



Travis County Commissioners Court Agenda Request

Meeting Date: November 26, 2013

Prepared By: Adele Noel, Environmental Project Manager **Phone #:** (512) 854 7211

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

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 regarding contract number 582-14-40117, an Intergovernmental Cooperative Reimbursement Agreement between the Texas Commission on Environmental Quality and Travis County for Local Initiative Projects.

BACKGROUND/SUMMARY OF REQUEST:

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 expenditure of accumulated funds on clean air projects by counties participating in Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program ("LIRAP").

In 2008, Travis County entered into a reimbursement contract with TCEQ, Contract Number 582-8-89964, under which TCEQ would reimburse the County for certain expenses associated with Local Initiative Project ("LIP") activities. The County has previously spent LIP funds obtained through this contract on several different projects: clean vehicles, school buses, heavy duty vehicles, counterfeit vehicle inspection program, and a transportation management program.

Contract Number 582-8-89964 has been extended several times and expires on August 14, 2014. TCEQ has informed the County that there will be no further extensions to contract number 582-8-89964 and has offered Travis County a new LIP reimbursement agreement to address new LIP funding. If approved by the County and TCEQ, the new contract (contract number 582-14-40177) would take effect upon execution and expire on August 31, 2017.

The following summarizes how the new contract is different from the current contract (contract number 582-8-89964):

1. Special Terms and Conditions Item 3 – TCEQ will provide funding in advance of incurring costs;

2. Special Terms and Conditions Item 16 – Funds generated through use of grant funding, including interest, rebates, and credits shall be treated as additional grant funds and be used for the same purpose;
3. Scope of Work, Section III, Item 4 requires any emissions enforcement projects proposed for funding under LIP to be developed and implemented in coordination with the Texas Department of Public Safety;
4. Cost Budget –Matching Funds, Item 3 – The Indirect Cost Reimbursable Rate has been established at the County’s certified Indirect rate (19.34%) as established in recognition of US Office of Management and Budget Circular A-87 instead of the default rate of 10% which was previously used.

This new contract will provide \$18,017 for fiscal year FY14 for approved LIP projects.

STAFF RECOMMENDATIONS:

TNR recommends approval.

ISSUES AND OPPORTUNITIES:

Keeping the region in compliance with federal ozone standards has long been a priority for Travis County, both to protect public health and to avoid the costly impacts of being designated non-attainment. Reducing ozone levels helps protect the health of children, seniors, and people with chronic respiratory problems such as asthma and bronchitis. If an area is designated non-attainment for ozone, it can have serious consequences for the regional economy, including new constraints on transportation planning, strict limits on industrial growth, and a host of costly pollution regulations. It would also result in the shift of air quality planning and impose new costs on the state for preparing State Implementation Plans for the Austin area.

For the 2013 ozone season, the Austin area experienced 4 days when the ozone level exceeded the levels EPA considers healthy (75 parts per billion, or “ppb”). In 2012, the region was only 2 ppb away from being out of compliance with the 3 year average EPA uses to determine if areas are in attainment (the “design value”). With the EPA now considering tightening the standard (range of 60-70 ppb), additional efforts will be needed to ensure continued compliance.

LIP funds provide an opportunity to develop and implement special projects that provide the best air quality results for a local situation.

FISCAL IMPACT AND SOURCE OF FUNDING:

There will be no negative impact on Travis County’s budget. The grant requires a local match in funds of 25% for emission enforcement LIP projects or 50% match for other LIP types. In the past, we have used in-kind services, employee benefits, monetary contributions from partners to satisfy match requirements. For example

on past emissions enforcement projects, we used officer's benefits as the source for the matching funds.

ATTACHMENTS/EXHIBITS:

Local Initiative (LIP) Contract Number: 582-14-40117

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	(512) 854-4239
Steven M. Manilla	County Executive	TNR	(512) 854-9429
Julie Joe	Assistant County Attorney	County Attorney's Office	(512) 854-9415

CC:

Jon White	Natural Resources Environmental Quality Division Director	TNR	(512) 854-7212
Thomas Weber	Environmental Program Manager	TNR	(512) 854-4629

: :
0801 - NREQ -

Contract Name: Travis County

TCEQ Contract Number: 582-14-40117

Texas Commission on Environmental Quality

Cooperative Reimbursement Contract for State Agencies and Local Governments

CONTRACT SIGNATURE PAGE

Contract Name: Local Initiative Projects (LIP)

Contract Number: 582-14-40117

Performing Party: Travis County

Performing Party Identification Number: 17460001922

Maximum Authorized Reimbursement: \$72,068.00

Effective Date: 9/01/2013 Date of last signature

Expiration Date: 8/31/2017 Last day of Fiscal Year in which the Contract was signed

If checked, this Contract requires matching funds. Match Requirement: See Scope of Work VII(5)

If checked, this Contract is funded with federal funds.

CFDA Number:

Federal Grant Number:

This Contract is entered under: Gov't Code ch. 771 Gov't Code ch. 791 Water Code § 5.124

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and the named Performing Party, a state agency or local government of the State of Texas, enter this agreement (Contract) to cooperatively conduct authorized governmental functions and activities under the laws of the State of Texas.

The Parties agree as follows: (a) to be effective, the Contract must be signed by an authorized official of the TCEQ and the Performing Party; (b) this Contract consists of all documents specified in the list of Contract Documents following this page; and (c) 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 (UGMS) and this Contract.

**Texas Commission on
Environmental Quality (TCEQ)**

**County of Travis
(Performing Party)**

By: _____
Authorized Signature

By: _____
Authorized Signature

Donna F. Huff
Printed Name

The Honorable Samuel T. Biscoe
Printed Name

Section Manager
Title

Travis County Judge
Title

Date

Date

Procurements & Contracts Representative

Clifford Calley
Printed Name

Date

CONTRACT DOCUMENTS LIST

Cooperative Reimbursement Contract for State Agencies and Local Governments

This Contract between TCEQ and Performing Party consists of the Contract Documents listed on this page and marked by an "X." Documents on this list include all amendments. 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, if any. All Contract provisions, however, are subject to control by the latest amendment and most specific provision and by the applicable state and federal laws, rules and regulations.

- Contract Signature Page
- Contract Documents List (this page)
- Special Terms and Conditions
- Federal Section (Including Federal Conditions and Completed Forms)
- Scope of Work
- General Terms and Conditions
 - Choose One
 - Fixed Payment Amounts
 - Cost Budget
- Notices, Project Representatives and Records Locations
- TCEQ – Approved Contract Work Plan
- TCEQ – Approved Performing Party Project Proposals (created during the term of the contract and incorporated by reference)
- Attachment A
- Attachment B
- Attachment C
- Attachment D

SPECIAL TERMS AND CONDITIONS

1. These Special Terms and Conditions add to, or in the case of conflicts, supersede and take precedence over the General Terms and Conditions set forth in this Contract.
2. Period of Funds Availability. TCEQ may encumber grant monies collected in a fiscal year and disburse that grant money to the Performing Party (on an as needed basis as determined by TCEQ) within a period of two (2) fiscal years after that encumbrance. After this time, any balance unpaid to the Performing Party shall be lost due to the TCEQ appropriation authority. Grant money encumbered by TCEQ for a specified fiscal year may be spent by the Performing Party in that fiscal year and for two (2) fiscal years after, provided that this contract remains in force.
3. Advance Payment. The TCEQ may provide the funds in advance of the Performing Party's incurring anticipated costs of LIRAP Activities.
 - 3.1. By paying advance payments the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may at any time before or after any advance payment request additional evidence concerning costs. The TCEQ may audit the records of the Performing Party and may also audit the Performing Party's performance as to any Contract Activity and any other Contract requirement.
 - 3.2. Advance Payments are conditioned on the approval of the FSR. If the FSR does not demonstrate Performing Party has complied with the Contract requirements, the TCEQ may withhold approval or reject the FSR.
 - 3.3. Any funds advanced during the duration of this Contract that have not been expended by the Performing Party by the Termination Date of this contract shall be returned to TCEQ within ninety (90) days after the Termination Date.
4. Cost Reimbursement. In accordance with the Appropriations Act, TCEQ will provide funding by reimbursing the Performing Party's costs of conducting the LIP Activities which are eligible for reimbursement. The TCEQ is responsible to the Texas Legislature and other state agencies to determine whether costs are eligible for reimbursement. Therefore, TCEQ will review the costs of the LIP Activities to determine eligibility for reimbursement under the terms of the Contract Documents.
5. Eligible Costs. An eligible cost is a cost of conducting the LIP Activities that is eligible for reimbursement under the Contract Documents. A payment of funding by the TCEQ, whether in advance of incurring costs or otherwise, does not constitute a TCEQ determination that a cost is eligible for reimbursement.
6. Source of Funds—State. State funds provided for this Contract are appropriated to TCEQ for this purpose under the Appropriations Act (Senate Bill 1) of the 83rd Texas Legislature at Article VI, TCEQ rider 25.
7. Period of Eligible Costs: In order to be eligible for a reimbursement, costs must occur on or after

the Effective Date unless specific approval is provided by TCEQ and on or before any Termination Date. Costs for a LIP Activity completed as required are presumed to have occurred during the term of this Contract.

8. The TCEQ will authorize reimbursement of the costs of the Performing Party when the Performing Party is in compliance with the requirements of the Contract Documents, the costs are eligible, and appropriated funds are available. Without limitation, none of the following in itself constitutes an entitlement to funds or a guarantee of payment:
 - 8.1. An estimate or determination of the amount of designated fees available for reimbursement.
 - 8.2. Approval of a LIP Activity Plan including the budget.
 - 8.3. A payment; regardless of whether paid in advance of incurring a cost or afterwards.
9. In order for costs to be eligible for reimbursement:
 - 9.1. The Performing Party must demonstrate that it has conducted the Grant Activities and other requirements in accordance with the Contract Documents and that the costs are eligible for reimbursement; and
 - 9.2. Costs must be determined to be the reasonable, necessary, actual, and allowable costs of conducting an approved Grant Activity in accordance with the requirements of the Contract Documents.
10. In order for TCEQ to determine eligibility of costs, the Performing Party must submit to the TCEQ the following on a quarterly basis within 30 days after the end of the term of the quarter represented in the report:
 - 10.1. A Financial Status Report on a form in paper copies and in an electronic database format provided by TCEQ detailing all costs of conducting the Grant Activity incurred during the previous reporting period.
 - 10.2. Supporting documentation for costs attached to the Financial Status Report.
11. The Performing Party must comply with the current TCEQ Financial Status Report processing procedures in effect at the time of submittal. The TCEQ may change or add requirements for processing.
12. The final Financial Status Report shall include a signed release of claims.
13. In addition to the requirements specified in the Contract Documents, the standards for costs to be eligible for reimbursement include those contained in the following, to the extent applicable:
 - 13.1. The Uniform Grant and Contract Management Act, Section 783.001 et seq. Texas Government Code; The Uniform Grant Management Standards for State Agencies, 34

- Texas Administrative Code, Section 20.421 et seq. (UGMS) (allowable costs standards and requirements for grantees);
- 13.2. Appropriations Act of the 83rd Texas Legislature Article IX, Part 4 (Grant-Making Provisions);
 - 13.3. Chapter 2261, Texas Government Code (pertaining to cost reimbursement contracts);
 - 13.4. Chapter 391 Local Government Code if a sub-grantee or recipient of funds is an entity defined as a Regional Planning Council or Council of Governments, (pertaining to costs for entities defined as Regional Planning Councils);
 - 13.5. Texas Government Code Section 556.0055 (pertaining to lobbying);
 - 13.6. 30 TAC Chapter 11 (pertaining to TCEQ contracts) and 30 TAC Chapter 14 (pertaining to grants);
 - 13.7. Other applicable Federal and State rules and statutes;
 - 13.8. Chapter 382, Texas Health and Safety Code and implementation rules of the TCEQ at 30 Texas Administrative Code Chapter 114 Subchapters A and C (pertaining to the Low Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program);
 - 13.9. Appropriations Act of the 83rd Texas Legislature at Article VI, TCEQ Rider 25 (appropriation for LIRAP program);
14. The Performing Party agrees that TCEQ may offset any payments for costs ineligible for reimbursement against any other payment to the Performing Party contemplated by the Contract Documents.
 15. The Project Budgets submitted by the Performing Party shall comply with the terms of the Cost Budget and General Terms and Conditions of this Contract; including, but not limited to, the restrictions on indirect rate and travel costs.
 16. Program Income: Funds generated through the use of grant funding, including interest, rebates, fees, and credits, shall be treated as additional grant funds in accordance with UGMS, Article III, Subpart C _____.25(g)(2), and shall be expended in accordance with the requirements of this Contract.
 17. No intent to create intellectual property. TCEQ anticipates that performance of the Contract Activities will not require the creation of intellectual property. Accordingly, Article 10 of the General Terms and Conditions of this Contract will not be applicable. If the Performing Party at any time determines that the Contract Activities will require creation of intellectual property, including new works incorporating preexisting intellectual property, the Performing Party shall immediately notify the TCEQ and will not undertake such activity unless TCEQ provides written authority to proceed.

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

CONTRACT ACTIVITIES

SCOPE OF WORK

Scope of Work for 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 Local Initiative Projects (LIP) under Texas Health and Safety Code (HSC) §382.220

I. INTRODUCTION

LIRAP was authorized by the 77th Texas Legislature in 2001, to improve air quality. LIRAP operates in areas of the state that participate in the AirCheckTexas motor vehicle emissions inspection and maintenance program administered jointly by the TCEQ and the Texas Department of Public Safety.

In 2007, the 80th Texas Legislature, passed Senate Bill (SB) 12, Section 1.07, amending the 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 81st Texas Legislature, House Bill (HB) 1796, made two changes to the program: 1) LIP funding can not 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. In 2013, the 83rd Texas Legislature, House Bill (HB) 2305, made a change that requires certain projects to be developed and implemented in consultation with the director of the Department of Public Safety for coordinating with local law enforcement officials to reduce the use of counterfeit registration insignia and vehicle inspection reports by providing local law enforcement officials with funds to identify vehicles with counterfeit insignia and vehicle inspection reports and to carry out appropriate actions. Also in 2013, the 83rd Texas Legislature, House Bill (HB) 2859, made a change that the appropriation from fees collected for LIP funding may not exceed \$7 million per fiscal year, of which \$2 million may be used only for Emissions Enforcement 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 in coordination with the director of Department of Public Safety for coordinating with local law enforcement officials to reduce the use of counterfeit registration insignia and vehicle inspection reports by providing local law enforcement officials with funds to identify vehicles with counterfeit registration insignia and vehicle inspection reports 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 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 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, TCEQ advances funds to the Grantee, Grantee must receive approval for a project and a NTP for that project 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. The transfer of funds does not release the Grantee from any fiduciary responsibilities related to the funding allocated to them. 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 who authorizes use of that county's allocation of LIP 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 (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 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, 81st 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 registration insignia and vehicle inspection reports. These projects would be developed and implemented in consultation with the Director of the Department of Public Safety.

Maximum funding under HSC §382.220 available to: Travis County
for LIP during FY **2014** is: \$18,017.00
to be expended by: August 31, 2014

Estimated funding under HSC §382.220 available to: Travis County
for LIP during FY **2015** is: \$18,017.00
to be expended by: August 31, 2015

Estimated funding under HSC §382.220 available to: Travis County
for LIP during FY **2016** is: \$18,017.00
to be expended by: August 31, 2016

Estimated funding under HSC §382.220 available to: Travis County
for LIP during FY **2017** is: \$18,017.00
to be expended by: August 31, 2017

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 or 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 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 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: Rick Smathers at 512/239-1406, rick.smathers@tceq.texas.gov; or Santos Olivarez at 512/239-4718, santos.olivarez@tceq.texas.gov.

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 of 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 (September 1, 2013 – August 31, 2014; September 1, 2014 – August 31, 2015; September 1, 2015 – August 31, 2016; September 1, 2016 – August 31, 2017.) Annual reports must be submitted within 30 days following the end of the fiscal year (due dates of September 30, 2014; September 30, 2015; September 30, 2016, September 30, 2017, 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.
- (b) Whereas the subject area categories described in Article III of the Scope of Work 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 scope of work, 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 Notice to Proceed and the PERFORMING PARTY shall start the project.

2. NOTICE TO PROCEED

- (a) Projects under this Contract will be authorized by Notices to Proceed (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 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

- (a) 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, 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.

**GENERAL TERMS AND CONDITIONS
for Cooperative Reimbursement Contract
for State Agencies and Local Governments**

1. CONTRACT PERIOD

- 1.1. **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Contract Signature Page. If no Effective Date is provided, the Effective Date of the Contract is the date of last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the same Fiscal Year in which the Contract is signed.
- 1.2. **Amendments.** This Contract is not subject to competitive selection requirements and may be amended by mutual agreement. Except as specifically allowed by the Contract, all changes to the Contract require a written amendment and agreed to by both parties.
- 1.3. **Extensions.** TCEQ may by unilateral written amendment extend the Expiration Date for a period of up to 90 days. Unless otherwise indicated in the applicable contract amendment, an extension does not extend any other deadlines or due dates other than the expiration of the Contract Period.

2. FUNDS

- 2.1 **Availability of Funds.** This Contract and all claims, suits or obligations arising under or related to this Contract are subject to the receipt and availability of funds appropriated by the Texas Legislature for the purposes of this Contract or the respective claim, suit or obligation, as applicable. Performing Party will ensure that this article is included in any subcontract it awards.
- 2.2 **Maximum Authorized Reimbursement.** The total amount of funds provided by TCEQ for the Contract will not exceed the amount of the Maximum Authorized Reimbursement as shown on the Contract Signature Page.
- 2.3 **Fiscal Year Restrictions.** In order to be reimbursed under this Contract, costs must be incurred during the Contract Period and within the time limits applicable to the funds from which the Contract is being paid. TCEQ is under no obligation to offer deadline extensions which extend to the maximum availability of the contract funding source.
- 2.4 **Grants.** If this Contract was entered under the TCEQ's authority to award grants, TCEQ is providing financial assistance to the recipient to undertake its own project.
- 2.5 **No Debt against the State.** This Contract is contingent on the continuing appropriation of funds. This Contract shall not be construed to create debt against the State of Texas.

3. ALLOWABLE COSTS

- 3.1 **Conforming Activities.** TCEQ will reimburse the Performing Party for necessary and reasonable Allowable Costs that are incurred and paid by the Performing Party in performance of the Scope of Work as authorized by this Contract in the Cost Budget or Fixed Payment Amounts.
- 3.2 **UGMS.** Allowable Costs are restricted to costs that comply with the Texas Uniform Management Standards (UGMS) and applicable state and federal rules and law. The text

of UGMS is available online at the Governor's website. The parties agree that all the requirements of the UGMS apply to this Contract, including the criteria for Allowable Costs. Additional federal requirements apply if this Contract is funded, in whole or in part, with federal funds.

4. REIMBURSEMENT

- 4.1. **Reimbursement Requests.** Performing Party shall invoice TCEQ to request reimbursement for its Allowable Costs for performing the Scope of Work. Performing Party's invoice shall confirm to all reimbursement requirements specified by TCEQ.
- 4.2. **Conditional Payments.** Reimbursements are conditioned on the Scope of Work being performed in compliance with the Contract. Performing Party shall return payment to TCEQ for either overpayment or activities undertaken that are not compliant with the Scope of Work. This does not limit or waive any other TCEQ remedy.
- 4.3. **No Interest for Delayed Payment.** Because the Performing Party is not a vendor of goods and services within the meaning of Texas Government Code Chapter 2251, no interest is applicable in the case of late payments.
- 4.4. **Release of Claims.** As a condition to final payment or settlement, or both, the Performing Party shall execute and deliver to the TCEQ a release of all claims against the TCEQ for payment under this Contract.

5. FINANCIAL RECORDS, ACCESS AND AUDITS

- 5.1 **Audit of Funds.** The Performing Party understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Performing Party 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. Performing Party shall ensure that this clause concerning the audit of funds accepted under this Contract is included in any subcontract it awards.
- 5.2 **Financial Records.** Performing Party shall establish and maintain financial records including records of costs of the Scope of Work in accordance with generally accepted accounting practices. Upon request Performing Party shall submit records in support of reimbursement requests. Performing Party shall allow access during business hours to its financial records by TCEQ and other state agencies for the purpose of inspection and audit. Financial records regarding this contract shall be retained for a period of three (3) years after date of submission of the final reimbursement request.

6. PERFORMING PARTY'S RESPONSIBILITIES

- 6.1 **Performing Party's Responsibility for the Scope of Work.** Performing Party undertakes performance of the Scope of Work as its own project and does not act in any capacity on behalf of the TCEQ nor as a TCEQ agent or employee. Performing Party agrees that the Scope of Work is furnished and performed at Performing Party's sole risk as to the means, methods, design, processes, procedures and performance.
- 6.2 **Independent Contractor.** The parties agree that the Performing Party is an independent contractor. Nothing in this Contract shall create an employee-employer relationship between Performing Party and TCEQ. Nothing in this Contract shall create a joint venture between TCEQ and the Performing Party.

- 6.3 **Performing Party's Responsibilities for Subcontractors.** All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Scope of Work under a direct or indirect contract with Performing Party shall be considered to be the acts and omissions of Performing Party.
- 6.4 **No Third Party Beneficiary.** TCEQ does not assume any duty to exercise any of its rights and powers under the Contract for the benefit of third parties. Nothing in this Contract shall create a contractual relationship between TCEQ and any of the Performing Party's subcontractors, suppliers or other persons or organizations with a contractual relationship with the Performing Party.

7. TIME

- 7.1 **Time is of the Essence.** Performing Party's timely performance is a material term of this Contract.
- 7.2 **Delays.** Where Performing Party's performance is delayed, except by Force Majeure or act of the TCEQ, TCEQ may withhold or suspend reimbursement, terminate the Contract for cause, or enforce any of its other rights (termination for convenience may be effected even in case of Force Majeure or act of TCEQ).

8. CONFLICT OF INTEREST

The Performing Party shall timely notify TCEQ in writing of any actual, apparent, or potential conflict of interest regarding the Performing Party or any related entity or individual. No entity or individual with any actual, apparent, or potential conflict of interest shall take part in the performance of any portion of the Scope of Work, nor have access to information regarding any portion of the Scope of Work, without TCEQ's written consent in the form of a unilateral amendment. Performing Party agrees that TCEQ has sole discretion to determine whether a conflict exists, and that a conflict of interest is grounds for termination for cause.

9. DATA AND QUALITY

- 9.1 **Quality and Acceptance.** All work performed under this Contract must be complete and satisfactory in the reasonable judgment of the TCEQ. All materials and equipment shall be handled in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract.
- 9.2 **Quality Assurance.** All work performed under this Contract that involves the acquisition of environmental data will be performed in accordance with a TCEQ-approved Quality Assurance Project Plan (QAPP) meeting all applicable TCEQ and EPA requirements. Environmental data includes any measurements or information that describe environmental processes, location, conditions, ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or literature. No data collection or other work covered by this requirement will be implemented prior to Performing Party's receipt of the QAPP signed by TCEQ and, if necessary, the EPA. Without prejudice to any other remedies available to TCEQ, TCEQ may refuse reimbursement for any environmental data acquisition performed prior to approval of a QAPP by TCEQ and, if necessary, the EPA. Also, without prejudice to any other remedies available to TCEQ, Performing Party's failure to meet the terms of the QAPP may result in TCEQ's suspension of associated activities and non-reimbursement of expenses related to the associated activities.

9.3 **Laboratory Accreditation.** Any laboratory data or analyses provided under this Contract must be prepared by a laboratory that is accredited by TCEQ according to 30 Texas Administrative Code Chapter 25, subchapters A and B, unless TCEQ agrees in writing to allow one of the regulatory exceptions specified in 30 Texas Administrative Code Section 25.6.

10. INTELLECTUAL PROPERTY

10.1 **Third Party Intellectual Property.** Unless specifically modified in an amendment or waived in a unilateral amendment, Performing Party must obtain all intellectual property licenses expressly required in the Scope of Work, or incident to the use or possession of any deliverable under the Contract. Performing Party 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.

10.2 **Grant of License.** Performing Party 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 Performing Party that is incorporated into any new works created as part of the Scope of Work, intellectual property created under this Contract, and associated user documentation.

11. INSURANCE AND INDEMNIFICATION

11.1 **Insurance.** Unless prohibited by law, the Performing Party shall require its contractors to obtain and maintain during the Contract Period adequate insurance coverage sufficient to protect the Performing Party and the TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract. Unless specifically waived by the TCEQ, sufficient coverage shall include Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.

11.2 **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, THE PERFORMING PARTY SHALL REQUIRE ALL CONTRACTORS PERFORMING CONTRACT ACTIVITIES ON BEHALF OF PERFORMING PARTY TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE TCEQ AND PERFORMING PARTY AND THEIR OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF CONTRACT ACTIVITIES BY THE CONTRACTOR OR ITS SUBCONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM 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. THE DEFENSE OF TCEQ SHALL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT TCEQ. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

12. TERMINATION

- 12.1 **Termination for Cause.** TCEQ may, upon providing 10 days' written notice and the opportunity to cure to the Performing Party, terminate this Contract for cause if Performing Party materially fails to comply with the Contract including any one or more of the following acts or omissions: nonconforming work, or existence of a conflict of interest. Termination for cause does not prejudice TCEQ's other remedies authorized by this Contract or by law.
- 12.2 **Termination for Convenience.** TCEQ may, upon providing 10 days' written notice to the Performing Party, terminate this Contract for convenience. Termination shall not prejudice any other right or remedy of TCEQ or the Performing Party. Performing Party may request reimbursement for: conforming work and timely, reasonable costs directly attributable to termination. Performing Party 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.
- 12.3 If, after termination for cause by TCEQ, it is determined that the Performing Party had not materially failed to comply with the Contract, the termination shall be deemed to have been for the convenience of TCEQ.

13. DISPUTES, CLAIMS AND REMEDIES

- 13.1 **Payment of a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release, in the form of a unilateral amendment, constitutes a release of Performing Party from liability under this Contract.
- 13.2 **Schedule of Remedies available to the TCEQ.** In accordance with Texas Government Code Chapter 2261 the following Schedule of Remedies applies to this Contract. In the event of Performing Party's nonconformance, TCEQ may do one or more of the following:
- Issue notice of nonconforming performance;
 - Reject nonconforming performance and request corrections without charge to the TCEQ;
 - Reject a reimbursement request or suspend further payments, or both, pending accepted revision of the nonconformity;
 - Suspend all or part of the Contract Activities or payments, or both, pending accepted revision of the nonconformity;
 - Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
 - Terminate the contract without further obligation for pending or further payment by the TCEQ and receive restitution of previous payments.
 - Opportunity to Cure. The Performing Party will have a reasonable opportunity to cure its nonconforming performance, if possible under the circumstances.
 - Cumulative Remedies. Remedies are cumulative; the exercise of any remedy under this Contract or applicable law does not preclude or limit the exercise of any other remedy available under this Contract or applicable law.

14. SOVEREIGN IMMUNITY

The parties agree that this Contract does not waive any sovereign immunity to which either party is entitled by law.

- 14.1 **Survival of Obligations.** Except where a different period is specified in this Contract or applicable law, all representations, indemnifications, and warranties made in, required by or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, survive for four (4) years beyond the termination or completion of the Contract, or until four (4) years after the end of a related proceeding. A related proceeding includes any litigation, legal proceeding, permit application, or State Office of Administrative Hearings proceeding, which is brought in relation to the Contract or which in TCEQ's opinion is related to the subject matter of the Contract. Either party shall notify the other of any related proceeding if notice of the proceeding has not been provided directly to that other party.

15. CONTRACT INTERPRETATION

- 15.1 **Definitions.** The word "include" and all forms such as "including" mean "including but not limited to" in the Contract and in documents issued in accordance with the Contract, such as Work Orders or Proposals for Grant Activities (PGAs).
- 15.2 **Headings.** The headings of the sections contained in this Contract are for convenience only and do not control or affect the meaning or construction of any provision of this Contract.
- 15.3 **Delivery of Notice.** Notices are deemed to be delivered three (3) working days after postmarked if sent by U.S. Postal Service certified or registered mail, return receipt requested. Notices delivered by other means are deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile transmission, email, or other commercially accepted means.
- 15.4 **Interpretation of Time.** All days are calendar days unless stated otherwise. Days are counted to exclude the first and include the last day of a 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.
- 15.5 **State, Federal Law.** This Contract is governed by, and interpreted under the laws of the State of Texas, as well as applicable federal law.
- 15.6 **Severability.** If any provision of this Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall be deemed severable (to the extent of such illegality, invalidity or unenforceability) and the remaining part of the provision and the rest of the provisions of this Contract shall continue in full force and effect. If possible, the severed provision shall be deemed to have been replaced by a valid provision having as near an effect to that intended by the severed provision as will be legal and enforceable.
- 15.7 **Assignment.** No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by Performing Party will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge the Performing Party from any duty or responsibility under the Contract.

- 15.8 **Venue.** Performing Party 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 Performing Party agrees that any cause of action involving this Contract arises solely in Travis County, Texas.
- 15.9 **Publication.** Performing Party agrees to notify TCEQ five (5) days prior to the publication or advertisement of information related to this Contract. Performing Party agrees not to use the TCEQ logo or the TCEQ graphic as an advertisement or endorsement without written permission signed by the appropriate TCEQ authority.
- 15.10 **Waiver.** With the exception of an express, written waiver in the form of a unilateral amendment signed by TCEQ, no act or omission will constitute a waiver or release of Performing Party'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.
- 15.11 **Compliance with Laws.** TCEQ relies on Performing Party to perform all Contract Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.
- 15.12 **Counterparts.** This Contract may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Contract.
- 15.13 **Accessibility.** All electronic content and documents created as deliverables under this Contract must meet the accessibility standards prescribed in 1 Texas Administrative Code sections 206.50 and 213 for state agency web pages, web content, software, and hardware, unless TCEQ agrees that exceptions or exemptions apply.

**Cost Budget – Matching Funds
Cooperative Reimbursement Contract
for State Agencies and Local Governments**

1. **Budget.** Authorized budgeted expenditures for work performed are as follows:

Budget Category	Total Project Costs
Salary / Wages	\$
Fringe Benefits	\$
Travel	\$
Supplies	\$
Equipment	\$
Contractual	\$
Construction	\$
Other	\$
Total Direct Cost	\$
Indirect Cost	\$
Other In-kind Contributions	\$
Total Contract Cost	\$
Cost Share (50%)	\$
TCEQ Reimbursement Amount (50%)	\$

2. **Matching Funds.** This Contract requires matching funds.

- Performing Party must match TCEQ expenditures by contributing 50% of the total project costs as shown above.¹ Unless a reduced match is allowed under VII Project Selection Criteria 5. Project Budget, each invoice must demonstrate that the Performing Party is contributing the required match for the period specified on the invoice.

3. **Indirect Cost Reimbursable Rate.** The reimbursable rate for this Contract is 31.5346% of (check one):

- salary and wages
 modified total direct costs
 other direct costs base

If other direct cost base, identify:

¹ Certain projects may have a lower match requirement. See Scope of Work Article VII(5).

This rate is less than or equal to (check one):

- approved predetermined rate
- experienced-based predetermined rate
- default rate

4. **Other.** If Budget Category “Other” is greater than \$25,000 or more than 10% of budget total, identify the main constituents:

5. **Budget Categories.** The Budget Categories above have the definitions, requirements and limitations stated in UGMS. Construction costs are not reimbursable without prior, specific written authorization from TCEQ.

6. **Budget Control.** Actual costs to be reimbursed for each line item above must not exceed ten percent (10%) over the budgeted amount for that line item. Total costs to be reimbursed must be at or less than the total specified. All invoices must be submitted in a format that clearly shows how this requirement is being met. At a minimum, invoices must show expenses for the invoice period, year-to-date expenses, projected totals for the year (or applicable contract period), percent of budget spent to date, and percentage of budget projected to be spent.

7. **Invoice Submittal.** Unless otherwise stipulated in the Contract, invoices must be submitted to the TCEQ individual named in Project Representatives and Records Location at monthly intervals. Final invoices shall be submitted within two (2) calendar months after completing the Scope of Work activities. TCEQ may extend this deadline by unilateral contract agreement.

8. **Grant Chargeback Invoices.** In the case of an invoice for grant activities being paid during the second fiscal year for which the funds were appropriated, ALL INVOICES MUST BE SUBMITTED IN SUFFICIENT TIME FOR TCEQ REVIEW, NECESSARY CORRECTIONS, TCEQ APPROVAL, AND SUBSEQUENT PRESENTATION TO THE COMPTROLLER BEFORE THE END OF THE FISCAL YEAR.

9. **Travel.** In order to be reimbursable, travel costs must be specifically authorized 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 employees of the State of Texas at the time the cost is incurred.

10. **Supporting Records.** Performing Party shall submit records and documentation to TCEQ as appropriate for the review and approval of reimbursing costs. TCEQ may reject invoices without appropriate supporting documentation. TCEQ has the right to request additional documentation. Performing Party shall maintain records subject to the terms of this Contract.

11. **Indirect Costs.** Performing Party’s indirect costs will be reimbursed at the reimbursable rate shown above (if no reimbursable rate is shown above, indirect costs are not reimbursable under this Contract). The reimbursable rate must be less than or equal to the rate authorized under UGMS. To the extent that the reimbursable rate is lower than Performing Party’s actual indirect costs, Performing Party is contributing its unreimbursed indirect costs to the successful performance of this Contract, and waives any right it may have to reimbursement of those costs (if this Contract requires

matching funds, Performing Party may claim its unreimbursed indirect costs as part or all of its match).

12. **Indirect Rates Authorized under UGMS.** The following rates are authorized under UGMS:

12.1 **Approved Predetermined Rate.** An approved predetermined rate is an indirect cost rate agreed to within the preceding 24 months in a signed indirect rate negotiation agreement with the applicable federal cognizant agency, state single audit coordinating agency, major state funding agency, or another state agency designated by the Governor. An approved predetermined rate shall be expressed as a percentage of the direct cost base specified in the signed indirect rate negotiation agreement.

12.2 **Experience-Based Predetermined Rate.** An experienced-based predetermined rate is an indirect cost rate agreed to between TCEQ and Performing Party, where there is no approved predetermined rate and there is sufficient cost experience and other pertinent facts to enable the parties to reach an informed judgment (a) as to the probable level of indirect costs in the Performing Party's programs during the term of the Contract, covered by the negotiated rate, and (b) that the amount allowable under that rate would not exceed actual indirect costs. An experience-based predetermined rate shall be expressed as a percentage of either (a) salary and wages, or (b) modified total direct costs. Modified total direct costs are total direct costs less "extraordinary or distorting expenditures," usually capital expenditures, subawards, contracts, assistance payments (e.g., to beneficiaries), and provider payments. The direct cost base selected should result in the fair distribution of indirect costs among all state and federal grants and contracts affected, as well as other Performing Party activities that share in the indirect costs.

12.3 **Default Rate.** A default rate is an indirect of ten percent (10%) of direct salary and wages, to be used where (a) there is no approved or experienced-based predetermined rate, and (b) the Performing Party represents that its actual indirect costs equal or exceed ten percent (10%) of salary and fringe.

13. **Adjustment of Indirect Rates.** A reimbursable rate is intended to be final. Performing Party acknowledges that TCEQ's budget is limited and funds may not be available to reimburse any increase in indirect costs. Performing Party waives any right it may have to upward adjustment of its indirect rate, and agrees to contribute any such increase to the successful performance of this Contract (if matching funds are required, Performing Party may claim such costs as all or part of its match). TCEQ waives any right it may have to a downward adjustment of Performing Party's indirect rate, unless the reimbursable rate is greater than the Performing Party's actual indirect costs. If the latter case, if reasonably feasible, a compensating adjustment shall be carried forward to this Contract or a future contract. If not feasible, where permitted by law TCEQ and Performing Party may identify additional services to be performed by Performing Party as a compensating adjustment, or Performing Party shall reimburse TCEQ the excess indirect costs paid.

NOTICES, PROJECT REPRESENTATIVES AND RECORDS LOCATION
CONTRACT NO. 582-14-40117
PROJECT TITLE: LOCAL INITIATIVE PROJECTS
(LIP)

14. **Representatives.** The individual(s) named below are the representatives of TCEQ and Performing Party. They are authorized to give and receive communications and directions on behalf of the TCEQ and the Performing Party as indicated below. All communications including official contract notices must be addressed to the appropriate representative or his or her designee.

15. **Changes in Representatives.** Either party may change its representative by unilateral amendment.

16. **TCEQ Representatives**

TCEQ CONTRACT MANAGER
(for Contractual Matters)

TCEQ PROJECT MANAGER
(for Technical Matters)

Noemi L. Craib
Contract Specialist
Title
Texas Commission on Environmental
Quality
P.O. Box 13087
MC-164
Austin, Texas 78711-3087
Telephone No. (512) 239-6474
Facsimile No. (512) 239-1500

Rick Smathers
Program Manager
Title
Texas Commission on Environmental
Quality
P.O. Box 13087
MC-164
Austin, Texas 78711-3087
Telephone No. (512) 239-1406
Facsimile No. (512) 239-6188

17. **Performing Party Representatives.**

For Contractual Matters

For Technical Matters

Title
Telephone No. _____
Facsimile No. _____

Title
Telephone No. _____
Facsimile No. _____

18. **Invoice Submittal.** Invoices must be submitted to the TCEQ Contract Manager, unless another recipient is identified below:

TCEQ Project Manager / TCEQ Disbursements Section / Other: _____

19. **Designated Location for Records Access and Review.** The Performing Party designates the physical location indicated below for record access and review pursuant to any applicable provision of this Contract:

(City / State ZIP)