

MEMORANDUM OF AGREEMENT

I. Parties

This Memorandum of Agreement (MOA) ("Agreement") is entered into between the Texas Commission on Environmental Quality ("TCEQ") and the local governments signing this agreement (Local Governments), collectively, the "Parties."

1. The Parties represent that they have the authority to enter into this MOA, including the authority granted in the Texas Government Code Chapter 791 Interlocal Cooperation Contracts.
2. The TCEQ has authority under Section 5.229 of the Texas Water Code and Section 382.033 of the Texas Health and Safety Code to enter into this MOA.
3. Local Governments have authority under Section 382.115 of the Texas Health and Safety Code to enter into this MOA.

II. Intent and Purpose

The intent of this Agreement is to memorialize both the renewal of the agreement between the original Parties (TCEQ and the Local Early Action Compact (EAC) Signatories) and to acknowledge new Local Governments to the agreement to implement the following rules aimed at the control of air pollution from motor vehicles: 30 Texas Administrative Code ("TAC") Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations, Sections 114.510 - 114.512 and 114.517.

The Parties, TCEQ and any new Local Governments, enter into this Agreement for the purpose of renewing or ratifying, as applicable, the agreement delegating rule enforcement from TCEQ to the Local Governments and incorporating the emission reductions resulting from the implementation and enforcement of the above-referenced rules into the State Implementation Plan ("SIP").

III. Definitions

As used in this Agreement the following terms have the meanings given below:

1. "EPA" shall mean the U.S. Environmental Protection Agency.
2. "TCEQ" shall mean the Texas Commission on Environmental Quality.
3. "Local Government" has the meaning assigned by 30 TAC Section 114.510.
4. "EAC" means Early Action Compact.

5. "Local EAC Signatories" means the Local Governments that are signatories to the Austin-Round Rock (previously Austin-San Marcos) MSA Memorandum of Agreement with TCEQ and EPA, signed December 18, 2002. These Local Governments are Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock, and San Marcos.
6. "SIP" shall refer to the Texas State Implementation Plan.

IV. Background

1. Under Section 110 of the Federal Clean Air Act ("FCAA"), 42 U.S.C. § 7410, each state that has a nonattainment area must submit a SIP to the EPA demonstrating strategies to come into compliance with the National Ambient Air Quality Standards ("NAAQS").

2. Section 110 of the FCAA, 42 U.S.C. § 7410 also requires Texas to submit to the EPA for approval any SIP revisions and to demonstrate that such SIP revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the FCAA, as required by § 110(1) of the FCAA.

3. On June 19, 2002, the EPA approved the *Protocol for Early Action Compacts Designed to Achieve and Maintain the 8-Hour Ozone Standard*, a guidance document developed in coordination with TCEQ that addresses EAC development, implementation and commitments of signatory parties. The EAC concerns attainment of the national eight-hour ozone standard. Early voluntary eight-hour air quality plans can be developed through a Compact between Local, State, and the EPA officials for areas that are in attainment of the one-hour ozone standard but approach or monitor exceedances of the eight-hour standard. Early action plans are incorporated into the SIP.

4. On December 18, 2002, the TCEQ, the EPA, and the Local EAC Signatories entered into the Austin-San Marcos MSA Early Action Compact.

5. On March 29, 2004, the Local EAC Signatories submitted an eight-hour air quality plan to TCEQ and EPA in accordance with the EPA EAC Protocol. The plan contains commitments for numerous locally implemented emission reduction measures as well as several state-assisted measures, including the state heavy duty vehicle idling restrictions, to be implemented and enforced locally.

6. On November 17, 2004, the TCEQ adopted rules concerning locally enforced motor vehicle idling limitations, which are applicable only within the jurisdiction of a Local Government that has signed a Memorandum of Agreement with TCEQ delegating enforcement of the rules. The TCEQ submitted the rules to EPA for approval on December 6, 2004. EPA approved the rules in the Federal Register on April 11, 2005. The rules were effective June 10, 2005.

7. On November 17, 2004, the TCEQ also incorporated most of the Austin-Round Rock MSA EAC Clean Air Action Plan into the SIP. The State submitted the SIP to EPA for approval on December 6, 2004. EPA approval makes the plan's emission reduction measure commitments state and federally enforceable.

8. Parties acknowledge that they have entered into this MOA voluntarily and it shall become binding upon the signature of the Executive Director of TCEQ or his designated representative. In order to comply with continuing vehicle idling commitments of the Austin-Round Rock MSA through December 31, 2013, and safeguard the air resources of the State of Texas, the Parties agree to comply with the terms of this Agreement.

9. The Local Governments understand and agree that the commitments in this Agreement to enforce the idling restrictions in 30 Texas Administrative Code (T.A.C.) Chapter 114, Subchapter J, Division 2 become federally enforceable by the EPA, and by persons using the citizen suits provision of the Federal Clean Air Act (42 U.S.C. § 7604), upon approval of this Agreement.

V. Obligations of Parties

(A) The Local Government signatories agree as follows:

1. In accordance with the terms of this Agreement but subject to subsection (b) below, the Local Governments agree to implement or to ratify, as appropriate, the following TCEQ rules as stated in the Austin-Round Rock MSA *Implementation Plan for the Texas Heavy-Duty Vehicle Idling Rule*:
 - a. 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Subchapter J, Operation Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations, Sections 114.510 - 114.512 and 114.517. Changes to these TCEQ rules shall be incorporated into this Agreement without requiring amendment of this Agreement.
 - b. The Local Governments that will not adopt the rules for criminal enforcement purposes under section 7.177 of the Texas Water Code are listed in Attachment A of the Agreement.
2. The Local Governments agree to submit the following information to the TCEQ for the rules listed above not later than forty-five (45) calendar days after the effective date of this MOA.
 - a. Detailed description of the plan for implementation of these rules;
 - b. Copies of local ordinances or resolutions adopted by each Local Government's governing body to implement these rules;
 - c. Copies of agreements entered between any Local Government and other units of Local Government for the purpose of the implementation of these rules; and
 - d. Submission of agreements entered between any Local Government and other units of Local Government for the purpose of the implementation of these rules.

- 3. Copies of any requisite resolutions under Section 7.352 of the Texas Water Code shall be submitted to the TCEQ within fourteen (14) calendar days after passage by the local governing body.

VI. Term and Termination

Each Local Government shall enter into this Agreement through attachment of a separate signature page to this Agreement. This Agreement will become effective for each Local Government on the later of the TCEQ signature date or the date appearing on the signature page that shall be attached to this Agreement for that Local Government.

This Agreement shall expire on December 31, 2013, unless renewed in writing by mutual agreement of all the Parties. A Party may withdraw from this Agreement at any time upon thirty days written notice to all other Parties to this agreement. Withdrawal by a Local Government does not constitute termination of the entire MOA. This Agreement may be terminated at any time by mutual written consent of the Parties.

VII. Miscellaneous

This Agreement represents the entire agreement between the TCEQ and the Local Governments and supersedes all other agreements, understandings or commitments, written or oral, relative to the intent of this MOA. Unless expressly provided for in this Agreement, this MOA may not be amended or modified except pursuant to a mutual written agreement executed by each of the Parties.

This MOA shall be governed by and interpreted in accordance with the laws of the State of Texas.

Executed by: **TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

By: *Mark Vickery*
 Name: Mark Vickery, P.G.
 Title: Executive Director

3-25-09
 Date

In witness thereof, City of Hutto, through its authorized officer, has made and executed this signature page that shall be attached to the Memorandum of Agreement to Control Air Pollution From Motor Vehicles Through Locally Enforced Vehicle Idling Limits, which is hereby incorporated by reference in its entirety.

Executed by: **City of Hutto**

By: *David F. Begier*
 David F. Begier
 Mayor Pro Tem

December 18, 2008
 Date

Attest: *Debbie Chelf*
 Debbie Chelf, City Secretary

