

**Houston-Galveston Area Clean Cities/Clean Vehicles Program
Funded by
Congestion Mitigation / Air Quality Improvement Funds**

PROGRAM GUIDANCE

July 2006

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INTRODUCTION

The Houston-Galveston Area Council (H-GAC) is seeking applications for incentive funding under the Houston-Galveston Area Clean Cities/Clean Vehicles (CC/CV) Program. This program was created to help assure the Houston-Galveston region remains in conformity with the Texas State Implementation Plan (SIP) for air quality attainment. The CC/CV Program provides Congestion Mitigation / Air Quality Improvement (CMAQ) funds to government and private entities to assist in their efforts to implement low emission vehicle fleets and fueling infrastructure. Funds will be awarded in cycles on a first-come, first-served basis until funds are exhausted.

The primary goal of the Houston-Galveston Area CC/CV Program is to reduce the emissions of nitrogen oxides (NO_x), volatile organic compounds (VOC) and particulate matter (PM) emissions. Funding is available to offset costs of projects that reduce these pollutants from on-road mobile sources within the Houston-Galveston ozone nonattainment area. Eligible projects include the following:

- ◆ purchase of new, low emission vehicles;
- ◆ repowering of existing high-emitting diesel vehicles with new, low emission engines;
- ◆ retrofit¹ of existing vehicles with after treatment systems to reduce emissions;
- ◆ building or upgrade of clean fuel infrastructure

Funds are available for projects proposed by public entities as well as those that are cooperatively implemented under agreements between the public and private sectors and/or non-profit entities. Since the public benefit is air quality improvement, it is expected that future funding proposals involving private entities will demonstrate strong emission reduction benefits. In this respect, public-private partnerships are no different from public sector CMAQ projects.

Applicants for CMAQ funds under the CC/CV may utilize the Texas Emission Reduction Plan (TERP), administered by the Texas Commission on Environmental Quality, for matching funds. The CC/CV Program is distinct from the TERP. Among the key differences are that the CC/CV Program possesses less strict cost effectiveness criteria. The CC/CV Program is also able to fund infrastructure expenses that are ineligible under the TERP. Projects involving non-road vehicles or engines cannot be funded under the CC/CV Program, but could be eligible for funding under the TERP.

¹ An engine "retrofit" includes (but is not limited to) any of these activities:
- addition of new/better pollution control after treatment equipment to certified engines
- upgrading a certified engine to a cleaner certified configuration
- upgrading an uncertified engine to a cleaner "certified-like" configuration
- conversion of any engine to a cleaner fuel
- early replacement of older engines with newer (presumably cleaner) engines (in lieu of regular expected rebuilding)

BACKGROUND INFORMATION

State Implementation Plan for Air Quality

With the signing of the Clean Air Act Amendments of 1990 into law, the Houston-Galveston region was designated non-attainment for exceeding the (NAAQS) for the pollutant ozone. On a scale ranging from marginal to extreme, the Houston-Galveston region was labeled as "Severe-II" and given until the year 2007 to attain the ozone standard. The CAAA requires each state to submit a state implementation plan (SIP) to the United States Environmental Protection Agency (EPA).

The SIP is an overall plan that outlines specific strategies to be implemented for the Houston-Galveston area in order to meet its clean air goal. Mobile emission reductions for the CC/CV Program will be evaluated with same methodology utilized in the current SIP.

Transportation Conformity

The Clean Air Act requires that transportation plans and programs demonstrate timely attainment of air quality goals in areas failing to attain federal air quality standards. This requirement is known as transportation conformity. Areas that are in conformity (consistent with adopted air quality standards in an area) will be better able to ensure Federal approval and funding of transportation projects. Transportation projects cannot be approved, funded or implemented without a conforming transportation plan.

H-GAC is the agency responsible for producing transportation plans and programs that conform to the adopted SIP. Therefore, the primary goal of the agency is lower transportation-related emissions, in particular from the on-road mobile sector. Projects submitted under the CC/CV Program must produce emissions credit (through lower emissions) that may be applied toward assisting the region's conformity demonstration.

FUNDING REQUIREMENTS

Funds will be used to reimburse the recipient for:

- Up to 75% of the incremental cost of the purchase price of original equipment manufactured (OEM) vehicles.
- Up to 75% of the total cost of a conversion that involves either operation on a clean fuel, or utilization of a catalyst or other technology that effectively reduces vehicle emissions.
- Up to 75% for the establishment of publicly owned, on-site fueling facilities and other infrastructure needed to fuel clean vehicles.

GENERAL ELIGIBILITY

- 1) Projects must reduce emissions from on-road motor vehicles in the Houston-Galveston nonattainment area. The Houston-Galveston nonattainment area

consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

- 2) Clean vehicles may include those fueled by alternative fuels approved by the U.S. Department of Energy (liquefied or compressed natural gas, propane, electricity, ethanol, methanol, hydrogen, biodiesel, P-Series and solar), as well as other clean fuels such as ultra-low sulfur diesel, diesel emulsions and fuel additives provided that the reductions in ozone precursors (nitrogen oxides and volatile organic compounds) can be demonstrated.
- 3) Funded vehicles – either new or conversions – must use certified technology. Emission reductions may be certified² by the EPA or the California Air Resources Board (CARB). Alternate certifications may be approved with submission of appropriate documentation.
- 4) Costs associated with an obligation imposed by any local, state, and/or federal rule or regulation – including, but not limited to, Energy Policy Act (EPACT) or State Implementation Plan (SIP) requirements – are not eligible for funding.
- 5) On-road vehicles must travel a minimum of 12,000 miles annually in the Houston-Galveston nonattainment area and remain in the fleet through December 31, 2012. Bi-fuel vehicles funded by this program will be required to operate the vehicles using the alternative fuel for a minimum of 75% of the annual vehicle miles traveled or 75% of the vehicle's operating hours. Verification of miles traveled or hours operated will be required.
- 6) Infrastructure projects funded by the Houston-Galveston Area CC/CV Program must ensure public access to fueling facilities. Infrastructure must be in place and utilized through December 31, 2012. Applicants must also supply information regarding the number and type of vehicles utilizing the fueling facilities.
- 7) Low-emission engines, vehicles, or technologies funded under the Houston-Galveston Area CC/CV Program cannot be used to generate credit in any emissions banking and trading program, and may not be used to generate emission reduction credits in the Houston-Galveston nonattainment area.
- 8) Prior to approval, projects must meet current cost effectiveness level. Specifically, projects cannot exceed a "Capital Cost Effectiveness" of \$70,000 per ton of NOx reduced per year and/or a "Cost Effectiveness" of \$7,000 per year per ton of NOx reduced annually over the life of the project.

² Certification means, with respect to new highway and non-road engines, obtaining a certificate of conformity for an engine family that complies with the highway or non-road engine emission standards and requirements. Every engine certified by EPA must have an engine emission control information label affixed to it. This required label contains engine specifications and should be readily visible on the engine.

- 9) Projects funded by the Houston-Galveston CC/CV Program may receive supplemental match funding from another incentive program such as the Texas Emission Reduction Plan (TERP). Supplemental funding sources must be disclosed in application.

APPLICATION AND EVALUATION PROCEDURE

Application forms are included in this document. Specific application forms have been developed for the following four types of projects:

- 1) purchase new, certified low-emission vehicles;
- 2) repowering of existing vehicles with certified, lower emission engines;
- 3) retrofit of existing vehicles with after treatment systems to lower emissions;
- 4) building or upgrade of clean fuel infrastructure

The Houston-Galveston Area CC/CV Program operates on a first-come, first-served basis. Applications providing all the required information will be evaluated using the methodology contained within the “Cost Effectiveness Worksheet” included in this documentation.

The application procedure is as follows (utilizing the forms provided in this documentation):

- 1) Complete the “Houston-Galveston Area Clean Cities/Clean Vehicles Program General Application Form”. If your project has multiple vehicles or infrastructure sites, only one “General Application Form” is required. **Forms must be type written.**
- 2) Complete and attach the “Vehicle Purchase Form”, “Engine Repower/Retrofit Application Form” (one application for **each type** of lower emission vehicle and/or engine) and/or the “Infrastructure Application Form”.
- 3) Attach the forms to the “Houston-Galveston Area Clean Vehicle Program General Application Form: and submit the package to H-GAC at the following address:

Houston-Galveston Area Council
Clean Cities/Clean Vehicles Program
3555 Timmons, Suite 120
Houston, TX 77027

- 4) The application will be reviewed to determine that all the required information has been provided and that all program requirements are met. If the application does not meet the program requirements, the applicant will be requested to provide additional information or to modify the application. Incomplete applications will not be rejected, but staff may request additional information.
- 5) Applications providing all the required information will be evaluated using the methodology contained within the “Cost Effectiveness Worksheet” in this document.

CONTRACTING AND REIMBURSEMENT

Complete applications will be submitted for funding approval by the H-GAC Board of Directors. Upon approval, a contract between H-GAC and applicant will be drafted. The Transportation Equity Act for the 21st Century (TEA-21) requires that a written agreement be in place between H-GAC and the private or non-profit entity before implementing a CMAQ-funded project.

A shell contract with General Terms and Conditions is attached to this document as Appendix F. The applicant will be required to waive, for all time, its right to claim emission credits which may accrue at any time as a result of the project.

The agreement will include a timeline for project implementation. Applicant is reimbursed upon receipt of invoices. Applicant must submit copies of original invoices to H-GAC in order to receive reimbursement. H-GAC will reimburse applicant up to seventy-five percent of the incremental cost.

H-GAC requires verification of vehicle usage in order to ensure compliance with CC/CV Program requirements. To verify compliance, the mileage, fuel-use, and maintenance records of equipment funded by this program must be submitted to H-GAC on a quarterly basis in accordance with state rules and the Clean Air Act Amendments of 1990. If records do not exist or there is evidence that the seventy-five percent use requirement has not been met, reimbursement to H-GAC will be required.

In the event funded equipment is destroyed or lost through fire, theft or accident, H-GAC would not seek reimbursement for the lost investment. In the event the funded equipment is sold or voluntarily taken out of service, a prorated amount of the funds received will be refunded to H-GAC. Any change in project scope must be requested in writing to H-GAC.

METHODOLOGY FOR CALCULATING EMISSIONS BENEFITS

The annual NO_x reduction is calculated using the formulas shown below. These formulas applied utilizing the same methodology employed in the current SIP.

The actual emission benefit will be calculated every calendar year using actual annual mileage reported by the user. Actual mileage is subject to verification by H-GAC staff.

Formula for Repower/New Engines and Retrofits

(Base NOx emission factor – Reduced NOx emission factor)_{g/mi} * annual miles

Note: divide the result of this formula by 907,200 to convert grams to tons.

Base NOx emission factor – rate in grams per mile (g/mi) after applying correction factors, etc. The emission is selected for the model year of the engine being removed/retrofitted.

Reduced NOx emission factor – rate in g/mi after applying correction factors. The emission rate is selected for the model year of the engine replacement.

EVALUATION CRITERIA

The main criteria that will be used to select projects to the Houston-Galveston Area Clean Vehicle Program will be:

- ◆ The amount of NOx emissions reductions in the Houston-Galveston ozone nonattainment area
- ◆ The cost-effectiveness of those emissions reductions

The following guidelines will also be utilized to evaluate projects. These guidelines support the overriding criteria listed above.

Emissions

- ◆ NOx emission reductions are the primary objective
- ◆ Reduction in VOCs and fine particulate matter are desirable.
- ◆ Increases in any pollutant are not desirable (but, except for NOx, does not result in de-facto rejection). Any increases in any pollutant must be shown not to endanger the attainment of maintenance of any NAAQS.
- ◆ Emissions reductions must be fully documented in a manner acceptable to the appropriate regulatory agencies.
- ◆ Applicants must provide emissions reductions compared to baseline emissions (e.g., purchase of a cleaner vehicle, engine repower or retrofit).
- ◆ Emission reductions obtained through this program must not be required by any existing regulations, memoranda of agreement/understanding, or other legally binding documents.

- ◆ Applicants must plan to operate equipment through December 31, 2012 within the Houston-Galveston ozone nonattainment area.

Cost

- ◆ Projects cannot exceed a “Capital Cost Effectiveness” of \$70,000 per ton of NOx reduced per year and/or a “Cost Effectiveness” of \$7,000 per year per ton of NOx reduced over the life of the project.
- ◆ Cost-effectiveness will have a secondary consideration if other pollutants are reduced, especially VOCs and fine particulate matter.
- ◆ Cost estimates must be fully documented in a manner acceptable to the appropriate regulatory agencies.

2006 PROJECT SELECTION SCHEDULE

Request for Project Proposals August 3 – August 24

APPENDIX A: GENERAL APPLICATION FORM (Sample) HOUSTON-GALVESTON AREA CLEAN CITIES/CLEAN VEHICLES PROGRAM

Please provide the following information to the Houston-Galveston Area Clean Vehicle Program. This information will be used to evaluate the eligibility of the proposed low-emission vehicle application. Clean Vehicle Program staff reserves the right to request additional information of the applicant and can deny the application if such requested information is not provided. Please type or print clearly using ink only.

Application Date: _____

Application # _____
(For office use only)

This application is for the following (check all that apply):

- New lower emission vehicle purchase
- Replacement of an older engine with a newer lower emission engine
- Retrofit of an existing engine
- Fueling infrastructure

Company _____	Address _____
Contact _____	_____
Title _____	City _____
E-mail _____	State _____ Zip _____
Phone _____	Fax _____

Please acknowledge your understanding of each statement by placing your initials in the provided space.

- ✍ _____ The vehicle/engine/infrastructure included in this application will be used in the Houston-Galveston ozone nonattainment area through December 31, 2012.
- ✍ _____ Purchase of this low-emission technology is NOT required by any local, state, and/or federal rule or regulation.
- ✍ _____ Low-emission technology in this application is certified by EPA , CARB or alternate source. Supporting documentation is enclosed.
- ✍ _____ Vehicles included in this application will travel a minimum of 12,000 miles annually in the Houston-Galveston ozone nonattainment area. If applying for a bi-fuel project, equipment included in this application will operate at least 75% of the time in the nonattainment area.
- ✍ _____ The definitions of eligible projects are listed in the program description. These definitions have been reviewed and this application is consistent with those definitions.

Will you be seeking supplemental funding for this project from another incentive program? YES NO

If yes, what percentage of funds do you anticipate from CMAQ? _____% CMAQ³ _____% Other _____% Self

To what additional incentive program(s) will you be applying? _____

³ Maximum of 75% CMAQ funds. Percentage calculated from Cost-Effectiveness Worksheet.

I certify to the best of my knowledge this application meets the minimum requirements as shown above.

I agree to accept the evaluation performed on my application as described in the Houston-Galveston Area Clean Vehicle Program. I understand there may be conditions placed upon receiving an incentive and agree to refund the incentive if it is found that at any time I do not meet those conditions and if directed by the Houston-Galveston Area Clean Vehicle Program.

I understand that all submitted project applications must meet current cost-effectiveness requirements. Projects cannot exceed a "Capital Cost Effectiveness" of \$70,000 per ton of NOx reduced per year and/or a "Cost Effectiveness" of \$7,000 per year per ton of NOx reduced over the life of the project.

I understand as a program participant that this program has limited funds and shall terminate upon depletion of program funding. The Houston-Galveston Area Clean Vehicle Program shall be under no obligation to honor requests received following depletion of program funding.

I understand that receipt of this incentive prohibits application for any form of emission credits including: Mobile Emission Reduction Credit (MERC) and/or Mobile Discrete Emission Reduction Credit, for all time, from any applicable agency.

Authorized Signature _____ Date _____

**Submit applications to the
Houston-Galveston Area Council
Clean Cities/Clean Vehicles Program
3555 Timmons, Suite 120
Houston, TX 77027**

APPENDIX B: VEHICLE PURCHASE FORM
Houston-Galveston Area Clean Cities/Clean Vehicles Program

(submit only if applying for the purchase of a new vehicle)
Form MUST be typewritten

Section 1: Baseline Vehicle Information

Make:	Model:	Model Year:	GVW ⁴ :	Fuel use (mi/gal):
Fuel Type: <input type="checkbox"/> CNG <input type="checkbox"/> Diesel <input type="checkbox"/> LNG <input type="checkbox"/> LPG <input type="checkbox"/> Gasoline <input type="checkbox"/> Other:				
Emissions per vehicle (please indicate units – g/mile; g/bhp-hr; or g/gallon)				
NOx	VOC	PM _{2.5}		

Section 2: New Vehicle Information

Make:	Model:	Model Year:	GVWR:	Fuel use (mi/gal):
Fuel Type: <input type="checkbox"/> CNG <input type="checkbox"/> Diesel <input type="checkbox"/> LNG <input type="checkbox"/> LPG <input type="checkbox"/> Gasoline <input type="checkbox"/> Other: (if utilizing more than one fuel type, indicate which fuels and percentage operating time for each)				
Emissions per vehicle (please indicate units – g/mile; g/bhp-hr; or g/gallon)				
NOx	VOC	PM _{2.5}		
Emissions certified by: <input type="checkbox"/> EPA <input type="checkbox"/> CARB <input type="checkbox"/> Alternate certification (specify and attach documentation)				
Vehicle use: <input type="checkbox"/> On-road <input type="checkbox"/> Non-road		Type of equipment:		

Section 3: Projected activity (per vehicle)

	Within the Houston-Galveston ozone nonattainment area ⁵	Outside of the Houston-Galveston ozone nonattainment area	Total Operation
miles/year			
hours/year			

Section 4: Incremental cost for vehicle purchase (per vehicle)

Baseline vehicle cost:	New vehicle cost:	Incremental cost: (baseline – new)	CMAQ share: (75% of Incremental Cost)
\$	\$	\$	\$

Section 5: Vehicle Vendor Information

Contact		Address			
Title		City			State
Company		ZIP			
E-Mail		Phone		FAX	

⁴ GVW – Gross vehicle weight

⁵ The Houston-Galveston ozone nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

**NEW VEHICLE PURCHASE APPLICATION FORM
PAGE TWO**

Section 6: Refueling

If the vehicle operates on alternative fuel, please describe how and where the vehicle will be refueled:

Section 7: Project Length

The vehicle will operate _____ years in the Houston-Galveston ozone nonattainment area.

Section 8: Number of vehicles purchased⁶ : _____

Please submit this form in addition to the **General Application:**

The Houston-Galveston Area Council
Clean Cities/Clean Vehicles Program
3555 Timmons, Suite 120
Houston, TX 77027

⁶ If make/model/year/fuel type differs for vehicles, please complete a separate form for each vehicle type.

APPENDIX C: ENGINE REPOWER / RETROFIT APPLICATION FORM
Houston-Galveston Area Clean Cities/Clean Vehicles Program

(submit only if applying for existing vehicle conversion)
Form MUST be typewritten

*****Supply one form per engine type to be replaced/retrofit**

Section 1: Application for: New engine / Repower Engine retrofit / Add-on

Section 2: Existing Engine Information

Make:	Model:	Year:	Serial Number:	HP:	Fuel use (mi/gal):
Engine family code ⁷ :			Gross Vehicle Weight:		
Fuel Type: <input type="checkbox"/> CNG <input type="checkbox"/> Diesel <input type="checkbox"/> LNG <input type="checkbox"/> LPG <input type="checkbox"/> Gasoline <input type="checkbox"/> Other					
Emissions per vehicle (please indicate units – g/mile; g/bhp-hr; or g/gallon)					
NOx		VOC		PM _{2.5}	

Section 3: New Engine / Repower Information

Make:	Model:	Year:	Serial Number:	HP:	Fuel use (mi/gal):
Engine family code:					
Fuel Type: <input type="checkbox"/> CNG <input type="checkbox"/> Diesel <input type="checkbox"/> LNG <input type="checkbox"/> LPG <input type="checkbox"/> Gasoline <input type="checkbox"/> Other: (if utilizing more than one fuel type, indicate which fuels and percentage operating time for each)					
Emissions per vehicle (please indicate units – g/mile; g/bhp-hr; or g/gallon)					
NOx		VOC		PM _{2.5}	
Emissions certified by: <input type="checkbox"/> EPA <input type="checkbox"/> CARB <input type="checkbox"/> Alternate certification (specify and attach documentation)					
Vehicle use: <input type="checkbox"/> On-road <input type="checkbox"/> Non-road			Type of equipment:		
Is this an accelerated purchase or repair of an existing vehicle? <input type="checkbox"/> Yes <input type="checkbox"/> No					

⁷Each group of engines with similar emission characteristics is defined as a separate engine family. Vehicles or engines in an engine family are expected to have similar emission characteristics. A permanent label is affixed to the engine that lists the engine family designation as well as other important information.

**REPOWER/RETROFIT APPLICATION FORM
PAGE TWO**

Section 4: Retrofit / Add-On Information

Description of retrofit/add-on technology:			
Manufacturer:		Kit number or other identification number:	
Fuel type after retrofit: <input type="checkbox"/> CNG <input type="checkbox"/> Diesel <input type="checkbox"/> LNG <input type="checkbox"/> LPG <input type="checkbox"/> Gasoline <input type="checkbox"/> Other: (if utilizing more than one fuel type, indicate which fuels and percentage operating time for each)			
Emissions per vehicle (please indicate units – g/mile; g/bhp-hr; or g/gallon)			
NOx	VOC	PM _{2.5}	
Emissions certified by: <input type="checkbox"/> EPA <input type="checkbox"/> CARB <input type="checkbox"/> Alternate certification (specify and attach documentation)			
Vehicle use: <input type="checkbox"/> On-road <input type="checkbox"/> Non-road		Type of equipment:	
Is this an accelerated purchase or repair of an existing vehicle? <input type="checkbox"/> Yes <input type="checkbox"/> No			

Section 5: Projected activity (per vehicle)

	Within the Houston-Galveston ozone nonattainment area ⁸	Outside of the Houston-Galveston ozone nonattainment area	Total Operation
miles/year			
hours/year			

Section 6: Incremental cost per engine repower/retrofit

Baseline engine cost: \$	Cost of engine repower or retrofit: \$	Incremental cost: (baseline – new) \$	CMAQ share: (75% of Incremental Cost) \$
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Section 7: Installer/Retrofit Information

Contact		Address			
Title		City		State	
Company		ZIP			
E-Mail		Phone		FAX	

⁸ The Houston-Galveston ozone nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties.

**REPOWER/RETROFIT APPLICATION FORM
PAGE THREE**

Section 8: Refueling

If the vehicle operates on alternative fuel, please describe how and where the vehicle will be refueled:

Section 9: Project Length

The engine will operate _____ years in the Houston-Galveston ozone nonattainment area.

Section 10:

Number of engines repowered/retrofit⁹ _____

Please submit this form in addition to the **General Application:**

The Houston-Galveston Area Council
Clean Cities/Clean Vehicles Program
3555 Timmons, Suite 120
Houston, TX 77027

⁹ If make/model/year/fuel type differs for each engine, please complete a separate form for each engine type.

APPENDIX D: INFRASTRUCTURE APPLICATION FORM
Houston-Galveston Area Clean Cities/Clean Vehicles Program

(submit only if applying for existing vehicle conversion)
Form MUST be typewritten

Section 1: Site Information

Site location:			
Physical address:	City and County:	Zip code:	
Primary function of the site/facility:			
Property ownership: <input type="checkbox"/> Own <input type="checkbox"/> Lease		Length of lease:	
Property owner:			
Street Address:	City:	State:	Zip code:

Section 2: Refueling Equipment Information

Manufacturer:			
Description (make/model):			
Dealer:		Contact name:	
Dealer address:	City:	State:	Zip:
Phone:	Fax:		
Structure: <input type="checkbox"/> Permanent <input type="checkbox"/> On-site mobile			
Type of fuel dispensed:		Estimated refueling equipment life:	

Section 3: Fuel Supplier Information

Supplier name:		Contact name:	
Street Address:	City:	State:	Zip:
Phone:	Fax:		

**INFRASTRUCTURE APPLICATION FORM
PAGE THREE**

Section 5: Cost Summary (attach estimates)

Equipment:	\$
Supplies:	\$
Contractual:	\$
Construction:	\$
Other	\$
Total cost:	\$
75% CMAQ share:	\$

Please submit this form in addition to the **General Application:**

The Houston-Galveston Area Council
Clean Cities/Clean Vehicles Program
3555 Timmons, Suite 120
Houston, TX 77027

APPENDIX E: COST EFFECTIVENESS WORKSHEET¹¹
Houston-Galveston Area Clean Cities/Clean Vehicles Program
(NOT required for submittal with application package)

Step 1: Determine Annual NOx Reduction

Baseline NOx emissions (if known) (in grams/mile; the emission rate is selected for the model year of the equipment being removed or converted)	
New NOx emissions (in grams/mile; the emission rate is selected for the model year of the equipment replacement)	-
Annual NOx reduction	=
<i>IF</i> TERP funds will be applied to this project in addition to CMAQ funds, reduce the annual NOx reduction by the percentage of TERP funds you will be receiving.	=

Step 2: Determine Tons/Year of NOx Reduced

Total annual miles for project	
Multiply Annual NOx reduction by Total annual miles for project	
Divide by 907200 to convert grams to tons	/
Tons per year reduced	=

Step 3: Determine Project Cost Effectiveness

Total cost of program (sum of incentive funds requested)	
Annual NOx reduction (from above)	/
Divide Total cost by Annual NOx reduction to determine CAPITAL COST EFFECTIVENESS	=

Step 4: Determine Percentage of Project Eligible for CMAQ Funds
(if cost-effectiveness exceeds \$70,000/ton of NOx per year)

Multiply Annual NOx reduction by \$70,000	
Divide by total cost of program (from above)	/
Percentage of project cost eligible for CMAQ funds	=

¹¹ Cost effectiveness may also be determined by using the calculator on the Clean Cities/Clean Vehicles website located at <http://www.houston-cleancities.org>

APPENDIX F: SAMPLE CONTRACT DOCUMENTATION

**HOUSTON-GALVESTON AREA COUNCIL
GENERAL PROVISIONS
INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement is made and entered into this ____ day of _____, 20____, by and between the Houston-Galveston Area Council, hereinafter referred to as H-GAC, having its principal place of business at 3555 Timmons Lane, Suite 500, Houston, Texas 77027 and _____, hereinafter referred to as the Contractor, having its principal place of business at _____.

WITNESSETH:

WHEREAS, H-GAC hereby engages the Contractor to perform certain services in accordance with the specifications of the Agreement; and

WHEREAS, the Contractor has agreed to perform such services in accordance with the specifications of the Agreement;

NOW, THEREFORE, H-GAC and the Contractor do hereby agree as follows:

ARTICLE 1 LEGAL AUTHORITY

The Contractor warrants and assures H-GAC that it possesses adequate legal authority to enter into this Agreement. The Contractor's governing body, where applicable, has authorized the signatory official(s) to enter into this Agreement and bind the Contractor to the terms of this Agreement and any subsequent amendments hereto.

ARTICLE 2 APPLICABLE LAWS

The Contractor agrees to conduct all activities under this Agreement in accordance with all applicable rules, regulations, directives, standards, ordinances and laws in effect or promulgated during the term of this Agreement. Such standards and laws shall include, to the extent applicable, the Uniform Grant and Contract Management Standards ("UGMS") promulgated by the State of Texas and the state and federal statutes referenced therein.

ARTICLE 3 INDEPENDENT CONTRACTOR

The execution of this Agreement and the rendering of services prescribed by this Agreement do not change the independent status of H-GAC or the Contractor. No provision of this Agreement or act of H-GAC in performance of the Agreement shall be construed as making the Contractor the agent, servant or employee of H-GAC, the State of Texas or the United States Government. Employees of the Contractor are subject to the exclusive control and supervision of the Contractor. The Contractor is solely responsible for employee payrolls and claims arising therefrom. The Contractor shall notify H-GAC of the threat of lawsuit or of any actual suit filed against the Contractor pertaining to this Agreement or which would adversely affect the contractor's ability to perform services under this Agreement.

ARTICLE 4 WHOLE AGREEMENT

The General Provisions, Special Provisions and Attachments, as provided herein, constitute the complete agreement between the parties hereto, and supersede any and all oral and written agreements between the parties relating to matters herein. Except as otherwise provided herein, this Agreement cannot be modified without written consent of the parties.

ARTICLE 5 SCOPE OF SERVICES

The services to be performed by the Contractor are outlined in the Special Provisions of this Agreement.

ARTICLE 6 PERFORMANCE PERIOD

This Agreement shall be performed during the period which begins _____ and ends _____. The work under this Agreement shall begin immediately following a formal Notice to Proceed.

ARTICLE 7 REPORTING REQUIREMENTS

Reporting requirements are set forth in the Special Provisions of this Agreement. If the Contractor fails to submit to H-GAC in a timely and satisfactory manner any report required by this Agreement, or otherwise fails to satisfactorily render performances hereunder, H-GAC may withhold payments otherwise due and owing the Contractor hereunder. If H-GAC withholds such payments, it shall notify the Contractor of its decision and the reasons therefor. Payments withheld pursuant to this Article may be held by H-GAC until such time as the delinquent obligations for which funds are withheld are fulfilled by the Contractor. The Contractor's failure to timely submit any report may also be considered cause for termination of this Agreement.

ARTICLE 8 PAYMENTS

The Contractor agrees that payments are predicated upon properly documented and verified proof of performance delivered and costs incurred by the Contractor in accordance with the terms of this Agreement and shall be paid in accordance with the Compensation Schedule in the Special Provisions.

ARTICLE 9 NON FUNDING CLAUSE

Each payment obligation of H-GAC created by this Agreement is conditioned upon the availability of state or federal funds appropriated or allocated for the payment of such obligations. H-GAC shall not be otherwise obligated or liable for any future payments due or for any damages as a result of interruption of payment or termination under this Article.

ARTICLE 10 INSURANCE

The Contractor shall maintain insurance coverage for work performed or services rendered under this Agreement as specified in the Special Provisions.

ARTICLE 11 REPAYMENTS

The Contractor understands and agrees that it shall be liable to repay and shall repay upon demand to H-GAC any amounts determined by H-GAC, its independent auditors, or any agency of state or federal government to have been paid in violation of the terms of this Agreement.

ARTICLE 12 SUBCONTRACTS

Except as may be set forth in the Special Provisions, the Contractor agrees not to subcontract, assign, transfer, convey, sublet or otherwise dispose of this Agreement or any right, title, obligation or interest it may have therein to any third party without prior written approval of H-GAC.

The Contractor acknowledges that H-GAC is not liable to any subcontractor(s) of the Contractor.

The Contractor shall ensure that the performance rendered under all subcontracts shall result in compliance with all the terms and provisions of this Agreement as if the performance rendered was rendered by the Contractor.

ARTICLE 13 AUDIT

As a recipient of state or federal assistance through this Agreement, the Contractor acknowledges that it is subject to the Single Audit Act of 1996, P.L. 98-502, (hereinafter referred to as "Audit Act"), OMB Circular No. A-133, and the State of Texas Single Audit Circular incorporated in UGMS.

The Contractor shall have an audit made in accordance with the Single Audit, requirements of the most recently adopted UGMS and OMB Circular A-133 for any of its fiscal years in which Contractor expends more than \$300,000 in state or federal financial assistance.

The Contractor will provide H-GAC a copy of the single audit, including management letter and reporting package required by federal and state rules within 30 days after receipt of the auditor's report, or nine months after the end of the audit period.

H-GAC reserves the right to conduct or cause to be conducted an independent audit of all funds received under this Agreement which may be performed by the local government audit staff, a certified public accountant firm, or other auditors as designated by the H-GAC. Such audit will be conducted in accordance with State law, regulations, and policy, and generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

The Contractor understands and agrees that the Contractor shall be liable to the H-GAC for any costs disallowed or overpayment as a result of audit or inspection of records kept by the Contractor on work performed under this Agreement.

ARTICLE 14 EXAMINATION OF RECORDS

The Contractor shall maintain during the course of the work, complete and accurate records of all of the Contractor's costs and documentation of items which are chargeable to H-GAC under this Agreement. H-GAC, through its staff or designated public accounting firm, the State of Texas and the United State Government, shall have the right at any reasonable time to inspect, copy and audit those records on or off the premises by authorized representatives of its own or any public accounting firm selected by it. The right of access to records is not limited to the required retention period, but shall last as long as the records are retained. Failure to provide access to records may be cause for termination of the Agreement. The records to be thus maintained and retained by the Contractor shall include (without limitation): (1) personnel and payroll records, including social security numbers and labor classifications, accounting for total time distribution of the Contractor's employees working full or part time on the work, as well as cancelled payroll checks, signed receipts for payroll payments in cash, or other evidence of disbursement of payroll payments; (2) invoices for purchases, receiving and issuing documents, and all other unit inventory records for the Contractor's stocks or capital items; and (3) paid invoices and cancelled checks for materials purchased and for subcontractors' and any other third parties' charges.

The Contractor further agrees to include in all its subcontracts permitted pursuant to Article 12 hereof, a provision to the effect that the subcontractor agrees that H-GAC and its duly authorized representatives shall, until the expiration of four (4) years after final payment under the subcontract or until all audit findings have been resolved, have access to and the right to examine and copy any directly pertinent books, documents, papers, invoices and records of such subcontractor involving transactions relating to the subcontract.

ARTICLE 15 RETENTION OF RECORDS

The Contractor shall maintain all records pertinent to this Agreement, including but not limited to those records enumerated in Article 14, and all other financial, statistical, property, participant records, and supporting documentation for a period of no less than four (4) calendar years from the later of the date of acceptance of the final contract closeout or the date of the final audit required under Article 13 of this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular four (4) year period, whichever is later.

ARTICLE 16 CHANGES AND AMENDMENTS

Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in federal law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation; provided if the Contractor may not legally comply with such change, the contractor may terminate its participation herein as authorized by Article 17.

H-GAC may, from time to time, require changes in the scope of the services of the Contractor to be performed hereunder. Such changes that are mutually agreed upon by and between H-GAC and the Contractor in writing shall be incorporated into this Agreement.

ARTICLE 17 TERMINATION PROCEDURES

The Contractor acknowledges that this Agreement may be terminated under the following circumstances:

A. Convenience

H-GAC may terminate this Agreement in whole or in part without cause at any time by written notice by certified mail to the Contractor whenever for any reason H-GAC determines that such termination is in the best interest of H-GAC. Upon receipt of notice of termination, all services hereunder of the Contractor and its employees and subcontractors shall cease to the extent specified in the notice of termination. In the event of termination in whole, the Contractor shall prepare a final invoice within 30 day days of such termination reflecting the services actually performed which have not appeared on any prior invoice, such invoice shall be satisfactory to the Executive Director or his designee. H-GAC agrees to pay the Contractor, in accordance with the terms of the Agreement, for services actually performed and accruing to the benefit of H-GAC, less payment of any compensation previously paid.

The Contractor may cancel or terminate this Agreement upon thirty (30) days written notice by certified mail to H-GAC. The Contractor may not give notice of cancellation after it has received notice of default from H-GAC. In the event of such termination prior to completion of the Agreement provided for herein, H-GAC agrees to pay services herein specified on a prorated basis for work actually performed and invoiced in accordance with the terms of this Agreement, less payment of any compensation previously paid.

B. Default

H-GAC may, by written notice of default to the Contractor, terminate the whole or any part of the Agreement in any one of the following circumstances:

- (1) If the Contractor fails to perform the services herein specified within the time specified herein or any extension thereof; or

- (2) If the Contractor fails to perform any of the other provisions of this Agreement for any reason whatsoever, or so fails to make progress or otherwise violates the Agreement that completion of the services herein specified within the agreement term is significantly endangered, and in either of these two instances does not cure such failure within a period of ten (10) days (or such longer period of time as may be authorized by H-GAC in writing) after receiving written notice by certified mail of default from H-GAC.

In the event of such termination, all services of the Contractor and its employees and subcontractors shall cease and the Contractor shall prepare a final invoice reflecting the services actually performed pursuant to the Agreement which have not appeared on any prior invoice. Such invoice must be satisfactory to the Executive Director of H-GAC or his designee. H-GAC agrees to pay the Contractor, in accordance with the terms of this Agreement, for services actually performed and accruing to the benefit of H-GAC as reflected on said invoice, less payment of any compensation previously paid and less any costs or damages incurred by H-GAC as a result of such default, including incremental costs that H-GAC will incur to have the Agreement completed by a person other than the contractor.

ARTICLE 18 SEVERABILITY

All parties agree that should any provision of this Agreement be determined to be invalid or unenforceable, such determination shall not affect any other term of this Agreement, which shall continue in full force and effect.

ARTICLE 19 COPYRIGHTS

The state or federal awarding agency and H-GAC reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for state or federal government or H-GAC purposes:

- (a) The copyright of all maps, data, reports, research or other work developed under this Agreement; and
- (b) Any copyrights or rights of use to copyrighted material which the Contractor purchases with funding under this Agreement. All such data and material shall be furnished to H-GAC on request.

ARTICLE 20 OWNERSHIP OF MATERIALS

Except as may be specified in the Special Provisions, all data, reports, research, etc., developed by the Contractor as a part of its work under this Agreement shall become the property of the H-GAC upon completion of this Agreement, or in the event of termination or cancellation hereof, at the time of payment under ARTICLE 8 for work performed. All such data and material shall be furnished to H-GAC on request.

ARTICLE 21 FORCE MAJEURE

To the extent that either party to this Agreement shall be wholly or partially prevented from the performance within the term specified of any obligation or duty placed on such party by reason of or through strikes, stoppage of labor, riot, fire, flood, acts of war, insurrection, accident, order of any court, act of God, or specific cause reasonably beyond the party's control and not attributable to its neglect or nonfeasance, in such event, the time for the performance of such obligation or duty shall be suspended until such disability to perform is removed. Determination of force majeure shall rest solely with the H-GAC.

ARTICLE 22 NON-DISCRIMINATION AND EQUAL OPPORTUNITY

The Contractor agrees to comply with all federal statutes relating to nondiscrimination. These include but are not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or

national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps and the Americans with Disabilities Act of 1990; (d) the Age Discrimination Act of 1974, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in any specific statute(s) applicable to any Federal funding for this Agreement; and (j) the requirements of any other nondiscrimination statute(s) which may apply to this Agreement.

ARTICLE 23 CONFLICT OF INTEREST

No officer, member or employee of the Contractor or subcontractors, no member of the governing body of the Contractor, and no other public officials of the Contractor who exercise any functions or responsibilities in the review or approval of this Agreement, shall participate in any decision relating to this Agreement which affects his or her personal interest, or shall have any personal or pecuniary interest, direct or indirect, in this Agreement.

ARTICLE 24 POLITICAL ACTIVITY; LOBBYING

No funds provided under this Agreement may be used in any way to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress, or for lobbying with state or local legislators. The Contractor, if a recipient of federal assistance exceeding \$100,000 through an H-GAC subcontract, will comply with section 319, Public Law 101-121 (31 U.S.C. 1352).

ARTICLE 25 SECTARIAN INVOLVEMENT PROHIBITED

The Contractor shall ensure that no funds under this Agreement are used, either directly or indirectly, in the support of any religious or anti-religious activity, worship, or instruction.

ARTICLE 26 CRIMINAL PROVISIONS AND SANCTIONS

The Contractor agrees that it will perform the Agreement activities in conformance with safeguards against fraud and abuse as set forth by the H-GAC, the State of Texas, and the acts and regulations of the funding entity. The Contractor agrees to promptly notify H-GAC of suspected fraud, abuse or other criminal activity through the filing of a written report within twenty-four (24) hours of knowledge thereof and to notify H-GAC of any accident or incident requiring medical attention arising from its activities under this Agreement within twenty-four (24) hours of such occurrence.

Theft or willful damage to property on loan to the Contractor from H-GAC, if any, shall be reported to local law enforcement agencies and H-GAC within two (2) hours of discovery of any such act.

The Contractor further agrees to cooperate fully with H-GAC, local law enforcement agencies, the State of Texas, the Federal Bureau of Investigation and any other duly authorized investigative unit in carrying out a full investigation of all such incidents.

ARTICLE 27 TITLES NOT RESTRICTIVE

The titles assigned to the various Articles of this Agreement are for convenience only. Titles shall not be considered restrictive of the subject matter of any Article, or part of this Agreement.

ARTICLE 28 ACKNOWLEDGEMENT OF FUNDING SOURCE

The Contractor shall give credit to H-GAC as the funding source for this Agreement in all oral presentations, written documents, publicity, and advertisements regarding any of the Contractor's activities which arise from this Agreement.

ARTICLE 29 DISPUTES

Any and all disputes concerning questions of fact or of law arising under this Agreement which is not disposed of by agreement shall be decided by the Executive Director of H-GAC or his designee, who shall reduce his decision to writing and provide notice thereof to the Contractor. The decision of the Executive Director or his designee shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor requests a rehearing from the Executive Director of H-GAC. In connection with any rehearing under this Article, the Contractor shall be afforded an opportunity to be heard and offer evidence in support of its position. The decision of the Executive Director after any such rehearing shall be final and conclusive. The Contractor may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement and in accordance with H-GAC's final decision.

ARTICLE 30 GOVERNING LAW; VENUE

This Agreement shall be governed by the laws of the State of Texas. Venue and jurisdiction of any suit or cause of action arising under or in connection with the Agreement shall lie exclusively in Harris County, Texas, unless the laws of the State of Texas specifically establish venue in some other county.

ARTICLE 31 ORDER OF PRIORITY

In the case of any conflict between the General Provision, the Special Provisions, and Attachments to this Agreement, the following order of priority shall be utilized: Special Provision, General Provisions, and Attachments.

H-GAC and the Contractor have executed the Agreement as of the date first written above.

_____	_____
Jack Steele, Executive Director	
Houston-Galveston Area Council	
_____	_____
Date	Date

SPECIAL PROVISIONS

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1. COMPENSATION

The Contractor 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 Contractor 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 Cost Estimate, attached hereto and identified as Attachment B. Federal matching funds shall not exceed seventy-five percent (75%) of the total estimated program cost. The Contractor will be responsible for securing the non-federal local matching funds twenty-five percent (25%) share required for financing the Alternative Fuels Grant Program. Costs incurred by the Contractor prior to the signed agreement will not be eligible for reimbursement. The Contractor shall comply with the cost principles established in OMB Circular A-87, "Cost Principles for State and Local Governments".

H-GAC will reimburse the Contractor 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 Contractor shall submit the State's Form 132, attached hereto and identified as Attachment C, Billing Statement, 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

All billing statements shall be properly documented. H-GAC will make payment to the Contractor within sixty (60) days from receipt of the Contractor'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.

2. CONTRACTOR PERSONNEL

The Contractor 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.

3. INSPECTION OF WORK

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

4. PROPRIETARY RIGHTS

Contractor 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. Contractor shall be permitted to list H-GAC as a client for marketing purposes.

5. INSURANCE

H-GAC acknowledges that Contractor 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 Contractor. The Contractor represents to H-GAC that it either has 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 Contractor 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.

6. PROGRESS REPORTS

During the term of the contract, the Contractor 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.

7. FINAL REPORT

The Contractor shall submit to H-GAC an annual progress report. This report will include, but not be limited to: total annual VMT per program vehicle, total annual fuel usage and cost per program vehicle, total annual maintenance costs per program vehicle. H-GAC reserves the right to request any data necessary to monitor compliance with the Houston-Galveston Alternative Fuel Grant Program.

8. 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 applies to this Agreement.
- (2) DBE Obligation. The Contractor 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 Contractor 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 Contractor 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 15% DBE participation in its FTA third party contracting opportunities. There, any contract issued under this Agreement will carry a 15% DBE participation goal.

9. TITLE VI ASSURANCE

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

- (a) Compliance with Regulations. The Contractor 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 Contractor, 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 subcontractors, including procurement of materials and leases of equipment. The Contractor 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 Contractor for work to be performed under the subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor'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 Contractor 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 Contractor and is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor 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 Contractor'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 Contractor under the Agreement until the Contractor complies, and/or
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- (f) Incorporation of Provisions. The Contractor 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 Contractor 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 Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request H-GAC to enter into such litigation to protect the interests of H-GAC and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

10. COMPLIANCE WITH LAWS

The Contractor shall comply with all 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 Contractor shall furnish H-GAC with satisfactory proof of its compliance therewith.

11. 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).

12. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT REQUIREMENTS

Contractor 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.

13. DEBARRED BIDDERS

Contractor, 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 Contractor be included on such a list during the performance of this project, it shall so inform H-GAC.

14. DRUG-FREE WORKPLACE

The Contractor agrees that if the Contractor is a recipient of more than \$25,000 in federal assistance through an H-GAC subcontract, the Contractor 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 Contractor 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.

Prepared in cooperation with the Texas Department of Transportation and the U. S. Department of Transportation, Federal Highway Administration, and Federal Transit Administration. The contents of the preceding project information reflect the views of the authors who are responsible for the opinions, findings, and conclusions presented herein. The contents do not necessarily reflect the views or policies of the Federal Highway Administration, the Federal Transit Administration, or the Texas Department of Transportation.