

**AIRCHECKTEXAS DRIVE A CLEAN MACHINE PROGRAM  
ADMINISTRATIVE AGREEMENT**

**RECEIVED**

**APR 20 2012**

**Program Implementation and Administration**

**TRANSPORTATION**

**AGREEMENT COVER SHEET**

TYPE OF AGREEMENT: Administration of Grant Activities in **Collin** County

AGREEMENT PERIOD: Signature date through closure

AGREEMENT AMOUNT: Total state allocated revenue

This agreement is entered into by and between the following parties:

**North Central Texas Council of Governments**

616 Six Flags Drive, Centerpoint Two  
P. O. Box 5888  
Arlington, Texas 76011

**Contact Person:**  
**Shannon Stevenson**  
(817) 608-2304

**Collin County**

Collin County Commissioners Court  
210 S. McDonald, Suite 626  
McKinney, Texas 75069

**Contact Person:**  
**Jeff Durham**  
(972) 548-3723

The North Central Texas Council of Governments (NCTCOG) agrees to implement, operate, maintain, and administer the AirCheckTexas Drive a Clean Machine Program for **Collin** County, Texas. Responsibilities and activities include, but are not limited to, advertising and outreach, application processing, eligibility determination, assessment, financial management, and reporting. The North Central Texas Council of Governments shall administer this program regionally to facilitate the efficient and effective use of public funds to reduce ozone-forming pollutants from on-road motor vehicles.

The North Central Texas Council of Governments agrees to provide **Collin** County, Texas with programs and services during the term of this Agreement in accordance with:

Appendix A: Inter-County Cooperative Agreement between the Counties of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant; and

Appendix B: Grant Activities Plan

Copies of the above appendices are included and are incorporated herein for all purposes.

The North Central Texas Council of Governments and **Collin** County agree that should any term or condition contained in this Agreement be determined to be invalid or unenforceable such determination shall not affect any or all of the other terms and conditions in this Agreement which shall continue in full force and effect.

## **PART A: GENERAL**

### **SECTION 1 PARTIES TO THE AGREEMENT**

This Agreement is made and entered into by and between the **North Central Texas Council of Governments**, acting as the Regional Administrator, hereinafter referred to as the Administrator, and **Collin County**, hereinafter referred to as the County.

### **SECTION 2 TITLE CHANGES**

The AirCheckTexas Drive a Clean Machine Program has been previously referred to as the Low-Income Vehicle Repair, Retrofit, the Accelerated Vehicle Retirement Program, and/or AirCheck Texas Repair and Replacement Assistance Program. References to this program under any such similar name shall be sufficient for purposes of this Agreement.

### **SECTION 3 TERM OF AGREEMENT**

- 3.1 The term of this Agreement shall commence upon the execution of this Agreement by all parties hereto.
- 3.2 The term of this Agreement shall continue until cessation of the AirCheckTexas Drive a Clean Machine Program in **Collin** County, or by a termination event described in Part A, Section 17 of this Agreement.

**SECTION 4 STATEMENT OF PURPOSE**

The AirCheckTexas Drive a Clean Machine Program was enacted to reduce ozone-forming pollutants from on-road motor vehicles by providing low to middle income vehicle owners with financial assistance in complying with vehicle emissions standards.

**SECTION 5 LEGAL WARRANTIES, AUTHORITY**

- 5.1 The Administrator warrants that it possesses the ability, resources, and personnel to perform successfully pursuant to the terms and conditions of this Agreement.
- 5.2 The Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, provides authority for the Administrator and County to enter into this Agreement.

**SECTION 6 PERFORMANCE**

- 6.1 The Administrator shall comply with the TCEQ Intergovernmental Cooperative Reimbursement Contract, hereinafter referred to as TCEQ Contract, as required under General Terms and Conditions of the TCEQ Contract, and provide services in accordance with the program provisions set forth in the Grant Activities Plan.
- 6.2 The Administrator shall provide such services in compliance with all applicable federal and state laws, regulations, and rules.
- 6.3 The Administrator shall comply with all County rules and regulations pertaining to conciliation, good cause determinations, and hearings concerning recipients of services, and shall abide by the decisions rendered by the County in such action subject to any statutory right of appeal.

**SECTION 7 FISCAL ADMINISTRATION AND COST PRINCIPLES**

Notwithstanding other provisions of this Agreement, the County and Administrator agree that the County's payment obligations hereunder are contingent upon actual receipt of adequate funds from the State of Texas. The County shall notify the Administrator in writing if it has not received adequate funds from the State of Texas to make payments under this Agreement. Under these circumstances, the County shall not be liable to the Administrator or any other entities, including program participants, for failure to make payments under this Agreement.

- 7.1 All funding allocated to **Collin** County for operation and administration of the AirCheckTexas Drive a Clean Machine Program shall be transferred to the Administrator for program operation, implementation, and administration within thirty (30) business days of receipt from the State of Texas. As per TCEQ Contract, TCEQ may provide the funds in advance of incurring anticipated costs of program activities.

- 7.2 Per TCEQ Contract, TCEQ may provide the funds to participating counties in advance of incurring anticipated costs of program activities. If this occurs, **Collin** County shall transfer all funds allocated in order to ensure operation and administration of the program for the North Texas region.
- 7.3 All payments are contingent upon conditions outlined in the TCEQ Contract.
- 7.4 The Administrator acknowledges the limits of reimbursable expenses as required under the Uniform Grant and Contract Management Act, Section 783.001 et seq. Texas Government Code, and the Uniform Grant Management Standards for State Agencies, 1 Texas Administrative Code, Section 5.141 et seq., and shall comply with cost principles and administrative requirements within.
- 7.5 The Administrator shall maintain fiscal controls and fund accountability in accordance with the federal regulations, state rules, and the reporting and records requirements of the TCEQ as specified in the TCEQ Contract.
- 7.6 Pursuant to requirements under the TCEQ Contract, the Administrator may be eligible to receive reimbursement for planning, administration, and/or implementation activities performed prior to commencement of this Agreement for the AirCheckTexas Drive a Clean Machine Program.
- 7.7 Income generated through implementation, operation, or administration of the AirCheckTexas Drive a Clean Machine Program shall be used for continuing operations of the Program in accordance with the Grant Activity Plan, and the Uniform Grant Management Standards for State Agencies, 1 Texas Administrative Code, Section 5.141 et seq.
- 7.8 The Administrator is responsible for the accurate, current, separate, and complete disclosure of the status of the funds it has received or will receive under this Agreement pursuant to federal, state, and local regulations and policies of the County, as applicable.

## **SECTION 8 REPORTING REQUIREMENTS**

- 8.1 The Administrator shall submit to the County Project Representative all forms and reports required by the TCEQ Contract, and Title 30, Texas Administrative Code §114.70.
  - 8.1.1 Quarterly, the Administrator shall provide a Financial Status Report (FSR) in a format provided by the TCEQ with supporting documentation for costs incurred during the previous quarter.
  - 8.1.2 Quarterly, the Administrator shall provide a Quarterly Activity Report (QAR) of operations and participation in a format provided by TCEQ.

8.1.3 The Administrator shall submit all forms and reports to the County Project Representative in a timely manner as described by the County, in a completed, legible and accurate state, and otherwise in accordance with the instructions of the County.

8.2 The County shall provide copies of any written performance evaluation of the activities of this Agreement as received by the TCEQ to the Administrator.

**SECTION 9 ACCESSIBILITY AND MAINTENANCE OF RECORDS.**

9.1 The Administrator shall maintain a record keeping system for all of its activities, including program records and financial management records, which support and document all expenditures of funds made under this Agreement, in accordance with federal regulations, state rules, Inter-County Cooperative Agreement, and the TCEQ Contract. This section shall not be interpreted to require maintenance of multiple exact duplicate copies of any record or document.

9.2 The Administrator shall retain all fiscal records and supporting documents for a minimum of three years in accordance with Title 30, Texas Administrative Code §114.70(c). In the event that any litigation or claim is still pending before the expiration of the three-year period, these records shall be retained until resolution of the litigation or claim.

9.3 The County and other oversight entities shall have the right to timely and reasonable access to the Administrator, premises, personnel, monitoring, auditing, evaluation or interview and discussion, related to all records required to be retained under this section.

9.4 The Administrator shall maintain an information security system for all records and supporting documentation, with particular attention to the reasonable safeguard of confidential data.

9.5 In the event of termination of the relationship between the Administrator and the County, the County may take responsibility for maintenance and retention of the records in its sole discretion.

**SECTION 10 MODIFICATIONS**

10.1 Any modifications to this Agreement required by changes in federal or state laws or regulations are automatically incorporated into this Agreement without written amendment hereto and shall become effective on the date designated by such law or regulation.

10.2 Other modifications to this Agreement must be reviewed by all parties and agreed to in a signed writing.

- 10.3 The County or the Administrator may suggest changes to the Grant Activities Plan at any time within the requirements of the TCEQ Contract. Any proposed changes by the Administrator must be forwarded to the designated County Project Representative for approval and transmittal to the TCEQ. Any proposed changes by the County must be forwarded to the Administrator or designated project manager for approval prior to transmittal to the TCEQ. Changes regarding funding sources or terms of the TCEQ Contract may require alternate procedures as designated in the TCEQ Contract.

#### **SECTION 11 SUBCONTRACTING**

- 11.1 The Administrator may enter into one or more subcontracts with other agencies, private businesses, or other entities, to administer all or portions of the Administrator's contractual duties
- 11.2 The Administrator shall ensure that the services performed under all subcontracts comply with all terms and conditions of this Agreement and the TCEQ Contract as if such services were performed by the Administrator.

#### **SECTION 12 AUDITS OR EVALUATIONS**

- 12.1 The County may conduct or cause to be conducted an independent audit of all funds received under this Agreement which may be performed by a certified public accounting firm or by other auditors as designated by the County. Such audit will be conducted in accordance with applicable federal rules and regulations, contractual guidelines, and established professional standards and practices.
- 12.2 The County may perform such evaluation studies as the County determines necessary and will report preliminary results to the Administrator before the evaluation is concluded and findings are made a matter of record.

#### **SECTION 13 TECHNICAL ASSISTANCE AND MONITORING**

The County may conduct monitoring and evaluation of the performances of the Administrator or any subcontractor. The County shall notify the Administrator in writing of any deficiencies noted during such review, and allow the Administrator adequate time to correct the deficiencies. The County may conduct follow-up visits to review the previous deficiencies and to assess the efforts made to correct them.

#### **SECTION 14 PREVENTION OF FRAUD, ABUSE, AND CONFLICTING INTERESTS**

- 14.1 The Administrator promises that it will perform services in accordance with safeguards against fraud and abuse as set forth by the State of Texas.
- 14.2 The Administrator shall implement reasonable internal program management procedures sufficient to ensure that its employees,

participants, and subcontractors are aware of penalties imposed for fraudulent activities.

- 14.3 Except as provided by law or court order, the parties shall ensure the confidentiality of all reports of fraud, program abuse, possible illegal expenditures, unlawful activity, and violations of law or program rules, policies and procedures subject to the requirements of the Texas Public Information Act. The Administrator shall not retaliate against any person filing a report.
- 14.4 The Administrator shall take every reasonable course of action in order to maintain the integrity of the AirCheckTexas Drive a Clean Machine Program and to avoid favoritism and questionable or improper conduct. This Agreement shall be administered in an impartial manner, free from efforts to gain personal, financial or political gain. The Administrator, its executive staff, and employees shall avoid situations, which suggest that any decision was influenced by prejudice, bias, special interest or desire for personal gain.

**SECTION 15 OPEN MEETINGS AND PUBLIC INFORMATION**

The Administrator shall comply with the provisions of the Texas Open Meeting Act, Texas Government Code, Chapter 551, and the Texas Public Information Act, Texas Government Code, Chapter 552.

**SECTION 16 NONDISCRIMINATION AND EQUAL OPPORTUNITY**

- 16.1 The parties are responsible for implementing equal opportunity programs and services as required by federal law. The Administrator shall comply with all applicable equal opportunity laws, rules, regulations, and executive orders.
- 16.2 The Administrator shall take affirmative action to ensure that program participants, applicants for employment, and employees are treated in all terms and conditions of service and/or employment without regard to their race, religion, color, sex, national origin, sexual orientation, political beliefs or affiliations, age, or physical or mental disability. Such terms and conditions of service and/or employment shall include, but are not limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; assistance award; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Administrator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the requirements of these nondiscrimination provisions.

**SECTION 17 TERMINATION**

- 17.1 The parties agree that this Agreement may be terminated, in whole or in part, due to any of the following events:

17.1.1 By mutual written agreement, or by 90 day written notice from either party.

17.1.2 In the event the Administrator fails to provide services in accordance with this Agreement or the approved Grant Activity Plan, the County may issue written notice of default. The County may terminate this Agreement after giving Regional Administrator reasonable ability to cure the failures stated in the written notice.

17.1.3 In the event federal or state laws or regulations should be amended or judicially interpreted to render continued performance of this Agreement by either party substantially unreasonable or impossible, or if the parties are unable to agree on an amendment to enable the substantial continuation of services, then the parties shall be discharged from any further obligation under this Agreement, except for the equitable settlement of the respective accrued interests or obligations incurred up to the effective date of Agreement close-out.

17.2 Administrator shall cease to incur costs upon termination or receipt of written notice to terminate, whichever occurs first subject to a mutual determination of reasonable and necessary close-out costs.

17.3 This Agreement will automatically terminate if the County discontinues participation in the Inter-County Cooperative Agreement.

**SECTION 18 GENERAL PROVISIONS**

18.1 To the extent required by law, the Administrator shall comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401 et seq) and the Federal Water Pollution Control Act, as amended (233 U.S.C. 1251 et seq, Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, Environmental Protective Agency Regulations at 40 CFR Part 15, and "the Buy America Act, as amended".

18.2 No liability or loss or rights hereunder shall result to either party from delay or failure in performance (other than payment) caused by force majeure, that is, circumstances beyond the reasonable control of the party effected thereby, including, without limitation, acts of God, fire, flood, war, compliance with laws and regulations, strikes, lockouts or other serious labor disputes, or shortage of or inability to obtain material or equipment.

18.3 Health and safety standards established under state and federal law apply to working conditions of participants in programs under this Agreement. The Administrator shall comply with any regulation prescribed by the Department of Labor necessary to protect the health and safety of any such participant who is engaged in activities which are not covered by health and safety standards under the Occupational Safety and Health Act of 1970.

- 18.4 This Agreement shall be construed, interpreted and applied in accordance with the laws of Texas. Venue shall be in **Collin** County, Texas.
- 18.5 If any of the terms or conditions of this Agreement shall contravene or be invalid under the laws of the United States, such contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as if not containing such contravention or invalidity, and enforced accordingly; and the parties shall endeavor to agree on a mutually acceptable alternative provision.

#### **SECTION 19 POLITICAL ACTIVITY: LOBBYING**

No funds provided under this Agreement shall be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with State or local legislators. The Administrator will comply with the requirements of Restrictions on Lobbying: Certification and Disclosure Requirements imposed by 29 CFR 93.

#### **SECTION 20 DRUG FREE WORK PLACE**

The Administrator agrees to provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 (102 Stat. 4304, P.L. 100-690, Title V, Subtitle D).

### **PART B: ADMINISTRATOR ASSURANCES**

#### **SECTION 1 PROHIBITION AGAINST EXCEEDING TERMS OF AGREEMENT**

- 1.1 The Administrator shall not exceed the allocated amount of funds to be expended in this Agreement unless such expenses are covered by additional revenue.
- 1.2 If such over-expenditure occurs, the Administrator may utilize funds in accordance with the Inter-County Cooperative Agreement.

#### **SECTION 2 CONFIDENTIALITY OF RECORDS**

- 2.1 The Administrator agrees to maintain the confidentiality of any information, which identifies or may be used to identify any program applicant or participant, and/or the immediate family of any applicant or participant, except as required under Part A, Sections 8 and 9 of this Agreement, by terms outlined in the TCEQ Contract, or Title 30, Texas Administrative Code §114.70.
- 2.2 The Administrator shall not divulge any such information without the written permission of the applicant or participant, unless the information is necessary for purposes related to the performance or evaluation of this Agreement. In these cases, information may be divulged to parties having responsibilities under this Agreement for monitoring or evaluating

the services and performances under this Agreement, to parties described in Part A, Section 1, or to other governmental authorities to the extent necessary for the proper administration of the law.

No release of information or records shall be construed as a breach of this Agreement if properly released pursuant to the Texas Public Information Act.

## **PART C – FACILITIES AND INFORMATION SYSTEMS**

### **SECTION 1 FACILITIES – GENERAL PROVISIONS**

The Administrator shall provide or arrange for appropriate facilities to process applications, store records, disperse information, and if applicable, communicate with program applicants and/or participants.

### **SECTION 2 INFORMATION TECHNOLOGY RESOURCES**

The Administrator may use any information technology necessary for administration and operation of the AirCheckTexas Drive a Clean Machine Program. Such equipment is the responsibility of the Administrator.

This Agreement shall be effective when signed below by a duly authorized representative of each party.

Collin County

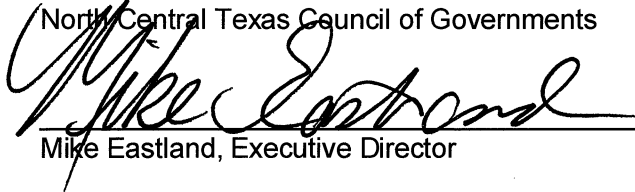


\_\_\_\_\_  
Keith Self, County Judge

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

4/2/12

North Central Texas Council of Governments



\_\_\_\_\_  
Mike Eastland, Executive Director

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

5/1/12

APPENDIX A

**INTER-COUNTY COOPERATIVE AGREEMENT**  
**Between**  
**COLLIN, DALLAS, DENTON, ELLIS, JOHNSON, KAUFMAN, PARKER, ROCKWALL,**  
**AND TARRANT COUNTIES**  
**for**  
**IMPLEMENTATION AND FUNDING**  
**of**  
**THE AIRCHECK TEXAS REPAIR AND REPLACEMENT ASSISTANCE PROGRAM**

WHEREAS, during the 77<sup>th</sup> Legislative Session of the State of Texas, House Bill 2134 was signed by the governor, improving the mandatory inspection and maintenance program, and introducing an optional Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Retirement Program (LIRAP), also named the AirCheck Texas Repair and Replacement Assistance Program; and,

WHEREAS, the counties of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant are affected counties implementing vehicle emissions Inspection and Maintenance testing programs approved by the Texas Commission on Environmental Quality (TCEQ); and,

WHEREAS, the counties of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant may request implementation of a vehicle assistance program through a grant agreement with the Executive Director of the TCEQ; and,

WHEREAS, the 2002-2003 Unified Planning Work Program for transportation specifies management and operations initiatives to compliment air quality planning, including a Regional High Emitting Vehicle Program, comprised of programs and projects addressing vehicle emissions, including the AirCheck Texas Repair and Replacement Assistance Program; and,

WHEREAS, implementation of the AirCheck Texas Repair and Replacement Assistance Program will be more effective and efficient when administered regionally, through county partnership; and,

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code provides authority for the Counties of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant to enter into this agreement; and,

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

**Article 1. DEFINITIONS:**

- 1.1 "Affected county" means any county within the North Central Texas Region operating an Inspection and Maintenance Testing Program in accordance with the Texas Transportation Code §548.301.

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- 1.2 "Participating county" means an affected county in which the commissioners court by resolution has chosen to implement a low-income vehicle repair, retrofit, and accelerated retirement program authorized by House Bill 2134 of the 77<sup>th</sup> Texas Legislature, and has entered into a grant agreement with the executive director of the Texas Commission on Environmental Quality.
- 1.3 "Best efforts" means one party's use of all reasonable exertions to fulfill the obligations of that party under this Agreement. It does not mean an obligation to attempt to fulfill the obligations of any other party.

### **Article 2. ORGANIZATIONAL RELATIONSHIPS:**

#### **2.1 Participating Counties:**

All participating counties are associated with other participating counties through the terms outlined in this inter-county cooperative agreement. It is understood and agreed that it will not be necessary for all of the Affected Counties to execute this Agreement and in the event one or more of the counties opt out of this regional initiative or withdraw from the partnership, it will not affect the validity of this agreement.

#### **2.2 Texas Commission on Environmental Quality:**

The Texas Commission on Environmental Quality (TCEQ) is responsible for distributing appropriate funds to participating counties, as defined in the Grant Agreement.

#### **2.3 Regional Administrator:**

The designated Regional Administrator shall implement the AirCheck Texas Repair and Replacement Assistance Program as instructed by participating counties within the limitations of House Bill 2134 of the 77<sup>th</sup> Texas Legislature, title 30 of the Texas Administrative Code §114, the Uniform Grant Management Standards, and the Administrative Contract.

#### **2.4 Local Advisory Panel:**

A local advisory panel may be formulated to advise participating counties on matters relating to the operation of the AirCheck Texas Repair and Replacement Assistance Program. Members of the local advisory panel shall include, but not be limited to, representatives from automobile dealerships, automotive repair facilities, safety and emissions inspection stations, antique and vintage car clubs, local nonprofit organizations, local governments, and the public. Representatives shall be appointed by the commissioners' court of participating counties. Participation in the local advisory panel shall be voluntary.

### **Article 3. GOVERNING DOCUMENTATION:**

#### **3.1 House Bill 2134/Texas Health and Safety Code, §382.209:**

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This Agreement is consistent with Program specifics designated by the 77<sup>th</sup> Texas Legislature, and cannot overrule requirements or intentions of House Bill 2134, or Texas Health and Safety Code §382.209.

### 3.2 Title 30 Texas Administrative Code:

Rules established by the Texas Commission on Environmental Quality cannot be overruled by this Agreement.

### 3.3 County Grant Agreement:

This Agreement does not relinquish a participating county from responsibilities authorized in the County Grant Agreement with the Texas Commission on Environmental Quality.

## **Article 4. IMPLEMENTATION:**

### 4.1 Third Party Administrator:

Administration of the AirCheck Texas Repair and Replacement Assistance Program will commence through one Regional Administrator.

### 4.2 County Review

Participating counties have the right and responsibility to evaluate the Regional Administrator and through mutual concurrence alter the administrative agreement.

## **Article 5. OPERATIONS AND MAINTENANCE:**

### 5.1 Continuance:

The Regional Administrator will ensure continuance of the AirCheck Texas Repair and Replacement Assistance Program and shall seek assistance from participating counties as needed to maintain the program and services provided.

### 5.2 Service Quality:

The Regional Administrator shall develop and establish the procedures to implement and ensure that the highest possible quality of service, consistent with the budget, is provided.

### 5.3 County Feedback:

Participating counties may suggest or request changes or additions to the service or implementation of services at any time during the term of this Agreement.

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### **Article 6. FUNDING:**

- 6.1 Participating counties recognize that administration of the AirCheck Texas Repair and Replacement Assistance Program may require additional funding outside the percentage determined by the Texas Legislature if the program is administered separately for each county. This Agreement will enable the allocated administrative funds to be combined and used efficiently by the Regional Administrator. Additionally, participating counties recognize that all unused money must be returned to the state general fund Comptroller Administration Rules §5.56. This agreement will enable participating counties to share their allocated funds with other regionally participating counties for increased program effectiveness.
- 6.2 All monies allocated to a participating county will be used first for assistance to residents of the participating county.
- 6.3 In the event that levels of program participation prevent use of money in one participating county, the extra available funds may be used for assistance to residents in another participating county.
- 6.4 Although county residents may seek assistance at a service location in another county, the money used to assist that resident will be subtracted from the money allocated to the county their vehicle is inspected in.
- 6.5 Participating counties are not required to financially supplement the program if allocated funds are expended prior to receipt of additional funds, nor is any county responsible for financial actions or accounts of another participating county.
- 6.6 The Regional Administrator is responsible for managing financial transactions and preparing reports for participating counties as requested.
- 6.7 Program funding will be maintained and distributed from one account managed by the Regional Administrator.
- 6.8 Allocated monies for each participating county will be recorded and distributed accordingly by the Regional Administrator.
- 6.9 Additional funding secured for expansion or administration of the Program may only be utilized by the parties of this Agreement.

### **Article 7. PROGRAM EVALUATION:**

- 7.1 Evaluation of Agreement necessity and effectiveness is the responsibility of each county. Recommendations for Agreement alterations may be made at any time during the term of this Agreement.
- 7.2 An optional Local Advisory Panel may be appointed to monitor the AirCheck Texas Repair and Replacement Assistance Program and the effectiveness of this Agreement as it relates to program operations.

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### **Article 8. TERM AND TERMINATION:**

#### **8.1 Effective Date:**

The effective date of this Agreement shall be the date on which it is executed by the participating counties.

#### **8.2 Term:**

This agreement shall be in effect until termination or alteration of the Low-Income Vehicle Repair, Retrofit, and Accelerated Retirement Program as decided by the Texas State Legislation.

#### **8.3 Renewal:**

Participating counties will have an opportunity to review and renew this agreement upon alteration of the Program or in conjunction with the addition of any new affected county.

#### **8.4 Mutual Termination:**

The parties may terminate this Agreement by mutual concurrence at any time. Any county may terminate this agreement on thirty (30) days written notice to the other counties and the Regional Administrator.

#### **8.5 New Affected County:**

In the event any county within the North Central Texas Region is identified as an affected county due to implementation of an Inspection and Maintenance Testing Program, the opportunities and obligations under this Agreement shall be extended to that county for consideration.

#### **8.6 County Redesignation:**

In the event any county within the North Central Texas Region discontinues implementation of the Inspection and Maintenance Testing Program, their participation in this Agreement will be terminated.

### **Article 9. MISCELLANEOUS PROVISIONS:**

#### **9.1 Force Majeure:**

It is expressly understood and agreed by the parties to this Agreement that, if the performance of any provision of this Agreement is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations or interferences, fire or other casualty, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such

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circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed.

### 9.2 Contractual Relationship:

It is specifically understood and agreed that the relationship described in this Agreement between the parties is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship between the parties. Nor shall any party be liable for any debts incurred by the other party in the conduct of such other party's business or functions.

### 9.3 Counterparts:

This Agreement may be executed in multiple counterparts. Each such counterpart shall be deemed an original of this Agreement, so that in making proof of this Agreement, it shall only be necessary to produce or account for one such counterpart.

### 9.4 Complete Agreement:

This Agreement embodies all of the agreements of the parties relating to its subject matter, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by all of the parties.

### 9.5 Captions:

The captions, headings, and arrangements used in this Agreement are for convenience only and shall not in any way affect, limit, amplify, or modify its terms and provisions.

### 9.6 Governing Law and Venue:

This Agreement and all agreements entered into in connection with the transactions contemplated by this Agreement are, and will be, executed and delivered, and are intended to be performed in the Counties of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant, State of Texas, and the laws of Texas shall govern the validity, construction, enforcement, and interpretation of this Agreement. In the event of litigation between the parties hereto, their successors or assigns, with regard to this Agreement and any subsequent supplementary agreements or amendments, venue shall lie exclusively in the county seat of the court sued as the defendant.

### 9.7 Severability:

In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or

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unenforceable provision(s) to carry out as near as possible the original intent of the parties.

### 9.8 Changed Circumstances:

If future federal, state, or local statute, ordinance, regulation, rule, or action render this Agreement, in whole or in part, illegal, invalid, unenforceable, or impractical, the parties agree to delete and/or to modify such portions of the Agreement as are necessary to render it valid, enforceable, and/or practical.

Each section, paragraph, or provision of this Agreement shall be considered severable, and if, for any reason, any section, paragraph, or provision herein is determined to be invalid under current or future law, regulation, or rule, such invalidity shall not impair the operation of or otherwise affect the valid portions of this instrument.

### 9.9 Enforcement:

If any party initiates an action to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provision hereof, the prevailing party shall be entitled to receive from the other parties all reasonable and necessary costs and expenses, including reasonable attorneys' fees and costs incurred in connection with such action.

### 9.10 Survival:

All of the terms, conditions, warranties, and representations contained in this Agreement shall survive, in accordance with their terms, and shall survive the execution hereof.

### 9.11 Incorporation of Exhibits and Schedules:

All Exhibits and Schedules attached hereto are by this reference incorporated herein and made a part hereof for all purposes as if fully set forth herein.

### 9.12 Reference:

The use of the words "hereof," "herein," "hereunder," and words similar import shall refer to this entire Agreement, and not to any particular section, subsection, clause, or paragraph of this Agreement, unless the context clearly indicates otherwise.

### 9.13 Further Assurances:

Each party agrees to perform any further acts and to sign and deliver any further documents, which may be reasonably necessary to carry out the provision of this Agreement.

### 9.14 Notice:

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Whenever this Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the consent, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to the party intended to receive it at the address(es) shown below:

If to Collin County:	Collin County Commissioners Court 210 S. McDonald, Suite 626 McKinney, Texas 75069 Attn: Court Administrator
If to Dallas County:	Dallas County Commissioners Court Administration Building 411 Elm Street, 2 <sup>nd</sup> Floor Dallas, Texas 75202 Attn: Court Administrator
If to Denton County:	Denton County Commissioners Court 110 W. Hickory Street Denton, Texas 76201 Attn: Court Administrator
If to Ellis County:	Ellis County Commissioners Court 1201 N. Hwy 77, Suite B Waxahachie, Texas 75165 Attn: Court Administrator
If to Johnson County:	Johnson County Commissioners Court #2 N. Main Street Cleburne, Texas 76033 Attn: Court Administrator
If to Kaufman County:	Kaufman County Commissioners Court 100 W. Mulberry Kaufman, Texas 75142 Attn: Court Administrator
If to Parker County:	Parker County Commissioners Court 123 North Main Street Weatherford, Texas 76086 Attn: Court Administrator
If to Rockwall County:	Rockwall County Commissioners Court 1101 Ridge Road, Suite 206 Rockwall, Texas 75087 Attn: Court Administrator
If to Tarrant County:	Tarrant County Commissioners Court 100 East Weatherford Street Fort Worth, Texas 76196 Attn: Court Administrator

APPENDIX A

IN WITNESS HEREOF, the parties hereto have executed this Agreement in duplicate original at Arlington, Tarrant County, Texas, the 14 day of April, 2003.

**COLLIN COUNTY**

  
\_\_\_\_\_  
County Judge

**DALLAS COUNTY**

\_\_\_\_\_  
County Judge

**DENTON COUNTY**

\_\_\_\_\_  
County Judge

**ELLIS COUNTY**

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County Judge

**JOHNSON COUNTY**

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County Judge

**KAUFMAN COUNTY**

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County Judge

**PARKER COUNTY**

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County Judge

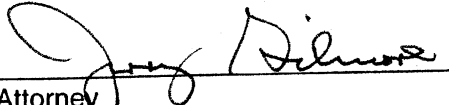
**ROCKWALL COUNTY**

\_\_\_\_\_  
County Judge

**TARRANT COUNTY**

\_\_\_\_\_  
County Judge

**REGIONAL ADMINISTRATOR  
APPROVED AS TO FORM AND LEGALITY:**

  
\_\_\_\_\_  
Attorney

  
\_\_\_\_\_  
Executive Director

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**COLLIN COUNTY**

\_\_\_\_\_  
County Judge

**DALLAS COUNTY**

*Margaret Helton*  
\_\_\_\_\_  
County Judge

**DENTON COUNTY**

\_\_\_\_\_  
County Judge

**ELLIS COUNTY**

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County Judge

**JOHNSON COUNTY**

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County Judge

**KAUFMAN COUNTY**

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County Judge

**PARKER COUNTY**

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County Judge

**ROCKWALL COUNTY**

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County Judge

**TARRANT COUNTY**

\_\_\_\_\_  
County Judge

**REGIONAL ADMINISTRATOR  
APPROVED AS TO FORM AND LEGALITY:**

*Jerry DeMore*  
\_\_\_\_\_  
Attorney

*Mike Eastland*  
\_\_\_\_\_  
Executive Director

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County Judge

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County Judge

**DENTON COUNTY**

*Mary Horn*  
\_\_\_\_\_  
County Judge

**ELLIS COUNTY**

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County Judge

**JOHNSON COUNTY**

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County Judge

**KAUFMAN COUNTY**

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County Judge

**PARKER COUNTY**

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County Judge

**ROCKWALL COUNTY**

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County Judge

**TARRANT COUNTY**

\_\_\_\_\_  
County Judge

**REGIONAL ADMINISTRATOR  
APPROVED AS TO FORM AND LEGALITY:**

*Greg Gilmore*  
\_\_\_\_\_  
Attorney

*Mike Eastmond*  
\_\_\_\_\_  
Executive Director

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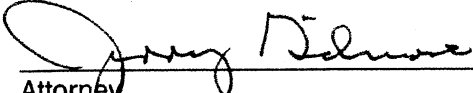
**ROCKWALL COUNTY**

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**TARRANT COUNTY**

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County Judge

**REGIONAL ADMINISTRATOR  
APPROVED AS TO FORM AND LEGALITY:**

  
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**ELLIS COUNTY**

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County Judge

**JOHNSON COUNTY**

  
County Judge

**4-14-03**

**KAUFMAN COUNTY**

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County Judge

**PARKER COUNTY**

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County Judge

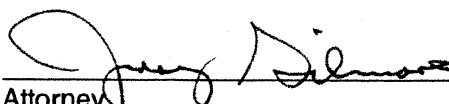
**ROCKWALL COUNTY**

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**TARRANT COUNTY**

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**REGIONAL ADMINISTRATOR  
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Attorney

  
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**KAUFMAN COUNTY**

Wayne Lerk  
County Judge

**PARKER COUNTY**

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County Judge

**ROCKWALL COUNTY**

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County Judge

**TARRANT COUNTY**

\_\_\_\_\_  
County Judge

**REGIONAL ADMINISTRATOR  
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James DeMare  
Attorney

Mike Anderson  
Executive Director

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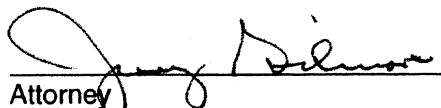
**ROCKWALL COUNTY**

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County Judge

**TARRANT COUNTY**

\_\_\_\_\_  
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**REGIONAL ADMINISTRATOR  
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Attorney

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County Judge

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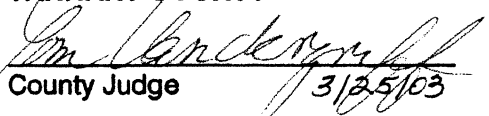
**PARKER COUNTY**

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County Judge

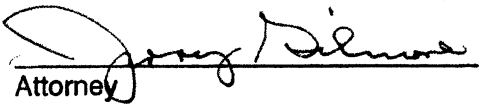
**ROCKWALL COUNTY**

\_\_\_\_\_  
County Judge

**TARRANT COUNTY**

  
County Judge 3/25/03

**REGIONAL ADMINISTRATOR  
APPROVED AS TO FORM AND LEGALITY:**

  
Attorney

  
Executive Director

## APPENDIX B

### AIRCHECKTEXAS DRIVE A CLEAN MACHINE PROGRAM (LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM)

#### GRANT ACTIVITIES PLAN

#### NORTH CENTRAL TEXAS REGION BY THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

### SECTION 1: GENERAL

#### 1.1 Statement of Purpose

The AirCheckTexas Drive a Clean Machine Program, also known as the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and formerly known as the Repair and Replacement Assistance Program, is designed in conjunction with AirCheckTexas, the enhanced vehicle emissions testing program administered by the State, to help vehicle owners comply with vehicle emissions standards as required by the Texas Administrative Code §114.50, §114.51 and §114.53. The immediate priority is to reduce ozone-forming pollutants created by on-road motor vehicles. This program addresses the highest polluting vehicles and provides an incentive for vehicle owners to contribute to the regional air quality solution.

#### 1.2 Amending the Grant Activities Plan

Changes or adjustments to the Grant Activities Plan are submitted in written form from the county to the Texas Commission on Environmental Quality (TCEQ) for approval. Suggested amendments from the Regional Administrator are approved by the County Project Representative prior to transmittal to TCEQ. Significant changes to scope of work or revenue must follow procedure as outlined in the Intergovernmental Cooperative Reimbursement Contract.

#### 1.3 Description of Entities

- 1.3.1 TCEQ is responsible for providing funding and determining program guidelines as specified by Title 5 Texas Health and Safety Code §382.209 and §382.210. TCEQ shall monitor implementation of the program. TCEQ has the ultimate approval of this Grant Activities Plan.
- 1.3.2 The Texas Department of Public Safety (DPS) has authority over all state inspection stations and Recognized Emissions Repair Facilities (RERF). DPS is responsible for recruiting, recognizing and maintaining data about these facilities.
- 1.3.3 The Texas Department of Motor Vehicles (TxDMV) has authority over all Licensed Motor Vehicle Dealers (new and used car dealers) and Licensed Salvage Vehicle Dealers (automotive dismantlers). TxDMV shall enforce the provisions of the 78<sup>th</sup> Texas Legislature's House Bill 3588, Article 17.
- 1.3.4 Participating counties have requested implementation of the AirCheckTexas Drive a Clean Machine Program. North Texas Counties include Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant, and apply to counties that implement a vehicle emissions inspection program and have elected to implement LIRAP provisions. Each participating county must appoint a County Project Representative who shall have authority to approve changes to this Grant Activities Plan. The County Project Representative is also responsible

## **APPENDIX B**

for approving and submitting signed financial status reports and funding request memos to TCEQ.

- 1.3.5 North Central Texas Council of Governments (NCTCOG), as the Regional Administrator on the behalf of the participating counties, is responsible for administration and implementation of the AirCheckTexas Drive a Clean Machine Program, including accounting, reports, and customer service.

### **1.4 Past Legislative Action**

- 77<sup>th</sup> Texas Legislative Session passed and the governor signed House Bill 2134. This established the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP); also known as AirCheckTexas Repair and Replacement Assistance Program.
- 79<sup>th</sup> Texas Legislative Session passed and the governor signed House Bill 1611. This provided amendments to the AirCheckTexas Program.
- 80<sup>th</sup> Texas Legislative Session passed and the governor signed Senate Bill 12. This provided amendments to the AirCheckTexas Program. Became known as AirCheckTexas Drive a Clean Machine Program
- 81<sup>st</sup> Texas Legislative Session passed and the governor signed House Bill 1796. This provided amendments to the AirCheckTexas Program.
- 82<sup>nd</sup> Texas Legislative Session passed and the governor signed House Bill 3272. This provided amendments to the AirCheckTexas Program.

### **1.5 Statutes and Rules**

- 1.5.1 Program statutes are contained in the Texas Health and Safety Code, Title 5, Subchapter G, §382.209 through §382.219.
- 1.5.2 Program rules are contained in the Texas Administrative Code, Title 30, Part 1, Chapter 114, Subchapter C, Division 2, §114.60, §114.62, §114.64, §114.66, §114.68, §114.70 and §114.72.

## **SECTION 2: REGIONAL ADMINISTRATOR OPERATIONS**

### **2.1 Personnel**

- 2.1.1 Program demand determines the number of people required to perform all duties and tasks assigned to the Regional Administrator. This may fluctuate throughout the course of the program. The Regional Administrator may contract or enter into an agreement for performance of all or some of the responsibilities listed in the Grant Activities Plan.
- 2.1.2 The Regional Administrator operates a telephone-based information center for applicants, participants, partners, or vendors to receive information about the AirCheckTexas Drive a Clean Machine Program. One or more people will staff this center during operating hours, or arrange for a recorded message to be played.
- 2.1.3 The Regional Administrator staff does not have the resources to assist applicants or participants in person.

### **2.2 Training and Certification**

Specific certification requirements have not been identified for the Regional Administrator or employed staff. Training is conducted as needed to correctly perform required tasks.

## **APPENDIX B**

### **2.3 Operating Hours**

Regular operating hours are Monday through Friday, 8:00 AM to 5:00 PM but may fluctuate with the dynamic needs of the program. The Regional Administrator may suspend operations for holidays, maintenance, administrative duties, or other reasonable needs.

### **2.4 Call Center**

Program participants, partners, and/or vendors can contact the Call Center by calling 1-800-898-9103 or 817-608-2348 during operating hours. Call Center staff will interact with participants, vendors, and other program partners through telephone, electronic mail, and/or facsimile transmittal. The Call Center does not have the ability to assist participants or partners in person.

### **2.5 Authorizing Assistance**

The Regional Administrator has authority to approve or deny applications within limits of the eligibility requirements. Individuals must complete an application form including their personal contact information, vehicle information and household size and income. All applicants will receive correspondence informing them of their application status or eligibility. Eligible applicants may be approved for diagnostics, repairs and/or retirement assistance in the form of a voucher. Applicants determined ineligible will receive information regarding the reasons for the determination and a timeframe in which to respond with additional information. There may be cases where the applicant(s) may submit additional information to support or overturn their eligibility status.

### **2.6 Vehicle Eligibility**

2.6.1 The program utilizes minimum eligibility requirements outlined by Title 30 of the Texas Administrative Code, §114.64(b) and §114.64(c). Additional requirements may be added as needed. Vehicle registration requirements are verified primarily through the TxDMV Vehicle Titles and Registration Motor Vehicle Inquiry database, information obtained from TxDMV representatives, or by contacting TCEQ. Vehicle inspection requirements are verified primarily through the NCTCOG Emissions Database. An aborted emissions test is not a complete test and cannot be used. The vehicle inspection date must be within 30 days of the initial received program application.

2.6.2 Applicants may submit proof of vehicle eligibility by presenting documentation of vehicle registration, vehicle inspection, or any other document approved by TCEQ to the Regional Administrator. In circumstances where further verification is required, TCEQ may be contacted for vehicle eligibility verification by phone or electronic mail.

### **2.7 Income Eligibility**

2.7.1 The program utilizes minimum eligibility requirements outlined by Title 30 of the Texas Administrative Code, §114.64(b) and §114.64(c). Additional requirements may be added as needed. The Regional Administrator may calculate yearly income based on a monthly average or by extrapolating weekly or monthly income documentation into one year.

2.7.2 Additional eligibility procedures may be added as the program progresses and/or as new resources become available. Applicants may be required to provide proof of their current residence to the Regional Administrator.

2.7.3 Household Size Verification

## APPENDIX B

Household family size may be verified by assuring the vehicle owner has completed and signed the program application, indicating the data supplied is truthful and accurate. This self-certification of household family size along with appropriate documentation as listed below shall fulfill the eligibility verification requirements for this program. Additional documentation of family household size is welcome, and may be used as additional support of eligibility, but is not required.

### 2.7.4 Income Verification:

Applicants may prove eligibility by submitting one or more of the following (original or copy) for each adult in the household or equivalent information to the Regional Administrator:

- Paycheck stubs from (each job held in) at least the previous three months or equivalent income information (W2) supplied by employer(s).
- Annuity and/or retirement income documentation.
- Unemployment compensation, Veterans, or Disability check stub issued within the last two weeks, or documentation of annual award received.
- The most recent Federal tax data available, representing the current or previous year.
- Written statement from individual(s) documenting income status for unemployed adult(s).

If an applicant has already been approved for and is receiving assistance under any of the following programs, their income eligibility is automatically approved if an original or copy of at least one of these identified document(s), or equivalent information to the Regional Administrator:

- Medicaid card issued within a month of application or letter from Department of Human Services (DHS) indicating approval for Medicaid
- Lone Star card or letter from DHS indicating approval for the Food Stamp Program
- Lone Star card or letter from DHS indicating approval for Temporary Assistance for Needy Families (TANF)
- Children's Health Insurance Program (CHIP) card or letter from DHS or TexCare indicating approval for CHIP
- Women, Infants, and Children (WIC) card or letter from DHS indicating approval for WIC
- Letter from the Social Security Administration identifying approval for Supplemental Security Income (SSI) or SSI check issued within a month of application
- Most recent utility bill indicating participation in LITE-UP Texas
- Other Federal or State programs with eligibility requirements within those outlined by Title 30 of the Texas Administrative Code, §114.64(b) 5, and for which participation can be proven and/or verified.

## 2.8 Processing Applications

2.8.1 Regional Administrator receives the application, income documentation, and/or other appropriate documentation from the vehicle owner(s). The received date shall be considered the application submittal date.

2.8.2 Data about the vehicle owner(s) is entered into the AirCheckTexas Program Database (Database), including but not limited to:

- First and last name
- Contact phone number

## APPENDIX B

- Mailing address
- Type of assistance requested
- Vehicle Identification Number (VIN)
- License plate number
- County of vehicle registration
- Vehicle make
- Vehicle model
- Vehicle year
- Household size
- Household income

2.8.3 The Regional Administrator verifies the application with affidavit is appropriately signed, certifying complete, true and correct information is provided.

### 2.9 Issuing Vouchers

2.9.1 Following application approval, the Regional Administrator issues a voucher to the participant(s). There are four types of vouchers, which authorize reimbursement amounts defined by Title 30 of the Texas Administrative Code, §114.64(d) (1). Vouchers expire 30 days after date issued. The Regional Administrator has authority to extend voucher expiration dates on a case by case basis due to extenuating circumstances.

- Diagnostic and Repair Voucher offers reimbursement for diagnostic and/or repair services.
- Repair Only Voucher limits reimbursement to parts, labor, and retesting for repair services only. Diagnostic fees are not reimbursable for vehicles accompanied by this type of voucher. The Repair Only Voucher is provided to participants who initially chose not to have repairs performed at the same time or by the original RERF that performed the diagnostics. In most cases, the Regional Administrator will submit directly to the chosen repair facility.
- Diagnostic Only Voucher limits reimbursements to diagnostics only. Repair services are not eligible for reimbursement with this voucher. This voucher type may be converted upon verification from RERF that safety items pass or make assurance that safety items will pass final vehicle inspection.
- Replacement Voucher offers reimbursement toward qualifying vehicle replacement purchase.

2.9.2 Regional Administrator may work with a participant to issue a new voucher as extenuating circumstances arise. There may be cases where participant chooses to not replace a vehicle and wants to repair the vehicle or the participant chooses not to repair the vehicle and wants to replace it (if funds are available) and has the option to change voucher types as long as necessary requirements are met for assistance. Applicants wishing to continue with the program after 30 days may be required to begin the process again with a new failed vehicle emissions test.

2.9.3 The Regional Administrator mails the participant:

- For repair assistance - a voucher, a list of participating RERFs and an approval letter.
- For replacement assistance – an approval letter/voucher, a list of participating dealerships, and Retired Vehicle Transfer Manifest form.

## **APPENDIX B**

### **2.10 Redeeming Vouchers from RERFs**

- 2.10.1 After receiving call from participating RERF, staff asks preliminary questions to ensure vehicle presented at facility is qualifying vehicle for assistance and acknowledging the voucher type issued for services. The Regional Administrator shall provide the RERF with an authorization code to charge eligible expenses for service to the vehicle.
- 2.10.2 The Regional Administrator has authority to approve or deny voucher reimbursement within limits of the eligibility requirements and the terms of the RERF participation agreement. Facilities will receive information regarding the reason(s) a voucher may be denied for reimbursement.
- 2.10.3 Participating RERFs will be issued a credit card (or single use credit card number as available) to charge eligible and authorized AirCheckTexas expenses. This credit account will be paid by the Regional Administrator.
- 2.10.4 In the event that the Regional Administrator does not receive the required documentation within five (5) business days from the date the charge is posted to the credit card account, the Regional Administrator will contact the RERF and request the documentation.
- 2.10.5 The Regional Administrator may contact the RERF for reconciliation of ineligible expenses, billing errors, or other unauthorized charges, and request the RERF to submit appropriate documentation or apply an adjusting credit transaction. Any charges not accompanied by an authorization code may be considered ineligible expenses.

### **2.11 Second Opinions**

- 2.11.1 Program participants wishing to receive a second opinion on the recommended repairs for their vehicle after receiving an initial diagnostic test and repair estimate may do so. However, additional diagnostics performed by another repair facility will not be reimbursed by the Regional Administrator and is the responsibility of the participant.
- 2.11.2 If the participant chooses to conduct business with the new facility, they must verify the facility is a participating Recognized Emissions Repair Facility, and contact the Regional Administrator or Program Advisor for a Repair Only Voucher. Regional Administrator will work directly with RERF to provide valid Repair Only Voucher for emissions repairs after the diagnostic test was performed and costs covered by the participant.

### **2.12 Redeeming Vouchers from Dealers**

- 2.12.1 Regional Administrator will receive and process required documentation from participating dealerships and ensure the replacement vehicle transaction meets all program statutes, rules and requirements. The Regional Administrator has authority to approve or deny voucher reimbursement within limits of the eligibility requirements and the terms of the dealer participation agreement. Facilities will receive information regarding the reason(s) a voucher may be denied for reimbursement.
- 2.12.2 Regional Administrator will release a single use credit card number, expiration date, and customer validation number to the dealership within 10 business days once the Regional Administrator receives complete and correct documentation of an auto transaction that meets all program statutes, rules and requirements.

## **APPENDIX B**

### **SECTION 3: REGIONAL ADMINISTRATOR ACTIVITIES AND RESPONSIBILITIES**

#### **3.1 Affidavits**

Program participation by applicants and involved parties must sign an affidavit ensuring complete, true and correct information, documentation and transactions. Affidavits are required for relieving the Regional Administrator and county of liability to dishonest actions, for damages and/or injury.

#### **3.2 Quality Assurance**

The Regional Administrator performs limited quality assurance checks on the collection of data, verification of income and vehicle eligibility, and payment procedures, consistent with available administrative funding.

#### **3.3 Appeals and Complaints**

Appeals and complaints regarding participating vendors or decisions rendered on vehicle or participant eligibility by the Regional Administrator are directed to the Regional Administrator for appropriate action as outlined:

1. The participant requests an appeals/complaint form from the Regional Administrator.
2. The Regional Administrator sends the form to the participant with instructions.
3. The Regional Administrator receives the appeals/complaint form and any other documentation provided by the participant and investigates the problem.
4. Participating service providers and/or other program partners may be contacted regarding complaints and appeals as necessary.
5. The Regional Administrator responds to the participant in writing and copies the appropriate State agencies.

#### **3.4 Confidentiality**

3.4.1 As Regional Administrator for the AirCheckTexas Program, the NCTCOG is subject to the Texas Public Information Act/Open Records Act. Therefore, some participant and vendor information is considered public information and may be disclosed in response to Public Information Act request. No release of information or records shall be construed as a breach of this Grant Activities Plan if properly released pursuant to the Texas Open Records Act.

3.4.2 As allowable by law, program information in various forms, including, but not limited to, paper record, oral communication, and electronic display, from applicants, voucher recipients, dealerships or recognized repair facilities is considered confidential. Access to confidential information is permitted only on a need-to-know basis and limited to the minimum amount of confidential information necessary to accomplish the intended purpose of the use, disclosure or request. Staff may not use this information in any way other than to determine eligibility for program benefits. This applies to any temporary employees hired by the Regional Administrator to assist the program team.

#### **3.5 Code of Conduct**

Regional Administrator staff is responsible for upholding the highest standards of ethical conduct in accordance with existing policies. Staff will ensure that they do not engage in conflicts of interest as defined in Regional Administrator's policies and avoid all appearance of conflict of interest.

- Staff is prohibited from outside employment or business dealings resulting in monetary gain or preferential treatment with any dealerships, emissions testing facilities, repair facilities, or related businesses.

## APPENDIX B

- Vehicle owners who are Regional Administrator staff or the relatives of staff may apply for program assistance. In order to maintain the highest standards of ethical conduct, Regional Administrator's program staff will observe the following policy when determining eligibility or paying vouchers for staff members and their relatives.
  - All program staff is responsible for notifying a supervisor and/or manager of each application received from a Regional Administrator staff member or staff member's relative.
  - The supervisor and/or manager may require an additional review of any of these applications before the team issues a voucher or denial letter.
  - No program staff member will process their own application or relative's application; or process their own voucher or a voucher for a vehicle owner who is a direct relative of that staff member.

### 3.6 Fiscal Administration

3.6.1 The Regional Administrator will monitor expenditures periodically. Resources and staff may be added, and/or reassigned based upon need and available funding.

#### 3.6.2 Reimbursements:

Program participants do not receive financial assistance payments and all assistance is provided in the form of a voucher. In accordance with Texas Administrative Code §114.64 (e) and (f), payment is granted to the provider of goods or services.

#### 3.6.3 Allocated Funding:

Allocated funds are recorded and distributed first for use by residents of the participating counties for which funds were received. By the terms outlined in the Inter-County Cooperative Agreement, funding may be shared between participating counties to assist residents of the region. Therefore, allocated money unused by one county will be available to residents of another county. Unused funds are returned to the State General Fund biennially.

#### 3.6.4 Additional Funding:

This program may utilize funding from other identified sources.

#### 3.6.5 Accounts:

Program funds are maintained in accounts managed by the Regional Administrator.

#### 3.6.6 Program Income, Interest and Other Income:

Refer to TCEQ's Intergovernmental Cooperative Reimbursement Contract with Federal, State and Local Governments and Agencies, Special Terms and Conditions, Section 18.

#### 3.6.7 Non-payment of Valid Charges and Other Fraudulent Activities:

Non-payment of the \$30.00 co-pay amount and/or valid charges due to the Recognized Emissions Repair Facility by means of a non-collectable check or credit card or refusal to pay will be cause for the Regional Administrator to deny

future participation in the AirCheckTexas Drive a Clean Machine Program until such amount is paid in full and shall report to the TCEQ, DPS, TxDMV or other local authorities if circumstances warrant.

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### **3.7 Support for Participating Vendor/Service Providers**

3.7.1 Regional Administrator will provide a process for interested RERFs and licensed automobile dealerships to participate in the program and accept vouchers. This process may include requiring vendors to:

- Be a Texas Department of Motor Vehicles (TxDMV) licensed dealership; and/or
- Be a DPS Recognized Emissions Repair Facility
- Sign and submit a Dealership or RERF Participation Agreement outlining the program requirements and disciplinary actions to which dealerships/RERFs will be subjected; and
- Submit an Internal Revenue Service Form W-9; and
- Maintain a valid email address; and
- Attend all mandatory workshops for program training; and
- Have internet capabilities for the public to access the Drive a Clean Machine website and/or program application; for the AirCheckTexas database (if authorized).

3.7.2 Regional Administrator will provide the dealership (or RERFs as available) access to the AirCheckTexas database once a completed, signed participation agreement and W-9 are received and processed.

3.7.3 Regional Administrator will train dealerships and RERFs in the proper administration of the program. This training may include the following elements:

- Mandatory and/or optional workshop presentations
- Printed and/or electronic material distributed at workshops
- Information provided via the AirCheckTexas database and the AirCheckTexas Drive a Clean Machine Program website
- Information and updates sent to the vendor's email address on file
- Other avenues as determined necessary by Regional Administrator

### **3.8 Auditing**

3.8.1 Best efforts are made to assure program applicants, participants, RERFs, automobile dealerships, or salvage/dismantlers do not commit fraud and maintain the purpose and intent of the program. The Regional Administrator shall be allowed to conduct audits on program applicants, participants, RERFs, automobile dealerships, or salvage/dismantlers and may investigate any complaint of improper activity, and shall report to the TCEQ, DPS, TxDMV or other local authorities if circumstances warrant.

3.8.2 Fraudulent activities by applicants, participants, RERFs, automobile dealerships, or salvage/dismantlers will be cause for the Regional Administrator to deny payment and/or deny future participation in the AirCheckTexas Drive a Clean Machine Program and shall report to the TCEQ, DPS, TxDMV or other local authorities if circumstances warrant.

3.8.3 Applicant and/or Participant Information:  
Income and vehicle specifications are investigated when necessary to ensure compliance with Title 30 of the Texas Administrative Code, §114.64(b) and §114.64(c).

3.8.4 Recognized Emissions Repair Facility (RERF) Information and Activity:  
• Documentation of vehicle diagnostics, repairs, and other services is reviewed for ineligible and inconsistent costs. Reconciliation of errors or misuse is

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requested from the RERF. Reconciliation may not be requested for identified errors of \$2.00 or less due to the administrative cost in recovering the funds.

- Onsite monitoring visits will be performed to ensure compliance with program statutes and rules.

### 3.8.5 Automobile Dealership Information and Activity:

- Documentation of vehicle purchases, retired vehicle transfers, and account activity is reviewed for inconsistent information. Reconciliation of errors or misuse is requested from the dealership.
- Regional Administrator will conduct periodic onsite monitoring visits to ensure compliance with program statutes and rules at participating dealerships.
  - Regional Administrator will normally provide at least 24 hours notice to the dealership of impending onsite monitoring visit. If potential suspicious or fraudulent activity was reported to the Regional Administrator, the Regional Administrator may not provide any notice of impending monitoring visit.
  - Documentation of vehicle purchases, retired vehicle transfers, and account activity may be reviewed.
  - The onsite monitoring visit may include an inspection of any retired AirCheckTexas vehicle(s) awaiting transfer to an approved dismantler.
  - Regional Administrator will notify, in writing, dealerships of any findings. Dealership will be given appropriate time to correct these findings. Additional site visits may be needed to follow up on these findings.
- Regional Administrator will investigate dealership complaints received from participants. These complaints may be verbal and/or written. The investigation may include onsite monitoring visits and/or requests for additional documentation from the dealership. In the event the investigation reveals misconduct on the part of the dealership or a violation of program rules and requirements, the Regional Administrator may deny payment or request a refund from the dealership if it has already been reimbursed by the program.

### 3.8.6 Dismantlers/Salvage Facilities:

- Documentation of retired vehicle transfers and destruction certification is reviewed for inconsistent information.
- The Regional Administrator may investigate retired vehicles by contacting the TxDMV by phone or by utilizing the TxDMV Vehicle Title Registration website, or the NCTCOG Emissions Database to confirm retired vehicles are not re-titled or re-inspected.
- Onsite monitoring visits may be performed to ensure compliance with program statutes and rules.
- Regional Administrator will investigate dismantler complaints received from dealerships or participants. These complaints may be verbal and/or written. The investigation may include onsite monitoring visits and/or requests for additional documentation from the dismantler and/or recycler and/or dealership. The Texas Commission on Environmental Quality (TCEQ) is responsible for allowing dismantlers to participate in the program. Regional Administrator will forward complaints received about dismantlers to the TCEQ and work in conjunction with the TCEQ to resolve.

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### **3.9 Monitoring Vehicle Inspections**

- 3.9.1 Regional Administrator shall monitor state inspections compliance of program vehicles. Fraudulent activities such as “clean scanning”, “clean piping”, or conducting the wrong test type on repaired program vehicles will be cause for the Regional Administrator to report these acts to TCEQ, DPS, or other local authorities if circumstances warrant. Such practices may be grounds for the Regional Administrator to charge back or refuse to pay for repair work completed to bring a vehicle into emissions compliance, and deny future participation in the AirCheckTexas Drive a Clean Machine Program.
- 3.9.2 If an automobile dealership is identified as using a DPS inspection facility that is involved in fraudulent activities such as “clean scanning”, “clean piping”, or conducting the wrong test type on program replacement vehicles, the dealership will be asked to use another inspection facility for inspection of replacement vehicles and obtain a passing reinspection on the vehicle involved. Such practices will be grounds for the Regional Administrator to refuse to pay for reimbursement until repair work is completed to bring a vehicle into emissions compliance. The costs for repair work may not be passed onto the program or the participant.

### **3.10 Terminating Participating Vendor/Service Providers**

- 3.10.1 Participation with the program is voluntary and may be terminated through the sole discretion of the Regional Administrator.
- 3.10.2 The Regional Administrator may terminate the agreement with the participating vendor without giving any advance notice if the vendor fails to comply with any and/or all the terms stated in the Grant Activities Plan, agreement terms, affidavits, statutes, and/or rules of the program.
- 3.10.3 The Regional Administrator may first opt to temporarily suspend a participating vendor while research and investigation of non-compliance are completed. Suspension shall be immediate and communicated in writing. This process could place payment of services on hold until final participation status is determined.
- 3.10.4 The Regional Administrator will notify the participating vendor regarding the termination of its participation in writing. Termination from the program may be permanent.
- 3.10.5 Upon such termination, Regional Administrator may provide payment for pending vouchers and/or services rendered if the voucher documentation meets all the program requirements and was determined not be involved in the reason for termination. The vendor shall not be entitled to any claim against the Regional Administrator for any additional payments or damages in the event of termination of its participation.
- 3.10.6 Regional Administrator may terminate program participation for vendors that are:
- Found out of compliance with program rules and regulations; or
  - Generating participant or dismantler complaints; or
  - Involved in fraudulent activities against a participant or the program; or
  - Involved in any activity that conflicts with the intent of the program or the orderly administration of the program; or
  - Found to be involved in any other activity deemed unacceptable, at the sole discretion of the Regional Administrator.

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3.10.7 All decisions to terminate a vendor's participation in the program are at the sole discretion of the Regional Administrator.

### 3.11 Available Recourse

The county has authority to take legal action against any or all perpetrators. Such an event may result in additional penalties imposed by the DPS, TxDMV, or TCEQ.

### 3.12 Local Advisory Panel

The Regional Administrator in coordination with the participating county may arrange and organize a Local Advisory Panel to assist in various aspects of operating the AirCheckTexas Drive a Clean Machine Program.

### 3.13 Other General Responsibilities

- Advertising and posting program changes and additions
- Providing information to the public and directing potential applicants to appropriate resources
- Surveying participants
- Providing information to the media as requested
- Completing and verifying information recorded in the Database, and appropriately correcting misinformation
- Maintaining application records in electronic format, within the Database and/or in hard copy form
- Providing procedural instructions to participating vendors
- Maintaining a website with program requirements and eligible Tier 2 Bin 5 or cleaner cars and trucks
- Maintaining a database of information on all transactions and applicant verification
- Evaluating the program and altering processes for maximum efficiency

### 3.14 Service, Reports and Records

3.14.1 In accordance with Texas Administrative Code §114.70, the Regional Administrator on behalf of the participating county will compile reports in an approved format and transmit quarterly reports to TCEQ and the participating county in paper copies or electronic format no later than 30 days after the end of the quarter.

#### 3.14.2 Indicators of Service:

The Regional Administrator records indicators of service, including, but not limited to the following:

- Number of persons applying for assistance
- Number of persons qualifying for assistance
- Number of vehicles repaired
- Number of vehicles retrofitted (if applicable)
- Number of vehicles retired and replaced
- Names and locations of vendors
- Amounts reimbursed to vendors
- Vehicle details including vehicle identification number, license plate number, odometer, model year, make and model

#### 3.14.3 Report Types:

- Regional Administrator files quarterly activity reports (QARs) of the indicators of service within each participating county. These reports are reviewed and forwarded to the TCEQ and each county is provided a copy for their records.

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- Financial status reports (FSRs) are filed with the County Project Representative for review on a quarterly basis, or as specified by the TCEQ. These reports may serve as reimbursement requests and are forwarded to the TCEQ, pending any modifications.
- Recycled vehicle reports (documents the retired vehicles that were recycled at a metal recycling facility) and vendor site monitoring reports (documents the vendors where a site visit was performed) are filed quarterly to the TCEQ. Each county may be provided a copy for their records.
- Regional Administrator shall make additional data and reports available in a timely manner as requested by the TCEQ for use in development and improvement of the program and its requirements. Any preliminary or draft information provided shall not be used for financial auditing or investigation of administrative operations.

### 3.14.4 Records:

The Regional Administrator maintains records on the AirCheckTexas Drive a Clean Machine Program for a minimum of three years as required by Title 30 of the Texas Administrative Code, §114.70(c). Program partners, RERFs, and other parties involved in program transactions are also required to maintain records for a minimum of three years.