

STATE OF TEXAS *
 *
COUNTY OF TRAVIS *

**AGREEMENT FOR FUNDING OF
ALTERNATIVE FUELS PROGRAM**

THIS AGREEMENT, is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State" and the Texas Turnpike Authority, acting by and through its authorized officials, hereinafter called the "Recipient".

W I T N E S S E T H

WHEREAS, the Intermodal Surface Transportation Efficiency Act of 1991, ("ISTEA") codified under Title 23 U.S.C. Section 101 et seq., establishes the National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the nation to compete in the global economy, and will move people and goods in an energy efficient manner; and

WHEREAS, Title 23 U.S.C. Section 149 establishes a congestion mitigation and air quality improvement program ("CMAQ") to contribute to the attainment of a national ambient air quality standard to be implemented by the States' Transportation Agencies; and

WHEREAS, Title 23 U.S.C. Section 134 establishes that Metropolitan Planning Organizations ("MPO's") and the States' Transportation Agencies develop transportation plans and programs for urbanized areas of the State; and

WHEREAS, Title 23 U.S.C. Section 120 establishes that the Federal share of funding for CMAQ programs will not exceed eighty percent (80%) of the cost of the desired activity; and

WHEREAS, Dallas, Tarrant, Collin and Denton Counties have been designated by the Clean Air Act Amendments of 1990 as an ozone nonattainment area, and thus qualifies for CMAQ funds; and

WHEREAS, the North Central Texas Council of Governments, hereinafter identified as "NCTCOG", as the Metropolitan Planning Organization for the Dallas-Fort Worth Metropolitan area and Denton and Lewisville urbanized areas, has the



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responsibility for developing transportation control measures for the State implementation plan to assist in the reduction of ozone-forming mobile emissions; and

WHEREAS, a program of converting new and existing vehicles from conventional fuels to alternative fuels is desired, to be hereinafter identified as the "Alternative Fuels Program"; and

WHEREAS, CMAQ funds have been made available to the State through the U.S. Department of Transportation for the advancement of the Alternative Fuels Program; and

WHEREAS, NCTCOG has submitted the Alternative Fuels Program through the Texas Natural Resource Conservation Commission to the U.S. Environmental Protection Agency for incorporation in the State implementation plan to assist in the reduction of ozone-forming mobile emissions; and

WHEREAS, the State and the Recipient desire to enter into this agreement to establish the parties' obligations and responsibilities associated with the Alternative Fuels Program; and

WHEREAS, on the 13th day of September, 1994, the Recipient's ruling board, passed Resolution No. 1485, attached hereto and identified as EXHIBIT A, authorizing the Recipient's participation in the Alternative Fuels Program; and

WHEREAS, on the 29th day of July, 1993, the State's Texas Transportation Commission passed Minute Order No. 102542, attached hereto and identified as EXHIBIT B, authorizing the Alternative Fuels Program through the State Transportation Improvement Program;

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

1. CONTRACT PERIOD

This agreement shall become effective on the date of final execution by the State and shall terminate upon completion of all vehicle conversions

subject to this Agreement or unless terminated or modified as hereinafter provided.

2. SCOPE OF PROJECT

The Recipient shall agree to the terms and conditions of the Specifications for Public Sector, Non-Transit Alternative Fuel Vehicles, attached hereto and identified as EXHIBIT C.

3. FUNDING RESPONSIBILITIES

The maximum amount payable under this cost reimbursement agreement is \$ 12,100. This amount is based on the Cost Estimate, attached hereto and identified as EXHIBIT D. The Recipient will be responsible for securing the non-federal funding share required for financing the Alternative Fuels Program. The Recipient will not incur any cost for reimbursement until authorized by the State. State authorization will not be granted until both FHWA authorization, to be attached hereto as EXHIBIT E, is granted; and, this Agreement is fully executed. Costs incurred by the Recipient prior to the above conditions will not be eligible for reimbursement. The Recipient shall comply with the cost principles established in OMB Circular A-87, "Cost Principles for State and Local Governments".

4. REIMBURSEMENT

The State will reimburse the Recipient for 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 Recipient shall submit the State's Form 132, Billing Statement, or other type of invoice acceptable to the State to the following address:

Texas Department of Transportation
9700 East R.L. Thornton
Dallas, Texas 75228

All billing statements shall be properly documented, summarizing the costs by description of work performed and other incidental costs. The State will make payment to the Recipient within thirty (30) days from receipt of

the Recipient's request for payment, provided that the request is properly prepared, executed, and documented. Unsupported charges or charges after final acceptance by the State will not be considered eligible for reimbursement. If applicable or necessary the State will prepare a final audit upon completion of the services authorized herein or at any time an audit is deemed to be in the best interest of the State.

5. TERMINATION

This agreement may be terminated by one of the following conditions:

- (1) By mutual agreement and consent of both parties.
- (2) By the State, upon thirty (30) days written notice to the Recipient as a consequence of failure by the Recipient to perform the services and obligations set forth in a satisfactory manner and within the limits provided, with proper allowances being made for circumstances beyond the control of the Recipient as determined by the State.
- (3) By either party, upon thirty (30) days written notice to the other.

Termination of this agreement shall extinguish all rights, duties, obligations or responsibilities established under this agreement. The Recipient will not incur any costs eligible for reimbursement during the thirty (30) day notice periods established hereabove.

6. INDEMNIFICATION

The Recipient acknowledges that it is not an agent, servant, or employee of the State, and that it is responsible for its own acts and deeds and for those of its agents or employees.

7. REMEDIES

Violation or breach of contract terms by the Recipient shall be grounds for termination of the agreement, and any increased cost arising from the Recipient's default, breach of contract, or violation of terms shall be paid by the Recipient. This agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

8. AMENDMENTS

Changes in the time frame, character, responsibilities, or obligations authorized herein shall be enacted by written amendment. Any amendment to this agreement must be executed by both parties.

9. SUBLETTING

The Recipient shall not assign or otherwise transfer its rights or obligations under this agreement without the prior written consent of the State.

10. INSPECTION OF RECIPIENT'S BOOKS AND RECORDS

The State will, for purpose of termination of the agreement prior to completion, examine the books and records of the Recipient for the purpose of checking the amount of the costs incurred by the Recipient at the time of contract termination. The Recipient shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State, Federal Highway Administration (FHWA) or its duly authorized representatives for review and inspection at its office during the contract period and for three (3) years from the date of final payment under this contract or until impending litigation is resolved. Additionally, the State, FHWA and its duly authorized representatives shall have access to all records of the Recipient which are directly applicable to this agreement for the purpose of making audits, examinations, excerpts and transcriptions.

11. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this agreement shall for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12. OMB CIRCULAR NO. A-128 AUDIT REQUIREMENT

The Recipient shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in paragraphs 6, 8 and 9 of OMB Circular No. A-128.

13. COMPLIANCE WITH LAWS

The Recipient shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any court, administration bodies, or tribunals in any matter affecting the performance of the agreement.

14. NOTICES

All notices or documentation to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following respective addresses:

State: Texas Department of Transportation
9700 East R.L. Thornton Freeway
Dallas, Texas 75228

Recipient:

All notices and documentation shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.

15. SOLE AGREEMENT

This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.



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IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

Texas Turnpike Authority
Name of Recipient
By: James W. Griffin
James W. Griffin
Typed Name
Executive Director
Title
September 19, 1994
Date

ATTEST: Jimmie Newton
Jimmie Newton - Secretary

THE STATE OF TEXAS

Executed for the Executive Director and approved by the Texas Transportation Commission under the authority of Minute Order No. 100002 and Administrative Circular 26-93, for the purpose and effect of activating and carrying out the orders, established policies or work programs heretofore approved by the Texas Transportation Commission.

By: Robert Cuellar
Bob Cuellar, P.E.
Deputy Executive Director for Transportation
Planning and Development
12-28-94
Date