

**FORT BEND COUNTY    FY 2010  
COMMISSIONERS COURT AGENDA REQUEST FORM**

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

|                                      |                                    |
|--------------------------------------|------------------------------------|
| <b>Date Submitted:</b> 03/31/2010    | <b>Submitted By:</b> Paul Stewart  |
|                                      | <b>Department:</b> County Attorney |
| <b>Court Agenda Date:</b> 04/06/2010 | <b>Phone Number:</b> 281-341-4555  |

**Summary of Item:**

ROAD AND BRIDGE:

Take all appropriate action on Agreement between Fort Bend County and Houston-Galveston Area Council (HGAC) for the Clean Cities/Clean Vehicles Program.

|                                              |            |                                     |           |                                     |
|----------------------------------------------|------------|-------------------------------------|-----------|-------------------------------------|
| <b>RENEWAL AGREEMENT/APPOINTMENT</b>         | <b>YES</b> | <input type="checkbox"/>            | <b>NO</b> | <input checked="" type="checkbox"/> |
| <b>REVIEWED BY COUNTY ATTORNEY'S OFFICE:</b> | <b>YES</b> | <input checked="" type="checkbox"/> | <b>NO</b> | <input type="checkbox"/>            |

**List Supporting Documents Attached:** Agreement

**FINANCIAL SUMMARY:**

**BUDGETED ITEM:**    YES    ☐                      NO    ☐

**FUNDING SOURCE:** Accounting Unit:    Account Number:  
Activity (If Applicable):

**DESCRIPTION OF LAWSON ACCOUNT:** \_\_\_\_\_

**Instructions to submit Agenda Request Form:**

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

**DISTRIBUTION:**

Original Form Submitted with back up to County Judge's Office ☐ (✓ when completed)

If by E-Mail to [ospindon@co.fort-bend.tx.us](mailto:ospindon@co.fort-bend.tx.us)

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

|                                                                                 |                                                                 |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------|
| <input checked="" type="checkbox"/> Auditor (281-341-3774)                      | <input checked="" type="checkbox"/> Comm. Pct. 1 (281-342-0587) |
| <input checked="" type="checkbox"/> Budget Officer (281-344-3954)               | <input checked="" type="checkbox"/> Comm. Pct. 2 (281-403-8009) |
| <input checked="" type="checkbox"/> Facilities/Planning (281-633-7022)          | <input checked="" type="checkbox"/> Comm. Pct. 3 (281-242-9060) |
| <input checked="" type="checkbox"/> Purchasing Agent (281-341-8642)             | <input checked="" type="checkbox"/> Comm. Pct. 4 (281-980-9077) |
| <input checked="" type="checkbox"/> Information Technology (281-341-4526)       | <input checked="" type="checkbox"/> County Clerk (281-341-8697) |
| <input checked="" type="checkbox"/> Other: <u>Marc Grant, Road &amp; Bridge</u> | <input checked="" type="checkbox"/> County Atty. (281-341-4557) |

**RECOMMENDATION / ACTION REQUESTED:**

**Special Handling Requested (specify):**

4-9-10    2 orig's. ret. to Paul at Co. Attorney



Houston-Galveston Area Council  
P.O. Box 22777 · 3555 Timmons · Houston, Texas 77227-2777

## NOTICE TO PROCEED

To: Honorable Robert E. Hebert  
County Judge  
Fort Bend County  
201 Payne Lane  
Richmond, TX 77469

Project Clean Cities/Clean Vehicles

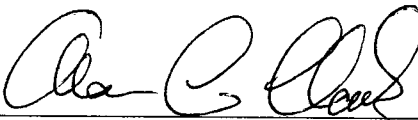
Contract No. TS8707-32

Type of Contract Clean Vehicles

Amount of Contract \$440,500 (236,624 fed; 203,876 match)

You are hereby notified to commence work on the referenced contract on March 1, 20 10 and shall fully complete all of the work of said contract on or before February 28, 20 11.

Dated this 29th day of April 20 10.

By 

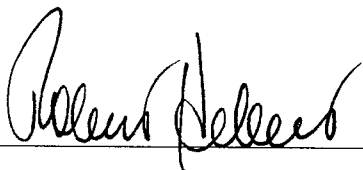
Title Director of Transportation Planning

## ACCEPTANCE OF NOTICE

Receipt of the foregoing Notice to Proceed is hereby acknowledged by

Fort Bend County  
(Company/Entity Name)

this 27 day of May 20 10.

By 

Title County Judge

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

This Intergovernmental Agreement is made and entered into this 1st day of March, 2010 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 120, Houston, Texas 77027 and Fort Bend County, hereinafter referred to as the Contractor, having its principal place of business at 201 Payne Lane, Richmond, TX 77469.

**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 March 1, 2010 and ends February 28, 2011.

#### **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 \$500,000 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 Federal Transit Administration (FTA), Federal Highway Administration (FHWA), Texas Department of Transportation (TxDOT) and 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 are 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.

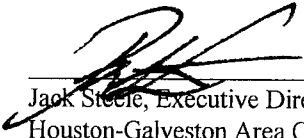
#### **ARTICLE 30 GOVERNING LAW; VENUE**

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.

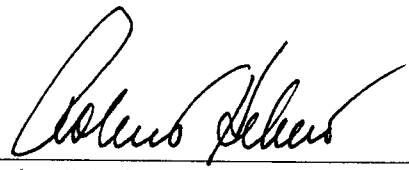
**ARTICLE 31 ORDER OF PRIORITY**

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

5-17-10  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert E. Hebert, County Judge  
Fort Bend County

April 6, 2010  
\_\_\_\_\_  
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 total project cost of this agreement is Four Hundred Forty Thousand Five Hundred Dollars (\$440,500). Funding for this agreement includes, \$236,624 federal H-GAC; and \$203,876 local Contractor.

The Contractor agrees to bill H-GAC on a monthly basis for all allowable costs. 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 Two Hundred Thirty-six Thousand Six Hundred Twenty-four Dollars (\$236,624). This amount is based on the Cost Estimate, attached hereto and identified as Attachment B. Federal matching funds shall not exceed 54% of the total estimated program cost. The Contractor will be responsible for securing the non-federal local matching funds 46% 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".

After execution of this contract, but prior to the performance of any work by the Contractor, Fort Bend County will remit a check made payable to "Corporation for Regional Excellence" in the amount of \$710.00 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 Clean Air Initiative oversight match and CSJ #912-71-884. Please include Tax ID number to ensure proper tax reporting and donor recognition.

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 H-GAC billing template for all billings, attached hereto and identified as Attachment C, Financial Report, and/or other type of invoice acceptable to H-GAC to the following address:

Houston-Galveston Area Council  
P.O. Box 22777  
Houston, Texas 77227-2777  
Attention: Aquina Grover

All billing statements shall be properly documented. Billing statements arriving after the 10<sup>th</sup> day of the month shall not be processed for payment until after the 10<sup>th</sup> day of the succeeding month. 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. 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. 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 Don Massey. 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.

### **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**

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.

### **6. 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 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 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.

### **7. 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.

### **8. 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.

## 9. 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 26 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 26 apply to this Agreement.
- (2) DBE Obligation. The Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 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 26 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. Therefore, any contract issued under this Agreement will carry a 15 % DBE participation goal.

## 10. 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.

## **11. COMPLIANCE WITH LAWS**

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

## **12. 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).

## **13. 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.

## **14. 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.

## **15. 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.

**ATTACHMENT A**  
**SCOPE OF WORK**

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

The Houston-Galveston Area Clean Cities/Clean Vehicles Program (CC/CV) provides funding to public and private entities in order to assist efforts to maximize use of clean vehicles in regional fleets. This program is fuel neutral.

**Program Goals**

The primary goal of this program is to reduce the emissions of nitrogen oxides (NO<sub>x</sub>), volatile organic compounds (VOC), and particulate matter (PM) emissions. Reductions in these emissions reduce the amount of ozone-producing chemicals in the air. Ancillary goals of the program include: reducing the cost to fleets for acquisition of clean vehicles; stimulating the development of clean fueling infrastructure; and stimulating additional public and private sector investment in clean vehicles and infrastructure.

**Eligibility**

Public or private entities are eligible to receive funding for projects that demonstrate cost effective emission reductions.

Examples of potentially eligible projects include:

- Purchase of new, low emission vehicles or engines
- Conversion of vehicles to cleaner fuel such that low emission status is achieved
- Retrofit of existing vehicles such that cleaner vehicle status is achieved
- Establishment or upgrade of publicly owned clean fuel refueling infrastructure (e.g., natural gas, propane, biodiesel, ultra-low sulfur diesel, E85, etc.)

**Funding Categories**

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) vehicle or engine.
- Up to 75% of the total cost of a conversion that involves operation on a clean fuel, or utilization of a retrofit technology that effectively reduces vehicle emissions. Diesel engine idling reduction technologies may also be funded under this program to the extent that emissions are reflected in the on-road regional emissions budget.
- Up to 75% for the establishment of publicly owned, on-site fueling facilities and other infrastructure needed to fuel clean vehicles.

Grant funds are intended for the purchase of new equipment – any financing (including lease-purchase) of project equipment must be approved by H-GAC in advance of project implementation.

The incremental cost is defined as the cost of an approved conversion of an existing or new vehicle or the additional cost of purchasing a new vehicle equipped to operate on at least one alternative fuel over the cost of a comparable new vehicle equipped to run on gasoline or diesel.

**Requirements**

- 1) Projects must reduce emissions from on-road motor vehicles in the Houston-Galveston non-attainment area. The Houston-Galveston non-attainment 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), or ultra-low sulfur diesel (ULSD, mandated October 2006, diesel emulsions and fuel additives provided that the reductions in ozone precursors (NOx and VOC) can be demonstrated.
- 3) Funded vehicles – either new or conversions – must use 2007 certified/verified technology. Emission reductions may be verified by the EPA or the California Air Resources Board (CARB).
- 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 and maintain a minimum of 75% vehicle operation hours within the Houston-Galveston non-attainment area. Vehicles purchased through the CC/CV Program must remain in the fleet for at least five years. 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 in the Houston-Galveston non-attainment area. Verification of miles traveled or hours operated will be required.
- 6) Infrastructure projects funded by the H-GAC CC/CV Program must ensure public access to fueling facilities. Infrastructure must be in place and utilized for at least five years. 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 H-GAC 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 non-attainment area.
- 8) Project selection is based upon emission reductions and cost effectiveness. 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.
- 9) Projects funded by the H-GAC 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.
- 10) Projects involving engine replacement require destruction of the baseline engine. Prior approval of destruction method is required. Proper documentation of engine destruction must be submitted to H-GAC.
- 11) To verify compliance, fuel-use, mileage, and maintenance records of the clean vehicles funded by this program will be made available for inspection by H-GAC or its designated agent. Compliance records will be requested by 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 75 percent use requirement has not been met, reimbursement to H-GAC will be required.

- 12) Property (vehicle/engine) records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds the title, the acquisition date, the cost of the property, percentage of H-GAC participation in the cost of the property, the location, use and condition of the property, and the ultimate disposition data including the date of disposal and sale price of the property.
- 13) Should the cost to remove and destroy the baseline engine(s) be less than revenue received for the scrapped engine(s), this net revenue should be applied to the reimbursed cost of the replacement engine(s) to reduce total project cost.
- 14) The consultant/contractor shall not dispose of any equipment purchased through the CC/CV program prior to the conclusion of the project without express written consent/approval of H-GAC.

**ATTACHMENT B**  
**COST ESTIMATE**

## Fort Bend County Road & Bridge

### Project Specifications/Cost Estimate

**Fort Bend County Road & Bridge** (Fort Bend) will replace **5** existing diesel vehicles with **5** vehicles that meet or exceed 2010 diesel engine emission standards. The existing engines identified for this project will be destroyed. Congestion Mitigation/Air Quality (CMAQ) funds will be provided by the Houston-Galveston Area Council (H-GAC).

The engines identified for replacement for this project are listed below:

| Unit no.      | Engine serial number | Engine make | Engine model | Year | GVW    | Miles per Year | NOx Reduction [ton/year] | Cost per engine | CMAQ fund % | CMAQ Funds (per unit) |
|---------------|----------------------|-------------|--------------|------|--------|----------------|--------------------------|-----------------|-------------|-----------------------|
| RB0091        | 35000497             | Cummins     | ISM          | 2000 | 54,600 | 19,424         | 0.291                    | \$88,100        | 49.53%      | \$43,634              |
| RB0092        | 35000656             | Cummins     | ISM          | 2000 | 54,600 | 23,222         | 0.348                    | \$88,100        | 59.21%      | \$52,166              |
| RB7031        | 11846122             | Cummins     | ISM          | 1997 | 54,600 | 15,653         | 0.294                    | \$88,100        | 50.00%      | \$44,069              |
| RB7034        | 11846129             | Cummins     | ISM          | 1997 | 54,600 | 17,080         | 0.321                    | \$88,100        | 54.58%      | \$48,087              |
| RB01112       | 35035453             | Cummins     | ISM          | 2001 | 54,600 | 21,717         | 0.324                    | \$88,100        | 55.24%      | \$48,668              |
| <b>TOTALS</b> |                      |             |              |      |        |                | 1.578                    | \$440,500       |             | \$236,624             |

Fort Bend will submit documentation to H-GAC on the program implementation and tracking of the engine replacement program. Any engines designated for retirement must be destroyed and documented in the same manner as those identified for replacement. The program implementation and tracking documents are required for reimbursement and project tracking and should address the following items:

- Engine destruction documentation
  - Method of engine destruction must make certain that the engine is permanently disabled. A hole in the engine block is required.
  - Engine destruction method must be approved by H-GAC prior to engine destruction.
  - Documentation of destroyed engines (including photos & destroyed engines affidavit) must be sent to H-GAC.
  - Documentation must include reference to Fort Bend vehicle identification number and engine serial number.
- Engine purchase information
  - Copy of paid purchase invoice from engine manufacturer and/or supplier supplemental documentation to accompany copy of paid invoice if engine price is not indicated on paid invoice. Invoice should indicate supplemental attachments. Grant funds are intended for the purchase of new equipment – any financing (including lease-purchase) of project equipment must be approved by H-GAC in advance of implementation.

- H-GAC must approve (in advance) any financing contracts related to the project (proof of financial responsibility for the life of the project must be provided). H-GAC will only make reimbursement for payments already paid by the consultant/contractor.
  - All grant funds (CMAQ) reimbursed to the fleet must be used to buy down the cost of the project (copies of cancelled checks or documentation of electronic transfer must be provided).
  - Documentation of engine emission standards. Engines must meet or exceed 2010 emission standards.
  - Total engine cost for this project is estimated to be **\$440,500**. **54%** of total engine purchase cost (**\$236,624**) will be reimbursed for this project.
  - All grant funds reimbursed to the fleet will be in the amount (and percentage) stated per individual unit on the Project Specification/Cost Estimate Table listed above.
- Quarterly reporting is required for five (5) years from the date of purchase of engines replaced or retrofitted with a Clean Vehicles grant. Report must include mileage, fuel consumption, and maintenance/repair records for funded vehicles/engines. Mileage documentation must include mileage accrued within the Houston-Galveston non-attainment area.

The H-GAC Board of Directors has approved a total project cost plus contingency of **\$125,000**. H-GAC will provide federal funding through Federal Congestion Mitigation Air Quality funds for an amount not to exceed **75%** of the total project cost. The federal CMAQ funding for this project is in the amount of **\$236,624** (**54%** of the total cost) and will be reimbursed to the fleet contractor in the amounts specified for each individual unit as per the “CMAQ Funds (Per Unit)” column of the Project Specification/Cost Estimate Table listed above. Fort Bend will be responsible for providing **\$203,876** (**46%** of the total project cost) as local matching funds.

The estimated total nitrogen oxide (NOx) reductions for this project are **1.578** tons per year. H-GAC will claim 100% of all the emission reduction credits achieved from the replacement and retirement of the above listed engines.

**Should any components of the approved project become altered at any time Fort Bend will notify H-GAC in writing of the proposed project modification and any anticipated changes in emission reductions. Approval from H-GAC is required in advance of any implementation of project changes.**

**ATTACHMENT C**  
**FINANCIAL REPORT**

## H-GAC TRANSPORTATION PROGRAM FINANCIAL REPORT

|             |                                |              |                  |
|-------------|--------------------------------|--------------|------------------|
| CONTRACTOR: | Fort Bend County Road & Bridge | CONTRACT NO. | STATUS: ORIGINAL |
|             |                                | TS8707-32    | HGAC VENDOR ID:  |

|                             |               |              |                     |                            |         |
|-----------------------------|---------------|--------------|---------------------|----------------------------|---------|
| Short Name:                 | Report No:    | #            | PROJECT/<br>Account | Cumulative<br>Expenditures | BALANCE |
| Clean Cities/Clean Vehicles | Period        |              |                     |                            |         |
| Cost Category               | Budget        | Expenditures |                     |                            |         |
| Total Project Cost          | \$ 440,500.00 |              |                     | \$ -                       |         |
|                             |               |              |                     |                            |         |
| Reimbursement _____ %       | \$ 236,624.00 |              |                     | \$ -                       |         |
| Less Salvage                |               | (\$ )        |                     | \$ -                       |         |
|                             |               |              |                     |                            |         |
| TOTAL CASH REQUEST          | \$ 236,624.00 | \$ -         |                     | \$ -                       | \$ -    |
| Match                       |               |              |                     |                            |         |
| Local Match _____ %         | \$ 203,876.00 | \$           |                     |                            |         |

I hereby certify that to the best of my knowledge and belief this expenditure report is complete and correct and that all expenditures are in accordance with the contract.

Authorized Official:

\_\_\_\_\_  
signature

Date:

\_\_\_\_\_

Report Prepared by:

\_\_\_\_\_

Telephone:

\_\_\_\_\_

HGAC use only

Approved by:

\_\_\_\_\_

Finance:

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date