



# Travis County Commissioners Court Agenda Request

**Meeting Date:** December 13, 2011

**Prepared By:** Adele Noel **Phone #:** 854 7211

**Division Director/Manager:** Jon White/Tom Weber - NREQ

*Carol B. Johnson*  
**Department Head:** Steven M. Manilla, P.E., County Executive-TNR

**Sponsoring Court Member:** County Judge Samuel T. Biscoe

**AGENDA LANGUAGE:** Consider and take appropriate action to approve the agreement with grant sub-recipients for the Local Initiatives Projects Grant.

## **BACKGROUND/SUMMARY OF REQUEST:**

Travis County Commissioners Court approved the use of the Local Initiative Project (LIP) grant to assist in the funding of a Downtown Austin Transportation Management Association (DATMA). The purpose of the DATMA is to support the development and implementation of strategies to address traffic congestion and mobility issues in downtown Austin and improve air quality in Central Texas. Examples of strategies could include:

- Encouraging and assisting employers, organizations, or venues that generate auto trips to develop transportation programs enhancing the travel choices available to the site (such as a shuttle from a work location to a transit hub).
- Parking management, including parking pricing and enforcement strategies in an area, implementing employer-specific improvements (such as revisions to policies to encourage alternatives to single-occupancy vehicles), and implementing parking cash-out programs that allow employees who choose not to use employer-paid parking to receive the cash value of the parking.
- Working with public transit providers to increase services by methods that may include discounted transit passes or route/schedule alterations to better serve an employer or area.
- Coordinating with state and local transportation agencies to improve traffic flow, including addressing traffic signal-timing and intersection improvements.
- Advocating for pedestrian and bicycle infrastructure improvements and providing facilities such as secure bicycle parking.

The attached agreement includes language that specifies the responsibility of the grant sub-recipient before receiving the LIP funds.

## **STAFF RECOMMENDATIONS:**

TNR recommends approval.

**ISSUES AND OPPORTUNITIES:**

In 2007, the 80th Texas Legislature, passed Senate Bill 12, amending the Texas Health and Safety Code, Chapter 382 to add Section 382.220 titled, Use of Funding for Local Initiative Projects. This section authorizes the spending of accumulated funds on clean air projects proposed by counties that participate in LIRAP.

The current National Ambient Air Quality Standard (NAAQS) for ozone is 75 parts per billion. Addressing the quality of emissions from vehicles is one of the primary strategies for addressing ozone in Travis County, considering that 66% of nitrogen oxides (precursors to ozone formation) result from on-road mobile sources like passenger vehicles.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

There will be no impact on Travis County's budget. Travis County's contribution will be state funds from the LIP grant that Travis County would pass-through to DATMA.

**ATTACHMENTS/EXHIBITS:**

Agreement Between The Downtown Austin Transportation Management Association and Travis County

**REQUIRED AUTHORIZATIONS:**

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429

**CC:**

Jon White	Division Director	TNR	854-7212
Diane Blankenship	Director	HR	854-9165
Tom Weber	Env. Prog. Mgr	TNR	854-4692
Michele Gable	Financial Auditor	Auditor	854-5883
Julie Joe	Attorney	Legal	854-9415
Adele Noel	Air Quality Prj. Mgr.	TNR	854-7211

## **AGREEMENT BETWEEN THE DOWNTOWN AUSTIN TRANSPORTATION MANAGEMENT ASSOCIATION AND TRAVIS COUNTY**

**THIS AGREEMENT** ("Agreement") is made between the Downtown Austin Transportation Management Association, a non-profit corporation ("DATMA" or the "Association") and Travis County, Texas, a political subdivision of the State of Texas (the "County"), together, the "Parties." Each of the Parties confirms that it has the authority and the ability to enter into this Agreement and to perform its obligations under this Agreement without the further approval or consent of any other person or entity.

### **RECITALS**

1. DATMA is a transportation management association whose mission is to support economic vitality and sustainable growth of downtown Austin employers by promoting transportation programs and services designed to enhance access, parking, and mobility, as well as improve the quality of life for employees, residents, and visitors of downtown Austin.
2. According to a 2009 report by the Texas Transportation Institute entitled "Austin Commute Solutions: Review and Opportunity," about 62,000 people, excluding people working at the State Capitol Complex, travel to downtown Austin each day to work, and of that number, about 80%, or approximately 49,000 people, drive to work alone.
3. Currently about 1900 of the County's employees work in the downtown Austin area.
4. The County is projected to add about 2000 more employees to the downtown area in the next 15 years.
5. The current roadway network in the downtown Austin area cannot accommodate the large numbers of vehicles that are driven to the downtown Austin area each day.
6. Decreasing the number of single occupancy vehicles that are driven into the downtown Austin area will not only relieve congestion and demands on parking but will also support the County's clean air objectives.
7. The federal government is considering imposing stricter clean air standards for the Central Texas region.
8. Supporting and implementing clean air objectives are crucial to remaining in compliance with clean air standards.
9. Pursuant to Contract Number 582-8-89964, a copy of which is attached as

Attachment 1, the Texas Commission on Environmental Quality ("TCEQ") has awarded Local Initiative Project grants ("LIP Grants") to the County to, among other things, develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

10. Under Contract Number 582-8-89964, the County is authorized to enter into a contract with an appropriate entity to develop and implement clean air objectives.
11. Under Contract Number 582-8-89964, the County has been awarded LIP Grants in the amounts of \$37,000 and \$22,223.60 for the County to contract with DATMA to develop and implement new air control strategies in the downtown Austin area. A copy of the Notice to Proceed for these two LIP Grants is attached as Attachments 2 and 3.
12. The County has applied for additional LIP grant funding to develop and implement new air control strategies in the downtown Austin area.

NOW, THEREFORE, the Parties agree to the terms and conditions in this Agreement.

#### **SECTION 1. OBLIGATIONS OF DATMA**

- A. By December 31, 2011, DATMA must perform each of the activities and produce each of the deliverables listed in Attachment A (FY 2011 Scope of Services).
- B. By August 31, 2013, DATMA must perform each of the activities and produce each of the deliverables listed in Attachment B (FY 2012 and FY 2013 Scope of Services).
- C. DATMA will use reasonable efforts to pursue funding for the activities listed in Attachment A and Attachment B.
- D. If by December 31, 2011, DATMA has not been able to secure sufficient funding to complete the activities and produce the deliverables listed in Attachment A, this Agreement will terminate.
- E. In addition to other information that DATMA must provide under this Section 1, DATMA must also provide to the County a written report on December 31, 2011, December 31, 2012, and August 31, 2013 that shows:
  1. how DATMA expended any funding provided by the County;
  2. the activities listed in Attachment A and Attachment B that DATMA accomplished that year.
- F. If DATMA fails to meet its obligations under this Agreement, DATMA must return to the County, by August 31, 2013, the entire amount of all funds received from the County. This provision will survive the termination of this Agreement.

G. As a sub-recipient of LIP Grant funding, DATMA agrees to comply with all LIP Grant requirements and conditions, including the terms and conditions set forth in TCEQ Contract Number 582-8-89964. DATMA further acknowledges that it is prohibited from expending any LIP grant funding from the County for any of the following purposes:

- (1) call center management;
- (2) application oversight;
- (3) invoice analysis;
- (4) education;
- (5) outreach;
- (6) advertising; or
- (7) local government fleet or vehicle acquisition or replacement.

## **SECTION 2. OBLIGATIONS OF THE COUNTY**

- A. Within 30 days after DATMA provides to the County a correct and complete invoice as set forth below in Paragraph J of Section 5 and written documentation that DATMA has satisfactorily performed each of the activities and produced each of the deliverables listed in Attachment A (FY 2011 Scope of Services), the County will reimburse DATMA an amount not to exceed the \$37,000.00. Despite the foregoing, no payment will be made by the County pursuant to this Section 3.A. unless DATMA performs each of the activities and produce each of the deliverables listed in Attachment A (FY 2011 Scope of Services) by December 31, 2011.
- B. Within 30 days after DATMA provides to the County a correct and complete invoice as set forth below in Paragraph J of Section 5 and written documentation to the County that DATMA has satisfactorily performed each of the activities and produced each of the deliverables listed in Attachment B (FY 2012 and FY 2013 Scope of Services), the County will reimburse DATMA an amount not to exceed \$22,223.60. Despite the foregoing, no payment will be made by the County pursuant to this Section 3.B. unless DATMA performs each of the activities and produce each of the deliverables listed in Attachment B (FY 2012 and FY 2013 Scope of Services) by August 31, 2013.

## **SECTION 3. TERMS AND TERMINATION**

- A. This Agreement becomes effective from when Texas Commission on Environmental Quality issued the Notice To Proceed on August 24, 2010, and has been executed by the Parties and will remain in full force and effect until August 31, 2013 unless previously terminated pursuant to Section 3.B. or Section 4.B of this Agreement. This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. The terms of this Agreement will become binding on each Party from and after it executes a copy hereof. In like manner, from and after the time it executes consent or other

document authorized or required by the terms of this Agreement, such consent or other document will be binding upon such Party.

- B. If either party defaults in the performance of any of the terms or conditions of this Agreement, the defaulting party will have 30 days after receipt of written notice of such default within which to cure such default. If such default is not cured within such period of time, then the offended party will have the right without further notice to terminate this Agreement.

#### **SECTION 4. FUNDING**

- A. The County's source of funding for this Agreement is one or more grants from the Texas Commission on Environmental Quality's Local Initiative Projects Program.
- B. **THE COUNTY CANNOT GUARANTEE THE AVAILABILITY OF FUNDS, AND ENTERS INTO THIS AGREEMENT ONLY TO THE EXTENT THAT GRANT FUNDS ARE MADE AVAILABLE. THERE IS RISK INVOLVED WITH THIS AGREEMENT. THE COUNTY'S OBLIGATIONS UNDER THIS AGREEMENT ARE CONTINGENT UPON THE ACTUAL RECEIPT BY THE COUNTY OF ADEQUATE GRANT FUNDS. IF SUFFICIENT GRANT FUNDS ARE NOT AVAILABLE, THE COUNTY WILL NOTIFY DATMA IN WRITING WITHIN A REASONABLE TIME AFTER SUCH FACT IS DETERMINED. THE COUNTY WILL THEN TERMINATE THIS AGREEMENT AND WILL NOT BE LIABLE FOR THE FAILURE TO MAKE ANY PAYMENT TO DATMA UNDER THIS AGREEMENT.**

#### **SECTION 5. MISCELLANEOUS**

- A. **Severability.** If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement will not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulation contained in it will become inoperative or fail by phrase, provision, or regulation of this Agreement.
- B. **Law and Venue.** This Agreement will be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Travis County, Texas.
- C. **Equal Opportunity in Employment.** DATMA must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, disability, or veteran or military reservist status. DATMA agrees, during the performance of the services under this Agreement, to comply with the

equal opportunity in employment provisions cited in Exhibit 1, attached hereto and made a part hereof.

- D. **Indemnity.** To the fullest extent allowable by law, DATMA indemnifies and hold harmless the County from and against all claims, losses, and damages caused by action or liability of any kind for injuries or death of any person or damage to any property, arising out of or in connection with work done by DATMA, its officers, agents, or employees under this Agreement.
- E. **Alteration, Amendment, or Modification.** This Agreement may not be altered, amended, or modified except in writing approved by both parties. IT IS EXPRESSLY ACKNOWLEDGED THAT NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS AGREEMENT EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE COMMISSIONERS COURT.
- F. **Entire Agreement.** This Agreement constitutes the entire agreement between the County and DATMA. No other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained in this Agreement is valid or binding.
- G. **Notice.** Notices to either party must be in writing, and may be either hand delivered or sent by certified or registered mail, postage paid, return receipt requested. If sent to the parties at the addresses designated herein, notice will be deemed effective upon receipt in the case of hand delivery and three days after deposit in the U.S. Mail in the case of mailing.

The address of the County for all purposes is:

The Honorable Samuel T. Biscoe (or successor)  
County Judge  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

With a copy to:

Mr. Steven M. Manilla, P.E. (or successor)  
County Executive  
Transportation and Natural Resources Department  
P.O. Box 1748  
Austin, Texas 78767

And to:

The Honorable David Escamilla (or successor)  
Travis County Attorney  
P.O. Box 1748  
Austin, Texas 78767  
Attn: File No. 291.47

The address for DATMA for all notices under this Agreement is:

P.O. Box 68433  
Austin, Texas 78768  
(512) 294-7446

The Parties may change their respective addresses for purposes of notice by giving at least five days written notice of the new address to the other Party. If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period will be extended to the next business day.

H. **Maintenance and Right of Access to Records.**

1. DATMA must maintain appropriate fiscal records and supporting documentation for all expenditures of funds accounting records of costs, expenses, and payrolls of employees working on the Project, together with documentation of evaluations and study results for a period of five years after final payment for completed services and all other pending matters concerning this Agreement have been closed.
  2. DATMA agrees that the County and its duly authorized representatives are entitled to have access to any and all books, documents, papers, and records of DATMA that are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
  3. All records or materials required by or produced under this Agreement, including records produced by any subcontractor to DATMA and/or the County, must be maintained for at least three years after DATMA and/or the County complete payment and performance under this Agreement or the termination or expiration of this Agreement, whichever date is later.
  4. DATMA must submit all information and documentation required by the County in order to comply with LIP Grant reporting requirements.
- I. **Purchase Order.** DATMA must provide goods and services using the purchase order method. A purchase order number will be assigned by the designated representative of the Travis County Purchasing Office. DATMA must reference the Agreement number and the purchase order number on all invoices to the Travis County Transportation and Natural Resources Department. The terms

and conditions contained elsewhere in this Agreement prevail over different or contrary terms in any purchase order. The County will not pay invoices that are in excess of the amount authorized by the purchase order.

- J **Payments.** Payment will be made by check or warrant by upon satisfactory delivery and acceptance of items and submission of a correct and complete invoice to the address below for orders placed by the Purchasing Agent, or as indicated on Purchase Orders placed by other authorized County offices and/or departments.

Travis County Transportation and Natural Resources  
P.O. Box 1748  
Austin, Texas 78767

In order to be considered "correct and complete," an invoice must include at least the following information:

- (1) Name, address, and telephone number of DATMA and similar information in the event payment is to be made to a different address,
- (2) County Agreement, Purchase Order, or Delivery Order number,
- (3) Identification of items or services as outlined in the Agreement,
- (4) Quantity or quantities, applicable unit prices, total prices, and total amount, and
- (5) Any additional payment information which may be called for by this Agreement.
- (6) Any other information required by the Travis County Auditor's Office.

DATMA must also submit a statement with each invoice showing the percentage completion of the work to date, as well as any additional written information requested by the County to document the progress of the work.

- K. **Taxpayer Identification.** DATMA must provide the County with an Internal Revenue Form W-9 Request for Taxpayer Identification Number and Certification that is completed in compliance with the Internal Revenue Code and its rules and regulations and a statement of entity status in a form satisfactory to the County Auditor before any funds are payable under this Agreement.

- L. **Non-Waiver of Default.** No payment, act, or omission by the County may constitute or be construed as a waiver of any breach or default of DATMA which then exists or may subsequently exist. All rights of the County under this Agreement are specifically reserved and any payment, act, or omission is not to be construed to impair or prejudice any remedy or title to the County under it. Any right or remedy in this Agreement does not preclude the exercise of any other right or remedy under this Agreement or under any law, except as expressly provided in this Agreement, nor will any action taken in the exercise of

any right or remedy be deemed a waiver of any other rights or remedies.

- M. **Mediation.** When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation are to remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.
- N. **No Waiver of Immunity.** It is expressly understood and agreed by the Parties that neither the execution of this Agreement nor any conduct of any representative of DATMA or County relating to this Agreement will be considered to waive, nor will it be deemed to have waived, any immunity or defense that would otherwise be available to that entity against claims arising in the exercise of its governmental powers and functions, nor will it be considered a waiver of sovereign immunity to suit.
- O. **Fiscal Year.** The County's fiscal year begins on October 1 and ends on September 30 of the following year. In this Agreement "FY2011" refers to the time period between October 1, 2010 and September 30, 2011.
- P. **Civil Rights/ADA Compliance.** DATMA must provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933] as if DATMA were an entity bound to comply with these laws. DATMA must not discriminate against any employee or applicant for employment based on race, religion, color, sex, national origin, age or handicapped condition.
- Q. **Gratuities.** The County may terminate this Agreement if it is found that gratuities of any kind, including entertainment, or gifts were offered or given by the DATMA or any agent or representative of DATMA, to any County Official or employee with a view toward securing favorable treatment with respect to this Agreement. If this Agreement is terminated by the County pursuant to this provision, the County will be entitled, in addition to any other rights and remedies, to recover from DATMA at least three times the cost incurred by DATMA in providing the gratuities.
- R. **Monitoring.** The County reserves the right to perform periodic on-site monitoring of DATMA's compliance with the terms of this Agreement and of the adequacy and timeliness of DATMA's performance under this Agreement. After each monitoring visit, the County will provide DATMA with a written report of the monitor's findings. If the report notes deficiencies in DATMA's performances

under the terms of this Agreement, it will include requirements and deadlines for the correction of those deficiencies by DATMA. DATMA must take action specified in the monitoring report prior to the deadlines specified.

- S. **Incorporation of Attachments.** The attachments and exhibits referred to in this Agreement are incorporated by reference as if set forth verbatim.
- T. **Texas Public Information Act.** Notwithstanding any provision in this Agreement to the contrary, disclosure of any information obtained by the County or any of its officials, employees, agents or representatives in connection with this Agreement is subject to the provisions of the Texas Public Information Act and all legal authorities relating thereto, including but not limited to opinions, decisions, and letter rulings issued by the Texas Attorney's General Office.
- U. **Conflict of Interest Questionnaire.** If required under Chapter 176 of the Texas Local Government Code, DATMA must file a completed Conflict of Interest Questionnaire in accordance with the requirements of that Chapter. Within the applicable, authorized time period prescribed in Chapter 176, DATMA must file the completed Conflict of Interest Questionnaire with the Travis County Clerk, Recording Division, 5501 Airport Blvd., Austin, Texas 78751. DATMA must file an updated, completed questionnaire with the Travis County Clerk not later than the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate. DATMA should note that the law requires that the County provide access to a filed Questionnaire on the official Travis County Internet website. However, the law does not require that the County release information which is accepted from disclosure under the Texas Public Information Act. DATMA is solely responsible for the preparation of its Conflict of Interest Questionnaire and the accuracy and completeness of the content contained therein and ensuring compliance with all applicable requirements of Chapter 176 of the Local Government Code.
- V. This Agreement is not intended, nor may it be construed, to confer any benefits, rights, or remedies upon any person not a party hereto.
- W. If performance by any Party of any obligation under this Agreement is interrupted or delayed by reason of unforeseeable event beyond its control, whether such event is an act of God or the common enemy, or the result of war, riot, civil commotion, sovereign conduct other than acts of the County under this Agreement, or the act of conduct of any person or persons not a party or privy hereto, then such Party will be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

Y. Interpretation. In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either party.

**WHEREFORE**, premises considered, this Agreement is executed to be effective the date of the last party to sign.

**TRAVIS COUNTY**

\_\_\_\_\_ Date: \_\_\_\_\_  
**Samuel T. Biscoe**  
County Judge

**Downtown Austin Transportation Management Association**

  
\_\_\_\_\_ Date: 5 December, 2011  
**Glenn Gadbois**  
Executive Director

**ATTACHMENT 1**  
**TCEQ Contract Number 582-8-89964, including Amendment Number 2,**  
**Amendment Number 3, Amendment Number 4, and Amendment Number 5**

5B

RECEIVED

Contract No. 582-8-89964

MAY 30 2008

AIR QUALITY DIVISION

Local Initiative Projects (LIRAP)

Texas Commission on Environmental Quality

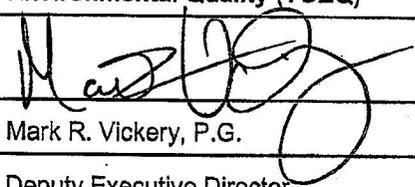
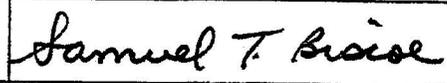
### Intergovernmental Cooperative Reimbursement Agreement with

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	582-8-89964	
Performing Party	Travis County	
Performing Party Identification Number	17460001922	
Maximum TCEQ Obligation: \$373,217.48	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)	Travis County
By (Authorized Signature)		
Printed Name:	Mark R. Vickery, P.G.	Honorable Samuel T. Biscoe
Title:	Deputy Executive Director	Travis County Judge
Date of Signature:	6-13-08	5-6-08
Contract Manager Name	Marivel Rodriguez	
Contact Numbers	(512) 239-2474	
Procurement and Contracts Representative		
Printed Name	Mike Fishburn	
Date	06/02/08	

**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 Work 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 77<sup>th</sup> 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 80<sup>th</sup> 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 :

Travis County  
\$373,217.48  
August 31, 2009

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

Travis County  
\$373,200.00  
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](mailto:marodrig@tceq.state.tx.us); or Donna Huff at 512/239-6628, [dhuff@tceq.state.tx.us](mailto: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 80<sup>th</sup> 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 80<sup>th</sup> 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 NEGLIGENTLY 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 LOCATION**Agreement No. 582-8-89964**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:  
Honorable Samuel T. Biscoe  
 (Name)  
Travis County Judge  
 (Title)  
314 West 11<sup>th</sup> St. Suite 520  
 (Mailing Address)  
Austin Texas 78767  
 (City) (State) (Zip Code)

Telephone No.: (512) 854-9555Facsimile No.: (512) 854-9535

For Contractual Matters:  
Honorable Samuel T. Biscoe  
 (Name)  
Travis County Judge  
 (Title)  
314 West 11<sup>th</sup> St. Suite 520  
 (Mailing Address)  
Austin Texas 78767  
 (City) (State) (Zip Code)

Telephone No.: (512) 854-9555Facsimile No.: (512) 854-9535**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:

Honorable Samuel T. Biscoe  
 (Name)  
Travis County Judge  
 (Title)  
314 West 11<sup>th</sup> St. Suite 520  
 (Mailing Address)  
Austin Texas 78767  
 (City) (State) (Zip Code)

Telephone No.: (512) 854-9555Facsimile No.: (512) 854-9535

**CONTRACT BUDGET FOR ACTUAL COST REIMBURSEMENT**

**ARTICLE 22.1 BUDGET**

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

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

**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*.

15d

CONTRACT NUMBER 582-8-89964

CONTRACT AMENDMENT TO THE INTER-GOVERNMENTAL  
COOPERATIVE REIMBURSEMENT AGREEMENT BETWEEN  
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)  
AND TRAVIS COUNTY

RECEIVED  
JUN 24 2009  
TNR

STATE OF TEXAS  
COUNTY OF TRAVIS

AMENDMENT NUMBER 2

Pursuant to Article 7 (AMENDMENTS) and Article 1.3 Contract Renewals in the GENERAL CONDITIONS of the Agreement, the Texas Commission on Environmental Quality (TCEQ) and Travis County (GRANTEE), hereby agree to amend Contract Number 582-8-89964 to extend the period of performance and renew the Agreement for one additional year through August 31, 2010. The total Maximum TCEQ Obligation is as shown in the table below and is the same as the total Maximum TCEQ Obligation following Amendment Number 1 to the Agreement, but as qualified by the paragraph immediately below the table.

Fiscal Year	Contract Amount
FY08	\$373,217.48
FY09	\$443,325.66
Total Maximum TCEQ Obligation	\$816,543.14

In accord with the Agreement between the TCEQ and Travis County, FY08 funds may be used by the GRANTEE in FY08 and FY09 through August 31, 2009. All funds, both FY08 and FY09 funds, may be expended during FY 2010, however all funds must be spent by August 31, 2010 unless otherwise determined by the TCEQ.

All other conditions and requirements of Contract Number 582-8-89964 remain unchanged, and shall apply to all services specified herein just as if those services had been included in the original scope of services of this Contract.

TCEQ:  
Texas Commission on Environmental Quality

Theresa Pella  
(Signature)

Theresa Pella  
(Printed Name)

Manager, Air Quality Planning Section  
(Title)

Date: 6/11/09

Grantee:  
Travis County

Samuel T. Biscoe  
(Signature)

Honorable Samuel T. Biscoe  
(Printed Name)

Travis County Judge  
(Title)

Date: 5-26-09

CONTRACT NUMBER 582-8-89964

**CONTRACT AMENDMENT TO THE INTER-GOVERNMENTAL  
COOPERATIVE REIMBURSEMENT AGREEMENT BETWEEN  
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)  
AND TRAVIS COUNTY**

**STATE OF TEXAS  
COUNTY OF TRAVIS**

**AMENDMENT NUMBER 3**

Pursuant to Article 7 (AMENDMENTS) and Article 1.3 Contract Renewals in the GENERAL CONDITIONS of the Agreement, the Texas Commission on Environmental Quality (TCEQ) and Travis County (GRANTEE), hereby agree to amend Contract Number 582-8-89964 to add \$443,186.97 bringing the total maximum TCEQ obligation to \$1,259,730.11 for the fiscal year (FY) 2010 project period, replacing the Maximum TCEQ Obligation shown on the Contract Signature page (page 1 of 18) and also to change provisions of the Contract to comply with changes of the 81<sup>st</sup> Texas Legislature, Regular Session, to Texas Health and Safety Code Section 382.220, relating to the Local Initiative Program of the Low Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program.

In accordance with legislative changes, the parties agree to amend the Contract

1. at III. ELIGIBLE PROJECTS relating to the restrictions on the categories of spending, so that the GRANTEE is prohibited from expending funds under this Contract for local government fleet or vehicle acquisition or replacement; and
2. at V. AMOUNT OF FUNDING so that TCEQ may reduce the amount of the GRANTEE matching contribution to less than 50% for development and implementation projects proposing to detect fraud at independent vehicle inspection facilities including projects to coordinate with law enforcement officials to detect, prevent and prosecute counterfeit state inspection sticker sales by individuals.

The parties agree that the terms of this amendment apply only to funding allocated for the 2010/2011 biennium, and does not impact expenditures made under the contract terms for funding during the 2007/2008 and 2008/2009 terms.

The total Maximum TCEQ Obligation is as shown in the table below.

Amendment History	Fiscal Year	Contract Amount
Original Amount	FY08	\$373,217.48
	FY09	\$443,325.66
Amendment 1 (Encumbrance of FY 09 funds)	FY09	
Amendment 2 (Contract extension for one year)	FY09	
This Amendment 3 (Increase of amount for FY 2010, changes to matching and eligible projects)	FY10	\$443,186.97
<b>Total Maximum TCEQ Obligation</b>		<b>\$1,259,730.11</b>

All other conditions and requirements of Contract Number 582-8-89964 remain unchanged, and shall apply to all services specified herein just as if those services had been included in the original scope of services of this Contract.

TCEQ:  
Texas Commission on Environmental Quality

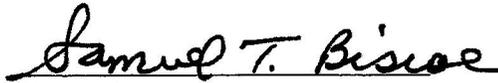
  
(Signature)

Zak Covar  
(Printed Name)

Deputy Executive Director  
(Title)

Date: 4/6/10

Grantee:  
Travis County

  
(Signature)

Honorable Samuel T. Biscoe  
(Printed Name)

Travis County Judge  
(Title)

Date: 3-10-10

**CONTRACT AMENDMENT TO THE INTERGOVERNMENTAL COOPERATIVE REIMBURSEMENT AGREEMENT BETWEEN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) AND TRAVIS COUNTY**

**AMENDMENT NUMBER 4**

Pursuant to Article 7 (AMENDMENTS) and Article 1 (CONTRACT PERIOD) in the General Conditions of the Agreement, TCEQ and Travis County (Grantee) agree to amend Contract Number 582-8-89964 to amend the Expiration Date of the Agreement, add Fiscal Year (FY) 2011 funding, and amend the Scope of Work (SOW).

1. In accordance with Section 1.2 of the General Conditions (Renewal and Extension Period), the Contract Signature Page is amended to reflect an Expiration Date of August 31, 2013.
2. Section 1.3 of the General Conditions is amended to read as follows:
  - 1.3 **Contract Renewals.** There are no additional renewals available after the Expiration Date of this Agreement.
3. The Maximum TCEQ Obligation is amended to reflect the addition of FY 2011 funding as follows:

Amendment History	Fiscal Year	Contract Amount
<b>Original Amount</b>	FY08	\$373,217.48
	FY09	\$443,325.66
Amendment 1 (Encumbrance of FY 09 funds)	FY09	
Amendment 2 (Contract extension for one year)	FY09	
Amendment 3 (Increase of amount for FY 2010, changes to matching and eligible projects)	FY10	\$443,186.97
Amendment 4 (Extension through 8/31/13, addition of FY 11 funding, amendment of Scope of Work)	FY11	\$443,186.97
<b>Total Maximum TCEQ Obligation</b>		<b>\$1,702,917.08</b>

4. Section 4.4 of the General Conditions is amended to read as follows:
  - 4.4 Grant funds advanced by the TCEQ under this Agreement must be spent by the Grantee by the expiration of the second FY following the Appropriation FY of the corresponding funds. For example, advanced FY 2008 funds must be spent by August 31, 2010.

5. Effective with this Amendment, the SOW is replaced in its entirety with the SOW attached to this Amendment as Exhibit A.

All other conditions and requirements of Contract Number 582-8-89964 remain unchanged and shall apply to all provisions specified herein.

6. All changes made in this Amendment will become effective as of the date of execution of this Amendment by all parties.

TCEQ:

Grantee:

Texas Commission on Environmental Quality

Travis County

\_\_\_\_\_  
(Signature)

BY:  
(Signature)

Zak Covar  
(Printed Name)

The Honorable Samuel T. Biscoe  
(Printed Name)

Deputy Executive Director  
(Title)

Travis County Judge  
(Title)

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

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

## ATTACHMENT A

### SCOPE OF WORK

The Local Initiatives Program (LIP) is a grant contract agreement between the Texas Commission on Environmental Quality (TCEQ or Commission) and participating county (Grantee or Performing Party), relating to expenditure of Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) funds for LIP under Texas Health and Safety Code (HSC) §382.220.

#### I. INTRODUCTION

LIRAP was authorized by the 77<sup>th</sup> 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 TCEQ and the Texas Department of Public Safety.

In 2007, the 80<sup>th</sup> Texas Legislature, passed Senate Bill (SB) 12, Section 1.07, amending the Texas Health and Safety Code (HSC) Chapter 382, to add Section 382.220, "Use of Funding for Local Initiative Projects," which authorized spending accumulated funds on clean air projects proposed by counties. In 2009, the 81<sup>st</sup> Texas Legislature, House Bill (HB) 1796, made two changes to the program: 1) LIP funding cannot be used for the purchase of local government fleet or vehicle acquisition or replacement and 2) the Commission has the flexibility to reduce the match requirement for certain projects.

The purpose of this agreement is to implement the Legislature's mandate to fund the LIP. The following sections describe in more detail the eligibility requirements, types of projects that can be funded, 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. HSC §382.220 specifies that LIP 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

HSC §382.220 (b)states that a project under this section must be implemented in consultation with the Commission and that projects eligible for funding under LIP 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 vehicle's operator;
- (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 certificates by providing local law enforcement officials

with funds to identify vehicles with counterfeit state inspection certificates 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. Project summary forms must be received by the Commission for approval no fewer than 180 days before the end of the fiscal year (FY) during which funds are to be expended, unless the Commission at its sole discretion waives this provision. Unless approved by the TCEQ, the costs of work performed prior to the TCEQ signature date on an executed Notice to Proceed (NTP), are not Allowable Costs for reimbursement. If, after execution of this Contract, the TCEQ advances funds to the Grantee, Grantee must receive approval for a project and a NTP prior to expending advanced funds. The reimbursement of costs is subject to confirmation by the TCEQ that the expenditure is an Allowable Cost according to this contract.

The Grantee 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, the metropolitan planning organization in the appropriate region, or with another county. The Grantee must oversee the work of this entity. The participating counties in a non-attainment region or counties participating in an early action compact (EAC) under 30 Texas Administrative Code (TAC) Chapter 114, Subchapter C (relating to vehicle inspection and maintenance; LIRAP; and EAC 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)). If one county gives any portion of their funding to another county, an agreement should be created between counties recording this transfer of funds and the transfer of funds should be reflected in the program budgets of the affected counties. A proposed project that involves more than one county shall include a list of all participating counties. For each participating county, written authorization, signed by an appropriate county official who authorizes the use of that county's LIP allocation and the amount to be dedicated to the proposed project is required.

To the extent possible, counties intending to fund projects that generate emission reduction credits to be included in the State Implementation Plan (SIP), should provide documentation, descriptions, computations, or other supporting evidence, demonstrating in detail the emission reduction benefits to be derived from proposed projects in their project summaries. 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;
6. advertising, and
7. local government fleet or vehicle acquisition or replacement.

Interpretation of the applicability of these prescribed categories to proposed projects is at the sole discretion of the Commission. LIP 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. HSC §382.220(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 FY, among all counties eligible to propose LIPs, as described above under Section II, ELIGIBLE COUNTIES of this Agreement. Funds will be made available to the Grantee only on a matching basis, whereby the Commission provides money to the Grantee in the same amount or a reduced amount for an eligible project as the Grantee matches, as described above under Section III, ELIGIBLE PROJECTS of this Agreement. The term "money" in HSC §382.220(d) is construed to mean cash or tangible property (as defined in the Texas Uniform Grant Management Standards (UGMS)) donated for a LIP. Funds may not be disbursed to the Grantee if the Grantee does not propose an approvable project during a particular FY.

House Bill (HB) 1796, 81<sup>st</sup> Texas Legislature, amended HSC §382.220(d) to state that the Commission may reduce the match requirement for a county that proposes to develop and implement independent test facility fraud detection programs, including the use of remote sensing technology for coordinating with law enforcement officials to detect, prevent, and prosecute the use of counterfeit state inspection certificates.

No part of the required local match may come from LIRAP funding provided under HSC §382.209. All or part of the 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, the Grantee should 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 the Grantee 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."

## VII. PROJECT SELECTION CRITERIA

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

1. **APPLICANT(S).** County requesting funding of the LIP 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 preparing, 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 LIP 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." Under HB 1796, the Commission may reduce the match requirement for a county that proposes to develop and implement independent test facility fraud detection programs. No part of the required local match may come from LIRAP funding provided under HSC §382.209. All or part of the local match may be an in-kind contribution of tangible property such as donations of land, materials, or professional services, if consistent with state regulations.

**In-Kind Match.** If part or the entire 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, 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, 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 from an appropriate agent of the owner of the property) for the purpose of implementing the proposed LIP.

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

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 the TCEQ LIRAP staff: Marivel Rodriguez at 512/239-2474, [marodrig@tceq.state.tx.us](mailto:marodrig@tceq.state.tx.us); or Santos Olivarez at 512/239-4718, [solivare@tceq.state.tx.us](mailto:solivare@tceq.state.tx.us).

## VIII. MONITORING AND REPORTING

The Grantee must submit quarterly reports to the TCEQ, documenting the activities conducted under the LIP 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 the TCEQ within 30 days following the end of the quarter (due dates are December 30, March 30, June 30, and September 30, respectively).

The Grantee must also submit comprehensive annual reports detailing all activities conducted under the LIP Biennium Agreement. The annual reports should be filed for each year during the term of the contract (January 1, 2010 – December 31, 2010; January 1, 2011- December 31, 2011; January 1, 2012- December 31, 2012; January 1, 2013- December 31, 2013.) Annual reports must be submitted within 30 days following the end of the year (due dates are January 31, 2010; January 31, 2011; January 31, 2012, January 31, 2013, respectively).

## IX. LIP PROJECT PROCEDURES

### 1. PROJECT PROPOSAL PROCESS

(a) Projects performed under this Contract will be performed under project proposals, containing the elements listed in Article VII of the Scope of Work (SOW).

(b) Whereas the subject area categories described in Article III of the SOW are intended to provide a general overview of the types of programs that are eligible, the project proposals will contain more detailed specifications of the project activities. The listing of a subject area category in Article III does not imply approval of a project proposal falling under one of those subject area categories. For each project submitted, the Grantee will submit the items listed in the SOW, including a project budget.

(c) The TCEQ will then approve the Grantee's project without modifications, reject the project and request modifications, or disapprove the project. When agreement between the parties has been reached about the project, the TCEQ will issue a NTP and the PERFORMING PARTY shall start the project.

### 2. NOTICE TO PROCEED

(a) Projects under this Contract will be authorized by NTP issued by the TCEQ after review and approval of submitted projects.

(b) A NTP may include time limits and a maximum authorized TCEQ reimbursement amount, in which case all activities must be performed within those time limits and reimbursement for project activities performed under that NTP may not exceed the authorized amount.

(c) The TCEQ is not liable to reimburse costs incurred by the Grantee for project activities until TCEQ issues an NTP for the project. Costs incurred before issuance of the NTP must be clearly identified in the project proposal and approved by TCEQ to be eligible for reimbursement.

### 3. PROJECT REVISIONS

(a) Revisions to the project activities. Additions and changes to the scope of an approved project, including any requested funding increases, require submission of a revised project plan for TCEQ review and approval. These changes to an approved project will not take effect until the TCEQ has issued a revised NTP, approving and incorporating these changes.

(b) Revisions to the project activities that do not affect the project budget categories, or cause an increase or decrease in the activities performed under the project, may be approved by the TCEQ as a minor change through electronic mail.

(c) Revisions to the project budget. Cumulative transfers among the budgeted direct cost categories within a project budget must not exceed 10 percent (10%) of the current total budgeted amount for that project. Transfers exceeding 10% require submission of a revised project plan as detailed in (a) above.

### 4. MATERIAL RELIANCE ON PROJECT BUDGETS

#### Project Budget.

The Grantee agrees to conduct an approved project within the original budget provided in the project proposal unless the TCEQ agrees to a budget revision. The TCEQ will only reimburse up to the total amount contained in each project budget and, therefore; the TCEQ materially relies on the Grantee's expertise and diligence in the preparation of budgets submitted for approval in the project proposals. The Grantee acknowledges and agrees that the TCEQ may materially rely on these estimates.

**CONTRACT AMENDMENT TO THE INTERGOVERNMENTAL COOPERATIVE  
REIMBURSEMENT AGREEMENT BETWEEN THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY (TCEQ) AND TRAVIS COUNTY**

**AMENDMENT NUMBER 5**

Pursuant to Article 7 (AMENDMENTS) and Article 1 (CONTRACT PERIOD) in the General Conditions of the Agreement, TCEQ and Travis County (Grantee) agree to amend Contract Number 582-8-89964 to reduce the Fiscal Year (FY) 2011 funding allocation by \$52,776.40 to \$390,410.57, thereby reducing the Total Maximum TCEQ Obligation to \$1,650,140.68.

The Maximum TCEQ Obligation is amended to reflect the reduction of FY 2011 funding as follows:

<b>Amendment History</b>	<b>Fiscal Year</b>	<b>Contract Amount</b>
<b>Original Amount</b>	FY08	\$373,217.48
	FY09	\$443,325.66
Amendment 1 (Encumbrance of FY 09 funds)	FY09	
Amendment 2 (Contract extension for one year)	FY09	
Amendment 3 (Increase of amount for FY 2010, changes to matching and eligible projects)	FY10	\$443,186.97
Amendment 4 (Extension through 8/31/13, addition of FY 11 funding, amendment of Scope of Work)	FY11	\$443,186.97
Amendment 5 (Decrease encumbrance of FY 2011 funds)	FY11	\$390,410.57
<b>Total Maximum TCEQ Obligation</b>		<b>\$1,650,140.68</b>

All other conditions and requirements of Contract Number 582-8-89964 remain unchanged and shall apply to all provisions specified herein.

TCEQ:  
Texas Commission on Environmental Quality

Grantee:  
Travis County

\_\_\_\_\_  
(Signature)  
  
David Brymer  
(Printed Name)  
  
Director, Air Quality Division  
(Title)

\_\_\_\_\_  
(Signature)  
  
The Honorable Samuel T. Biscoe  
(Printed Name)  
  
Travis County Judge  
(Title)

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

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

## **Attachment 2**

### **Notice to Proceed with Respect to \$37,000 LIP Grant**

**NOTICE TO PROCEED**

**Re:** TCEQ Grant Contract No. 582-8-89964

**Grantee:** Travis County

**Costs for period:** Fiscal Year 2010-2011

**Maximum amount of costs:** \$37,000

**Grant Activity Name:** Travis County Operation Transportation Management Association (TMA)

**Grant Activity Description:** The Travis County TMA will develop, coordinate, and implement "transportation management" strategies enabling and encouraging people to make commuting choices other than driving to work alone. Such strategies include a wide array of programs and policies designed to maximize the efficient utilization of existing transportation investments, such as parking management, enhancing travel choices, public transit options, improving traffic flow, and coordinating pedestrian and bicycle infrastructure improvements.

**Grantee:**

You are authorized to proceed with the Grant Activity as described in the attached proposal and budget which may contain modifications to the proposal and budget you submitted. The Texas Commission on Environmental Quality (TCEQ) will reimburse the costs for the referenced period and referenced maximum amount that conform to the requirements for allowable costs in the TCEQ Grant Contract and the Texas Uniform Grant Management Standards (Rules of the Office of the Governor). The TCEQ may revoke this authorization under the terms of the Contract if the funding for this Grant Activity becomes unavailable to the TCEQ.

**TCEQ:**

Texas Commission on Environmental Quality

  
\_\_\_\_\_  
(Signature)

David Brymer  
\_\_\_\_\_  
(Printed Name)

Director, Air Quality Division  
\_\_\_\_\_  
(Title)

Date: 8/24/10

**Attachment 3**

**Notice to Proceed with Respect to \$22,224.60 LIP Grant**

**NOTICE TO PROCEED**

Re: TCEQ Grant Contract No. 582-8-89964

Grantee: Travis County

Costs for period: Fiscal Years 2012 and 2013

Maximum amount of grant costs: \$22,223.60

Grant Activity Name: Travis County Operation Transportation Management Association (TMA)

**Grant Activity Description:**

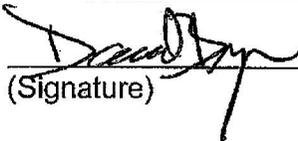
The Travis County TMA will continue the development, coordination, and implementation of transportation management strategies enabling and encouraging people to make commuting choices other than driving to work alone. These strategies include a wide array of programs and policies designed to maximize the efficient utilization of existing transportation investments, such as parking management, enhancing travel choices, public transit options, improving traffic flow, and coordinating pedestrian and bicycle infrastructure improvements.

**Grantee:**

You are authorized to continue with the Grant Activity and request reimbursement for the Grant Activity as described in the attached proposal and budget which may contain modifications to the proposal and budget you submitted. The Texas Commission on Environmental Quality (TCEQ) will reimburse the costs for the referenced period and referenced maximum amount that conform to the requirements for allowable costs in the TCEQ Grant Contract and the Texas Uniform Grant Management Standards (Rules of the Office of the Governor). The TCEQ may revoke this authorization under the terms of the Contract if the funding for this Grant Activity becomes unavailable to the TCEQ.

**TCEQ:**

Texas Commission on Environmental Quality

  
\_\_\_\_\_  
(Signature)

David Brymer  
\_\_\_\_\_  
(Printed Name)

Director, Air Quality Division  
\_\_\_\_\_  
(Title)

Date: 11/18/11

## Attachment A

### FY 2011 Scope of Services

#### Project Description

The mission of the Downtown Austin Transportation Management Association (“DATMA”) is to address the mobility needs of Downtown Austin by establishing programs to improve transportation choices for downtown commuters and to encourage commuters to choose travel modes other than single-occupant vehicles. During the initial year, DATMA’s goals are to develop a sustainable non-profit organization with public and private leadership, organizational capacity, and resources to provide aggressive educational and program support to downtown commuters. In years two and three the TMA is expected to document a track record, which justifies the public and private investments in the organization.

### FY 2011 (Year 1) Deliverables

#### Goals Achieved Since DATMA Creation

Since its formation as a non-profit 501(c) organization, DATMA has:

- Recruited a board of directors that includes representatives of the Downtown Austin Alliance, Travis County, the City of Austin, and Capital Metro, downtown employers and property owners.
- Developed and filed articles of incorporation with the Secretary of State.
- Developed and approved organizational bylaws
- Developed a three-year budget.
- Developed a summary business plan, including:
  - A mission statement
  - An explanation of purpose and need
  - A description of possible activities
  - Recognition of public and private leadership
- Developed and submitted IRS application for 501(c) status, including acquiring an Employee Identification Number
- Recruited and hired a qualified executive director

DATMA will continue to work to create a sustainable organization and complete the following tasks during the remainder of 2011:

- Finalize funding agreements with base level funding agencies (Travis County, City of Austin, Capital Metro, Downtown Austin Alliance).
- Develop a 12 month work plan that includes:
  - Initiating program activities and evaluation beginning in January 2012.
  - Initiating new membership development activities by January 2012.
  - Development of a strategic plan (which will revise the 12 month work plan) for organizational, financial and program goals, activities, and evaluation.
  - Reporting to base level funders

## **Attachment B**

### **FY 2012 and FY 2013 Scope of Services**

DATMA will conduct planning to determine the most effective strategies to achieve its mission. Based on this planning, DATMA the Scope of Services for FY 2012 and FY 2013 set forth below may be amended by written agreement between DATMA and Travis County. The FY 2012 and FY 2013 Scope of Services will focus on the following goals and strategies of the program, and will define deliverables as well as performance measures related to key outcomes such as air quality impacts, levels of participation in programs, levels of travel mode shifts, etc.

**1. Goal A - Improve accessibility and mobility of employees, residents and visitors (collectively "Riders") to, within, and from the central Texas (Austin) area by researching and understanding the current travel behaviors and challenges for Riders. This research will aid transportation agencies by providing information to maximize the efficiency and usability of current services and programs; thereby, potentially initiating new programs or services to improve accessibility and mobility within the area.**

- a. DATMA will contact area employers and property managers to:
  - i. Initiate a supported Employee Transportation Coordinator program for worksites by prioritizing companies with over 50 employees;
  - ii. Inventory current employee travel splits and needs;
  - iii. Identify opportunities for preferential parking for carpools and vanpools;
  - iv. Promote the use of pre-tax transportation accounts to subsidize travel by alternate modes;
  - v. Work with area employers to develop a plan to promote alternative work arrangements such as flex-time and telecommuting that promote the use of alternative transportation choices a few days a week;
  - vi. Coordinate and facilitate building based parking management activities such as parking cash out and space brokerage.
- b. DATMA will work with Capital Metro to:
  - i. Further develop and promote vanpool services; and
  - ii. Improve local and regional bus services, e.g., explore new local and regional services to complement the Red Line and provide a "Last Mile" connection (i.e. downtown transit circulator service).
- c. DATMA will contact stakeholders to:
  - i. Inventory and identify bus stop enhancements; and
  - ii. Develop partnerships that re-introduce Downtown circulator services or other key mobility services/programs.

2. **Goal B** - Improve knowledge and awareness of mobility programs and services available for Travel within Austin. DATMA will work to provide information regarding the range of transportation options available including individualized marketing to match employee needs with residential interests and needs with specific information, incentive programs, and supportive training.
  - a. DATMA will create an area-wide marketing program for stakeholder group (employers, employees, residents, developers, visitors and institutions) within the DATMA service area. The new marketing materials will include:
    - i. Alternative transportation mode information as well information regarding changes to the infrastructure; and
    - ii. Information that addresses the desire for transportation flexibility and as well as the fear of being without a car.
  - b. DATMA will develop a website marketing strategy and print materials that provide:
    - i. Travel information tools;
    - ii. Educational materials; and
    - iii. Transportation-specific updates for all stakeholders.
  - c. DATMA will acquire or develop an employer/employee focused marketing campaign to educate and promote employer based Transportation Demand management (“TDM”) strategies. The marketing campaign will include, but not be limited to the following:
    - i. Carpool Parking, parking cash out, and transit pass programs;
    - ii. Employee/commuter rewards and incentives, alternative work arrangements (e.g. telecommuting, flex-time, and compressed work schedules);
    - iii. Working with area employers to promote and populate existing rideshare databases;
    - iv. Creating and distributing downtown mobility maps that include the locations of car share programs, bus stops, public bike racks, bike and pedestrian trails, and public parking garages with surface, on-street, and after-hours parking;
    - v. Developing a “new employee” information packet, hosting new employee orientations for area businesses and partners, ensuring that all new employees are aware of transportation alternatives, information sources and how to reach the DATMA;
    - vi. Partnering with property managers and hospitality management organizations to educate employees working with the public about downtown transportation options;
    - vii. Promoting the use of car-share services for mid-day trips requiring cars; and

viii. Developing partnership with area employers to promote and populate the existing Guaranteed Ride Home program database.

3. **Goal C - Maximize existing and future transportation investments for travel within Austin.** DATMA will promote investments by its members and other agencies providing services to maximize demand management outcomes for downtown Austin. To achieve Goal C DATMA will:

- a. Provide a conduit for accessing regional services such as bus passes, the Guaranteed Ride Home program, ride-matching services and vanpool formation;
- b. Seek opportunities to subsidize vanpool and transit while marketing such opportunities;
- c. Develop "pre-trip" travel-planning information resources (access guides, website, etc.) with comprehensive information on all travel choices and support programs to ensure widespread availability and distribution;
- d. Communicate transportation needs and ideas to accelerate projects based upon expected build-out timeframe;
- e. Explore transit-supportive transportation and land use opportunities to maximize the future success of additional transit investments in the area;
- f. Provide a point-of-presence for sale of bus passes and other transaction-related needs;
- g. Seek partnerships for demonstration projects that maximize existing or future investments;
- h. Explore opportunities to broker parking spaces for downtown garage and lot owners in order to address the poor perception of parking availability; and
- i. Monitor agency transportation plans and projects needed for downtown mobility to inform members and provide public comment.

**EXHIBIT 1**  
**EQUAL OPPORTUNITY IN EMPLOYMENT**

- A. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
  
- B. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  
- C. The CONSULTANT will send to the labor union representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or worker's representatives of the CONSULTANT'S obligations under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  
- D. The CONSULTANT will comply with the Regulations of the Department of Transportation (49 CFR 21 and 23 CFR 710.405) and all provision of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) and of the rules, regulations and relevant order of the Secretary of Labor.
  
- E. The CONSULTANT will furnish, upon written request, all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto; and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
  
- F. In the event of the CONSULTANT'S non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The CONSULTANT will include the provisions of paragraph (A.) through (F.) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 or Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 (41 CFR 60) so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontractor purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the COUNTY or Federal Agency the CONSULTANT may request the COUNTY and United States to enter into such litigation to protect the interest of the United States.