

SPECIAL PROVISIONS

**1. COMPENSATION**

The Consultant shall be reimbursed by H-GAC for authorized costs in accordance with 48 CFR, Ch 1, Part 31 incurred in performance of the work set out in this Agreement as specifically described in Attachment A. Detailed records must be maintained to show actual time devoted and costs incurred. The total project cost of this agreement is \_\_\_\_ Dollars (\$ ). Funding for this agreement includes:

Funding Type	Funding Source	Funding Amount	Funding Percentage
	H-GAC Clean Vehicles Program		
	Applicant		
<b>Totals</b>			

The Consultant agrees to bill H-GAC on a monthly basis for all allowable costs. The Consultant will submit a final invoice within sixty (60) days after the completion of work. Invoices submitted after this time will not be honored unless prior arrangements are made and approved in writing by H-GAC.

The total reimbursement under this contract shall not exceed \_\_\_\_\_ Dollars (\$ ). This amount is based on the Project Specifications(s), attached hereto and identified as Attachment B. Costs incurred by the Consultant prior to the signed agreement will not be eligible for reimbursement. The Consultant shall comply with the cost principles established in OMB Circular A-87, "Cost Principles for State and Local Governments".

After execution of this contract, but prior to the performance of any work by the Consultant, \_\_\_\_\_ will remit a check made payable to "Corporation for Regional Excellence" in the amount of \$ \_\_\_\_\_ as the cost reimbursement for the contract oversight fee H-GAC must pay to the State of Texas for this funding. If possible, include in the memo or note section of the check, a notation that the funds are for the Clean Air Initiative oversight match and CSJ# \_\_\_\_\_. Please include a Tax ID number to ensure proper tax reporting and donor recognition.

H-GAC will reimburse the Consultant for all properly supported costs incurred under the terms and conditions of this agreement. The reimbursement of costs will only include those applicable federal participating funds. The Consultant shall submit the State's Form 132 and/or other type of invoice acceptable to the H-GAC or State to the following address:

Houston-Galveston Area Council  
 P.O. Box 22777  
 Houston, Texas 77227-2777  
 Attention: Clean Vehicles Program

All billing statements shall be properly documented. Billing statements arriving after the 1<sup>st</sup> day of the month shall not be processed for payment until after the 1<sup>st</sup> day of the succeeding month. H-GAC will make payment to the Consultant within sixty (60) days from receipt of the Consultant's request for payment, provided that the request is properly prepared, executed and documented. Unsupported charges or charges after final acceptance by H-GAC will not be considered eligible for reimbursement. If applicable or necessary, H-GAC will prepare a final audit upon completion of the services authorized herein or at any time audit is deemed to be in the best interest of H-GAC or the State.

#### Release of Claims

The final invoice shall include a signed and executed Release of Claims section, releasing all claims for payment of any funds due and payable by the H-GAC, upon H-GAC's payment of the final invoice.

### **2. AVAILABILITY OF EMISSIONS REDUCTION CREDITS**

A project funded under this program may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program. An emissions reduction generated by this project may not be used as a marketable emissions reduction credit or, to offset any emissions reduction obligation; and may be used to demonstrate conformity with the state implementation plan as a voluntary emission reduction program measure only.

### **3. CONSULTANT PERSONNEL**

The Consultant agrees to assign qualified staff members including a Project Manager who shall be responsible for the task administration and work performance. The Project Manager shall be \_\_\_\_\_. In the event the Project Manager becomes no longer available to this project, a substitution of like personnel with similar qualifications can only be made after obtaining prior written approval of H-GAC.

If the contact information for the Consultant and/or the Consultant's project manager changes, the consultant shall notify H-GAC in writing within thirty (30) days.

### **4. INSPECTION OF WORK**

H-GAC shall have the right to review and inspect the progress of the work described herein at all times.

### **5. PROPRIETARY RIGHTS**

Consultant agrees not to release data or information about the results of the project to any person outside of H-GAC without first obtaining written authorization to release such information from H-GAC. Consultant shall be permitted to list H-GAC as a client for marketing purposes.

### **6. INSURANCE**

H-GAC acknowledges that Consultant is governed by the Texas Tort Claims Act, which sets forth certain limitations and restrictions on the types of liability and the types of insurance coverage that can be required of Consultant. The Consultant represents to H-GAC that it either has adequate General Liability and Property insurance policies in place or sufficient resources to self-insure for all claims for which it may be responsible under the Texas Tort Claims Act. The Consultant further represents to H-GAC that it either has workers' compensation insurance in the amount required by statute or is entitled to self-insure for workers compensation coverage under Texas law and has elected to do so.

## **7. PROGRESS REPORTS**

During the term of the contract, the Consultant shall promptly advise H-GAC in writing of events which have a significant impact upon the contract, including:

- (1) Problems, delays or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated and any state or federal assistance needed to resolve the situation.
- (2) Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

## **8. CHANGE IN CONSULTANT STATUS**

In the event the organizational status of the Consultant changes, such as through a change of ownership and/or filing for bankruptcy, the Consultant shall immediately notify H-GAC in writing and provide appropriate contact information for key individuals. In the event of bankruptcy, the Consultant shall place H-GAC on the distribution list for bankruptcy court documents.

## **9. QUARTERLY REPORTING**

The Consultant shall submit to H-GAC quarterly monitoring reports. This report will include (as applicable), but not be limited to: total and in-region quarterly VMT, total and in-region fuel usage, and maintenance information. H-GAC reserves the right to request any data necessary to monitor compliance with the Houston-Galveston Clean Vehicles Program.

## **10. DISADVANTAGED BUSINESS ENTERPRISES**

- (1) Policy. It is the policy of the Department of Transportation (DOT) that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this Agreement.

- (2) DBE Obligation. The Consultant agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard the Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The Consultant shall not discriminate on the basis of race, creed, color, national origin, age, or sex in the award and performance of DOT-assisted contracts.

H-GAC has established a goal of 22% DBE participation in its FTA third party contracting opportunities. Therefore, any contract issued under this Agreement will carry a 22% DBE participation goal.

## 11. TITLE VI ASSURANCE

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- (a) Compliance with Regulations. The Consultant shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.
- (b) Nondiscrimination. The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, religion, sex, age, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulation including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- (c) Solicitation for Subcontracts, including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under the subcontract, including procurement of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, religion, age, sex, or national origin.
- (d) Information and Reports. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by H-GAC or the

Department of Transportation (DOT) to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a Consultant and is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to H-GAC or the Department of Transportation, as appropriate and shall set forth what efforts it has made to obtain the information.

- (e) Sanctions for Noncompliance. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the District shall impose such contract sanctions as it or the Department of Transportation may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or
  - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- (f) Incorporation of Provisions. The Consultant shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant hereto. The Consultant shall take such action with respect to any subcontract or procurement as H-GAC may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Consultant becomes involved in or is threatened with litigation with a subconsultant or supplier as a result of such direction, the Consultant may request H-GAC to enter into such litigation to protect the interests of H-GAC and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

## **1. COMPLIANCE WITH LAWS**

The Consultant shall comply with all applicable Federal, State and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Consultant shall furnish H-GAC with satisfactory proof of its compliance therewith.

## **13. ENERGY POLICY**

Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

## **14. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT REQUIREMENTS**

Consultant agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibit the use under nonexempt federal contracts, grants or loans, of facilities included on the EPA list for Violating Facilities.

#### **15. DEBARRED BIDDERS**

Consultant, including any of its officers or holders of a controlling interest, is obligated to inform H-GAC whether or not it is or has been on any debarred bidders' list maintained by the United States Government. Should the Consultant be included on such a list during the performance of this project, it shall so inform H-GAC.

#### **16. DRUG-FREE WORKPLACE**

The Consultant agrees that if the Consultant is a recipient of more than \$25,000 in federal assistance through an H-GAC subcontract, the Consultant shall provide a "drug-free" workplace in accordance with the Drug-free Workplace Act (DFWA), March 18, 1989. For purposes of this Section, "drug-free" means a worksite at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance. The Consultant shall:

1. Publish a policy statement prohibiting the manufacture, distribution, dispensation, possession, or use of a controlled substance and notify employees of the consequences for violating this prohibition;
2. Establish a drug-free awareness program;
3. Provide each employee with a copy of its policy statement; and
4. Notify employees that, as a condition of employment, the employee must adhere to the terms of the statement and must notify the employer of any criminal drug offense within five days of conviction.