

**RESOLUTION NO. 17-1704**

**RESOLUTION BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS AUTHORIZING THE MAYOR OR CITY MANAGER TO APPROVE A MASTER SERVICES AGREEMENT FOR PREPARATION OF A TPDES PERMIT AND PREPARATION OF A SPILL PREVENTION CONTROL AND COUNTERMEASURES PLAN.**

WHEREAS, the City of Lago Vista ("City") is required to renew its Texas Pollution Discharge Elimination System Permit at the Airport; and

WHEREAS, the City is also desirous of obtaining a Spill Prevention Control and Countermeasures (SPCC) Plan; and

WHEREAS, the Consultant, AARC Environmental, Inc., is an environmental firm knowledgeable and capable in preparation of these items and is able to assist the City with its needs

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, THAT:**

**SECTION 1.** The above recitals are hereby found to be true and correct and incorporated herein for all purposes.

**SECTION 2.** The City Council of the City of Lago Vista, Texas does hereby authorize the Mayor or City Manager, to confer with the City's Engineer and the City Attorney's office and ultimately approve the Master Services Agreement and Service Order in order for the Consultant, AARC Environmental Inc. to perform the necessary services.

**SECTION 3.** This Resolution shall be in full force and effect from and after its passage.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LAGO VISTA, TEXAS, ON THE 7<sup>th</sup> DAY OF SEPTEMBER, 2017.**



ATTEST

*Sandra Barton*  
Sandra Barton, City Secretary

CITY OF LAGO VISTA

*Dale Mitchell*  
Dale Mitchell, Mayor

On a motion by Councilman Tippetts, seconded by Councilman Sullivan, the above and foregoing instrument was passed and approved.

## MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT, dated September 7, 2017 is between AARC Environmental, Inc., having an address at Two Riverway, Suite 1780, Houston, TX 77056, telephone (713) 974-2272 ("Consultant"), and City of Lago Vista ("Company"), a Texas corporation, having its principal place of business at 5803 Thunderbird, Lago Vista, TX 78645, telephone 512-267-1155

### BACKGROUND

Company desires to have the option to have Consultant undertake various services (hereinafter referred to as "Service Order" and/or "Services") for Company at various times and solely at Company's option. The Service Order may include such items as, consulting, testing, assessing, sampling and monitoring, and remediation activities. However, both parties understand and recognize that Company is under no obligation to hire or contract with Consultant to perform any Services other than those agreed to by both parties and set out in a Service Order. The first Service Order is attached as Exhibit A. Company simply wants the option to be able to contract with Consultant at any time for Services it may need without having to execute a new contract for each such Service.

### TERMS

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties hereto, intending to be legally bound, agree as follows:

#### 1. SERVICES AND FEES.

(a) Consultant agrees to perform the Services set forth on the attached Service Order, which is attached as Exhibit A, and Company agrees to pay Consultant as set forth in this Agreement. Performance of this Agreement is in Travis County, Texas.

(b) Consultant may invoice Company for the Services. Company shall pay the invoices within thirty (30) days of receipt of any such invoice after which time interest of 1-1/2% per month (but not exceeding the maximum rate allowable by law) will be payable on any amount not paid within thirty (30) days from the date of billing, with payments thereafter to be applied first to accrued interest and then to the unpaid principal amount. Invoices are to be sent to Consultant's address stated herein. Company shall not offset amounts due. In the event of errors or disputes in billing, Company shall timely pay the undisputed portion of any such billing. Consultant has the right to suspend service due to non-payment of overdue invoicing.

(c) Consultant will perform the Services as detailed in each future Service Order in accordance with the terms of this Agreement and all provisions of the Service Order. Company agrees to notify Consultant of any defect in the Services performed within five (5) business days of learning of the defect and Consultant agrees to investigate and correct any defect.

#### 2. COMPLETION OF SERVICES.

(a) Consultant's Services will commence on the date agreed by the parties and set forth on Exhibit A, and on any subsequent Service Orders, respectively. At the completion of the Services, as identified on the Service Order for each particular Service, that particular Service and Service Order will terminate.

Time is an important element of the performance of any Service Order. Consultant will put forth its best efforts to complete the Services in accordance with any deadlines to which the parties agree in any Service Order. Consultant agrees to perform all obligations and render the Services set forth in this Master Service Agreement or any Service Order issued pursuant hereto in accordance with the any timelines included in the Service Order, except as the Parties may hereafter mutually agree in writing otherwise. When Consultant can demonstrate that the Services are complete in accordance with the acceptance criteria included in the Service Order or MSA and so notifies Company, Company shall review the Services for general compliance with the Service Order. If the Services appears to comply with the Service Order requirements, and Consultant has furnished all required documentation, Company shall notify Consultant in writing of Company's Acceptance of the Work.

(b) Should Company default in any of its obligations hereunder or should Company become insolvent, enter bankruptcy (voluntarily or involuntarily), enter receivership, make any assignment for the benefit of creditors, fail to cooperate with Consultant, fail to make any payments within thirty (30) days of billing, or in the event that Company is a sole proprietorship, the death of the proprietor, Consultant may immediately terminate this Agreement or any Service Order upon notice to Company or its legal representative. In the event of such termination, Consultant shall be relieved of all further responsibility or obligations hereunder and Company shall promptly pay to Consultant the costs incurred so far (i.e. services performed to date and related expenses) and the anticipated profits on all Service Orders for which the Consultant and Company have contracted.

(b) Upon thirty (30) days written notice, either party may terminate this Master Services Agreement. However, this Master Services Agreement shall remain in effect for all outstanding Service Orders until the services are completed and payment to Consultant is made in full or until such Service Orders are terminated under Section 2(b) of this Agreement. In the event Company terminates the Master Service Agreement based on the belief that Consultant is failing in its performance, Company must provide written notice to Consultant via Certified Mail, Return Receipt Requested specifying the failure(s). Consultant will then have fifteen (15) days from the date of receipt to cure any such failure(s). If the failure(s) are not cured within the fifteen (15) day notice period, Company may send a second notice by Certified Mail, Return Receipt Requested, terminating the Service Contract fifteen (15) days from the date this second notice is received. The above notice requirement is a condition precedent to Company filing suit against Consultant.



**Work Product.** Upon termination of this Agreement for cause or for convenience, Consultant shall deliver all work product and deliverables prepared under this Agreement, whether complete or not, to the Company in a form acceptable to the Company. The work product and deliverables shall be delivered to the Company upon the earlier to occur of thirty days' notice from the Company or the date of termination of the Agreement. This section shall survive termination of the Agreement, and the Company may enforce this provision through specific performance.

Consultant further agrees that Company or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Consultant, which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Consultant agrees that Company shall have access during normal working hours to all necessary Consultant facilities (excluding the Consultant's servers) and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Company shall give Consultant reasonable advance notice of intended audits.

Consultant agrees that items such as plans, drawings, photos, designs, studies, specifications, computer programs, schedules, technical reports, or other work products which is/are specified to be delivered under this Agreement, and which is/are to be paid for by Company, is/are subject to the rights of Company in effect on the date of this Agreement. These rights include the right to use, duplicate and disclose such items in whole or in part, in any manner and for whatever purpose, and to have others do so. If an item produced by Consultant is copyrightable, Consultant may copyright it, subject to the rights of Company. Company reserves the royalty-free, non-exclusive and irrevocable license to reproduce, publish, modify and use such items and to authorize others to do so. Company understands that any modification to any reports and/or documents will void an warranty/guarantee previously made by the Consultant.

### 3. NONDISCLOSURE.

(a) Confidential Information. Each party acknowledges that the other has developed and is the exclusive owner of a substantial body of trade secrets, know-how and other confidential information, whether owned by Company or developed by Consultant or Company in connection with the Services, including without limitation, information regarding customers, suppliers and business arrangements, technical and business data, know-how, processes, designs and ideas, (collectively, "Confidential Information").

(b) Nondisclosure. Except as required by court order or otherwise required by law or, with the prior written consent of the other party, or as specifically provided herein, the parties hereto and their directors, officers, employees, agents and other representatives (collectively "Representatives"), shall not disclose or permit the disclosure to any third party of any Confidential Information which has been or may be given or shown to the other party or its Representatives, or to which such party or its Representatives have been or may be granted access.

(c) Restricted Use of Confidential Information. The parties and their Representatives shall use any Confidential Information disclosed to them solely for the purposes of performing the Services.

(d) Permitted Exceptions. The parties shall be under no obligation with respect to any Confidential Information that: (i) is or becomes generally available to the public; (ii) is known to such party at the time of disclosure as evidenced by written records; (iii) was received by such party after the time of disclosure hereunder on a nonconfidential basis from a third party who had a legal right to make such disclosure; (iv) is subsequently developed by such party without the use of such Confidential Information, as evidenced by written records; or (v) is required by court or administrative order, including a subpoena.

### 4. REPRESENTATIONS.

(a) Consultant Representations. The Services will be performed in accordance with standards customarily provided by a firm rendering the same or similar services in the area during the same time period. Consultant shall provide Company a copy of Consultant's insurance coverages for such project and such coverages shall be in line with other firms providing the same or similar services in the area.

(b) Company Representations. Company understands the nature of the Consultant's presence at the Site and shall ensure that the Consultant has safe and reasonable access to the Project or Site. Company will take reasonable precautions to prevent injury or loss to persons or property at the Site during the Services; however, Consultant has the right to discontinue or terminate Services in the event that Site conditions pose a health or safety risk to Consultant or its subcontractors. Company shall furnish or cause to be furnished to Consultant all information known to Company relating to the Site location, utilities, and environmental conditions of the Site, including, but not limited to, identity and location of quantity nature and characteristics of any hazardous or toxic materials on or near the Site, to the extent known by Company. Consultant shall have no right to rely upon such information and that any reliance thereon shall be at Consultant's own risk. COMPANY HEREBY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE ABOVE-MENTIONED REPORTS.. Company shall immediately transmit new, updated or revised information as it becomes available during the Services. If Company fails to do so, Company releases and forever holds harmless Consultant from any loss or damage incurred as a result of such failure.

5. STATUS AS INDEPENDENT CONTRACTOR. Consultant acknowledges and agrees that it will be performing the Services as an independent contractor and that Consultant shall be responsible for the payment of any and all applicable payroll and income taxes relating to the performance of the Services. Nothing contained in this Agreement shall be deemed to constitute Consultant or any of its Representatives as an employee of Company, and neither Consultant nor any of its Representatives shall be entitled by virtue of this Agreement to any benefits afforded generally to employees of Company. Neither Consultant nor any of its Representatives shall have the authority to incur any obligations, contractual or otherwise, for or in the name of Company.

6. REMEDIES. To the extent allowed by law, Company agrees it will assume full responsibility and liability for and hold Consultant harmless for any property damage, personal injury or economic loss, including consequential damages resulting from violations of any state or federal environmental law, the alteration of the site or preservation or removal of hazardous materials introduced by the Company. Company



expressly assumes any and all responsibility for changed conditions or hazardous materials introduced by the Company or other persons after completion of the services by Consultant. It is understood and agreed that all spill or release notifications required by law shall be the responsibility of the Company. While unlikely, should any action performed solely by Consultant result in any property damage, personal injury or economic loss, including consequential damages, Consultant shall assume full responsibility and liability for such damages, claims and losses.

Services will be performed expeditiously and in accordance with the professional skill and care practiced and in accordance with generally accepted practices of the profession undertaken in similar studies at the same time and in the same geographical area. All goods, work and/or services are transferred or rendered to Company as is. Consultant represents the Services rendered hereunder shall be performed in accordance with above standard of care, all laws and regulations, and the requirements of this Agreement. Consultant shall re-perform any Services in accordance with this Contract as required to correct any error, omission, defect or deficiency arising within a period of one (1) year following the completion of all Services required under this Contract to the extent any such error, omission, defect or deficiency arises as a result of Consultant's failure to perform the Services under such standard of care. In all events, Company's sole and exclusive remedy against Consultant shall be limited to monies paid for the specific service performed on which the issue arises. It is further understood and agreed that the laws, orders, rules and regulations which underlie Consultant's advice/work for Company are subject to frequent change, Consultant's services, advice, and/or work are based merely on its understanding of current statutory and regulatory requirements, and the Consultant has no further or additional duty to warn or advise Company as to such changes, amendments, or modification after completion or termination of any Service Order or this Master Service Agreement.

In the event that either party defaults on any provision of this Agreement and/or in the event that either party institutes any action or proceeding and/or asserts a claim against the other to enforce any provision hereof by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be allowed to seek damages permitted by this Agreement and reasonable attorneys' fees and court costs in connection with such recovery. In the event that the Consultant's employees are compelled by subpoena or legal order to give expert or witness testimony or otherwise participate in a judicial or administrative proceeding involving the Company and such proceeding is brought through no fault of Company, such costs shall be borne by the Consultant. To the extent that any such proceeding is the result of direct actions by Company, or are requested by Company, Company shall compensate Consultant for all such services required, including preparation time, participation time, and out of pocket costs.

7. **NO CHANGES IN SERVICE.** No changes shall be made in the Services and no additional services shall be performed unless such changes or additional services and any related cost to Company are agreed upon, in writing, between Company and Consultant. Payment and compensation for Service Order revisions shall be in accordance with cost estimates to be included in the revision.

8. **SURVIVAL.** The rights and obligations of the parties hereto relating to payment, nondisclosure, patents, copyrights, clearance for publication, remedies and similar terms shall survive the suspension and/or termination of this Agreement.

9. **SEVERABILITY.** If any provision of this Agreement should be deemed to violate any limitations permitted by applicable law in any jurisdiction, such provision shall be deemed reformed in such jurisdiction so as to continue to apply to the maximum extent permitted by applicable law, and this Agreement shall continue in full force and effect with regard to all other provisions. Company and Consultant shall negotiate the cost, if any, of having to comply with any laws, rules or regulations first coming into effect after the signing of this Agreement.

10. **NO WAIVER.** No waiver of any provision, breach or default under this Agreement shall be deemed a waiver of any subsequent provision, breach or default, nor shall any such waiver constitute a continuing waiver.

11. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire understanding of the parties with regard to the subject matter hereof and may not be modified, supplemented or rescinded except by an agreement in writing signed by the parties hereto.

12. **BINDING EFFECT; ASSIGNMENT.** This Agreement shall not be assigned by the Company. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

13. **GOVERNING LAW; EXCLUSIVE JURISDICTION.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OF CONFLICTS OF LAW. The agreement is performable in Travis County, Texas. The parties stipulate that venue shall lie in Travis County, Texas. The parties agree that the exclusive forum for any dispute shall lie in Travis County, Texas.

14. **NOTICE.** Company hereby represents and warrants that the personnel identified in each Service Order shall have authority to authorize work, sign change orders, and receive notices for Company and that by notifying any of those individuals, Consultant shall be deemed to have notified Company.

15. **NON-SOLICITATION.** Company expressly agrees that for a period of one (1) year following the later of the termination of this Master Service Agreement and all Service Orders, however construed, it will not directly or indirectly hire, entice, employ, contract, divert, take away, or attempt to hire, entice, employ, contract, divert, or take away any present or former employee, contractor, subcontractor, officer, agent, or representative of Consultant without the express written consent of Consultant.

16. **SAFETY.** It is understood that each party will be responsible for all working conditions within that party's possession and/or control of and on the Site, including safety of all persons and property during the performance of any work by that party.

17. **HAZARDOUS MATERIALS.**

(a) When hazardous materials are known, assumed or suspected to exist at a site, Consultant is required to take all appropriate precautions to protect the health and safety of its personnel, to comply with applicable laws and regulations and to follow procedures that Consultant deems



prudent to minimize physical risks to employees and the public. Company hereby warrants that if it knows or suspects that hazardous materials may exist at the Site, it shall immediately so inform Consultant of that fact as well as the known or suspected, location, type and quantity thereof.

(b) Hazardous materials may exist at a site where there is no reason to believe they could or should be present. Consultant and Company agree that the discovery of unanticipated hazardous materials constitutes a changed condition and both parties agree to negotiate the terms, including costs, associated with addressing the unanticipated hazardous waste. Consultant and Company also agree that the discovery of unanticipated hazardous waste may make it necessary for Consultant to take immediate measures to protect human health and safety, and/or the environment. However, Consultant has no duty to discover such hazards.

18. **FORCE MAJEURE.** Neither party shall hold the other responsible for damages or delays in performance caused by acts of God, acts and/or omissions of Federal, State and local governmental authorities and regulatory agencies, or other events which are beyond the reasonable control of the other party and which could not have been reasonably foreseen or prevented. For this purpose, such acts or events shall include storms, floods, epidemics, war, riot, strikes, lockouts or other industrial disturbances, and inability with reasonable diligence to supply personnel, information, or material to the project. Should such acts or events occur, it is agreed that the party claiming the delay or force majeure shall use its best efforts to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit and schedule of the Services covered by this Agreement.

19. **ASSIGNMENT.** This Agreement shall not be assigned by either party without the express written consent of the other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

City of Lago Vista  
By: [Signature] 9-11-17  
Name: Kenneth Reneau Date  
Title: Int. C.M.

AARC Environmental, Inc.  
By: [Signature] 9/15/17  
Name: Dinesh Dama Date  
Title: Vice President of Operations—SW Region

**Corporate Information**

Company Name: City of Lago Vista  
Contact Name: \_\_\_\_\_ Contact Title: \_\_\_\_\_  
Physical Address: 5803 Thunderbird City: Lago Vista State: TX Zip: 78045  
Mailing Address: P.O. Box 4727 City: Lago Vista State: TX Zip: 78045  
Telephone Number: 512-267-1155 Fax Number: 512-267-7070

**Facility Information**

Same as Corporate  Other (Please fill below) Municipal Airport  
Company Name: City of Lago Vista  
Contact Name: Roy Jambor Contact Title: Director of development services  
Physical Address: 9201 Burk ranch City: Lago Vista State: TX Zip: 78045  
County: Texas Is the Facility Inside City Limits: Yes Sic Code(s) \_\_\_\_\_  
Mailing Address: P.O. Box 4727 City: Lago Vista State: TX Zip: 78045  
Telephone Number: 512-267-5259 Fax Number: \_\_\_\_\_

**Billing Information**

Same as Corporate  Same as Facility  Other (Please fill below)  
Billing Contact: Nichole Navarro  
Physical Address: 5803 Thunderbird City: Lago Vista State: TX Zip: 78045



# Client Information Sheet

## Additional Information

E-mail address \_\_\_\_\_

Federal Tax ID No. 74 - 2337006 \_\_\_\_\_

Franchise Tax ID No. \_\_\_\_\_

## Type of Customer

- Individual       Sole Proprietorship-DBA       Corporation       Limited Liability Co.  
 Limited partnership       General partnership       City Government       County Government  
 State Government       Federal Government

Company Officer: Genneth Reneau      Officer's Title: Int. C.M.

*Client verifies that all of the information included in this the client information section is correct. Any changes made after this information is submitted will incur additional costs to the client.*

Client Signature: [Signature]      Date Signed: Sept 11, 2017

EXHIBIT A  
SERVICE ORDER

**Facility: Airport**

**Texas Pollution Discharge Elimination System (TPDES)**

**TPDES General Industrial Storm Water Permit**

- Prepare Site Map of facility according to the permit
- Prepare Notice of Intent for the Permit. (Permit Fee to be paid by the client)
- Prepare Storm Water Pollution Prevention Plan (SWPPP) per TPDES Permit requirements
- Assist with implementation of Pollution Prevention Plan

Cost per facility for TPDES renewal:..... \$3,875.00

**Spill Prevention Control and Countermeasures (SPCC)**

**Spill Prevention Control and Countermeasures (SPCC) Plan:**


- Prepare Spill Prevention Control and Countermeasures (SPCC) Plan
- Provide Facility Diagrams
- Determine Facility Storage Capacity
- Review and Certification of SPCC Plan by Registered Professional Engineer

Est. Cost: ..... \$3,400 - \$4,000\*

*\*Cost will be charged on a time and material basis. Costs will be determined by the complexity of the work and will range from \$65 to \$250 per hour.*

*\*This amount will be invoiced on the specific date on Exhibit B regardless if and when monitoring occurs at the site. The associated discharge monitoring reports (DMRs) will be prepared and submitted regardless of whether or not monitoring has occurred. The DMR preparation and submittal costs are included in the amount invoiced to you. Also, a \$25 additional charge will be incurred if a sample kit that has previously been supplied, but not used for AARC samples, needs to be replaced.*

*\*\*\*The terms of this agreement are found in the Master Service Agreement which has been previously signed\*\*\**

City of Lago Vista  
By:  9-16-17  
Name: Kenneth Renedo Date  
Title: Int. C.M.

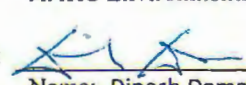
AARC Environmental, Inc.  
By:  7/15/17  
Name: Dinesh Dama Date  
Title: Vice President of  
Operations—SW Region



EXHIBIT B  
PAYMENT STRUCTURE

**Facility: Airport**


**TPDES General Industrial Storm Water Permit**


Due Herewith (First ½ Permit Cost) ..... \$1,937.50  
Due Upon Delivery (Second ½ Permit Cost) ..... \$1,937.50

**SPCC Plan**

Due Herewith (First ½ Permit Cost) ..... \$1,700.00  
Balance Due Upon Completion

\*\*\*The terms of this agreement are found in the Master Service Agreement which has been previously signed\*\*\*

City of Lago Vista  
By:  9-11-17  
Name: Kenneth Renshaw Date  
Title: Int. C. M.

AARC Environmental, Inc.  
By:  9/15/17  
Name: Dinesh Dama Date  
Title: Vice President of  
Operations—SW Region

