

CONTRACT NUMBER 582-8-89960

**CONTRACT AMENDMENT TO THE INTERGOVERNMENTAL COOPERATIVE
REIMBURSEMENT AGREEMENT BETWEEN THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY (TCEQ) AND FORT BEND COUNTY**

AMENDMENT NUMBER 4

Pursuant to Article 7 (AMENDMENTS) and Article 1 (CONTRACT PERIOD) in the General Conditions of the Agreement, TCEQ and Fort Bend County (Grantee) agree to amend Contract Number 582-8-89960 to amend the Expiration Date of the Agreement, add Fiscal Year (FY) 2011 funding, and amend the Scope of Work (SOW).

1. In accordance with Section 1.2 of the General Conditions (Renewal and Extension Period), the Contract Signature Page is amended to reflect an Expiration Date of August 31, 2013.
2. Section 1.3 of the General Conditions is amended to read as follows:

1.3 **Contract Renewals.** There are no additional renewals available after the Expiration Date of this Agreement.
3. The Maximum TCEQ Obligation is amended to reflect the addition of FY 2011 funding as follows:

Amendment History	Fiscal Year	Contract Amount
Original Amount	FY08	\$131,872.15
	FY09	\$134,860.75
Amendment 1 (Encumbrance of FY 09 funds)	FY09	
Amendment 2 (Contract extension for one year)	FY09	
Amendment 3 (Increase of amount for FY 2010, changes to matching and eligible projects)	FY10	\$135,850.57
Amendment 4 (Extension through 8/31/13, addition of FY 11 funding, amendment of Scope of Work)	FY11	\$135,850.57
Total Maximum TCEQ Obligation		\$538,434.04

4. Section 4.4 of the General Conditions is amended to read as follows:

4.4 Grant funds advanced by the TCEQ under this Agreement must be spent by the Grantee by the expiration of the second FY following the Appropriation FY of the corresponding funds. For example, advanced FY 2008 funds must be spent by August 31, 2010.

8-3-10 copy received

5. Effective with this Amendment, the SOW is replaced in its entirety with the SOW attached to this Amendment as Attachment A.

All other conditions and requirements of Contract Number 582-8-89960 remain unchanged and shall apply to all provisions specified herein.

TCEQ:

Texas Commission on Environmental Quality


(Signature)

Zak Covar

(Printed Name)

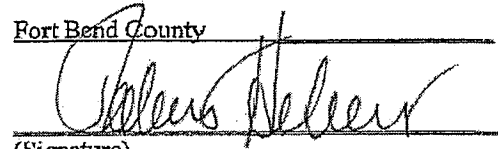
Deputy Executive Director

(Title)

Date: 8/30/10

Grantee:

Fort Bend County


(Signature)

The Honorable Robert E. Hebert

(Printed Name)

Fort Bend County Judge

(Title)

Date: 8-3-2010

ATTACHMENT A

SCOPE OF WORK

The Local Initiatives Program (LIP) is a grant contract agreement between the Texas Commission on Environmental Quality (TCEQ or Commission) and participating county (Grantee or Performing Party), relating to expenditure of Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) funds for LIP under Texas Health and Safety Code (HSC) §382.220.

I. INTRODUCTION

LIRAP was authorized by the 77th Texas Legislature in 2001, to improve air quality. LIRAP operates in areas of the state that participate in the AirCheckTexas motor vehicle emissions inspection and maintenance program administered jointly by the TCEQ and the Texas Department of Public Safety.

In 2007, the 80th Texas Legislature, passed Senate Bill (SB) 12, Section 1.07, amending the HSC Chapter 382, to add Section 382.220, "Use of Funding for Local Initiative Projects," which authorized spending accumulated funds on clean air projects proposed by counties. In 2009, the 81st Texas Legislature, House Bill (HB) 1796, made two changes to the program: 1) LIP funding cannot be used for the purchase of local government fleet or vehicle acquisition or replacement and 2) the Commission has the flexibility to reduce the match requirement for certain projects.

The purpose of this agreement is to implement the Legislature's mandate to fund the LIP. The following sections describe in more detail the eligibility requirements, types of projects that can be funded, the process of proposal and approval of projects, and expenditure of LIRAP funds.

II. ELIGIBLE COUNTIES

Only counties currently participating in the LIRAP Program are eligible to receive funding under HSC §382.220 and this Contract. HSC §382.220 specifies that LIP funds provided under HSC §382.220(a) and "...made available to participating counties under Section 382.202(g) or 382.302, may be appropriated only for programs administered in accordance with Chapter 783, Government Code, to improve air quality. A participating county may agree to contract with any appropriate entity, including a metropolitan planning organization or a council of governments, to implement a program under Section 382.202, 382.209, or this section."

III. ELIGIBLE PROJECTS

HSC §382.220 (b) states that a project under this section must be implemented in consultation with the Commission and that projects eligible for funding under LIP may include projects to:

- (1) expand and enhance the AirCheckTexas Repair and Replacement Assistance Program;
- (2) develop and implement programs or systems that remotely determine vehicle emissions and notify the vehicle's operator;
- (3) develop and implement projects to implement the Commission's Smoking Vehicle Program;
- (4) develop and implement projects for coordinating with local law enforcement officials to reduce the use of counterfeit state inspection certificates by providing local law enforcement officials

with funds to identify vehicles with counterfeit state inspection certificates and to carry out appropriate actions;

- (5) develop and implement programs to enhance transportation system improvements; or
- (6) develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

To be considered eligible, a proposed project must comply with applicable provisions of state and federal laws. Project summary forms must be received by the Commission for approval no fewer than 180 days before the end of the fiscal year (FY) during which funds are to be expended, unless the Commission at its sole discretion waives this provision. Unless approved by the TCEQ, the costs of work performed prior to the TCEQ signature date on an executed Notice to Proceed (NTP), are not Allowable Costs for reimbursement. If, after execution of this Contract, the TCEQ advances funds to the Grantee, Grantee must receive approval for a project and a NTP prior to expending advanced funds. The reimbursement of costs is subject to confirmation by the TCEQ that the expenditure is an Allowable Cost according to this contract.

The Grantee will administer and implement the Contract Activities; however, the Grantee may implement the program by subcontracting with an appropriate entity, including a regional council of governments, the metropolitan planning organization in the appropriate region, or with another county. The Grantee must oversee the work of this entity. The participating counties in a non-attainment region or counties participating in an early action compact (EAC) under 30 Texas Administrative Code (TAC) Chapter 114, Subchapter C (relating to vehicle inspection and maintenance; LIRAP; and EAC Counties), may agree to have the money collected in any one county be used in any other participating county in the same region (HSC §382.209(g)). If one county gives any portion of their funding to another county, an agreement should be created between counties recording this transfer of funds and the transfer of funds should be reflected in the program budgets of the affected counties. A proposed project that involves more than one county shall include a list of all participating counties. For each participating county, written authorization, signed by an appropriate county who authorizes the use of that county's LIP allocation and the amount to be dedicated to the proposed project is required.

To the extent possible, counties intending to fund projects that generate emission reduction credits to be included in the State Implementation Plan (SIP), should provide documentation, descriptions, computations, or other supporting evidence, demonstrating in detail the emission reduction benefits to be derived from proposed projects in their project summaries. If none are projected, then state "none." See Attachment A for guidance on submitting evidence for SIP credit.

IV. STATUTORY RESTRICTION ON USE OF FUNDS

As specified in SB 12, Section 1.07(c), and codified in HSC §382.220(c), funds provided under this contract may not be expended for the following purposes related to operation and administration of the LIRAP Program:

- 1. call center management;
- 2. application oversight;
- 3. invoice analysis;
- 4. education;

5. outreach;
6. advertising, and
7. local government fleet or vehicle acquisition or replacement.

Interpretation of the applicability of these prescribed categories to proposed projects is at the sole discretion of the Commission. LIP proposals must clearly state the nature of the goods and services acquired or to be acquired in the course of implementing a project.

V. AMOUNT OF FUNDING

The Commission may provide funds in the form of reimbursements for approved projects that meet project eligibility requirements enumerated above. HSC §382.220(d) authorizes the Commission to disburse fees collected under HSC §§382.202 and 392.302, in an amount not to exceed \$5,000,000.00 per FY, among all counties eligible to propose LIPs, as described above under Section II, ELIGIBLE COUNTIES of this Agreement. Funds will be made available to the Grantee only on a matching basis, whereby the Commission provides money to the Grantee in the same amount or a reduced amount for an eligible project as the Grantee matches, as described above under Section III, ELIGIBLE PROJECTS of this Agreement. The term "money" in HSC §382.220(d) is construed to mean cash or tangible property (as defined in the Texas Uniform Grant Management Standards (UGMS)) donated for a LIP. Funds may not be disbursed to the Grantee if the Grantee does not propose an approvable project during a particular FY.

House Bill (HB) 1796, 81st Texas Legislature, amended HSC §382.220(d) to state that the Commission may reduce the match requirement for a county that proposes to develop and implement independent test facility fraud detection programs, including the use of remote sensing technology for coordinating with law enforcement officials to detect, prevent, and prosecute the use of counterfeit state inspection certificates.

No part of the required local match may come from LIRAP funding provided under HSC §382.209. All or part of the local match may be an in-kind contribution of services or tangible property, such as donations of land or materials if consistent with state regulations.

In computing a budget for a proposed project, the Grantee should complete an actual Project Budget. All invoices for reimbursement must clearly describe the project for which reimbursement is being requested, the nature of the goods and services acquired, and the period of time during which expenses were incurred.

VI. PROJECT APPROVAL

Project proposals submitted by the Grantee will be evaluated and awarded funding based on the criteria in this contract. At a minimum, proposals should include all components listed below under "PROJECT SELECTION CRITERIA."

VII. PROJECT SELECTION CRITERIA

Unless otherwise provided in this agreement or authorized in writing by the TCEQ, the Grantee must submit a written plan for conducting each LIP, which must contain the following components:

1. **APPLICANT(S).** County requesting funding of the LIP and the name of the agency or entity that will administer the project.
2. **RESPONSIBLE PERSON(S).** Names, phone numbers, and, if appropriate, titles of the individual or individuals preparing, submitting, and directing this project on behalf of the eligible county or counties.
3. **PROJECT DESCRIPTION.** A clear and concise description of the proposed project, including details of the operation of the program, target emitting source or sources, technologies or methods to be implemented to reduce emissions, an itemized list of goods and services needed to implement the project, and any other details of the project that explain how the project will reduce emissions or help the region comply with state or federal clean air rules or regulations. If construction is proposed, the proposal should include a map of the location, photographs of the existing project site, a site plan of the proposed construction, illustrations of the proposed work, and a description of how it would be accomplished, including estimated cost.
4. **PROJECT SCHEDULE.** The proposal should include the proposed starting date and, if appropriate, ending date of the proposed project. If possible, the proposal should also include dates of important project milestones, or durations of key phases of the project (planning and design, bid approvals and awards, implementation or construction, if any).
5. **PROJECT BUDGET.** An itemized budget identifying the full cost of all project phases, including the amount and source of local matching funds or value of in-kind donations for which LIP funding under HSC §382.220 is requested. Of this total, a maximum of 50 percent may be reimbursed from HSC §382.220 Clean Air Account funds not to exceed the amount in section V. "AMOUNT OF FUNDING." Under HB 1796, the Commission may reduce the match requirement for a county that proposes to develop and implement independent test facility fraud detection programs. No part of the required local match may come from LIRAP funding provided under HSC §382.209. All or part of the local match may be an in-kind contribution of tangible property such as donations of land, materials, or professional services, if consistent with state regulations.

In-Kind Match. If part or the entire local match will be an in-kind contribution in lieu of funds, the proposal must include a detailed description and estimated value of the property or professional services to be donated to the project. A tangible in-kind match could include donations of land, equipment, materials to be used, or professional services related to the project that can be documented. The in-kind local match cannot include professional services funded under HSC §382.209 or activities prohibited under HSC §382.220(c). The in-kind local match can be provided by another entity besides the county, for example, a city or metropolitan transportation authority. If the local match is provided by an entity other than the proposing county, the proposal must include official documentation of the commitment of that property (such as by signed letter of commitment from an appropriate agent of the owner of the property) for the purpose of implementing the proposed LIP.

Project Budget. The Grantee will include documentation showing the amount of any in-kind contribution received with each invoice.

6. **PROJECT BENEFITS.** Explain and document, if possible, the anticipated air quality benefits to the county or region. Describe how the air quality benefits or emission reductions are enforceable, permanent, quantifiable, and surplus, including computations, model results, or other documentation, if available. If the proposed project provides new opportunities for innovation,

diversity, enhancement, or creativity in local air quality projects, describe these benefits as well. If none are projected, then state "none."

7. SIGNATURE. The proposal must be signed by a person who will be responsible for the management and implementation of the proposed project.
8. CONTACTS FOR ASSISTANCE. For further information, please contact the TCEQ LIRAP staff: Marivel Rodriguez at 512/239-2474, marodrig@tceq.state.tx.us; or Santos Olivarez at 512/239-4718, solivare@tceq.state.tx.us.

VIII. MONITORING AND REPORTING

The Grantee must submit quarterly reports to the TCEQ, documenting the activities conducted under the LIP and the total amount of funds expended for the project. The reports should be filed for each quarter during the term of contract (September 1-November 30; December 1-February 29; March 1- May 31; June 1-August 31). Reports must be submitted to the TCEQ within 30 days following the end of the quarter (due dates are December 30, March 30, June 30, and September 30, respectively).

The Grantee must also submit comprehensive annual reports detailing all activities conducted under the LIP Biennium Agreement. The annual reports should be filed for each year during the term of the contract (January 1, 2010 – December 31, 2010; January 1, 2011- December 31, 2011; January 1, 2012- December 31, 2012; January 1, 2013- December 31, 2013.) Annual reports must be submitted within 30 days following the end of the year (due dates are January 31, 2010; January 31, 2011; January 31, 2012, January 31, 2013, respectively).

IX. LIP PROJECT PROCEDURES

1. PROJECT PROPOSAL PROCESS

(a) Projects performed under this Contract will be performed under project proposals, containing the elements listed in Article VII of the Scope of Work (SOW).

(b) Whereas the subject area categories described in Article III of the SOW are intended to provide a general overview of the types of programs that are eligible, the project proposals will contain more detailed specifications of the project activities. The listing of a subject area category in Article III does not imply approval of a project proposal falling under one of those subject area categories. For each project submitted, the Grantee will submit the items listed in the SOW, including a project budget.

(c) The TCEQ will then approve the Grantee's project without modifications, reject the project and request modifications, or disapprove the project. When agreement between the parties has been reached about the project, the TCEQ will issue a NTP and the PERFORMING PARTY shall start the project.

2. NOTICE TO PROCEED

(a) Projects under this Contract will be authorized by NTP issued by the TCEQ after review and approval of submitted projects.

(b) A NTP may include time limits and a maximum authorized TCEQ reimbursement amount, in which case all activities must be performed within those time limits and reimbursement for project activities performed under that NTP may not exceed the authorized amount.

(c) The TCEQ is not liable to reimburse costs incurred by the Grantee for project activities until TCEQ issues an NTP for the project. Costs incurred before issuance of the NTP must be clearly identified in the project proposal and approved by TCEQ to be eligible for reimbursement.

3. PROJECT REVISIONS

(a) Revisions to the project activities. Additions and changes to the scope of an approved project, including any requested funding increases, require submission of a revised project plan for TCEQ review and approval. These changes to an approved project will not take effect until the TCEQ has issued a revised NTP, approving and incorporating these changes.

(b) Revisions to the project activities that do not affect the project budget categories, or cause an increase or decrease in the activities performed under the project, may be approved by the TCEQ as a minor change through electronic mail.

(c) Revisions to the project budget. Cumulative transfers among the budgeted direct cost categories within a project budget must not exceed 10 percent (10%) of the current total budgeted amount for that project. Transfers exceeding 10% require submission of a revised project plan as detailed in (a) above.

4. MATERIAL RELIANCE ON PROJECT BUDGETS

Project Budget.

The Grantee agrees to conduct an approved project within the original budget provided in the project proposal unless the TCEQ agrees to a budget revision. The TCEQ will only reimburse up to the total amount contained in each project budget and, therefore; the TCEQ materially relies on the Grantee's expertise and diligence in the preparation of budgets submitted for approval in the project proposals. The Grantee acknowledges and agrees that the TCEQ may materially rely on these estimates.