWIS Building	19
Fisher Scientific Sci 60L Oven Gravity	Serial #41990802	1	SWIS Building	20
Microscope Slids		1 Box	SWIS Building	21
CHEMetrics water analysis System	V2000 Photometer	1	SWIS Building	22
Fisher Scientific	Serial #91062644	1	SWIS Building	23
Timex Alarm Clock		1	SWIS Building	24
Tape measures, assorted tools and fittings		1 Box	SWIS Building	25
Trash bags and dust masks		1 Box	SWIS Building	26
Timesaver 2" Ball Valve		1	SWIS Building	27
M-Bond AE-10 Adhesive Kit		1 Box	SWIS Building	28
PBC fittings and Fernco's 2"		1 Box	SWIS Building	29
Strain Indicator and Recorder	Serial #195642	1	SWIS Building	30
Rubber Maid Storage Containers		1 Box	SWIS Building	31
2 Piece Mirror		1	SWIS Building Office	32
VAL040010 Valve	8763032-1	1	SWIS Building Office	33
Falanges		1	SWIS Building Office	33
Falange Kit		2	SWIS Building Office	33



Office Charis		4	SWIS Building Office	36
Desk		1	SWIS Building Office	36
Small bookshelf		1	SWIS Building Office	36
5 gallon jugs		1	SWIS Building	38
Table	289644	20	1001 Bldg, Training Room	39
Creson Projector	RLF550178L	1	1001 Bldg, Training Room	40
Dark Maple Round Table		3	1001 Bldg, Training Room	41
Hard Hats		5	1001 Bldg, Training Room	42
Safety Glasses		3	1001 Bldg, Training Room	43
Projector Screen		1	1001 Bldg, Training Room	44
White Boards		2	1001 Bldg, Training Room	45
Framed Pictures		15	1001 Bldg, Training Room	46
Non Framed Pictures		6	1001 Bldg, Training Room	47
Podium		1	1001 Bldg, Training Room	48
Wireless Mic	BLX1 H9	1	1001 Bldg, Training Room	49
Epson Projector Remote		1	1001 Bldg, Training Room	50
Elite Screen Remote		2	1001 Bldg, Training Room	51
Fire Extinguisher		1	1001 Bldg, Training Room	52
Side Chairs		5	1001 Bldg, Training Room	53
Table		1	1001 Bldg, room 103	54
Chairs	423482M	3	1001 Bldg, room 103	55
Whiteboard		1	1001 Bldg, room 103	56
Easel		2	1001 Bldg, room 103	57
Trashcan		1	1001 Bldg, room 103	58
Sectional Desk		1	1001 Bldg, room 102	59
Chairs		1	1001 Bldg, room 102	60
Table		1	1001 Bldg, room 104	61
Trashcan		1	1001 Bldg, room 104	62
Table		2	1001 Bldg, room 106	63
Chair		1	1001 Bldg, room 106	64
Whiteboard		1	1001 Bldg, room 106	65
Table		3	1001 Bldg, room 105	66
Whiteboard		1	1001 Bldg, room 105	67
Table		1	1001 Bldg, room 107, electrical room	68
Verizon Wireless Router	PIN CSXI3450104506	1	1001 Bldg, room 107, electrical room	69
Verizon Network Box	MRCC0030959B	1	1001 Bldg, room 107, electrical room	70

Total Access 924 Box	31251278E	1	1001 Bldg, room 107, electrical room	71
Table		2	1001 Bldg, breakroom	72
Chairs		9	1001 Bldg, breakroom	73
Whirlpool Refrigerator		1	1001 Bldg, breakroom	74
Samsung Microwave		1	1001 Bldg, breakroom	75
Tables		3	1001 Bldg, room 108	76
Chair		1	1001 Bldg, room 110	77
Fire Extinguishers		6	SWIS Building	78
Trashcan		2	SWIS Building	79
Shelf		1	SWIS Building	80
Scale		1	SWIS Building	81
AutoClave		1	SWIS Building	82
Refrigerator - The Big One		1	SWIS Building	83
Nitrogen Tank		1	SWIS Building	84
Oxygen Tank		1	SWIS Building	85
Dissolve Oxygen Reagent		4	SWIS Building	86
Sulphuric Acid		2	SWIS Building	87
Phosphoric Acid		1	SWIS Building	88
Nitric Acid		1	SWIS Building	89
Ammonium Persulfate		1	SWIS Building	90
Andro Fire Ant Killer		1	SWIS Building	91
Misc Rocks		1	SWIS Building	92
Week Killer		1	SWIS Building	93
Grass Killer		1	SWIS Building	94
Sink and Sweep		1	SWIS Building	95
Acetone		1	SWIS Building	96
Misc Spray Bottle of Product		1	SWIS Building	97
Liquinox		5	SWIS Building	98
Buffer Solution PH7		3	SWIS Building	99
Buffer Solution PH10		1	SWIS Building	100
Dominior and Grimm Detergent		1	SWIS Building	101
Airablo		1	SWIS Building	102
Powder Detergent		1	SWIS Building	103
Alconox		3 sm	SWIS Building	104
Alconox		1 lg	SWIS Building	105
Luminox		2	SWIS Building	106
Terajet		2	SWIS Building	107

Alcojet		1	SWIS Building	108
Trisodium Phosphate		1	SWIS Building	109
Benzoic Acid		1	SWIS Building	110
Non foaming Cleanser		1	SWIS Building	111
Ammonium Hydroxide		1	SWIS Building	112
Potassium Phosate		1	SWIS Building	113
Phenolphthalein 98.5%		3	SWIS Building	114
Gorilla Glue		1	SWIS Building	115
Water Check		1	SWIS Building	116
Sodium Hydroxide		2	SWIS Building	117
Dentonium Bnzoat		1	SWIS Building	118
Rug Doctor		1	SWIS Building	119
Magnesium Oxide		1	SWIS Building	120
Magnesium Sulfate		1	SWIS Building	121
NaOH		1	SWIS Building	122
Vacu Vials		1	SWIS Building	123
Dr. Grow Fertilizer		2	SWIS Building	124
Acctivated Sludge		1	SWIS Building	125
1 Light Green Tub Misc Chemicals		1	SWIS Building	126
Digital Refractometer	D09JC	1	SWIS Building	127
Glass Lab Tubes		1 BX	SWIS Building	128
Glass Lab Vials		1	SWIS Building	129
Glass Compound Bowl		1	SWIS Building	130
COD Vials		3 BX	SWIS Building	131
PH Thermometer		1	SWIS Building	132
Glass Funnel		1	SWIS Building	133
Volatile Acid		1	SWIS Building	134
Nuova Stir Plate		1	SWIS Building	135
Drill Bits		1 BX	SWIS Building	136
FCI-Gas Flow Meters	619053/619056	2	SWIS Building	137
32 Gal Black Trashcans		5	SWIS Building	138
Water Heater	0910N400467	1	SWIS Building	139
Amber Glass Bottles		2 BX	SWIS Building	140
Misc Lab Equip		4 BX	SWIS Building	141
Performance Pipe Fitting		1	SWIS Building	142
Ball Valves		2 BX	SWIS Building	143
Plastic Lab Bottles		2 BX	SWIS Building	144
Air Regulators		1 BX	SWIS Building	145

Emergency Eye Wash Kits		3	SWIS Building	146
Glassware		1 BX	SWIS Building	147
Mason Jars		1 BX	SWIS Building	148
Mass Flow Meter		1 BX	SWIS Building	149
Air Pump		1 BX	SWIS Building	150
Mis Bolts and Stuff		1 BX	SWIS Building	151
Pond Liner Patch\ and little blue balls		1 BX	SWIS Building	152
Guava Tech Machine	GTI-0300337	1	SWIS Building	153
Stainless Pot with Thermometer		1	SWIS Building	154
Cabinets - Green		16	SWIS Building	155
Mirror		1	SWIS Building	156
Dishwasher		1	SWIS Building	157
Tables		8	SWIS Building	158