

AGENDA ITEM

5F

FORT BEND COUNTY FY 2009
COMMISSIONERS COURT AGENDA REQUEST FORM
Return Completed Form to: Agenda Coordinator, County Judge's Office

Date Submitted: September 2, 2009

Submitted By: Ann Werlein

Department: County Judge

Court Date: September 8, 2009

Telephone: 281-341-8634

SUMMARY OF ITEM:

County Judge: Correct ending date of contract between Fort Bend County and the Texas commission on Environmental Quality (TECQ) for the Low Income Vehicle Repair Assistance, Retrofit and Accelerated Retirement Program (LIRAP) effective September 1, 2008 through August 31, 2011 not as of August 31, 2009 as previously stated on August 26, 2008 agenda and re-record contract.

Agreement/Appointment: YES NO

Reviewed by County Attorney's Office: YES NO

List Supporting Documents Attached: Complete packet is available if you wish a copy please call.

FINANCIAL SUMMARY:

Budgeted Item: YES NO

Funding Source: FY10

Requires Auditor to Certify Funds: YES NO

Instructions for submitting an Agenda Request:

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

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office: (checkbox) (check when completed)

If by E-Mail to 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 the numbers below:

- ✓ Auditor (281-341-3774) ✓ Comm. Pct. 1 (281-342-0587)
✓ Budget Officer (281-344-3954) ✓ Comm. Pct. 2 (281-403-8009)
✓ Facilities/Planning (281-633-7022) ✓ Comm. Pct. 3 (281-242-9060)
✓ Purchasing Agent (281-341-8642) ✓ Comm. Pct. 4 (281-980-9077)
✓ Information Technology (281-341-4526) ✓ County Clerk (281-341-8697)
[checkbox] Other: \_\_\_\_\_ ✓ County Atty (281-341-4557)

Recommendation:

9-15-0A orig. ret. to Ann at Co. Judge

Texas Commission on Environmental Quality

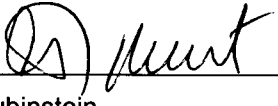
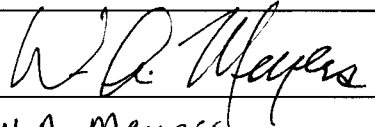

**Intergovernmental Cooperative Reimbursement Contract**  
with  
**Federal, State and Local Governments and Agencies**  
**CONTRACT SIGNATURE PAGE**

**RECEIVED**  
 AIR QUALITY  
 DIVISION  
 AUG 28 2008

Contract Name	Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program
Contract Number	582-9-90416-14
Grantee Name	Fort Bend County
Grantee Identification Number	17460019692

<b>Maximum TCEQ Obligation: \$ 45,000,000.00</b>	Effective Date: Date of last signature	Expiration Date: 08-31-2011
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The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and the named Grantee, a governmental body, agency, or political subdivision of: the United States, the State of Texas, or another State, enter this Contract (Contract) to cooperatively conduct authorized governmental functions and activities under the laws of the State of Texas, including, without limitation, the Interagency Cooperation Act, the Interlocal Cooperative Act, and Texas Water Code §§ 5.124 and 5.229. The Parties agree as follows: to be effective, the Contract must be signed by an authorized official of the TCEQ and the COUNTY; as authorized by TCEQ, The COUNTY will conduct Contract Activities as part of its own authorized governmental functions and TCEQ will reimburse Allowable Costs subject to the Texas Uniform Grant Management Standards and this Contract; the COUNTY is not a vendor of goods and services under Texas Government Code Chapter 2251, therefore, no interest is applicable; and the Contract may be terminated by TCEQ for its own convenience with 30 days written notice.

Parties to the Contract:	<b>Texas Commission on Environmental Quality (TCEQ)</b>	<b>(COUNTY)</b>
By (Authorized Signature)		
Printed Name:	Carlos Rubinstein	W.A. Meyers
Title:	Deputy Executive Director	Commissioner, Pct.3
Date of Signature:	9-11-08	8-26-08
Contract Manager Name	Chad Lenz	
Contact Numbers	(512) 239-6154	
Procurement and Contracts Representative		
Printed Name	Mike Fishburn	
Date	09/02/08	

**Intergovernmental Cooperative Reimbursement Contract**  
**CONTRACT DOCUMENTS**

The entire Contract between TCEQ and the COUNTY is composed of the Contract Documents listed on this page and marked by an "X." A listed document includes all amendments. The terms "Contract" and "Grant Contract" include all the Contract Documents. In the event of a conflict of terms, the Contract Documents as amended control in the descending order of the list, subject to provisions in the Special Terms and Conditions, if any. All contract provisions, however, are subject to control by the latest amendment and most specific provision and by the applicable state and federal laws, rules, and regulations.

<input checked="" type="checkbox"/>	Contract Signature Page
<input checked="" type="checkbox"/>	Special Terms and Conditions
	Documents Created During the Contract (including any Activity Plan, or Activity Plan amendment approved by TCEQ in accordance with Contract procedures)
<input checked="" type="checkbox"/>	Contract Activities ("Scope of Work")
<input checked="" type="checkbox"/>	TCEQ - Approved Activity Plan / The COUNTY Proposal
	Work Order Section
	Contract Budget
<input checked="" type="checkbox"/>	General Terms and Conditions
	Schedule of Fixed Cost for Reimbursement
	Federal Section (Including Conditions and Completed Forms)
<input checked="" type="checkbox"/>	Project Representatives and Records Location
<input checked="" type="checkbox"/>	Attachment A
<input checked="" type="checkbox"/>	Attachment B
	Attachment C
	Attachment D

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**Inter-Governmental Cooperative Reimbursement Contract**  
with  
**Federal, State and Local Governments and Agencies**

**CONTRACT ACTIVITIES**

I. INTRODUCTION

The purpose of this Contract is to provide financial assistance to enable the COUNTY to conduct the Grant Activity efficiently with a minimum of expense, risk, and potential liability to the COUNTY.

II. DESCRIPTION OF ACTIVITIES

The COUNTY agrees to perform, in accordance with this Contract and other Contract Documents, the activity generally described as: Low Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) , also known as the AirCheckTexas Drive a Clean Machine Program, The LIRAP Activities to be conducted by the COUNTY within its boundaries are described in Chapter 382, Texas Health and Safety Code and the Rules of the TCEQ at 30 Texas Administrative Code(TAC) Chapter 114 Subchapters A and C (specifically, Sections 30 TAC sections 114.7, 114.60, 114.62, 114.64, 114.66, 1114.68, 114.70, and 114.72). The LIRAP Activities may be further described in other Contract Documents.

1.3. The LIRAP Activities specifically include:

1.3.1. Payments necessary for repairs to bring vehicles into emissions compliance.

1.3.2. Payments for replacement vehicles when existing vehicles are retired.

1.3.3. Submittal of quarterly report forms to the TCEQ to demonstrate program compliance and accountability of funding.

1.3.4. Administration of the COUNTY'S LIRAP program.

1.4 Unless otherwise provided in this Contract or authorized in writing by the TCEQ, the COUNTY must submit a written Activity Plan for the conduct of the Work of this Contract. The COUNTY must obtain the TCEQ's written approval in a Notice to Proceed, in order for the costs to be eligible for reimbursement. The Activity Plan may be amended by written agreement of the Parties without amending this Contract.

## SPECIAL TERMS AND CONDITIONS

These conditions add to, or in the case of conflicts, supersede and take precedence over the general conditions set forth in this Contract.

The following conditions apply to the COUNTY'S LIRAP and the COUNTY will be impose these requirements on all of the COUNTY'S subcontractors and will enforce the requirements on applicants and dealers through enforcement of its contracts with its subcontractors, dealers and applicants.

### **1. Applicability for LIRAP**

- (a) The provisions of these requirements (relating to Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions) and provide the minimum requirements for the COUNTY'S implementation of a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and apply to counties that implement a vehicle emissions inspection program and have elected to implement LIRAP under this contract.
- (b) To be eligible for assistance under this division, vehicles must be subject to 30 TAC Section 114.50(a)
- (c) LIRAP does not apply to a vehicle that is a:
  - (1) fleet vehicle;
  - (2) commercial vehicle;
  - (3) vehicle owned or leased by a governmental entity;
  - (4) vehicle registered as a classic motor vehicle as defined by Transportation Code, Section 502.274;
  - (5) vehicle registered as an exhibition vehicle, including antique or military vehicles, as defined by Transportation Code, Section 502.275; or
  - (6) vehicle not regularly used for transportation during the normal course of daily activities.
- (d) The COUNTY must ensure that owners of vehicles under subsection (c) of this section do not receive monetary or compensatory assistance under LIRAP.

### **2. LIRAP Funding**

- (a) The TCEQ shall provide funding for the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) with available funds from Inspection and Maintenance Fees or other designated and available funds.

- (b) The COUNTY'S program shall be administered in accordance with Texas Government Code, Chapter 783. Programmatic costs may include call-center management, application oversight, invoice analysis, education, outreach, and advertising.
- (c) The COUNTY shall receive, to the extent practicable, funding in reasonable proportion to the amount in fees collected in the COUNTY or area from emissions testing fees designated by the commission.
- (d) If the COUNTY conducts a vehicle emissions inspection and maintenance program under Texas Health and Safety Code, §382.202 or §382.302, not more than 10 percent of the money provided for LIRAP may be used for administration of the program.

### **3. LIRAP Requirements**

- (a) The COUNTY agrees that it has, through its county commissioner's court, requested to implement a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP and the purpose of this grant contract is to implement that request.
  - (1) This grant contract provides conditions, requirements, and projected funding allowances for the implementation of the LIRAP.
  - (2) The COUNTY may contract with an entity approved by the TCEQ for services necessary to implement the LIRAP. The COUNTY or its designated entity (also referred to herein as subcontractor) shall demonstrate to the TCEQ that, at a minimum, the COUNTY or its designated entity has provided for appropriate measures for determining applicant eligibility and repair effectiveness and ensuring against fraud.
  - (3) The COUNTY shall remain obligated as the contractual party to this Contract even if the COUNTY contracts with another county or another entity or subcontractor to administer the LIRAP within the boundaries of the COUNTY.
- (b) Repair and retrofit assistance. The COUNTY'S LIRAP must provide for monetary or other compensatory assistance to eligible vehicle owners for repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements or for installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed to bring a vehicle into compliance with emissions requirements. Vehicles under the LIRAP must be repaired or retrofitted at a recognized emissions repair facility. To determine eligibility, the COUNTY or its designated subcontractor shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:

- (1) the vehicle has failed a vehicle emissions test within 30 days of application submittal;
  - (2) the vehicle can be driven under its own power to the emissions inspection station or vehicle retirement facility;
  - (3) the vehicle is currently registered in and has been registered in the COUNTY for the 12 months immediately preceding the application for assistance;
  - (4) the vehicle has passed the safety portion of the Texas Department of Public Safety (DPS) motor vehicle safety and emissions inspection as recorded in the Vehicle Inspection Report (VIR), or provide assurance that actions will be taken to bring the vehicle into compliance with safety requirements;
  - (5) the vehicle owner's net family income is at or below 300 percent of the federal poverty level; and
  - (6) any other requirements of the COUNTY or the TCEQ are met.
- (c) Accelerated vehicle retirement. A LIRAP must provide monetary or other compensatory assistance to eligible vehicle owners to be used toward the purchase of a replacement vehicle.
- (1) To determine eligibility, the COUNTY or its subcontractor shall make applications available for LIRAP participants. The application, at a minimum, must require the vehicle owner to demonstrate that:
    - (A) the vehicle meets the requirements under (b) (1) - (3) and (5) of this Special Condition 3 of this Contract;
    - (B) the vehicle has passed a DPS motor vehicle safety or safety and emissions inspection within 15 months prior to application submittal; and
    - (C) any other requirements of the COUNTY or the TCEQ are met.
  - (2) Eligible vehicle owners of pre-1996 model year vehicles that pass the required United States Environmental Protection Agency (EPA) Start-Up Acceleration Simulation Mode (ASM) standards emissions test, but would have failed the EPA Final ASM standards emissions test, or some other criteria determined by the commission, may be eligible for accelerated vehicle retirement and replacement compensation under this section.
  - (3) Notwithstanding the vehicle requirement provided under (b) (1) of this Special Condition 3 of this Contract, an eligible vehicle owner of a vehicle that is gasoline powered and is at least 10 years old as determined from the current calendar year (i.e., 2007 minus 10 years equals 1997) and meets the requirements under (b) (2), (3), and (5) of this Special Condition 3 of this Contract, may be eligible for accelerated vehicle retirement and compensation.

- (4) Replacement vehicles must:
  - (A) be in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or cleaner Bin certification under 40 Code of Federal Regulations §86.1811-04, as published in the February 10, 2000, *Federal Register* (65 FedReg 6698);
  - (B) have a gross vehicle weight rating of less than 10,000 pounds;
  - (C) be a vehicle the total cost of which does not exceed \$25,000; and
  - (D) have a current DPS motor vehicle safety and emissions inspection
- (d) Compensation. The COUNTY shall determine eligibility and approve or deny the application promptly. If the requirements of (b) or (c) of this Special Condition 3 of this Contract are met and based on available funding, the COUNTY shall authorize monetary or other compensations to the eligible vehicle owner.
  - (1) Compensations must be:
    - (A) no more than \$600 and no less than \$30 per vehicle to be used for emissions-related repairs or retrofits performed at recognized emissions repair facilities, including diagnostics tests performed on the vehicle; or
    - (B) based on vehicle type and model year of a replacement vehicle for the accelerated retirement of a vehicle meeting the requirements under this subsection. Only one retirement compensation can be used toward one replacement vehicle annually per applicant. The maximum amount toward a replacement vehicle must not exceed:
      - (i) \$3,000 for a replacement car of the current model year or previous three model years, except as provided by clause (iii) of this subparagraph;
      - (ii) \$3,000 for a replacement truck of the current model year or the previous two model years, except as provided by clause (iii) of this subparagraph;
      - (iii) \$3,500 for a replacement hybrid vehicle of the current model year or the previous model year.
  - (2) Vehicle owners shall be responsible for paying the first \$30 of emissions-related repairs or retrofit costs that may include diagnostics tests performed on the vehicle.
  - (3) For accelerated vehicle retirement, provided that the compensation levels in (1) (B) of this Special Condition 3 of this Contract are met and minimum eligibility requirements under (c) of this Special Condition 3 are met, a COUNTY may set a specific level of

compensation or implement a level of compensation schedule that allows flexibility.

The following criteria may be used for determining the amount of financial assistance:

- (A) model year of the vehicle;
  - (B) miles registered on the vehicle's odometer;
  - (C) fair market value of the vehicle;
  - (D) estimated cost of emissions-related repairs necessary to bring the vehicle into compliance with emissions standards;
  - (E) amount of money the vehicle owner has already spent to bring the vehicle into compliance, excluding the cost of the vehicle emissions inspection; and
  - (F) vehicle owner's income.
- (e) Reimbursement for repairs and retrofits. The COUNTY shall reimburse the appropriate recognized emissions repair facility for approved repairs and retrofits within 30 calendar days of receiving an invoice that meets the requirements of the COUNTY or its subcontractor. Repaired or retrofitted vehicles must pass a DPS safety and emissions inspection before the recognized emissions repair facility is reimbursed. In the event that the vehicle does not pass the emissions retest after diagnosed repairs are performed, the COUNTY has the discretion, on a case-by-case basis, to make payment for diagnosed emissions repair work performed.
- (f) Reimbursements for replacements. The COUNTY shall ensure that funds are transferred to a participating automobile dealership no later than five business days after the COUNTY receives proof of the sale, proof of transfer to a dismantler, and any administrative documents that meet the requirements of the COUNTY or its subcontractor or other reasonable time in accordance with the Opinion GA 0624 of the Attorney General of Texas relating to the LIRAP in Williamson County, Texas. A list of all administrative documents must be included in the agreements that are entered into by the COUNTY or its subcontractor and the participating automobile dealerships.
- (1) The COUNTY shall provide an electronic means for distributing replacement funds to a participating automobile dealership once all program criteria have been met. The replacement funds may be used as a down payment toward the purchase of a replacement vehicle. Participating automobile dealers shall be located in the State of Texas. Participation in LIRAP by an automobile dealer is voluntary.
  - (2) The COUNTY shall develop a document for confirming a person's eligibility for purchasing a replacement vehicle and for tracking such purchase.

(A) The document must include at a minimum, the full name of applicant, the vehicle identification number of the retired vehicle, expiration date of the document, the program administrator's contact information, and the amount of money available to the participating vehicle owner.

(B) The document must be presented to a participating dealer by the person seeking to purchase a replacement vehicle before entering into negotiations for a replacement vehicle.

(C) A participating dealer who relies on the document issued by the County has no duty to confirm the eligibility of the person purchasing a replacement vehicle in the manner provided by this Special Condition 3 of this Contract.

#### **4. Disposition of Retired Vehicle.**

- (a) Vehicles retired under a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) may not be resold or reused in their entirety in this or another state. Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in the State of Texas.
- (b) The vehicle must be:
- (1) destroyed;
  - (2) recycled;
  - (3) dismantled and its parts sold as used parts or used in the LIRAP;
  - (4) placed in a storage facility and subsequently destroyed, recycled, or dismantled within 12 months of the vehicle retirement date and its parts sold or used in the LIRAP; or
  - (5) repaired, brought into compliance, and used as a replacement vehicle under this division. Not more than 10% of all vehicles eligible for retirement may be used as replacement vehicles.
- (c) Notwithstanding subsection (b) of this section, the dismantler of a vehicle shall destroy the emissions control equipment and engine, certify those parts have been destroyed and not resold into the market place. The dismantler shall remove any mercury switches and shall comply with state and federal laws applicable to the management of those mercury switches.
- (d) The dismantler shall provide certification that the vehicle has been destroyed to the automobile dealer from whom the dismantler has taken receipt of a vehicle for retirement.

The automobile dealer shall submit to the COUNTY or its subcontractor the proof of destruction from the dismantler.

- (e) The dismantler shall provide the residual scrap metal of a retired vehicle under this section to a recycling facility at no cost, except for the cost of transportation of the residual scrap metal to the recycling facility.

## **5. Emission Reduction Credits.**

- (a) Emission Reduction Credits Available Under a Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP). The COUNTY may allow private, commercial, and business entities to provide monetary assistance towards the LIRAP. To the extent allowed under state and federal law, private, commercial, and business entities may purchase eligible vehicles under Title 30 TAC 114.64(c) of the Rules of the TCEQ (relating to LIRAP Requirements) for accelerated retirement as approved by the COUNTY, and may have up to 100% of the emission reductions certified as emission credits. This emission reduction credit may be transferred or used by the holder in accordance with Title 30 TAC Chapter 101, Subchapter H, Division 1 or 4 of the Rules of the TCEQ (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading).
- (b) Emission Reduction Credits Available for Vehicles Not Covered Under a LIRAP. To the extent allowed under state and federal law, a fleet vehicle, a government owned or leased vehicle, or a commercial vehicle may be retired and may have up to 100% of the emission reductions certified as emission credits.
- (c) Other Requirements. Emission reduction credits under subsection (a) or (b) of this section must meet the requirements of Chapter 101, Subchapter H, Division 1 or 4 of Title 30 TAC.

## **6. Records, Audits, and Enforcement.**

- (a) The COUNTY shall submit quarterly audit reports to ensure that the funds provided to implement the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) have been used in accordance with requirements of this division. The quarterly reports (September - November, December - February, March - May, June - August) must be transmitted to the executive director in paper copies and in an *electronic database format* to be determined by mutual agreement between the state and the COUNTY no later than 30 days after the end of the quarter.
- (b) At a minimum, the quarterly reports must include the following:

- (1) name of the COUNTY'S department or subcontractor implementing the program and their mailing address;
  - (2) name of the official representative of the COUNTY'S department or subcontractor;
  - (3) amount of funds received during the reporting period;
  - (4) amount distributed for repair assistance, retrofitting, accelerated retirement, and administrative costs;
  - (5) information regarding the recognized emissions repair facilities and vehicle retirement facilities participating in the LIRAP, including the number of approved assistance transactions, the amount of each transaction, and the total amounts paid to each facility;
  - (6) pending amount of funds that must be paid out; (7) information for each vehicle participating in program, including:
    - (A) vehicle identification number (VIN);
    - (B) vehicle license plate number;
    - (C) name and business address of the Texas Department of Public Safety recognized emissions repair facility or vehicle retirement facility; and
    - (D) date of vehicle repair, retrofit, or retirement; and
  - (8) information for each replacement vehicle including:
    - (A) vehicle identification number (VIN);
    - (B) make of vehicle;
    - (C) model year;
    - (D) odometer reading;
    - (E) name and business address of seller; and
  - (9) any other information requested by the executive director.
- (c) Records on LIRAP must be maintained for a minimum period of three years by the COUNTY. The COUNTY will require its subcontractor; a participating recognized emissions repair facility, and a participating vehicle retirement facility through written contracts to maintain records of LIRAP for a minimum period of three years. Such records must be available upon request by the executive director for auditing purposes.
- (d) The COUNTY, shall allow the TCEQ to conduct audits and inspections. The COUNTY shall require its subcontractors, participating recognized emissions repair facilities, and a participating vehicle retirement facilities, through written contracts to allow the TCEQ to conduct audits and inspections.



## GENERAL TERMS AND CONDITION

### 1. CONTRACT PERIOD.

- 1.1 **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Signature Page of this Contract (Contract Period). If no Effective Date is provided, the Effective Date of the Contract is the date of last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the same Fiscal Year in which the Contract is signed.
- 1.2 **Renewal and Extension Period.** The Parties may renew this Contract for 3 each one-year periods for a maximum of 3 years. The Contract may be extended by notice of TCEQ beyond expiration of a Contract Period for up to ninety (90) days (Extension Period) during which the parties may agree on a written amendment to extend the Contract for a longer period. Renewals and extensions do not extend any other deadlines or due dates other than the expiration of the Contract Period.
- 1.2.1 This Contract is not subject to competitive procurement or grant regulations, and may be amended for Renewal as needed.
- 1.2.2 This Contract must immediately terminate at the end of any state fiscal year for which the Texas Legislature fails to appropriate and/or to provide sufficient funds necessary to perform this Contract.

### 2. DEFINITIONS

- 2.1 "Include." The word "include" and all forms such as "including" shall be construed to introduce a non-exhaustive list. The parties agree include is a term of enlargement, and does not limit the scope of the preceding noun.

### 3. AUTHORIZATION.

The COUNTY must obtain a written Notice to Proceed from the TCEQ to start activities. Any performance of the activities prior to the Notice to Proceed is not reimbursable. At its option, TCEQ may issue a limited Notice to Proceed to authorize reimbursement for a portion of the activities.

### 4. FUNDS.

- 4.1 **Availability of Funds.** This Contract and all claims, suits or obligations arising under or related to this Contract are subject to the receipt and availability of funds appropriated by the Texas Legislature for the purposes of this Contract or the respective claim, suit or obligation, as applicable.
- 4.1.1 COUNTY will ensure that this clause concerning the availability of funds received by subcontractors through the COUNTY is included in any subcontract it awards.
- 4.2. **Maximum Amount of Funds.** The maximum reimbursement is shown on the Contract Signature Page.
- 4.3. **Grants.** TCEQ is providing financial assistance to the recipient to undertake its own project.
- 4.4. **Amount of Grant.** In accordance with Rider 16 of the Appropriations Act and Senate Bill 12

both of the 80<sup>th</sup> Texas Legislature, the amount of funds to be provided to all eligible counties for the LIRAP program must not exceed the amount of \$ 45,000,000 in each fiscal year 2008 and 2009, and amounts to be determined the by the 81<sup>st</sup> Texas Legislature (regular session) in fiscal years 2010 and 2011, contingent on receipt of designated fee revenues sufficient for this purpose. Therefore, no payment will be made by the TCEQ pursuant to this Contract which causes the funds limitation to be exceeded.

- 4.5. **Period of Funds Availability.** TCEQ may encumber grant monies collected in a fiscal year and disburse that grant money to the COUNTY (on an as needed basis as determined by TCEQ) within a period of two (2) fiscal years after that encumbrance. After this time, any balance unpaid to the COUNTY shall be lost due to the TCEQ appropriation authority. Grant money appropriated for TCEQ in a fiscal year may be spent by the COUNTY in that fiscal year and for two (2) fiscal years after the year of appropriation.
- 4.6. **Advance Payment.** The TCEQ may provide to the COUNTY funds in advance of the COUNTY'S incurring anticipated costs of LIRAP Activities.
- 4.7. **Administrative Costs.** TCEQ may provide in advance of incurring costs, the amount allocated for costs of administration in the COUNTY'S total annual budget in the LIRAP Activity Plan approved by TCEQ. The amount provided for administrative costs must not exceed 10% of that total annual budget.
- 4.8. **Cost Reimbursement.** In accordance with the Appropriations Act, TCEQ will provide funding by reimbursing the COUNTY's costs of conducting the LIRAP Activities which are eligible for reimbursement. The TCEQ is responsible to the Texas Legislature and other state agencies to determine whether costs are eligible for reimbursement. Therefore, TCEQ will review the costs of the LIRAP Activities to determine eligibility for reimbursement under the terms of the Contract Documents.
- 4.9. **Eligible Costs.** An eligible cost is a cost of conducting the LIRAP Activities as eligible for reimbursement under the Contract Documents. A payment of funding by the TCEQ, whether in advance of incurring costs or otherwise, does not constitute a TCEQ determination that a cost is eligible for reimbursement. The COUNTY only becomes entitled to retain the funds expended upon if a cost is eligible for reimbursement.
- 4.10. **Source of Funds—State.** State funds provided for this Contract are appropriated to TCEQ for this purpose under the Appropriations Act (Senate Bill 1) of the 80<sup>th</sup> Texas Legislature at Article VI and specifically in a rider at Article VI, paragraph 41.
- 4.11. **Authority of the TCEQ.** This Contract is entered into by TCEQ and COUNTY pursuant to authority of the 80<sup>th</sup> Texas Legislature at Chapter 382, Texas Health and Safety Code. Further authority is contained in the Texas Water Code Chapter 5, Section 5.125, Texas Water Code Section 5.229 (pertaining to the TCEQ's general authority to enter contracts) and TCEQ rules at 30 TAC Chapters 14 and 114.

## 5. ALLOWABLE COSTS.

- 5.1 **Conforming Activities.** TCEQ will reimburse the COUNTY for Allowable Costs incurred and paid by the COUNTY in performance of conforming Contract Activities. Allowable Costs are those costs for conforming Contract Activities that are reasonable, necessary,

actual, and authorized by this Contract and a Notice to Proceed. Contract Activities must be authorized in writing to be eligible for reimbursement.

- 5.2 **UGMS.** Allowable Costs are restricted to costs that comply with the Texas Uniform Grant Management Standards (UGMS) and additional state and federal rules and law. The text of UGMS is available online at the Governor's Website. (The link as of December 18, 2007 is):  
<http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>  
The parties agree that all the requirements of the UGMS apply to this Contract, including the criteria for Allowable Costs. TCEQ Allowable Expenditures Guidelines provide additional information as to the construction of UGMS. Additional federal requirements apply when federal funds are included in the reimbursement.
- 5.3. **Period of Eligible Costs:** In order to be eligible for a reimbursement, costs must occur on or after the Effective Date and on or before any Termination Date. Fixed Costs for a LIRAP Activity completed as required are presumed to have occurred during the term of this Contract.

## 6. REIMBURSEMENT.

- 6.1 **Contract for Reimbursement.** The Contract Documents describe the activities to be conducted by the COUNTY for reimbursement by TCEQ.
- 6.2 **Reimbursement Request Deadline.** The COUNTY shall submit all requests for payment to TCEQ prior to July 15 of the second fiscal year following the appropriation fiscal year.
- 6.3 **Travel, Other Costs.** Travel costs must be specifically authorized in advance of the travel outside of the administrative area. Travel costs, including per diem, will be reimbursed only in the amount of actual costs, up to the maximum allowed by law for employees of the State of Texas at the time the cost is incurred.
- 6.4 **Supporting Records.** The COUNTY shall submit records and documentation to TCEQ as appropriate for the review and approval of reimbursing costs. At a minimum, the COUNTY shall submit supporting records with its invoices; TCEQ may reject invoices without appropriate supporting documentation. TCEQ has the right to request additional documentation. the COUNTY shall maintain records subject to the terms of this Contract.
- 6.5 **Conditional Payments.** Reimbursements are conditioned on the Contract Activities being performed in compliance with the Contract. the COUNTY shall return payment to TCEQ for either overpayment or activities undertaken that are not compliant with the Contract Activities. This does not limit or waive any other TCEQ remedy.
- 6.6 **Historically Underutilized Businesses.** The COUNTY shall include, with its invoicing, reports on the use of Historically Underutilized Businesses.
- 6.7 TCEQ will pay to the COUNTY funds equal to all eligible Costs incurred by the COUNTY and expended in accordance with the budget approved by the TCEQ, provided that such amounts do not exceed the amount of all designated fees collected between September 1, 2008 and the termination of this Contract within the COUNTY or, if some eligible counties in a region do not participate, then the amount collected within the region.
- 6.8. The TCEQ will authorize reimbursement of the costs of the COUNTY when the COUNTY is in compliance with the requirements of the Contract Documents, the costs are eligible, and

appropriated funds are available. Without limitation, none of the following in itself constitutes an entitlement to funds or a guarantee of payment:

- 6.8.1. An estimate or determination of the amount of designated fees available for reimbursement.
- 6.8.2. Approval of a LIRAP Activity Plan including the budget.
- 6.8.3. A payment; regardless of whether paid in advance of incurring a cost or afterwards.
- 6.9. **Payment Does Not Constitute a Waiver.** A payment of funds by the TCEQ does not constitute a waiver of the requirements of the Contract Documents. TCEQ may audit previous payments for cost eligibility at any time during or after the term of the Contract. Unless made in writing by the TCEQ, no waiver of any obligation of the COUNTY shall bind the TCEQ. Any authorized waiver shall not constitute a continuing waiver of the obligation.
- 6.10. The COUNTY may contract with any appropriate entity, including the regional council of governments or the metropolitan planning organization in the appropriate region, or with another COUNTY for services necessary to implement the participating COUNTY's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program. The COUNTY may agree that its LIRAP funds be used in any other LIRAP-participating COUNTY in the same region. Where the COUNTY contracts with another entity or individual, including a sub-grantee or recipient (Subcontractor), to perform any or all of the Grant Activities, the COUNTY will enter into written contractual Contracts requiring the Subcontractor to comply with the provisions of this Contract.

## ARTICLE 7. CONDITIONS FOR FUNDING

- 7.1. In order for costs to be eligible for reimbursement:
  - 7.1.1. The COUNTY must demonstrate that the COUNTY has conducted the Grant Activities and other requirements in accordance with the Contract Documents and that the costs are eligible for reimbursement; and
  - 7.1.2. Costs must be determined to be the reasonable, necessary, actual, and allowable costs of conducting an approved Grant Activity in accordance with the requirements of the Contract Documents.
- 7.2. In order for TCEQ to determine eligibility of costs, the COUNTY must submit quarterly, unless otherwise instructed by the TCEQ, a spreadsheet provided by TCEQ that tracks expenditures by vehicle.
- 7.3. In order for TCEQ to determine eligibility of costs, the COUNTY must submit quarterly unless otherwise instructed by the TCEQ:
  - 7.3.1. A Financial Status Report on a form in paper copies and in an electronic database format provided by TCEQ detailing all costs of conducting the Grant Activity incurred during the previous reporting period.

- 7.3.2. Supporting documentation for costs attached to the Financial Status Report.
  - 7.3.3. Each Quarterly Report, including the Financial Status Report and all supporting documentation, shall be submitted to the TCEQ within 30 days after the end of the term of the quarter represented in the report.
  - 7.3.4 Track and Monitor, including conduct site visits, the disposition of retired vehicles to include AirCheckTexas Vehicle Transfer Manifest tracking and retention quarterly.
- 7.4 The COUNTY must comply with the current TCEQ Financial Status Report processing procedures in effect at the time of submittal. The TCEQ may change or add requirements for processing.

The final request for reimbursement shall include a financial status report and a signed release of claims. The release of claims shall be subject to payment of the final request.

- 7.5. In addition to the requirements specified in the Contract Documents, the standards for costs to be eligible for reimbursement include those contained in the following, to the extent applicable:
- 7.5.1. The Uniform Grant and Contract Management Act, Section 783.001 et seq. Texas Government Code;
  - 7.5.2. The Uniform Grant Management Standards for State Agencies, 1 Texas Administrative Code, Section 5.141 et seq. (UGMS) (allowable costs standards and requirements for grantees);
  - 7.5.3. Appropriations Act of the 80<sup>th</sup> Texas Legislature Article IX, (requirement that grant funds be distributed by state agencies on a reimbursement or as needed basis, except as determined by grantor agency to be necessary for purposes of the grant);
  - 7.5.4. Chapter 2261, Texas Government Code (pertaining to cost reimbursement contracts);
  - 7.5.5. Chapter 391 Local Government Code and implementation rules and of the Governor's Office of Budget and Planning Rules, a sub grantee or recipient of funds is an entity defined as a Regional Planning Council. (Pertaining to costs for entities defined as Regional Planning Councils, etc);
  - 7.5.6. Texas Government Code Section 556.0055 (pertaining to lobbying);
  - 7.5.7. TCEQ *Allowable Expenditure Guidelines* (pertaining to allowable costs for cost reimbursement contracts and grants);
  - 7.5.8. 30 TAC Chapter 11 (pertaining to TCEQ contracts) and 30 TAC Chapter 14 (pertaining to grants);
  - 7.5.9. Other applicable Federal and State rules and statutes;
  - 7.5.10. Chapter 382, Texas Health and Safety Code and implementation rules of the TCEQ at 30 Texas Administrative Code Chapter 114 Subchapters A and C (pertaining to the Low Income Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program);
  - 7.5.11. Appropriations Act of the 80<sup>th</sup> Texas Legislature at Article VI, rider paragraph 16 (appropriation for LIRAP program);

- 7.6. The COUNTY agrees that TCEQ may offset any payments for costs ineligible for reimbursement against any other payment to the COUNTY contemplated by the Contract Documents.
- 7.7. The COUNTY agrees that it is the recipient of a grant of public funds and is not a vendor of goods and services within the meaning of Texas Government Code Chapter 2251.

## 8. AMENDMENTS.

Changes to the Contract may only be made by a written amendment, signed and agreed to by the Parties.

## 9. CONTRACT INTERPRETATION

- 9.1 **Interpretation of Time.** All days are calendar days, unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday, or a state or federal holiday, it is omitted from the computation.
- 9.2 **State, Federal Law.** This Contract is governed by, and interpreted under the laws of the State of Texas, as well as applicable federal law.
- 9.3 **Severability.** If any provision of this Contract is held to be invalid, illegal or unenforceable, the remainder of the Contract shall be construed to conform to the intent of the parties.

## 10. COUNTY'S RESPONSIBILITIES.

- 10.1 **COUNTY's Responsibility for the Contract Activities.** The COUNTY undertakes performance of the Contract Activities as its own project and does not act in any capacity on behalf of the TCEQ nor as a TCEQ agent, employee or vendor of goods or services. The COUNTY agrees that the Contract Activities are furnished and performed at The COUNTY's sole risk as to the means, methods, design, processes, procedures and performance of the Contract Activities.
- 10.2 **Independent Contractor.** Nothing in this Contract shall create an employee-employer relationship between The COUNTY and TCEQ. The parties agree that the COUNTY is an independent contractor.

The TCEQ recognizes that the LIRAP Activity is a project conducted solely by the COUNTY. While TCEQ may reject reimbursement only under the terms of this Contract, TCEQ will not supervise, direct or have control or authority over, nor be responsible for, the COUNTY's means, methods, techniques, sequences or procedures relating to the conduct of the LIRAP Activity, or for any failure of The COUNTY to comply with applicable laws and regulations. The TCEQ, having obtained the COUNTY's binding commitment to this Contract, will not be responsible for The COUNTY's failure to conduct the LIRAP Activity in accordance with the Contract.

- 10.3 **COUNTY'S Responsibility for Subcontractors.** All acts and omissions of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Contract Activities under a direct or indirect contract with The COUNTY shall be considered to be the acts and omissions of The COUNTY.

- 10.4 **No Third-Party Beneficiary.** The TCEQ does not assume any duty to exercise any of its rights and powers under the Contract for the benefit of third parties. Nothing in this Contract shall create a contractual relationship between TCEQ and any of The COUNTY's subcontractors, suppliers or other persons or organizations with a contractual relationship with the COUNTY.

## 11. COUNTY PERFORMANCE EVALUATION.

Performance evaluations are a part of the TCEQ review of Performing Party, and may be a factor in the selection of future contracts. The TCEQ may provide this information to state agencies and upon request, to others. The COUNTY consents to the disclosure of any information or opinion in the evaluations.

## 12. CONFLICT OF INTEREST.

The COUNTY shall timely notify the TCEQ in writing of any actual, apparent, or potential conflict of interest regarding the COUNTY or any related entity or individual. No entity or individual with any actual, apparent, or potential conflict of interest shall take part in the performance of any portion of the Contract Activities, nor have access to information regarding any portion of the Contract Activities. The COUNTY agrees that TCEQ has sole discretion to determine whether a conflict exists, and that a conflict of interest is grounds for termination for cause.

## 13. INTELLECTUAL PROPERTY.

- 13.1 **Third Party Intellectual Property.** Unless specifically waived, The COUNTY must obtain all Intellectual Property licenses expressly required in the Scope of Work, or incident to the use or possession of the intellectual property. The COUNTY shall obtain and furnish to TCEQ: documentation on the use of such Intellectual Property, and a perpetual, irrevocable, enterprise-wide license to reproduce, publish, otherwise use, or modify such Intellectual Property and associated user documentation, and to authorize others to reproduce, publish, otherwise use, or modify such Intellectual Property for TCEQ non-commercial purposes, and other purposes of the State of Texas.
- 13.2 **Grant of License.** The COUNTY grants to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, modify or otherwise use for any non-commercial TCEQ purpose any preexisting intellectual property belonging to the COUNTY that is incorporated into the Contract Activities, intellectual property created under this Contract, and associated user documentation.

## 14. TIME DELAYS.

- 14.1 **Time is of the Essence.** The COUNTY's timely performance is a material term of this Contract.
- 14.2 **Delays.** Where The COUNTY's performance is delayed, except by *Force Majeure* or act of the TCEQ, TCEQ may withhold or suspend reimbursement, terminate the Contract, or enforce any of its other rights.

## 15. TERMINATION

- 15.1 **Termination for Cause.** A party to the Contract, upon thirty (30) days written notice and the opportunity to cure, terminate this Contract for cause if The COUNTY materially fails to comply with the Contract Documents including any one or more of the following acts or omissions:

nonconforming Contract Activities, existence of a conflict of interest, failure to provide evidence of required insurance coverage and failure to comply with HUB requirements in law or this Contract.

- 15.2 **Termination for Convenience.** A party to the Contract, may, upon thirty (30) days written notice, terminate this Contract for convenience. The COUNTY may request reimbursement for: conforming Contract Activities and timely, reasonable costs directly attributable to termination. The COUNTY shall not be paid for: work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from the termination.
- 15.3 If, after termination for cause, it is determined that the COUNTY had not materially failed to comply with the Contract Documents, the termination shall be deemed to have been for the convenience of the TCEQ. TCEQ will reimburse the County for any eligible costs incurred prior to receipt of written notice of termination.

## 16. INSURANCE AND INDEMNIFICATION.

- 16.1 **Insurance.** Unless prohibited by law, the COUNTY shall require its contractors and suppliers to obtain and maintain during the Contract Term adequate insurance coverage sufficient to protect the COUNTY and the TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract, whether caused by the COUNTY or by the contractor(s) or by anyone directly or indirectly employed by either. Unless specifically waived by the TCEQ, sufficient coverage shall include Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.
- 16.2 **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, THE COUNTY SHALL REQUIRE ALL CONTRACTORS PERFORMING CONTRACT ACTIVITIES ON BEHALF OF COUNTY TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE TCEQ AND COUNTY AND THEIR OFFICERS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF THE CONTRACT ACTIVITIES BY THE COUNTY OR ITS CONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM A DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY STANDARDS OR DIRECTIVES. THE DEFENSE OF THE TCEQ SHALL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT THE TCEQ. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

## 17. DISPUTES, CLAIMS, REMEDIES.

- 17.1 **Payment not a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release constitutes a release of the COUNTY from liability under this Contract.
- 17.2 **Schedule of Remedies available to the TCEQ.** In accordance with Chapter 2261, Texas Government Code, the following Schedule of Remedies applies to this contract. In the event of the COUNTY's nonconformance, TCEQ may:
- 17.2.1 Issue notice of nonconforming performance;

- 17.2.2 Reject nonconforming performance and request corrections without charge to the TCEQ;
  - 17.2.3 Reject a reimbursement request or suspend further payments, or both, pending accepted revision of the nonconformity;
  - 17.2.4 Suspend all or part of the Contract Activities or payments, or both, pending accepted revision of the nonconformity;
  - 17.2.5 Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
  - 17.2.6 Terminate the contract without further obligation for pending or further payment by the TCEQ and receive restitution of previous payments.
- 17.3 Notwithstanding Section 17.2, no adverse action shall be taken against the COUNTY, unless the non-conformity is material to the contract, the COUNTY has been notified of the non-conformity, and the COUNTY has been given a reasonable opportunity to correct the non-conformity.
- 17.4 **Cumulative Remedies.** TCEQ rights and remedies in this Contract are in addition to, and are not in any way a limitation of, any rights and remedies available under state and federal rules, regulations, and laws and at common law.

## 18. FINANCIAL RECORDS, ACCESS, AND AUDITS.

- 18.1 **Audit of Funds.** The COUNTY understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. The COUNTY further agrees to fully cooperate with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The COUNTY shall ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.
- 18.2 **Financial Records.** The COUNTY shall establish and maintain financial records including records of costs of the Contract Activities in accordance with generally accepted accounting practices. Upon request The COUNTY shall submit records in support of reimbursement requests. The COUNTY shall allow access during business hours to its financial records by TCEQ and other state agencies for the purpose of inspection and audit. Records shall be maintained for a minimum of three (3) years beyond the expiration or earlier termination of this Contract, and three (3) years after the end of any litigation or claims process, including appeals.

The COUNTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the LIRAP Activity and requirements of this Contract. All financial records will be maintained in accordance with generally accepted accounting principles, the UGMS, and this Contract. The COUNTY shall also maintain the financial information and data used in the preparation or support of costs in Financial Status Reports and a copy of any cost information or analysis submitted to the TCEQ. The TCEQ, Texas State Auditor's Office, or any of their authorized representatives shall have access to all such books, records, documents, and other evidence for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The COUNTY shall provide proper facilities and equipment for such access and inspection. Records under this Contract must be maintained for a period of three years following the termination of this Contract.

## 19. INDIRECT COST RATE.

- 19.1 **Authority for Indirect Cost Rates.** The COUNTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates. In the event an audit changes the indirect cost rate, The COUNTY agrees to waive additional indirect costs, or in the alternative, contribute the difference between the contract indirect rate and audited indirect rate.
- 19.2 **Indirect Cost Rate of Contract Activities.** The cost of services provided to TCEQ by another agency may include allowable direct costs of the service plus a pro rata share of indirect costs, if authorized by the budget. A standard indirect cost allowance equal to ten percent (10%) of the direct salary and wage cost of the activity may be used in lieu of determining the actual indirect costs of the activity, if any indirect cost rate is approved.
- 19.3 **Application Indirect Cost Rate, Councils of Government.** As provided by 1 TAC § 5.86(f) a regional planning commission may not spend more than 15% of its total expenditures on indirect costs. Where an indirect cost exceeds 15%, the regional planning commission will credit each affected awarding agency by reducing indirect charges on a pro rata basis to the affected agencies in the subsequent fiscal year.

## 20. SOVEREIGN IMMUNITY.

The parties agree that this Contract does not waive sovereign immunity relating to suit, liability, or payment of damages.

## 21. CONTRACT DOCUMENTS.

- 21.1. The Contract Documents which comprise the entire Contract between TCEQ and COUNTY are:
- 21.1.1. The TCEQ Grant Contract;
  - 21.1.2. The following which may be delivered or issued after the Effective Date of the Contract and are not attached hereto: LIRAP Activity Plan(s) and amendments thereto as approved, to the extent that such plans do not conflict with any provision of this Contract; all written amendments to this Contract amending, modifying or supplementing the Contract Documents.
- 21.2. In the event of conflicts in the terms of the Contract Documents, the Contract Document agreed to or approved latest in time will control.
- 21.3. There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified or supplemented only as provided in the Contract Documents.
- 21.4. In the event of conflicts in the terms of the Contract Documents, the Contract Document agreed to or approved latest in time will control, provided that the following provision shall prevail over any other provision in any Contract Document:

## 22. MISCELLANEOUS.

- 22.1 **Assignment.** No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by The COUNTY will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge the COUNTY from any duty or responsibility under the Contract.
- 22.2 **Venue.** The COUNTY agrees that the Contract is being performed in Travis County, Texas, because this Contract has been performed or administered, or both, in Travis County, Texas. The COUNTY agrees that any cause of action involving this Contract arises solely in Travis County. This provision does not waive TCEQ's sovereign immunity.
- 22.3 **Publication.** The COUNTY agrees to notify TCEQ five (5) days prior to the publication or advertisement of information related this Contract. The COUNTY agrees not to use the TCEQ logo or a TCEQ graphic as an advertisement or endorsement without a Contract signed by the appropriate TCEQ authority.
- 22.4 **Waiver.** With the exception of an express, written document signed with authority by TCEQ, no act or omission will constitute a waiver or release of The COUNTY's obligation to perform conforming Contract Activities. No waiver on one occasion, whether expressed or implied, shall be construed as a waiver on any other occasion. The making of a payment does not constitute acceptance of the invoiced Contract Activities nor does it constitute a waiver of the TCEQ's claims against the COUNTY or its sureties.
- 22.5 TCEQ relies on The COUNTY to perform all Contract Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.
- 22.6 **Survival of Obligations.** Except where a different period is specified in this Contract or applicable law, all representations, indemnifications, and warranties made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive for four (4) years beyond the termination or completion of the Contract; or after the end of a proceeding which was brought under the contract or if TCEQ has notified The COUNTY of an on-going proceeding. A proceeding includes any litigation, legal proceeding, permit application, State Office of Administrative Hearings proceeding, or similar activity listed in a TCEQ notice to the COUNTY.
- 22.7 **Release of Claims.** As a condition to final payment or settlement, or both, the COUNTY shall execute and deliver to the TCEQ a release of all claims against the TCEQ for payment under this contract.

**PROJECT REPRESENTATIVES/ RECORDS LOCATION**

Contract No. 582-9-90416-14

**1 TCEQ PROJECT REPRESENTATIVE**

The individual named below is the TCEQ Project Representative, who is authorized to give and receive communications and directions on behalf of the TCEQ. All communications including all payment requests must be addressed to the TCEQ Project Representative or his or her designee.

Chad Lenz  
(Name)

Telephone No.: (512) 239-6154

Contract Manager                      164  
(Title)    (Mail Code)

Facsimile No.: (512) 239-1500

Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**2 COUNTY PROJECT REPRESENTATIVE**

The individual named below is the COUNTY Project Representative, who is authorized to give and receive communications and directions on behalf of the COUNTY. All communications to the COUNTY will be addressed to the COUNTY Project Representative or his or her designee.

For Technical Matters:

Ann Werlein  
(Name)

Telephone No.: (281) 341-8634

Administrative/Budget Mq-Office County Judge  
(Title)

Facsimile No.: (281) 341-8609

301 Jackson St., Suite 719  
(Mailing Address)

Richmond, Texas 77469  
(City)                      (State)                      (Zip Code)

For Contractual Matters:

Ann Werlein  
(Name)

Telephone No.: (281) 341-8634

Administrative & Budget Mq-Office County Judge  
(Title)

Facsimile No.: (281) 341-8609

301 Jackson St., Suite 719  
(Mailing Address)

Richmond, Texas 77469  
(City)                      (State)                      (Zip Code)

**3 SUBMITTAL OF PAYMENT REQUESTS**

Payment requests must be submitted to (whichever is checked):

- the TCEQ Project Representative.
- the TCEQ Disbursements Section.

*(if neither box is checked, payment requests must be submitted to the TCEQ Project Representative).*

**4 DESIGNATED LOCATION FOR RECORDS ACCESS AND REVIEW**

The COUNTY designates the physical location indicated below for record access and review pursuant to any applicable provision of this contract:

Ann Werlein  
(Name)  
Administrative/Budget Mgr-Office County Judge  
(Title)  
301 Jackson St., Suite 719  
(Mailing Address)  
Richmond, Texas 77469  
(City) (State) (Zip Code)

Telephone No.: (281) 341-8634

Facsimile No.: (281) 341-8609

**CONTRACT BUDGET FOR ACTUAL COST REIMBURSEMENT**

**1. BUDGET – Submitted by HGAC for all counties within their region**

The budget of expenditures for Work Performed must be authorized by TCEQ prior to the expenditure. TCEQ may authorize changes in writing.

<b>Budget Item</b>	<b>Administrative Costs FY ____</b>
<b>Direct Costs</b>	See HGAC FY09 Budget
Personnel/Salary	\$
Fringe Benefits	\$
Travel	\$
Supplies	\$
Equipment	\$
Contractual	\$
Construction	\$
Other	\$
Indirect	\$
<b>TOTAL</b>	\$

**2. LIMITATION ON DIRECT AND INDIRECT COSTS FOR ADMINISTRATION**

- 2.1. In accordance with Texas Health and Safety Code Section 382.209, the total administrative costs whether direct costs or indirect costs shall not, under any circumstances, exceed 10 percent of the annual amount of funds provided under this contract. The COUNTY will clearly designate all administrative costs.
  
- 2.2. If any indirect Costs are authorized by TCEQ, the amount shall not exceed an amount equal to 10% of the funds allocated to salaries and fringe benefits.

**3. BUDGET CONTROL AND TRANSFERS**

Cumulative transfers among the budgeted direct cost categories must not exceed ten percent (10%) of the current Total Budgeted amount without written agreement of the TCEQ.

**4. SUBMITTAL OF PAYMENT REQUESTS**

Unless otherwise stipulated in the Contract, payment requests must be submitted at monthly intervals.

Note: Invoices shall be submitted no later than the last working day in August for each year that is to be invoiced, unless a later time is otherwise approved in writing by TCEQ.

## **ATTACHMENT A**

**FORT BEND COUNTY - AIRCHECKTEXAS  
LOW INCOME REPAIR, RETROFIT AND ACCELERATED VEHICLE REPLACEMENT  
PROGRAM (LIRAP) ACTIVITY PLAN**

**PURPOSE**

This document has been developed and is submitted to the Texas Commissioner Environmental Quality (TCEQ) in fulfillment of the requirement for a LIRAP activity plan, as contained in the grant agreement between Fort Bend County and TCEQ. It also serves as the scope of services for the agreement between Fort Bend County and the Houston-Galveston Area Council (H-GAC) to administer LIRAP.

**BACKGROUND**

The low income vehicle repair, retrofit and accelerated vehicle replacement program (LIRAP) provides financial assistance for low income vehicle owners whose vehicles have failed emissions tests. Financial assistance can be used to repair the vehicle so that it may pass the emissions test or retrofit the vehicle to pass the emissions test. Vehicles failing emissions tests may also be retired by providing assistance to low income owners to purchase a replacement vehicle.

H-GAC will administer LIRAP in and on behalf of, Fort Bend County. The program will be implemented in accordance with state law, TCEQ rules and the agreement between Fort Bend County and TCEQ.

**PROGRAM DESIGN**

H-GAC will implement the program through its human services department, in cooperation with its transportation/air quality department. A program administrative unit in the H-GAC offices will approve applications for assistance and authorize payments. H-GAC will staff the administrative unit with adequate, qualified personnel. Job descriptions and names of persons filling the positions will be maintained by H-GAC, and provided to Fort Bend County and TCEQ upon request. In addition, to the extent administrative funds are available a limited number of The WorkSource career offices will assist in determining financial eligibility.

The H-GAC program administrator will perform the following tasks:

- Manage LIRAP services within Fort Bend County
- Disseminate public information on LIRAP
- Respond to public concerns, complaints and appeals
- Process applications, authorize vouchers and approve payments
- Negotiate vendor agreements with Texas DPS recognized emission repair facilities
- Verify applicant and vehicle eligibility
- Provide information to applicants about DPS recognized emission repair facilities
- Maintain a program database and prepare required reports to TCEQ and Fort Bend County
- Monitor program activity for compliance with applicable laws and rules
- Evaluate the program and revise as needed

## **DETERMINING ELIGIBILITY**

Applications for LIRAP assistance will be available in Fort Bend County at the local WorkSource office on Lane Drive in Rosenberg, Fort Bend County's Social Services Department and online at [www.h-gac.com](http://www.h-gac.com) as well as vehicle inspection and maintenance stations, TCEQ offices and DPS offices. To be eligible for LIRAP, a vehicle owner's net family income must be at or below 200% of the federal poverty level. Individuals applying for LIRAP assistance must provide information documenting their financial status to H-GAC by mail, fax or email, or in person at a designated WorkSource office. Applicants must provide source documents, such as pay stubs, documenting their last three months' income. Applicants may also document their eligibility by providing information demonstrating that they qualify for the following Texas Department of Human Services programs: Medicaid, Temporary Assistance for Needy Families (TANF), Children's Health Insurance Program (CHIP), Supplemental Security Income (SSI), Refugee Relocation programs and Food Stamps. H-GAC can access relevant state data bases to verify the applicant's status for TANF and Food Stamp programs. Case numbers and other sensitive information will remain confidential. Applicants may provide alternative documentation for other public assistance programs by providing a CHIP insurance card, Medicaid identification letter, evidence of SSI payments or other TCEQ acceptable documentation. The applicant will also be required to certify that the information provided is true and correct.

In addition to income eligibility, the vehicle must have been registered in Fort Bend County for the past two years and failed an emissions test within the last thirty days. Vehicle registration data will be verified by H-GAC using the Vehicle Information Database. The verification will be accomplished through TCEQ until H-GAC is able to access that database directly. The applicant must also provide the Vehicle Inspection Report (VIR) verifying that the vehicle has passed the safety test, but failed the emissions test.

For the accelerated vehicle retirement program, the applicant must also establish vehicle ownership.

LIRAP funds will not be used for fleet vehicles, commercial vehicles, government vehicles, classic vehicles or vehicles not regularly used for transportation during the normal course of daily activities.

## **AUTHORIZING ASSISTANCE**

H-GAC will approve applications and issue vouchers to eligible applicants. The vouchers will authorize payments to DPS recognized emission repair facilities and to approved car dealers for replacement vehicles. The vouchers will authorize reimbursement of up to \$600 for vehicle repairs and \$1,000 for vehicle replacement. For repairs, the applicant must pay \$30 toward the total repair cost. Payments to vendors will be in accordance with vendor agreements for actual repair expenses incurred, less the \$30 applicant payment.

### **□ VEHICLE REPAIR PROGRAM**

To be eligible for the Vehicle Repair Program, vehicles of low income-eligible persons must have failed an emissions test in the last 30 days and passed the safety test or provide assurance that it can pass the safety test. Vehicles must be registered in Fort Bend County, be operable, be between 2 and 24 years old and gasoline powered.

The following steps outline the program flow from application to payment authorization and repair. These steps may be revised as necessary for efficient administration.

1. Vehicle owner submits application within 30 days of failed emissions test by mail to H-GAC or at a WorkSource office.
2. H-GAC verifies vehicle owner eligibility.
3. H-GAC approves the application and provides applicant a voucher and a list of recognized repair facilities.
4. The applicant takes vehicle and voucher to a recognized repair facility.
5. Repair facility performs diagnostics, determines repair requirements and costs.
6. Vehicle owner may decline to participate further, opt for vehicle retirement, or agree to repairs.
7. If owner opts for repairs, repairs are attempted.
8. Upon successful completion of repairs (vehicle must pass an emissions test prior to the repair facility getting reimbursed), repair facility forwards a copy of the invoices, signed by the vehicle owner and the re-test VIR for reimbursement.
9. H-GAC will reimburse the repair facility after receiving complete, properly documented paperwork.

#### ❑ VEHICLE RETROFIT PROGRAM

At this time, there is no currently approved EPA certified or verified retrofit equipment available for use on gasoline engines

#### ❑ ACCELERATED VEHICLE RETIREMENT

Financial assistance may be provided to a qualifying vehicle owner to retire a vehicle that has failed an emissions test. The assistance is used to purchase a replacement vehicle after determining that repair or retrofit is not economical. The vehicle owner will be required to deliver the vehicle failing the emissions test to a designated retirement facility. Financial assistance for purchase of a replacement vehicle can range from \$600 to \$1,000.

To be eligible for the accelerated vehicle retirement program, vehicles must have failed an emissions test in the last 30 days and passed a DPS safety or safety and emissions inspection test within the last 15 months. The vehicle must be currently registered in Fort Bend County and must have been registered in Fort Bend County for the past two years. It must be operable and be within 2 to 24 years old and gasoline powered.

The following steps outline the program flow from eligibility determination, to payment authorization to vehicle retirement and replacement.

1. Vehicle owner submits application within 30 days of failed emissions test by mail to H-GAC or at a WorkSource office.
2. H-GAC verifies vehicle owner eligibility, including vehicle title and send owner a voucher, retirement information sheet, and a list of salvage yards..
3. Applicant takes vehicle and retirement information sheet to a licensed salvage facility.
4. Retirement facility accepts vehicle and destroys, recycles, or dismantles vehicle. (Forward copy of signed information sheet to H-GAC)

5. Owner makes arrangements with licensed Texas auto dealer to purchase replacement vehicle and sends H-GAC completed voucher (signed by owner and dealership) and signed buyer's order.
6. Replacement vehicle must have passed an emissions test and have a current inspection sticker that is no more than three months prior to the purchase date. Verification that the vehicle has successfully passed the safety and emissions test must be presented to H-GAC.
7. H-GAC pays auto dealer when we have received the signed voucher, buyer's order, and retirement information sheet.

## **VENDOR RELATIONS**

H-GAC will develop and execute vendor agreements with designated repair facilities. All DPS recognized repair facilities are eligible to enter into vendor agreements. The agreement will describe vendor and H-GAC responsibilities, paperwork flow and procedures for reimbursement. The vendor agreement will also include language concerning LIRAP provisions and penalties for fraud. A designated staff person will work with vendors to develop the agreements, answer vendor questions and disseminate information to the vendor network.

## **PROGRAM MONITORING**

H-GAC will implement program controls, including a monitoring program, consistent with funding available, that provides safeguards for preventing fraud. Vendor invoices will be reviewed against industry standards for such repairs. A selected group of vendors will be monitored for proper payment, completion of required repairs and compliance with the vendor agreement. Likewise, selected applicant files will be tested for eligibility and adequacy of documentation.

H-GAC will review data from the reporting system to determine if any monitoring activities are warranted and if necessary, take corrective action. H-GAC will also respond to complaints of improper activity, investigate them to the extent resources permit and report to TCEQ, TDPS or other local authorities if circumstances warrant. H-GAC and Fort Bend County understand that if these controls and monitoring procedures are implemented that TCEQ will not disallow costs for ineligible participants or repair costs resulting from participant or vendor misrepresentations.

## **OTHER H-GAC PROGRAM FEATURES**

In addition to administering LIRAP, H-GAC will work with the region's Air Emission Reduction Credit Organization to develop private sector support and credits. H-GAC will also disseminate public information materials to vendors, repair stations, career center offices and non-profit agencies.

## **LEVELS OF SERVICE**

Based upon TCEQ estimates approximately 4,387 vehicle owners will qualify for repair or replacement assistance during the first full year of operation. As required by TCEQ, H-GAC will track the following indicators of service:

- Number of persons applying for assistance

- Number of persons qualifying for assistance
- Number of vehicles repaired
- Number of vehicles replaced

H-GAC will, at the end of each quarter, deliver the TCEQ-required spreadsheet and Financial Status Report to the TCEQ and to Fort Bend County. H-GAC will maintain records on the LIRAP program for a minimum of three years.

### ANNUALIZED BUDGET

Personnel will be assigned to the project based upon business volume, need and available funding. Fort Bend County funds will not be available until May 1, 2003. H-GAC will fund the program until the first advance from TCEQ is received by Fort Bend County at which time payment will be made from Fort Bend County to H-GAC per Interlocal Agreement with H-GAC. Fort Bend County will contribute approximately \$8,785 in state fiscal year 2003 funds toward H-GAC's 2003 administrative budget, based on estimates from TCEQ. Following is the estimated H-GAC administrative budget.

<input type="checkbox"/> H-GAC annual administrative budget:		
-Personnel	\$221,880	
-Indirect costs @15% of personnel	33,282	
-Travel	3,000	
-Equipment	12,000	
-Other	<u>38,500</u>	
H-GAC sub-total	\$308,662	
<input type="checkbox"/> Subcontracts Worksource offices:	<u>\$240,000</u>	
Subtotal administrative costs	\$548,662	
<b>Fort Bend County contribution</b>		<b>\$8,785</b>

**Repair and replacement assistance.** Based on TCEQ data, the budget for repair and replacement assistance for the period May, 2003 through August, 2003 is estimated at:

<input type="checkbox"/> Repair assistance—258 @ maximum \$600/vehicle	\$154,924	
<input type="checkbox"/> Vehicle retirement—12 @ \$1,000/vehicle	<u>12,000</u>	
Subtotal repair and replacement		\$166,924
<b>Total costs</b>		<b>\$175,709</b>
<input type="checkbox"/> Revenue:		
--LIRAP administration	\$ 8,785	
--LIRAP repair and replacement assistance	<u>166,924</u>	
<b>Total revenue</b>		<b>\$175,709</b>

H-GAC contributes federal Congestion Mitigation/Air Quality (CMAQ) funds and uses allowable LIRAP administrative funds from other participating counties to fund the administration of the project. This is included for information purposes only and does not constitute a contractual obligation.

### **PAYMENT OF FUNDS**

TCEQ will advance funds collected from fiscal year 2003(May 1-August 31, 2003) to Fort Bend County. Fort Bend County will advance these funds to H-GAC upon request by H-GAC and authorization of the proper Fort Bend County official.

After the initial advance, Fort Bend County will request that TCEQ reimburse actual expenses incurred by H-GAC quarterly using the procedures described below.

### **REIMBURSEMENT PROCESS**

H-GAC will prepare and certify the Supplemental Form #269 (Financial Status Report) quarterly. The Financial Status Report will be submitted by the 15<sup>th</sup> day following the appropriate quarter as outlined below:

- September, October, November – due December 15<sup>th</sup>
- December, January, February – due March 15<sup>th</sup>
- March, April, May – due June 15<sup>th</sup>
- June, July, August – due September 15<sup>th</sup>

The original Financial Status Report along with a purchase voucher will be submitted to the Fort Bend County, Office of the County Judge. In addition, a copy will be submitted to the Fort Bend County Auditor's Office, Grant Accountant – Joyce Kovar or her successor.

The Fort Bend County Auditor's Office will perform a review of the Financial Status Report to determine that H-GAC is not exceeding the 5% limit on administrative costs. Subsequent to this review, Fort Bend's Auditor will forward the Original Financial Status Report onto TCEQ for processing.

TCEQ will wire funds to Fort Bend County no later than 30 days after receipt of the reimbursement request in accordance with Fort Bend County's wire transfer instructions. Fort Bend County will release a check to H-GAC within 21 days after funds are received from TCEQ. The payment will be based on the quarterly Financial Statement and Purchase Voucher originally submitted by H-GAC.

Interest earned in excess of \$250 per year from the state funding is considered program income. Five percent of the interest earned may be used for program administration. The remaining funds may be committed to vehicle repair, retrofit, and retirement.

Upon receipt of the initial advance, the ongoing Financial Status Reports from H-GAC, and the reimbursements from TCEQ, the Fort Bend County Auditor will make the appropriate General Ledger entries in accordance with Generally Accepted Accounting Principles.

## **REPORTING PROCESS**

H-GAC will prepare all TCEQ required activity reports quarterly. These quarterly activity reports shall be submitted along with the applicable Financial Status Report to the Fort Bend County Auditor and a copy to Office of the County Judge for Fort Bend. Fort Bend County will forward the applicable Financial Status Report and the Quarterly activity reports onto TCEQ upon completion of the review noted in the Reimbursement Process section of this activity plan.

## **RECORD RETENTION**

H-GAC shall maintain records adequate to verify the costs incurred in conducting LIRAP and shall afford Fort Bend County and its authorized representatives the opportunity to inspect and audit such records upon reasonable notice. Records relating to LIRAP shall be maintained for three (3) years after the expiration of the Agreement or until all claims or disputes relating to the Agreement are resolved, whichever is later.

TCEQ will prepare quarterly reports indicating total actual collections and the amount applicable to Fort Bend County by the 20<sup>th</sup> of the month following the end of the quarter. These reports will be sent to Fort Bend County and H-GAC no later than the 25<sup>th</sup> of each month following the end of the quarter.

## **ATTACHMENT B**

THE STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND       §

**AMENDMENT NO. 5 TO INTERLOCAL AGREEMENT  
FOR ADMINISTERING A LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT AND  
VEHICLE REPLACEMENT PROGRAM**

This Amendment No. 5 to Interlocal Agreement is made and entered into between FORT BEND COUNTY (the "County") and HOUSTON-GALVESTON AREA COUNCIL (H-GAC).

WHEREAS, on April 8, 2003, the parties hereto entered into a certain Interlocal Agreement for H-GAC to administer the Low Income Vehicle Repair Assistance Program (LIRAP); and,

WHEREAS, County desires to align amendment numbers with the Agreement with H-GAC to the correlated Amendment Numbers of the Agreement with TCEQ, which numbered this last Amendment as No. 5 after having deemed a letter dated December 14, 2007 as Amendment No. 4; and,

WHEREAS, on or about November 4, 2003, the County and H-GAC amended the agreement to extend the term through August 31, 2004, and on December 16, 2004 extended the agreement further to August 31, 2006, and on January 24, 2006 further extended to August 7, 2007; and on August 29, 2007 further extended to August 31, 2008; and,

WHEREAS, the parties wish to further extend certain terms relating to the Agreement;

NOW, THEREFORE, for and in consideration of good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Section 2.3 Fort Bend County will forward any allowance of incurring costs allocated by TCEQ to H-GAC for administrative cost not to exceed 10% of the total annual budget.
2. Section 3.1 The term of this Agreement shall commence on the date last executed by the parties and continues through August 31, 2009.

Except as amended hereby, the terms and conditions of the original Agreement, attached hereto as Exhibit "A" shall remain unchanged.

FORT BEND COUNTY

By: 

Robert E. Hebert, County Judge

Date: May 6, 2008

ATTEST: 

Dianne Wilson, County Clerk

HOUSTON-GALVESTON AREA COUNCIL

By: 

Date: May 1, 2008

THE STATE OF TEXAS           §  
  §  
COUNTY OF FORT BEND       §

**AMENDMENT NO. 3 TO INTERLOCAL AGREEMENT  
FOR ADMINISTERING A LOW INCOME VEHICLE REPAIR ASSISTANCE,  
RETROFIT AND VEHICLE REPLACEMENT PROGRAM**

This Amendment No. 3 to Interlocal Agreement is made and entered into between **FORT BEND COUNTY** (the "County") and **HOUSTON-GALVESTON AREA COUNCIL (H-GAC)** .

**WHEREAS**, on April 8, 2003, the parties hereto entered into a certain Interlocal Agreement for H-GAC to administer the Low Income Vehicle Repair Assistance Program (LIRAP); and,

**WHEREAS**, on or about November 4, 2003, the County and H-GAC amended the agreement to extend the term through August 31, 2004, and on December 16, 2004 extended the agreement further to August 31, 2006, and on January 24, 2006 further extended to August 7, 2007; and,

**WHEREAS**, the parties wish to further extend certain terms relating to the Agreement;

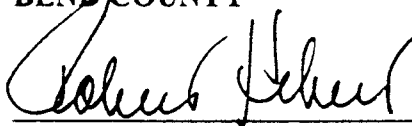
**NOW, THEREFORE**, for and in consideration of good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Section VIII. The term of this Agreement shall commence on the date last executed by the parties and continue through **August 31, 2008**.

Except as amended hereby, the terms and conditions of the original Agreement, attached hereto as Exhibit "A" shall remain unchanged.

**FORT BEND COUNTY**

By: \_\_\_\_\_




Robert E. Hebert, County Judge

Date: \_\_\_\_\_

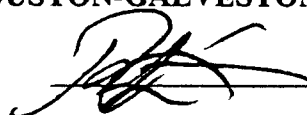
8-28-07

ATTEST: \_\_\_\_\_

  
Dianne Wilson, Ph.D., County Clerk

**HOUSTON-GALVESTON AREA COUNCIL**

By: \_\_\_\_\_



Date: \_\_\_\_\_

8-28-07

THE STATE OF TEXAS  
COUNTY OF FORT BEND

§  
§  
§

**AMENDMENT NO. 2 TO INTERLOCAL AGREEMENT  
FOR ADMINISTERING A LOW INCOME VEHICLE REPAIR ASSISTANCE,  
RETROFIT AND VEHICLE REPLACEMENT PROGRAM**

This Amendment No. 2 to Interlocal Agreement is made and entered into between **FORT BEND COUNTY** (the "County") and **HOUSTON-GALVESTON AREA COUNCIL (H-GAC)**.

**WHEREAS**, on April 8, 2003, the parties hereto entered into a certain Interlocal Agreement for H-GAC to administer the Low Income Vehicle Repair Assistance Program (LIRAP); and,

**WHEREAS**, on or about November 4, 2003, the County and H-GAC amended the agreement to extend the term through August 31, 2004, and on December 16, 2004 extended the agreement further to August 31, 2006; and,

**WHEREAS**, the parties wish to further extend certain terms relating to the Agreement:

**NOW, THEREFORE**, for and in consideration of good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties hereto agree as follows:

- 1. Section VIII. The term of this Agreement shall commence on the date last executed by the parties and continue through **August 31, 2007**.

Except as amended hereby, the terms and conditions of the original Agreement, attached hereto as Exhibit "A" shall remain unchanged.

**APPROVED AS TO LEGAL FORM**

Ken D. Decker  
Assistant County Attorney  
Date: 1/9/06

**FORT BEND COUNTY**

By: Robert E. Hebert  
Robert E. Hebert, County Judge

Date: 1-24-06

ATTEST:

Dianne Wilson  
Dianne Wilson, Ph.D., County Clerk

**HOUSTON-GALVESTON AREA COUNCIL**

By: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TEXAS §

COUNTY OF FORT BEND §

**AMENDMENT NO. 1 TO INTERLOCAL AGREEMENT FOR ADMINISTERING A LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT AND VEHICLE REPLACEMENT PROGRAM**

This Amendment is entered into between Fort Bend County, hereinafter referred to as "County", a body corporate and politic under the laws of the State of Texas and the Houston Galveston Area Council (H-GAC), a commission operation under Texas Local Government Code, chapter 391.

WHEREAS, the 77<sup>th</sup> Texas Legislature enacted Acts 2001, ch. 1075 (H. B. 2134) (the "Act") requiring the Texas Commission on Environmental Quality and Texas Department of Public Safety to establish rules for a low income vehicle repair assistance, retrofit and vehicle replacement program (LIRAP) for counties where vehicle inspection and maintenance programs are implemented; and

WHEREAS, The County has entered into a Grant Funding Agreement with the Texas Commission on Environmental Quality (TCEQ); and

WHEREAS, on or about April 8, 2003, the County and the H-GAC entered into an interlocal agreement (the "Interlocal Agreement") providing for H-GAC to administer LIRAP within the county through August 31, 2003; and

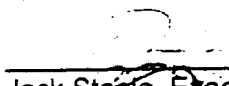
WHEREAS, on or about November 4, 2003, the County and the H-GAC amended the interlocal agreement (the "Interlocal Agreement") providing for H-GAC to administer LIRAP within the County through August 31, 2004; and

WHEREAS, the County and the H-GAC desire to further extend the term of the Interlocal Agreement through August 31, 2006.

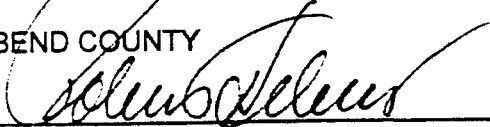
NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, H-GAC and Fort Bend County agree that all other terms and conditions in the original agreement will remain in full force and effect.

EXECUTED for and on behalf of the parties as follows:


HOUSTON-GALVESTON AREA COUNCIL

By:  Date: 12/16/04  
Jack Steele, Executive Director

FORT BEND COUNTY

By:  Date: 11-16-04  
Robert E. Hebert, County Judge

ATTEST:

  
Dianne Wilson, County Clerk

**INTERLOCAL AGREEMENT FOR ADMINISTERING A LOW INCOME  
VEHICLE REPAIR ASSISTANCE, RETROFIT AND VEHICLE  
REPLACEMENT PROGRAM**

WHEREAS, the 77<sup>th</sup> Texas Legislature enacted House Bill 2134 requiring the Texas Commission on Environmental Quality ("TCEQ") and Texas Department of Public Safety to establish rules for a low income vehicle repair assistance, retrofit and vehicle replacement program (LIRAP) for counties where vehicle inspection and maintenance programs are implemented: and

WHEREAS, LIRAP's purpose is to assist low income persons whose vehicles fail emissions inspections to bring their vehicles into compliance, or to assist in replacing the vehicle, thereby improving air quality; and

WHEREAS, House Bill 2134 authorizes commissioners courts to determine whether to implement LIRAP and to contract with another entity to administer the program: and

WHEREAS, the Fort Bend County Commissioners Court has determined to implement a LIRAP in the county and has further determined to enter into an interlocal agreement with the Houston-Galveston Area Council (H-GAC) to administer LIRAP within the county: and

WHEREAS, under the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code, H-GAC and Fort Bend County ("County") are authorized to enter into agreements to perform governmental functions and services.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, H-GAC and County agree as follows:

I

County agrees to contract with H-GAC to administer LIRAP within Fort Bend County. The County further agrees to provide to H-GAC all funds available for LIRAP through state collected fees in accordance with its contract with TCEQ. County's financial obligation to H-GAC is limited only to LIRAP funds actually provided by TCEQ. However, County and H-GAC may make available additional funds from other sources to support LIRAP if either party chooses.

II

H-GAC agrees to administer LIRAP on behalf of County and in accordance with applicable state law, state rules and the contract between TCEQ and the County, which is attached hereto and is made a part of this agreement. H-GAC agrees that not more than five percent of LIRAP funds provided may be used for administrative costs.

### III

H-GAC will administer LIRAP consistent with the scope of services and initial budget attached hereto and made a part of this agreement.

### IV

H-GAC shall maintain records adequate to verify the costs incurred in conducting LIRAP and shall afford County and its authorized representatives the opportunity to inspect and audit such records upon reasonable notice. Records relating to LIRAP shall be maintained for four (4) years after the expiration of the Agreement or until all claims or disputes relating to the Agreement are resolved, whichever is later.

### V

Either party may terminate this Agreement for any reason without further obligation by providing thirty (30) days advance notice. Within sixty (60) days after termination, H-GAC shall provide the County a final statement of expenses and payments due, if any.

### VI

H-GAC is responsible for administering the project. H-GAC's project manager for this agreement is Mike Temple. H-GAC agrees that it is solely liable for any expenditures under this agreement that have been determined to be not in accordance with state law, rules or the contract between TCEQ and the County.

### II

H-GAC shall notify County of any public meetings conducted in association with LIRAP. H-GAC shall also provide the County regular reports on expenditures, individual assisted and other program information as specified by the County and TCEQ.

### VIII

The term of this Agreement shall commence on the date last executed by the parties and continue through August 31, 2003. The agreement may be annually renewable by the parties.

### IX

All notices required by this Agreement shall be in writing and delivered personally or sent by certified U. S. mail, postage prepaid addressed to each party as follows:

To H-GAC:

Mr. Jack Steele  
Executive Director  
Houston-Galveston Area Council  
P. O. Box 22777  
Houston, Texas 77227-2777

To Fort Bend County:  
Robert E. Hebert, County Judge  
Fort Bend County  
301 Jackson, Suite 719  
Richmond, Texas 77469


Notice shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. The parties may change the above address by sending written notice of such change to the other in the manner provided for above.

X

The entire Agreement between the parties is contained herein and no change or modification of this Agreement shall be valid or enforceable unless it is in writing and signed by all parties.

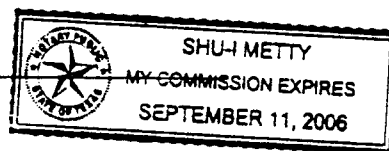
EXECUTED for and on behalf of the parties as follows:

HOUSTON-GALVESTON AREA COUNCIL

By:   
Title: EXECUTIVE DIRECTOR

ATTEST:

By: \_\_\_\_\_



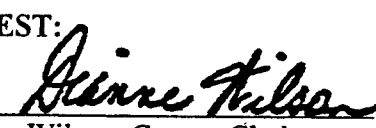
*Shu-Metty*

FORT BEND COUNTY

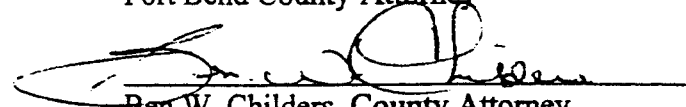
By:   
Robert E. Hebert, County Judge

ATTEST:

By: \_\_\_\_\_

  
Dianne Wilson, County Clerk

APPROVED AS TO FORM:  
BEN W. CHILDERS  
Fort Bend County Attorney

  
Ben W. Childers, County Attorney