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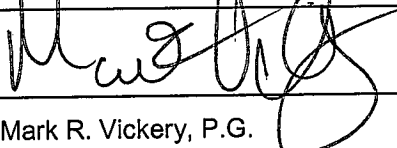
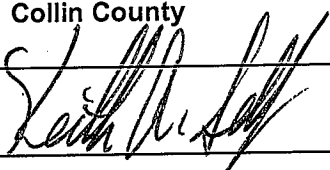
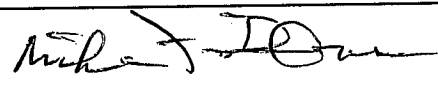
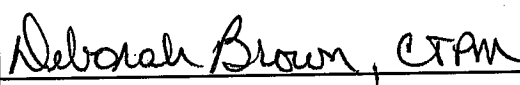
Local Initiative Projects (LIRAP)

Contract No. 582-8-89950

Texas Commission on Environmental Quality

AIR QUALITY
DIVISION

Intergovernmental Cooperative Reimbursement Agreement
with
Federal, State and Local Governments and Agencies
CONTRACT SIGNATURE PAGE

Contract Name		Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) Local Initiative Projects
Contract Number		582-8-89950
Performing Party		Collin County
Performing Party Identification Number		17560008736
Maximum TCEQ Obligation: \$ 263,040.89	Effective Date: Date of last signature	Expiration Date: August 31, 2009
The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and the named Performing Party, a governmental body, agency, or political subdivision of: the United States, the State of Texas, or another State, enter this agreement (Contract) to cooperatively conduct authorized governmental functions and activities under the laws of the State of Texas, including, without limitation, the Interagency Cooperation Act, the Interlocal Cooperative Act, and Texas Water Code §§ 5.124 and 5.229. The Parties agree: to be effective, the Contract must be signed by an authorized official of the TCEQ and the Performing Party; as authorized by TCEQ, Performing Party will conduct Contract Activities as part of its own authorized governmental functions and TCEQ will reimburse Allowable Costs subject to the Texas Uniform Grant Management Standards and this Contract; the Performing Party is not a vendor of goods and services under Texas Government Code Chapter 2251, therefore, no interest is applicable; and the Contract may be terminated by TCEQ for its own convenience with 30 days written notice.		
Parties to the Contract:	Texas Commission on Environmental Quality (TCEQ)	Collin County
By (Authorized Signature)		
Printed Name:	Mark R. Vickery, P.G.	Honorable Keith Self
Title:	Deputy Executive Director	Collin County Judge
Date of Signature:	4-28-08	
Contract Manager Name	Marivel Rodriguez	
Contact Numbers	(512) 239-2474	
Procurement and Contracts Representative		
Printed Name	Mike Fishburn	Deborah Brown, CTPM
Date	03/13/08	03/13/08

Intergovernmental Cooperative Reimbursement Agreement
CONTRACT DOCUMENTS

The entire Contract between TCEQ and Grantee is composed of the Contract Documents listed on this page and marked by an "X". A listed document includes all amendments. The terms "Contract" and "Grant Agreement" include all the Contract Documents. In the event of a conflict of terms, the Contract Documents, as amended, control in the descending order of the list, subject to provisions in the Special Terms and Conditions that alter the order, if any. All contract provisions, however, are subject to control by the latest and most specific provision and by the applicable state and federal laws, rules, and regulations.

X	Contract Signature Page
X	Documents Created During the Contract (including, Contract Activity Proposals, and Project Plans, approved by TCEQ in accordance with Contract procedures and agreed amendments to those documents)
X	Contract Activities ("Scope of Work")
	TCEQ - Approved Work Plan / Grantee Proposal
	Work Order Section
X	Contract Actual Cost Budget
X	General Conditions
	Schedule of Fixed Cost for Reimbursement
	Federal Section (Including Conditions and Completed Forms)
X	Project Representatives and Records Location
X	Attachment A - Guidance for Submitting Evidence for SIP Credit
	Attachment B
	Attachment C
	Attachment D

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Inter-Governmental Cooperative Reimbursement Agreement
with
Federal, State and Local Governments and Agencies

CONTRACT ACTIVITIES

SCOPE OF WORK

for a grant contract agreement between TCEQ and participating county
relating to expenditure of Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement
Program (LIRAP) funds for Local Initiative Projects under Texas Health and Safety Code §382.220

I. INTRODUCTION

The Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) was authorized by the 77th Texas Legislature in 2001 to improve air quality. LIRAP operates in areas of the state that participate in the AirCheckTexas motor vehicle emissions inspection and maintenance program administered jointly by the Texas Commission on Environmental Quality (TCEQ or commission) and the Texas Department of Public Safety (DPS).

In 2007, the 80th Texas Legislature, passed SB 12, Section 1.07, amending the Texas Health and Safety Code, (HSC) Chapter 382, to add Section 382.220, titled, Use of Funding for Local Initiative Projects which authorized spending accumulated funds on clean air projects proposed by counties.

The purpose of this agreement is to implement the Legislature's mandate to fund the Local Initiative Projects. The following sections describe in more detail the eligibility requirements, types of projects that can be funded, and the process of proposal and approval of projects and expenditure of LIRAP funds.

II. ELIGIBLE COUNTIES

Only counties currently participating in the LIRAP program are eligible to receive funding under HSC §382.220 and this contract. SB 12, Section 1.07(a) specifies that Local Initiative Projects funds provided under HSC §382.220(a) and "made available to participating counties under Section 382.202(g) or 382.302 may be appropriated only for programs administered in accordance with Chapter 783, Government Code, to improve air quality. A participating county may agree to contract with any appropriate entity, including a metropolitan planning organization or a council of governments to implement a program under Section 382.202, 382.209, or this section."

III. ELIGIBLE PROJECTS

SB 12, Section 1.07 added HSC §382.220(b) which states that a project under this section must be implemented in consultation with the commission and that projects eligible for funding under Local Initiative Projects may include projects to:

- (1) expand and enhance the AirCheckTexas Repair and Replacement Assistance Program;
- (2) develop and implement programs or systems that remotely determine vehicle emissions and notify the

- (3) develop and implement projects to implement the commission's smoking vehicle program;
- (4) develop and implement projects for coordinating with local law enforcement officials to reduce the use of counterfeit state inspection stickers by providing local law enforcement officials with funds to identify vehicles with counterfeit state inspection stickers and to carry out appropriate actions;
- (5) develop and implement programs to enhance transportation system improvements; or
- (6) develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

To be considered eligible, a proposed project must comply with applicable provisions of state and federal laws. Also, project proposals must be received by the commission for approval no fewer than 180 days before the end of the fiscal year during which funds are to be expended, unless the commission waives this provision at its sole discretion. The costs of work performed prior to TCEQ issuing an approval for the project in a written Notice to Proceed are not Allowable Costs for reimbursement. The Commission will not reimburse any costs incurred or paid prior to the commencement of this Contract. If, after execution of this contract, funds are advanced for a project, grantee must receive approval for the project and a Notice to Proceed prior to incurring costs. The reimbursement of costs is subject to confirmation by TCEQ that the expenditure is an Allowable Cost according to this contract.

A participating county will administer and implement the Contract Activities however, the Grantee may implement the program by subcontracting with an appropriate entity including a regional council of governments or the metropolitan planning organization in the appropriate region, or with another county and overseeing the work of the subcontractor. The participating counties in a non-attainment region or counties participating in an early action compact under 30 TAC Chapter 114, Subchapter C (relating to Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties) may agree to have the money collected in any one county be used in any other participating county in the same region (HSC §382.209(g)). A proposed project that involves more than one county must include a list of participating counties and, for each participating county, written authorization, such as a letter, signed by a responsible individual of the county, that authorizes use of that county's allocation of Local Initiative Project funds, and the amount of the county's allocation to be dedicated to the proposed project.

To the extent possible, counties intending to fund projects that generate emission reduction credits to be included in the State Implementation Plan, should provide in their project proposals, documentation, descriptions, computations, or other supporting evidence demonstrating in detail the emission reduction benefits to be derived from proposed projects. If none are projected, then state none. See Attachment A for guidance on submitting evidence for SIP credit.

IV. STATUTORY RESTRICTION ON USE OF FUNDS

As specified in SB 12, Section 1.07(c), and codified in HSC §382.220(c), funds provided under this contract may not be expended for the following purposes related to operation and administration of the LIRAP program:

1. call center management;
2. application oversight;

3. invoice analysis;
4. education;
5. outreach; and
6. advertising.

Interpretation of the applicability of these prescribed categories to proposed projects is at the sole discretion of the commission. Local Initiative Project proposals must clearly state the nature of the goods and services acquired or to be acquired in the course of implementing a project.

V. AMOUNT OF FUNDING

The commission may provide funds in the form of reimbursements for approved projects that meet project eligibility requirements enumerated above. SB 12, Section 1.07(d) authorizes the commission to disburse fees collected under HSC §§382.202 and 392.302, in an amount not to exceed \$5,000,000.00 per fiscal year, among all counties eligible to propose Local Initiative Projects, as described above under Section II, ELIGIBLE COUNTIES of this Agreement. Funds will be made available to the county only on a matching basis, whereby the commission provides money to a county in the same amount that the county dedicates to an eligible project, as described above under Section III, ELIGIBLE PROJECTS of this Agreement. The term "money" in SB 12, Section 1.07(d) is construed to mean cash or tangible property (as defined in the Texas Uniform Grant Management Standards (UGMS) donated for a Local Initiative Project. Clean air account funds will be allocated by the commission on a *pro rata* basis according to the number of emissions inspection stickers issued during fiscal year 2006. Funds may not be disbursed to the county if the county does not propose an approvable project during a particular fiscal year.

Maximum funding under HSC §382.220 available to:
for Local Initiative Projects during Fiscal Year 2008 is:
to be expended by :

Collin County
\$263,040.89
August 31, 2009

Estimated funding under HSC §382.220 available to:
for Local Initiative Projects during Fiscal Year 2009 is:
to be expended by:

Collin County
\$263,000.00
August 31, 2009

No part of the required 50 percent local match may come from LIRAP funding provided under HSC §382.209. All or part of the 50 percent local match may be an in-kind contribution of services or tangible property, such as donations of land or materials if consistent with state regulations.

In computing a budget for a proposed project, counties should consult and complete an actual Project Budget. All invoices for reimbursement must clearly describe the project for which reimbursement is being requested, the nature of the goods and services acquired, and the period of time during which expenses were incurred.

VI. PROJECT APPROVAL

Project proposals submitted by eligible counties will be evaluated and awarded funding based on the criteria in this contract. At a minimum, proposals should include all components listed below under "PROJECT SELECTION CRITERIA." Project expenses incurred prior to the date of issue of the letter of approval will not be eligible for reimbursement, unless agreed to in writing in advance by both parties.

VII. PROJECT SELECTION CRITERIA

Unless otherwise provided in this agreement or authorized in writing by the TCEQ, the County must submit a written plan for conducting each Local Initiative Project, which must contain the following components:

1. **APPLICANT(S).** County requesting funding of the Local Initiative Project and the name of the agency or entity that will administer the project.
2. **RESPONSIBLE PERSON(S).** Names, phone numbers and, if appropriate, titles of the individual or individuals submitting and directing this project on behalf of the eligible county or counties.
3. **PROJECT DESCRIPTION.** A clear and concise description of the proposed project, including details of the operation of the program, target emitting source or sources, technologies or methods to be implemented to reduce emissions, an itemized list of goods and services needed to implement the project, and any other details of the project that explain how the project will reduce emissions or help the region comply with state or federal clean air rules or regulations. If construction is proposed, the proposal should include a map of the location, photographs of the existing project site, a site plan of the proposed construction, illustrations of the proposed work, and a description of how it would be accomplished, including estimated cost.
4. **PROJECT SCHEDULE.** The proposal should include the proposed starting date and, if appropriate, ending date of the proposed project. If possible, the proposal should also include dates of important project milestones, or durations of key phases of the project (planning and design, bid approvals and awards, implementation or construction, if any).
5. **PROJECT BUDGET.** An itemized budget identifying the full cost of all project phases, including the amount and source of local matching funds or value of in-kind donations, for which Local Initiative Project funding under HSC §382.220 is requested. Of this total, a maximum of 50 percent may be reimbursed from HSC §382.220 clean air account funds not to exceed the amount in section V. "AMOUNT OF FUNDING". No part of the required 50 percent local match may come from LIRAP funding provided under HSC §382.209. All or part of the 50 percent local match may be an in-kind contribution of tangible property such as donations of land or materials, or professional services, if consistent with state regulations.

In-Kind Match. If part or the entire 50 percent local match will be an in-kind contribution in lieu of funds, the proposal must include a detailed description and estimated value of the property or professional services to be donated to the project. A tangible in-kind match could include donations of land, equipment, or materials to be used, or professional services related to the project that can be documented. The in-kind local match cannot include professional services funded under HSC §382.209 or activities prohibited under HSC §382.220(c). The in-kind local match can be provided by another entity besides the county, such as, for example, a city or metropolitan transportation authority. If the local match is provided by an entity other than the proposing county, the proposal must include official documentation of the commitment of that property, such as by signed letter of commitment, by an appropriate agent of the owner of the property, for the purpose of implementing the proposed Local Initiative Project.

Project Budget. The County will include with each invoice, documentation showing the amount of any in-kind contribution received.

6. **PROJECT BENEFITS.** Explain and document, if possible, the anticipated air quality benefits to the county or region. Describe how the air quality benefits or emission reductions are enforceable, permanent, quantifiable, and surplus, including computations, model results, or other documentation, if available. If

the proposed project provides new opportunities for innovation, diversity, enhancement, or creativity in local air quality projects, describe these benefits as well. If none are projected, then state none.

7. **SIGNATURE.** The proposal must be signed by a person who will be responsible for the management and implementation of the proposed project.
8. **CONTACTS FOR ASSISTANCE.** For further information, please contact TCEQ LIRAP staff: Marivel Rodriguez at 512/239-2474, marodrig@tceq.state.tx.us; or Donna Huff at 512/239-6628, dhuff@tceq.state.tx.us.

An approved Local Initiative Project may be amended by written agreement among the parties to this agreement.

VIII. MONITORING AND REPORTING

Participating counties must submit quarterly reports to the TCEQ documenting the activities conducted under the Local Initiative Projects, and the total amount of funds expended for the project. The reports should be filed for each quarter during the term of contract (September 1-November 30; December 1-February 29; March 1- May 31; June 1-August 31). Reports must be submitted to TCEQ within 30 days following the end of the quarter (due dates of December 30, March 30, June 30 and September 30 respectively).

Participating counties must also submit a comprehensive final report detailing all activities conducted under the Local Initiative Projects Biennium Agreement. The final report should cover the entire term of the contract and must be submitted within 30 days of the contract expiration date (September 30, 2009 respectively).

GENERAL CONDITIONS

1. CONTRACT PERIOD.

- 1.1 **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Signature Page of this Contract (Contract Period). If an expiration date is not provided, the Expiration Date is August 31 of the same Fiscal Year.
- 1.2 **Renewal and Extension Period.** The Contract may be extended by notice of TCEQ beyond expiration of a Contract Period for up to ninety (90) days (Extension Period) during which the parties may agree on a written amendment to extend the Contract for a longer period. Renewals and extensions do not extend any other deadlines or due dates other than the expiration of the Contract Period. The Contract amount may be amended for Renewal as needed as this is an agreement between two governmental agencies and is not subject to competitive procurement regulations, unless this Contract was awarded under the TCEQ authority to award grants.
- 1.3 **Contract Renewals.** Prior to expiration of the current Contract Term (8/31/09), the Contract may be renewed up to one (1) additional year term. The parties must agree in a written amendment to renew the Contract, not to extend past 08/31/10.

2. DEFINITIONS.

- 2.1 "Include." The word "include" and all forms such as "including" shall be construed to introduce a non-

exhaustive list. The parties agree include is a term of enlargement, and does not limit the scope of the preceding noun.

3. AUTHORIZATION.

The Grantee must obtain a written Notice to Proceed from the TCEQ Project Representative to start project activities. Any performance of the activities prior to the Notice to Proceed is not reimbursable. At its option, TCEQ may issue a limited Notice to Proceed to authorize reimbursement for a portion of the activities.

4. FUNDS.

- 4.1 **Availability of Funds.** This Agreement and all claims, suits or obligations arising under or related to this Agreement are subject to the receipt and availability of funds appropriated by the Texas Legislature for the purposes of this Agreement or the respective claim, suit or obligation, as applicable.
- 4.1.1 Grantee will ensure that this clause concerning the availability of funds received indirectly by subcontractors through Grantee is included in any subcontract it awards.
- 4.2 **Amount Limits on Funds.** The maximum reimbursement is shown on the Signature Page. The Contract does not guarantee a minimum amount of reimbursement, where project plans may be issued.
- 4.3 **Grants.** If this agreement was entered under the TCEQ authority to award grants, TCEQ is providing financial assistance to the recipient to undertake its own project. TCEQ does not assert any oversight or control other than what is required by the Uniform Grant Management Standards and the Office of Management and Budget Circulars, if applicable.
- 4.4 Grant money issued by the TCEQ under this reimbursement contract must be spent by the county by the end of the Appropriation Biennium. An Appropriation Biennium is the period of two Fiscal Years for which the Texas Legislature has appropriated funds for these projects (ex. for the 2008-2009 biennium, funding awarded for fiscal year 2008 and fiscal year 2009 must be spent by August 31, 2009) unless otherwise determined by TCEQ.

5. ALLOWABLE COSTS.

- 5.1 **Conforming Activities.** TCEQ will reimburse the Grantee for Allowable Costs incurred and paid by the Grantee in performance of conforming Contract Activities only when authorized in writing. Allowable Costs are those costs for conforming Contract Activities that are reasonable, necessary, actual and authorized by this Contract and a Notice to Proceed.
- 5.2 **UGMS.** Allowable Costs are restricted to those that comply with the Texas Uniform Grant Management Standards (UGMS) and additional state and federal rules and law. The text of UGMS is available online at the Governor's Website. (The link as of April 27, 2007 is <http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>.) The parties agree that all the requirements of the UGMS apply to this Contract, including the criteria for Allowable Costs. TCEQ Allowable Expenditures Guidelines provide additional information as to the construction of UGMS. Additional federal requirements may apply when federal funds are included in the reimbursement.

6. REIMBURSEMENT.

- 6.1 **Contract for Reimbursement.** The Contract Documents describes the activities to be conducted by the Grantee for reimbursement by TCEQ.
- 6.2 **Reimbursement Request Deadline.** Grantee agrees to submit all outstanding requests for payment to TCEQ prior to July 15 of the second Fiscal Year following the Appropriation Fiscal Year.
- 6.3 **Reimbursement Requests.** Not more than once a month, Grantee may request by invoice, reimbursement of Allowable Costs for performing the Contract Activities. Grantee's request must conform to TCEQ's reimbursement requirements.
- 6.4 **Travel, Other Costs.** Travel costs must be specifically authorized and pre-approved by TCEQ in advance of the travel. Travel costs, including per diem, will be reimbursed only in the amount of actual costs, up to the maximum allowed by law for Texas state employees' travel at the time the cost is incurred. Volunteers may not receive travel costs.
- 6.5 **Supporting Records.** Grantee will maintain records of costs and records of performance of the Contract Activities for three (3) years following the expiration of the Contract. Upon request, Grantee will submit records in support of reimbursement requests.
- 6.6 **Conditional Payments.** Reimbursements are conditioned on the Contract Activities being performed in compliance with the Contract. Grantee must return payment to TCEQ for either overpayment or activities undertaken that are not compliant with the Contract Activities. This does not limit or waive any other TCEQ remedy.
- 6.7 **Historically Underutilized Businesses.** Grantee agrees to include, with its invoicing, reports on the use of Historically Underutilized Businesses.

7. AMENDMENTS.

Changes to the Contract may only be made by a written amendment, signed and agreed to by the Parties. The Contract amount may be amended as needed and is not subject to competitive procurement regulations.

8. CONTRACT INTERPRETATION.

- 8.1 **Interpretation of Times.** When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of the period is a Saturday or Sunday, or a state or federal holiday, it is omitted from the computation. A calendar day of twenty-four hours measured from midnight to the next midnight constitutes a day. A period referred to as a "month" is the applicable calendar month or, if none, a period of thirty consecutive days. A period referred to as "week" is the applicable calendar week or if none, a period of seven consecutive days.
- 8.2 **State, Federal Law.** This Contract shall be governed by, and construed and interpreted under the laws of the State of Texas, as well as applicable federal law.
- 8.3 The activities funded under the Agreement conducted by the COUNTY and its grantees shall be in accordance with all provisions of the Agreement, all applicable state and local laws, rules, regulations, and guidelines. The main governing standards include, but are not limited to, the standards set forth below:

- 8.3.1. Chapter 382, Subchapter G of the Texas Health and Safety Code
- 8.3.2. Texas Government Code Chapter 783
- 8.3.3. 30 TAC Chapter 14, TCEQ Rules
- 8.3.4. Texas Uniform Grant Management Standards (Rules of the Governor of Texas at 1 TAC § 5.141 et seq)
- 8.3.5. Appropriations Act of the 80th Texas Legislature Article IX Section 17.04 (requirements that grant funds be distributed by state agencies on a reimbursement or as needed basis) as well as the Appropriations Acts of any following Texas Legislative sessions that may be applicable to this provision during the term of the contract.
- 8.3.6. Texas Government Code Section 556.0055 (pertaining to lobbying)
- 8.3.7. TNRCC *Allowable Expenditure Guidelines* (pertaining to allowable costs for cost reimbursement contracts and grants)
- 8.3.8. Appropriations Act of the 80th Texas Legislature at Article VI rider paragraph 16 (**Appropriation: Low-income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP)**), as well as the Appropriations Acts of any following Texas Legislative sessions that may be applicable to this provision during the term of the contract

8.4 **Severability.** If any provision of this Contract is held to be invalid, illegal or unenforceable, the remainder of the Contract shall be construed to conform to the intent of the parties.

9. GRANTEE'S RESPONSIBILITIES.

- 9.1 **Grantee's Responsibility for the Contract Activities.** Grantee undertakes performance of the Contract Activities as its own project and does not act in any capacity on behalf of the TCEQ nor as a TCEQ-hired contractor, agent, employee or vendor of goods or services. Grantee agrees that the Contract Activities are furnished and performed at Grantee's sole risk as to the means, methods, design, processes, procedures and performance of the Contract Activities.
- 9.2 **Independent Contractor.** Nothing in this agreement shall create an employee-employer relationship between Grantee and TCEQ. The parties agree that the Grantee is an independent contractor.
- 9.3 **Grantee's Responsibility for Subcontractors.** All acts and omissions of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Contract Activities under a direct or indirect contract with Grantee shall be considered to be the acts and omissions of Grantee.
- 9.4 Nothing in this Contract shall create a contractual relationship between TCEQ and any of Grantee's subcontractors, suppliers or other persons or organizations with a contractual relationship with the Grantee.
- 9.5 Grantee and its employees and agents have no conflicts of interest relative to this Contract including without limitation: the source of grant funds, the selection of subgrantees to receive the grant funds and the purchases or leases made by the subgrantees.
- 9.6 **No Third-Party Beneficiary.** The TCEQ does not assume any duty to exercise any of its rights and powers under the Contract for the benefit of third parties.
- 9.7 Grantee agrees to fully utilize the resources provided by the TCEQ under this agreement to carry out and complete the tasks and activities in this agreement.

- 9.8 Grantee will make available for TCEQ's review, upon TCEQ's request, all documentation pertinent to this Agreement.
- 9.9 The TCEQ may, during the period of this agreement, issue policy guidelines and directives which serve to establish, interpret, or clarify performance requirements under this agreement. Such policy guidance or directives shall be promulgated by the TCEQ's contract representative and shall have the effect of qualifying the terms of this agreement and shall be binding upon the performance, as if written herein, provided however the said policy guidance or directives shall not alter the main scope of this agreement, nor the overall obligations of either the TCEQ or the Performing Party under the terms of this agreement.
- 9.10 Grantee is familiar with and understands all federal, state and local laws and regulations that may affect cost, progress, performance or completion of work. Grantee has examined and carefully studied the Agreement and other related data identified in the Agreement.
- 9.11 Prior to entering into any subgrantee contract with any appropriate entity including a metropolitan planning organization or a council of government, the Grantee shall provide a copy of the subcontract shell to the TCEQ for review and comment. Any substantive changes made to the subcontract shell at a later date are also subject to review and comment by the TCEQ.
- 9.12 If a subgrantee does not comply with the terms of its contract with the Grantee, the Grantee shall initiate such actions as it deems appropriate up to and including the recovery of all or a portion of the funds paid to the subgrantee. The TCEQ may require the Grantee to return all or a portion of the funds paid to the subgrantee.
- 9.13 As part of the payment process, the Grantee will require subgrantees to submit applicable supporting documentation for each activity and also retain such documents in the subgrantee's records.

10. GRANTEE PERFORMANCE EVALUATION.

Performance evaluations are a part of the TCEQ review Grantee, and may be a factor in the selection of future contracts. The TCEQ may provide this information to state agencies and upon request, to others. Grantee consents to the disclosure of any information or opinion in the evaluations.

11. CONFLICT OF INTEREST.

The Grantee shall notify the TCEQ in writing of any actual, apparent, or potential conflict of interest regarding the Grantee or any related entity or individual performing or having access to information regarding any portion of the Contract Activities. Any entity with an organizational conflict of interest and any individual with a personal conflict of interest shall not take part in any way in the performance of any portion of the Contract Activities that creates the conflict of interest or have access to information regarding any portion of the Contract Activities that creates the conflict of interest. Grantee agrees that TCEQ has sole discretion to determine whether a conflict exists and a conflict of interest is grounds for termination for cause.

12. INTELLECTUAL PROPERTY.

- 12.1 **Third Party Intellectual Property.** Unless specifically waived, Grantee must obtain all Intellectual Property licenses expressly required in the Scope of Work, or incident to the use or possession of the intellectual property. Grantee shall obtain and furnish to TCEQ: documentation on the use of such Intellectual Property, and a perpetual, irrevocable, enterprise-wide license to reproduce, publish, otherwise use, or modify such Intellectual Property and associated user documentation, and to authorize others to

reproduce, publish, otherwise use, or modify such Intellectual Property for TCEQ non-commercial purposes, and other purposes of the State of Texas.

- 12.2 **Grant of License.** Grantee grants to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, modify or otherwise use for any non-commercial TCEQ purpose any preexisting intellectual property belonging to the Grantee that is incorporated into the Contract Activities, intellectual property created under this Contract, and associated user documentation.

13. TIME DELAYS.

- 13.1 **Time is of the Essence.** Grantee's timely performance is a material term of this Contract.
- 13.2 **Delays.** Where Grantee's performance is delayed, except by *Force Majeure* or act of the TCEQ, TCEQ may withhold or suspend reimbursement, terminate the Contract, or enforce any of its other rights.

14. TERMINATION.

- 14.1 **Termination for Cause.** TCEQ may, upon ten (10) days written notice and the opportunity to cure, terminate this Contract for cause if Grantee materially fails to comply with the Contract Documents including any one or more of the following acts or omissions: nonconforming Contract Activities, existence of a conflict of interest, failure to provide evidence of required insurance coverage and failure to comply with HUB requirements in law or this Contract. Cancellation for cause does not prejudice TCEQ's other remedies authorized by this Contract or by law.
- 14.2 **Termination for Convenience.** TCEQ may, upon thirty (30) days written notice, terminate this Contract for convenience. Termination shall not prejudice any other right or remedy of TCEQ or the Grantee. Grantee may request reimbursement for: conforming Contract Activities and timely, reasonable costs directly attributable to termination. Grantee shall not be paid for: work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from the termination.

15. INSURANCE AND INDEMNIFICATION.

- 15.1 **Insurance.** Unless prohibited by law, the Grantee shall require its contractors and suppliers to obtain and maintain during the Contract Term adequate insurance coverage sufficient to protect the Grantee and the TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract, whether caused by the Grantee or by the contractor(s) or by anyone directly or indirectly employed by either. Unless specifically waived by the TCEQ, sufficient coverage shall include but is not limited to Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.
- 15.2 **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, THE GRANTEE SHALL REQUIRE ALL CONTRACTORS PERFORMING THE CONTRACT ACTIVITIES ON BEHALF OF GRANTEE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE TCEQ AND GRANTEE AND THEIR OFFICERS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF THE CONTRACT ACTIVITIES BY THE GRANTEE OR ITS CONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM A DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY

STANDARDS OR DIRECTIVES REGARDLESS OF WHETHER SUCH ACTS OR OMISSIONS ARE NEGLIGENCELY OR RECKLESSLY PERFORMED. THE DEFENSE OF THE TCEQ SHALL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT THE TCEQ. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

16. DISPUTES, CLAIMS, REMEDIES.

- 16.1 **Payment not a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release constitutes a release of Grantee from liability under this Contract.
- 16.2 **Schedule of Remedies available to the TCEQ.** In accordance with Chapter 2261, Texas Government Code, the following Schedule of Remedies applies to this contract. In the event of Grantee's nonconformance, TCEQ may:
- 16.2.1 Issue notice of nonconforming performance.
 - 16.2.2 Reject nonconforming performance and request corrections without charge to the TCEQ.
 - 16.2.3 Reject a reimbursement request and/or suspend further payments pending accepted revision of the nonconformity;
 - 16.2.4 Suspend all or part of the Contract Activities and/or payments pending accepted revision of the nonconformity.
 - 16.2.5 Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
 - 16.2.6 Terminate the contract without further obligation for pending or further payment by the TCEQ and receive restitution of previous payments.
- 16.3 Notwithstanding Section 16.2, no adverse action shall be taken against the Grantee, unless the non-conformity is material to the contract, the Grantee has been notified of the non-conformity, and the Grantee has been given a reasonable opportunity to correct the non-conformity.
- 16.4 **Cumulative Remedies.** TCEQ rights and remedies in this Contract, are in addition to, and are not in any way a limitation of any rights and remedies available under state and federal rules, regulations, and laws and at common law.

17. FINANCIAL RECORDS, ACCESS, AND AUDITS.

- 17.1 **Audit of Funds.** The Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, including TCEQ, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to fully cooperate with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.
- 17.2 **Financial Records.** Grantee will maintain financial records and make financial reports in accordance with the Uniform Grant Management Standards (UGMS), Part III State Uniform Requirements for Grants and Cooperative Agreements (based on OMB A-102, also referred to as the Common Rule), particularly Section _____.20, titled, Standards for Financial Management Systems which generally requires financial reports to contain accurate, current and complete disclosures and requires records to adequately identify the source and application of funds provided for the financially-assisted activities. Upon request Grantee will submit records in support of reimbursement requests. Grantee will allow access during business hours to its

financial records by TCEQ and other state agencies for the purpose of inspection and audit. Records must be maintained for a minimum of three (3) years beyond the expiration or earlier termination of this Contract, or during any period of litigation or claims process, including appeals.

18. INDIRECT COST RATE.

- 18.1 **Authority for Indirect Cost Rates.** The Grantee shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.
- 18.2 **Indirect Cost Rate of Contract Activities.** The costs to be reimbursed may include allowable direct costs of the Contract Activities plus a pro rata share of indirect costs, if authorized by the budget. A standard indirect cost allowable equal to ten percent (10%) of the direct costs for salaries, wages, and fringe benefits for personnel performing work related to the Contract Activities is authorized.

19. DOCUMENTS CREATED DURING THE CONTRACT

Contract Documents created during the term of the contract are automatically incorporated into it. Any Contract Document issued under the authority of this Contract is a part of this Contract. These documents include the Notice to Proceed, TCEQ approved Project Plans, TCEQ approved Quality Management Plan, TCEQ approved Quality Assurance Project Plan, and TCEQ approved Standard Operating Procedures.

20. MISCELLANEOUS.

- 20.1 **Assignment.** No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by Grantee will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge the Grantee from any duty or responsibility under the Contract.
- 20.2 **Sovereign Immunity.** The parties agree that this Contract does not waive sovereign immunity relating to suit, liability, and the payment of damages.
- 20.3 **Venue.** Grantee agrees that the Contract is being performed in Travis County, Texas, because this Contract has been performed or administered, or both, in Travis County, Texas. The Grantee agrees that any cause of action involving this contract arises solely in Travis County. This provision does not waive TCEQ's sovereign immunity.
- 20.4 **Publication.** Grantee agrees to notify TCEQ five (5) days prior to the publication or advertisement of information related to this Contract. Grantee agrees not to use the TCEQ logo or a TCEQ graphic as an advertisement or endorsement without an agreement signed by the appropriate TCEQ authority.
- 20.5 **Waiver.** With the exception of an express, written document signed with authority by TCEQ, no act or omission will constitute a waiver or release of Grantee's obligation to perform conforming Contract Activities. No waiver on one occasion, whether expressed or implied, shall be construed as a waiver on any other occasion. The making of a payment does not constitute acceptance of the invoiced Contract Activities nor does it constitute a waiver of the TCEQ's claims against the Grantee or its sureties.
- 20.6 TCEQ relies on Grantee to perform all Contract Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.

- 20.7 **Survival of Obligations.** All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive for two (2) years beyond the termination or completion of the Agreement.
- 20.8 **Release of Claims.** As a condition to final payment or settlement, or both, the Grantee shall execute and deliver to the TCEQ a release of all claims against the TCEQ for payment under this contract.
- 20.9 This Agreement shall immediately terminate at the end of any state fiscal year for which the Texas Legislature fails to appropriate or provide the funds necessary to perform pursuant to this Agreement.
- 20.10 Certain reporting requirements shall survive the termination of this contract. The Grantee agrees and obligates to performance in accordance with the Scope of Work beyond the termination of this Agreement.

PROJECT REPRESENTATIVES/ RECORDS LOCATIONAgreement No. 582-8-89950**ARTICLE 21.1 TCEQ PROJECT REPRESENTATIVE**

The individual named below is the TCEQ Project Representative, who is authorized to give and receive communications and directions on behalf of the TCEQ. All communications including all payment requests must be addressed to the TCEQ Project Representative or his or her designee.

Marivel Rodriguez
(Name)
Program Specialist 164
(Title) (Mail Code)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Telephone No.: (512) 239-2474Facsimile No.: (512) 239-1500**ARTICLE 21.2 GRANTEE PROJECT REPRESENTATIVE**

The individual named below is the GRANTEE Project Representative, who is authorized to give and receive communications and directions on behalf of the GRANTEE. All communications to the GRANTEE will be addressed to the GRANTEE Project Representative or his or her designee.

For Technical Matters:

Jeff B. Durham
(Name)
Parks and Projects Manager
(Title)
825 N. McDonald Street, Ste. 145
(Mailing Address)
McKinney, Texas 75069
(City) (State) (Zip Code)

Telephone No.: (972) 548-3726Facsimile No.: (972) 548-5555

For Contractual Matters:

Jeff B. Durham
(Name)
Parks and Projects Manager
(Title)
825 N. McDonald Street, Ste. 145
(Mailing Address)
McKinney, Texas 75069
(City) (State) (Zip Code)

Telephone No.: (972) 548-3726Facsimile No.: (972) 548-5555**ARTICLE 21.3 SUBMITTAL OF PAYMENT REQUESTS**

Payment requests must be submitted to (whichever is checked):

☐ the TCEQ Project Representative.☐ the TCEQ Disbursements Section.*(if neither box is checked, payment requests must be submitted to the TCEQ Project Representative).***ARTICLE 21.4 DESIGNATED LOCATION FOR RECORDS ACCESS AND REVIEW**

The GRANTEE designates the physical location indicated below for record access and review pursuant to any applicable provision of this contract:

Jeff B. Durham
(Name)
Parks and Projects Manager
(Title)
825 N. McDonald Street, Ste. 145
(Mailing Address)
McKinney, Texas 75069
(City) (State) (Zip Code)

Telephone No.: (972) 548-3726Facsimile No.: (972) 548-5555

CONTRACT BUDGET FOR ACTUAL COST REIMBURSEMENT

ARTICLE 22.1 BUDGET

1. Authorized budgeted expenditures for Work Performed are as follows:

Budget Item	Cost for Work to be Performed
Personnel/Salary	\$ 0
Fringe Benefits	\$ 0
Travel	\$ 0
Supplies	\$ 0
Equipment	\$ 0
Contractual	\$ 0
Construction	\$ 0
Other	\$ 0
Total Direct Costs	
Authorized Indirect Costs	
Total Costs	

ARTICLE 22.2 INDIRECT COSTS RATE

Indirect costs allowable under this Contract are limited to a maximum of 10 % of direct costs for salaries, wages and fringe benefits for personnel performing work related to the Grant Activities. This Indirect Cost Rate is agreed to by the parties. TCEQ is not liable for indirect costs in excess of those allowed in this paragraph. Grantee agrees that any excess indirect costs will be paid solely by Grantee with no reimbursement from the TCEQ funds under this Contract and will be considered as a matching contribution of the Grantee.

ARTICLE 22.3 BUDGET CONTROL AND TRANSFERS

Cumulative transfers amount the budgeted direct cost categories must not exceed ten percent (10%) of the current Total Budgeted amount without a written Amendment to the contract.

ARTICLE 22.4 SUBMITTAL OF PAYMENT REQUESTS

Payment requests must be submitted at monthly intervals, unless otherwise stipulated in the Contract.

Note: Invoices shall be submitted no later than 60 days following the expiration date of the contract, unless a later time is otherwise approved in writing by TCEQ.

ARTICLE 22.5 SUBMITTAL OF PAYMENT REQUESTS

Payment requests must be submitted at the interval specified below (whichever is checked; if none is checked, payment requests must be submitted monthly; if more than one is checked, invoices must be submitted when both requirements are met):

- | | |
|-------------------------------------|--|
| ☒ | Monthly |
| ☐ | Upon completion of milestones/deliverables |
| ☐ | Upon completion of all Contract Activities |
| ☐ | Other |

Attachment A**Guidance for Submitting Evidence for SIP Credit**

Submitted evidence must address the following four criteria for evaluating air emission control strategies that demonstrates and describes how the emission reductions to be achieved by the project are:

1. **Enforceable.** Emission reductions and other required actions are enforceable if:
 - A. They are independently verifiable.
 - B. Program violations are defined.
 - C. Those liable can be identified.
 - D. The enforcing entity and the U.S. Environmental Protection Agency (EPA) maintain the ability to apply penalties and secure appropriate corrective action where applicable.
 - E. Citizens have access to all emissions-related information obtained from the source.
 - F. Citizens can file suits against sources for violations.
 - G. They are practicably enforceable in accordance with other EPA guidance on practicable enforceability.
2. **Permanent.** Emission reductions are permanent if it can be ensured that no emission increases (compared to emissions in the absence of the project) occur over the time the emission reduction are relied upon in the SIP.
3. **Quantifiable.** Emission reductions attributed to a Local Initiative Project are quantifiable if they can be reliably measured or determined, and if these determinations can be independently verified and replicated.
4. **Surplus.** Emission reductions used to meet air quality attainment requirements are surplus as long as they are not otherwise relied on in air quality-related programs related to a SIP, SIP-related requirements, other State air quality programs adopted but not in a SIP, or federal rules that focus on reducing criteria pollutants or their precursors. In the event that Local Initiative Project emission reductions are relied on to meet air quality-related program requirements, they are no longer surplus.

These four criteria were developed by the EPA to guide state and local governments in developing control strategies for State Implementation Plans (SIP) to improve local air quality and comply with federal regulations. Satisfaction of these criteria is necessary to generate an emission reduction that is creditable in a SIP. More information on SIP credit criteria can be found in EPA guidance: <http://www.epa.gov/ttn/oarpg/t1/memoranda/eip9-2.pdf>

This agreement should not be construed as a guarantee that emission reduction credits claimed to be generated by approved Local Initiative Projects will be included in the State Implementation Plan. Approval of a Local Initiative Project by the commission does not ensure SIP creditability, *per se*.