

RESOLUTION NO. 2003- 9 R

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDED INTERLOCAL AGREEMENT BETWEEN TO THE CITY OF VICTORIA AND VICTORIA COLLEGE DISTRICT FOR AIR QUALITY PUBLIC OUTREACH SERVICES FUNDED BY THE 2001 TEXAS LEGISLATIVE SESSION TO MOVE EXPENDITURES FROM 2002 TO 2003; AND DECLARING AN EFFECTIVE DATE.

On November 6, 2001, by Resolution No. 2001-173R, the City Administration authorized a \$136,000.00 two-year agreement with Victoria College District for Air Quality Public Outreach Services, fully funded by the 2001 Texas legislative session; and

The First Amended Agreement moves \$22,000.00 from the 2002 calendar year to the 2003 calendar year for increased advertising expenditures related to air quality. The funds were not used in 2002 due to salary savings during a vacancy in the Public Outreach Coordinator position.

THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The City Manager is authorized to execute the First Amended Interlocal Agreement between the City of Victoria and the Victoria College District for air quality public outreach services funded by the 2001 Texas Legislative Session to move \$22,000 of expenditures from 2002 to 2003, and the City Manager is further authorized to execute related documents, in the form attached as Exhibit "A" with minor changes as approved by the City Attorney.

2.

This resolution shall become effective immediately upon adoption.

PASSED, this 21st day of January, 2003.

AYES: 7

NAYS: 0

ABSTENTIONS: 0

APPROVED AND ADOPTED, this the 21st day of January, 2003.



ATTEST:

Scarlet Swoboda
SCARLET SWOBODA, City Secretary

Distribution: Legal Department
Utilities Department

Gary Middleton
GARY MIDDLETON, Mayor of the
City of Victoria, Texas

APPROVED AS TO LEGAL FORM:

David Atmar Smith
DAVID ATMAR SMITH, City Attorney

Copies Sent: January 23, 2003

**FIRST AMENDED INTERLOCAL AGREEMENT BETWEEN VICTORIA COLLEGE DISTRICT
AND THE CITY OF VICTORIA FOR AIR QUALITY PUBLIC OUTREACH SERVICES
\$136,000.00 (maximum of ~~\$68,000~~ \$46,000 for 2002 and ~~\$68,000~~ \$90,000 for 2003--funded by 2001 Texas
Legislative Session)**

THIS FIRST AMENDED AGREEMENT is made by and between Victoria College District, hereinafter called "VCD" and the City of Victoria hereinafter called "the City". This FIRST AMENDED AGREEMENT amends the original Interlocal Agreement, which was executed on February 14, 2002 to delete the terms designated by ~~strikeout~~ and add the underlined terms. Attachments to this agreement are not re-attached, but shall continue to apply as if re-attached.

1. CONTRACT PERIOD---This agreement becomes effective on **January 1, 2002** and shall terminate on **December 31, 2003**, with the exception of record-keeping, auditing, and inspection requirements provided herein.

2. SCOPE OF SERVICES

The VCD shall commence, conduct and carry out Air Quality Public Outreach Services from **January 1, 2002 to December 31, 2003**. These activities shall include but are not limited to providing at least 40 person-hours per week during the aforementioned time period on the following projects:

1. developing and preparing an outline/plan for providing public information for air quality awareness,
2. developing and preparing informational handouts,
3. developing and preparing publicity material for "Air Quality Alert Days",
4. developing and preparing an air quality public information booth to be utilized at public events,
5. developing contacts with the media for air quality outreach purposes,
6. developing and preparing a videotape script and videotape that provides citizen awareness of Victoria area issues, impact, and relevant activities regarding air quality,
7. developing and preparing inserts for City utility bills providing awareness air pollution reduction measures for the Victoria area,
8. developing and preparing a status report at least once per month of the items prepared to the Air Quality Outreach Committee and the City's Assistant Director of Planning,
9. developing and preparing outlines of proposed air quality projects for presentation to the air quality outreach and technical committees and the City's Assistant Director of Planning,
10. coordinating with industry representatives to develop and analyze air quality improvement methodologies and initiatives in conjunction with the air quality outreach and technical committees,
11. presenting educational programs concerning air quality and local air quality initiatives to school teachers, school children, civic groups, civic groups, and various other organizations,
12. providing miscellaneous public outreach services as may be assigned by the public outreach committee,
13. providing services as a public outreach coordinator,
14. aiding City representatives in the preparation and submission to TNRCC, of financial reimbursement requests under the City's contract with its subcontractors regarding public outreach,
15. aiding City representatives in the preparation and submission to TNRCC, of progress and status reports from the City to TNRCC regarding public outreach,
16. aiding City representatives in the preparation and reviewing of the City's subcontracts (including scopes of work) with private air quality consultants and researchers that relate to the subject of these public outreach activities,
17. aiding City representatives in the review of technical work plan products as provided by private air quality consultants and researchers that relate to the subject of these public outreach activities,
18. traveling to various meetings, conferences, seminars and educational programs, as approved by City representatives, related to the air quality issues present in the air quality near non-attainment program, and
19. performing such other public outreach tasks as directed by the City of Victoria Director of Planning or his appointed representative.

3. CONTRACT AMOUNT---The City agrees to pay to VCD an amount not to exceed ~~\$68,000~~ ~~\$46,000~~ for calendar year 2002 and ~~\$68,000~~ ~~\$90,000~~ for calendar year 2003 as payment for the aforementioned services. This amount shall be payable solely from funds received for the purpose stated herein from the Texas Natural Resources Conservation Commission (TNRCC) pursuant to **Texas Natural Resource Conservation Commission State Funded Grant Agreement Contract No. 582-2-44894 between the TNRCC and the City of Victoria**, which is attached as **Exhibit "A."** Payments shall be made for the services to be provided under this contract after the execution of this contract and ratification by all parties in response to VCD invoices submitted monthly to the City in the format required by the City and TNRCC. Payment shall be made within 30 days of the invoice date if the funds are in the possession of the City and within 14 days of the date funds are received from the TNRCC if funds have not been delivered to the City at the time VCD's invoice is received by the City. Each party paying for the performance of governmental functions or services pursuant to this contract must make those payments from current revenues available to the paying party.

4. OWNERSHIP OF WORK PRODUCT AND EQUIPMENT---Upon completion or termination of this Agreement, all documents prepared by VCD or the City of Victoria shall become the property of the City and may be distributed. VCD may retain copies of any documents, and shall have the right to distribute the copies to the public. Copies of all documents and data prepared or reviewed under this Agreement shall be made available to the City and TNRCC. Title to and management of equipment purchased by VCD with funds received pursuant to this agreement shall be treated in accordance with Section 4.10 through 4.19 of **Texas Natural Resource Conservation Commission State Funded Grant Agreement Contract No. 582-2-44894 between the TNRCC and the City of Victoria.**

5. TERMINATION

a. This agreement may be terminated by either party upon 10 days notice of such termination to the other party.

b. Termination or cancellation of the Agreement shall not affect the rights and obligations of the parties accrued prior to termination. Upon termination, the City shall pay VCD for all reasonable expenses incurred or committed to be expended as of the effective termination date, including salaries for employees for services provided prior to the termination date. City liability pursuant to this section shall be limited to payment of amounts the City receives from the TNRCC for payment of the services provided prior to termination. After the date of termination, VCD shall not provide further services hereunder, but will continue to have an obligation to comply with recordkeeping, reporting, equipment management, and auditing requirements of this agreement.

6. REMEDIES---This agreement shall not be considered as specifying the exclusive remedy for any agreement default, but all remedies existing at law and in equity may be availed of by either party to this agreement and shall be cumulative.

7. AUDITS, ACCESS TO RECORDS

a. VCD shall maintain and make available for review, inspection and/or audit books, records, documents, and other evidence reasonably pertinent to performance on all work under this agreement, including negotiated changes or amendments thereto, in accordance with accepted professional practice, appropriate accounting procedures and practices at VCD's main office. VCD shall also maintain and make available at its main office the financial information and data used by VCD or its designee (including independent financial auditors) in the preparation or support of any cost submission or cost (direct and indirect), price or profit analysis for this Agreement or any negotiated agreement or change order and a copy of the cost summary submitted to VCD. The City, the Texas State Auditor's Office or any of the City's duly authorized representatives shall have access to VCD's books, records, inspections, or audits. During the conduct of any such review, audit or inspection, VCD books, records, and other pertinent documents may, upon prior conference with VCD, be copied by the City or any of its duly authorized representatives. All such information shall be handled by the parties in accordance with good business ethics. VCD shall provide proper facilities for such access and inspection.

- b. Audits conducted pursuant to this provision shall be 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).
- c. VCD agrees to the disclosure of all information and reports resulting from the access to records pursuant to Section (a) above to VCD, except as may be permitted/excluded under applicable law. Where the audit concerns VCD, the auditing agency will afford VCD an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report.
- d. Records under this section above shall be maintained and made available during the entire period of performance of this Agreement and until three years from date of final payment for the project. In addition, those records which relate to any dispute, litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception of such action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. Access to records is not limited to the required retention periods. The City shall have access to records at any reasonable time for as long as the records are maintained.
- f. This section applies to financial records pertaining to all agreements and all agreement change orders and amendments. In addition, this right of access applies to all records pertaining to all agreements, agreement change orders, and agreement amendments to the extent the records reasonably pertain to the performance of this agreement.

8. INDEPENDENT FINANCIAL AUDIT—VCD shall be governed by to the Single Audit requirements of OMB Circular A-133. Should VCD undergo a single audit in compliance with OMB Circular A-133, a copy of the single audit report must be submitted to the City within 30 days of completion of the single audit report. VCD is responsible for including the Single Audit requirements in all agreements and shall be responsible for ensuring adherence to those requirements by all subcontractors.

9. MISCELLANEOUS STATE-MANDATED PROVISIONS:

In the performance of the duties performed pursuant to this contract, VCD will:

- (1) comply with Texas Government Code, Chapter 573, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
- (2) ensure that all information collected, assembled or maintained by the applicant relative to a project will be available to the public during normal business hours in compliance with Texas Government Code, Chapter 552, Vernon's 1994, unless otherwise expressly prohibited by law.
- (3) comply with Texas Government Code, Chapter 551, which requires all regular, special or called meeting of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.
- (4) comply with Texas Family Code § 231.006, which prohibits payments to a person in arrears on child support payments.
- (5) if it is a health and human services agency or public safety or law enforcement agency, not contract with or issue a license, certificate or permit to the owner, operator or administrator of a facility if the

license, permit or certificate has been revoked by another health and human services agency or public safety or law enforcement agency.

(6) if it is a law enforcement agency regulated by Texas Government Code, Chapter 415, be in compliance with all rules adopted by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to Chapter 415, Texas Government Code or provide the grantor agency with a certification from the Texas Commission on Law Enforcement Officer Standards and Education that the agency is in the process of achieving compliance with such rules.

(8) comply with the Texas Family Code § 261.101 which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. VCD shall also ensure that all program personnel are properly trained and aware of this requirement.

(9) not discriminate against any employee or applicant because of race, religion, color, sex, age, or national origin and it will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (Title 41 CFR Part 60). VCD assures that no person will, on the grounds of race, creed, color, handicap, national origin, sex, political affiliation or beliefs, be excluded from, be denied the benefit of, or be subject to discrimination under any program or activity funded in whole or part under this Contract. VCD further 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 (42 U.S.C §§12101-12213); (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 the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

(10) comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § § 276a to 276a-7), the Copeland Act (40 U.S.C. § § 276c and 18 U.S.C. § § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. § § 327-333), regarding labor standards for federally assisted construction sub-agreements.

(11) comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P. L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

(12) comply with the provisions of the Hatch Political Activity Act (5 U.S.C. § 7321-29) which limit the political activity of employees whose principal employment activities are funded in whole or in part with Federal funds.

(13) comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable.

(14) ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA. (EO 11738).

(15) comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234. Section 102(a) requires the purchase of flood insurance in communities where such insurance is available as a condition for receiving federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(16) comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

(17) comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

(18) assist the City and TNRCC in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

(19) comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

(20) comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

(21) comply with Public Law 103-277, also known as the Pro-Children Act of 1994, which prohibits smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

(22) adopt and implement applicable provisions of the model HIV/AIDS work place guidelines of the Texas Department of Health as required by the Texas Health and Safety Code § 85.001, et seq.

(23) comply with all federal tax laws and are solely responsible for filing all required state and federal tax forms.

(24) comply with all applicable requirements of all other federal and state laws, executive orders, regulations and policies governing this program.

VCD hereby certifies that it is not debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs.

10. UTILIZATION OF HISTORICALLY UNDERUTILIZED BUSINESS (HUB) ENTERPRISES—VCD agrees that qualified historically underutilized businesses (HUBs) shall have the maximum practicable opportunity to participate in the performance of this contract.

11. INTELLECTUAL PROPERTY

- a. For the purpose of this Article, “intellectual property” refers to:
 - (1) Any discovery or invention for which patent rights may be acquired.
 - (2) Any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials.
 - (3) Any other materials in which intellectual property rights may be obtained.
- b. If VCD or a subcontractor first conceives of, actually puts into practice, discovers, invents, or produces any intellectual property resulting from and during the course of its work under this Contract, it shall report that fact to the City.
- c. VCD or its subcontractors may obtain governmental protection for rights in the intellectual property. However, the City hereby reserves a nonexclusive, royalty-free, and irrevocable license to use, publish, or reproduce the intellectual property for non-commercial City or State purposes, and to authorize others to do so. The City also reserves a nonexclusive, royalty-free, and irrevocable license to use, publish, or reproduce for non-commercial City or State purposes, and to authorize others to use, publish, or reproduce, for non-commercial City or State purposes (to the extent consistent with the rights of third parties) any intellectual property for which VCD or a subcontractor obtains rights with funds received under this Contract. The City and TNRCC shall further have the right to modify any such intellectual property and authorize others to modify such intellectual property. The City and TNRCC shall own all intellectual property rights to such modifications.
- d. In performing work under this Contract, VCD shall comply, and shall require all subcontractors to comply with all laws, rules, and regulations relating to intellectual property, and shall not knowingly infringe on any third-part’s intellectual property rights. VCD represents to the City, to the best of its knowledge, the deliverables furnished under this contract will not infringe the intellectual property of any third party.
- e. VCD shall further adhere to such intellectual property limits as are provided in Section 4.33 of the **Texas Natural Resource Conservation Commission State Funded Grant Agreement Contract No. 582-2-44894 between the TNRCC and the City of Victoria**. VCD shall include provisions adequate to effectuate the purposes of this Article in all subcontracts under this contract in the course of which intellectual property may be produced or acquired.

12. AMENDMENTS—Any changes in the time frame, character, agreement provisions or obligations of the parties hereto shall be enacted by written amendment executed by both the City and VCD.

14. COMPLIANCE WITH LAWS—The City and VCD 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 manner affecting the performance of the agreement. When required, VCD shall furnish the City with written documentation necessary to provide satisfactory proof of the compliance.

15. LEGAL CONSTRUCTION—In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal or unenforceable provisions has never been contained herein.

16. NOTICES—All notices to other party by the other required under this agreement shall be delivered personally or sent by certified or US Mail, postage prepaid, addressed to such party at the following respective addresses:

City of Victoria
Planning Department
P.O. Box 1758
Victoria, Texas 77902

Victoria College
Director of Workforce Development and Education
2200 E. Red River
Victoria, Texas 77901

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

17. SOLE AGREEMENT—This agreement constitutes the sole and only agreement between the parties hereto and supersedes any prior understandings or written or oral agreements respecting the subject matter.

Executed, this the _____ day of _____, 2003.

CITY OF VICTORIA

VICTORIA COLLEGE DISTRICT

Denny L. Arnold, City Manager

Dr. Jimmy Goodson, President

(seal)

(seal)

ATTEST:

ATTEST:

Scarlet Swoboda, City Secretary

APPROVED AS TO FORM:

David A. Smith, City Attorney

Exhibits: Texas Natural Resource Conservation Commission State Funded Grant Agreement Contract No. 582-2-44894 between the TNRCC and the City of Victoria in the amount of \$924,600 --- not re-attached, but shall continue to apply as if re-attached.