CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: Environmental Services

AGENDA DATE: July 5, 2011

CONTACT PERSON/PHONE: Ellen A. Smyth, P.E., (915) 621-6719

DISTRICT (S) AFFECTED: All Districts

SUBJECT:

Approve a Local Air Program Grant Amendment #2 with the Texas Commission on Environmental Quality

BACKGROUND / DISCUSSION:

This is an amendment to Contract #582-10-90258. The purpose of the contract is to conduct compliance investigations on behalf of TCEQ at permitted air sources including, but not limited to, gasoline stations, paint shops, auto body shops and cabinet shops. The grant amount is for $ 321,074.00 for the period of September 1, 2011 through August 31, 2012. City matching funds are required in the amount of $ 105,954.42.

PRIOR COUNCIL ACTION:

June 2009
July 2010

AMOUNT AND SOURCE OF FUNDING:

$105,954.42 Matching Amount
Fund: 40429
Account: G341217
Deptid: 34010289
Account: 406003

BOARD / COMMISSION ACTION:

N/A

********************REQUIRED AUTHORIZATION**********************

LEGAL: (if required) Josette Flores **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, for FY2010, the City received a Texas Commission on Environmental Quality ("TCEQ") Local Air Program grant under Contract Number 582-10-90258, for $321,074, which required a cash match from the City in the amount of $158,140, which match was approved by City Council for the City of El Paso, to conduct compliance investigations on behalf of TCEQ; and

WHEREAS, for FY2011, the City Council approved Amendment #1 to extend the term of TCEQ Contract No. 582-10-90258 to cover the period of September 1, 2010 through August 31, 2011, in an amount of $321,074, with a cash match from the City in the amount of $158,140, resulting in a total of $479,214; and

WHEREAS, for FY2012, TCEQ seeks the approval of Amendment #1 to extend the term of TCEQ Contract No. 582-10-90258 to cover the period of September 1, 2011 through August 31, 2012, in an amount of $321,074, with a cash match from the City in the amount of $105,954.42; and

WHEREAS, Amendment #2 to Contract No. 582-10-90258, indicates the total of the FY2010 ($321,074), FY2011 ($321,074) and FY2012 contract amount as being $963,222; and

WHEREAS, as Amendment #2 to Contract No. 582-10-90258 calls for matching funds, in accordance with Ordinance No. 16016, the document requires City Council approval.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign Amendment #2 of the Local Air Program grant contract No. 582-10-90258 (the "Amendment") by and between the City of El Paso and the Texas Commission of Environmental Quality ("TCEQ"), in the amount of $321,074.00 to allow for services to continue for the period of September 1, 2011 through August 31, 2012, to conduct compliance investigations on behalf of TCEQ at permitted air sources including, but not limited to, gasoline stations, paint shops, auto body shops and cabinet shops. City matching funds are required in the amount of $105,354.42. The City Manager is authorized to approve necessary budget transfers to designate the required matching funds.

PASSED AND APPROVED by the City Council of the City of El Paso in El Paso, Texas, on this the _____day of _____, 2011.

(Signature appear on following page)

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

Ellen A. Smyth, P.E., Director
Environmental Services Department

CONTRACT NUMBER 582-10-90258

AMENDMENT #2
TO
LOCAL AIR PROGRAM CONTRACT

The Texas Commission on Environmental Quality ("TCEQ") and The City of El Paso ("PERFORMING PARTY"), agree to amend Contract # 582-10-90258 to: (1) renew the contract for Fiscal Year 2012 (FY12), (2) increase the contract amount to include funding for FY12, (3) update contact information, and (4) update the Scope of Work. The Contract is amended as follows:

1. The Term of Contract is extended to August 31, 2012.

2. The Maximum TCEQ Obligation is increased by $321,074.00 to $963,222.00. The total compensation possible under this contract is as follows:

FY10, Original Contract Amount	$321,074.00
FY11, Amendment #1	$321,074.00
FY12, Amendment #2	$321,074.00
Total Contract Price (Maximum TCEQ Obligation)	$963,222.00

3. The TCEQ's PROJECT REPRESENTATIVE/Project Manager is:

Faith Melgaard
Field Operations Support Division
Mail Code 174
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, TX 78711-3087
Phone: 512-239-0458

4. Pursuant to Articles 3 and 4 of the Scope of Work of the Contract, paragraphs 3.2 and 4.2.3.3 are amended to state:

3.2 Periodic program evaluation meetings. The intention of periodic program evaluations is to ensure ongoing program effectiveness. Evaluations of the PERFORMING PARTY are based on both individual work product evaluations and trends identified through work product evaluations as well as performance under the various activities required under the Agreement. Program evaluation meetings will be held at least quarterly during the course of this Agreement term. The meetings will include at least the TCEQ Regional Representative and TCEQ Regional Air and Waste Section Managers or his/her designee, and the PERFORMING PARTY's representative responsible for day to day program oversight. Standing topics for each meeting should include at least the following topics:

- Updates on progress made on the work plan;
- Updates on program implementation issues;
- Work plan development for future years;
- Discussions on progress implementing corrective action plans, if any, and;

- Discussions related to the various work product evaluations conducted by the TCEQ.

If the TCEQ work product evaluations conducted since the previous meeting result in the TCEQ identifying deficiencies or a trend toward unsatisfactory performance, the discussions will include the conditions that contributed to the deficiency or trend. The TCEQ Regional Representative or designee will document the meeting and will provide meeting minutes or a meeting summary to the PERFORMING PARTY's representative within three calendar weeks of the meeting.

4.2.3.3 Stage II – List of All Facilities. The PERFORMING PARTY shall identify and maintain a list identifying those motor vehicle fuel dispensing facilities within the PERFORMING PARTY's territorial jurisdiction where Stage II vapor recovery equipment is required pursuant to the TCEQ rules (30 TAC 115.221 - 115.229 and 115.241 - 115.249). The list of these sources shall be utilized when developing and implementing Work Plans, and therefore should be maintained as the fiscal year progresses, but must be as accurate as possible prior to Work Plan development in any given fiscal year.

Stage II – List of Newly Identified or Closed Facilities. A listing of Stage II facilities which were newly identified or which were identified as closed or no longer in business shall be created, updated and maintained by the PERFORMING PARTY. Upon request, this list shall be provided by the PERFORMING PARTY to the TCEQ Regional Representative and include the total number of facilities identified since the beginning of the fiscal year covered by this Agreement.

All other conditions and requirements of Contract Number 582-10-90258 remain unchanged.

TCEQ:	**PERFORMING PARTY:**
Texas Commission on Environmental Quality	The City of El Paso
By:	By:
_____	_____
(Signature)	*(Signature)*
Zak Covar	Joyce Wilson
(Printed Name)	*(Printed Name)*
Deputy Executive Director	City Manager
(Title)	*(Title)*
_____	_____
(Date Signed)	*(Date Signed)*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

STATE FUNDED GRANT AGREEMENT

CONTRACT SIGNATURE PAGE

THIS AGREEMENT is entered by and between Texas Commission on Environmental Quality (hereinafter called TCEQ) and the City of El Paso acting through its Environmental Services Department (hereinafter called PERFORMING PARTY).

Contract Name	Local Air Program	
Contract No.	582-10-90258	
Performing Party	City of El Paso	
Performing Party I.D. No.	17460007499020	
Maximum TCEQ Obligation: $ 321,074.00	Contract effective date: 09/01/2009	Contract expiration date: 08/31/2010

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and the named PERFORMING PARTY, a governmental body, agency, or political subdivision of: the United States (US), the State of Texas, another State of the US, or a local government enter this agreement (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 the Texas Water Code Section 5.229 (TCEQ General Contract Authority). The Parties agree: to be effective, the Contract must be signed by an authorized official of the TCEQ and the PERFORMING PARTY; as authorized by TCEQ, PERFORMING PARTY will conduct Contract Activities as part of the its own authorized governmental functions and TCEQ will reimburse Allowable Costs subject to the Texas Uniform Grant Management Standards and this Contract; the PERFORMING PARTY 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:	Texas Commission on Environmental Quality (TCEQ)	(Performing Party)
By (Authorized Signature)		Jayne A. Fellin
Signer's Printed name:		
Signer's Title:		
Date of Signature:		
By (Authorized Signature)		
Printed name:	Wendy Cox, CTPM	
Title:	Contract Specialist	
Date of Signature:		
By (Authorized Signature)		
Printed name:		
Title:		
Date of Signature:		

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign Local Air Program grant contract No. 582-10-90258 (the "Agreement") by and between the City of El Paso and the Texas Commission of Environmental Quality ("TCEQ"), in the amount of $479,214 for the period of September 1, 2009 through August 31, 2010, to conduct compliance investigations on behalf of TCEQ at permitted air sources including, but not limited to, gasoline stations, paint shops, auto body shops and cabinet shops. City matching funds are required in the amount of $158,140. The City Manager is authorized to approve necessary budget transfers to designate the required matching funds.

PASSED AND APPROVED by the City Council of the City of El Paso in El Paso, Texas, on this the _____day of _____, 2009.

CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Josette Flores
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Ellen A. Smyth, P.E., Director
Environmental Services Department

Document Name:SWM/1/TCEQ LOCAL AIR PROGRAM GRANT 582-10-90258
Document #: 48321
Author_Id: JFLO

TCEQ PROJECT REPRESENTATIVES

TCEQ Contract Manager:
Donna Canady, CTCM
Field Operations Support Division
Mail Code 174
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, TX 78711-3087
Phone: 512-239-5725

TCEQ Project Manager:
Cathy Remmert, P.G.
Field Operations Support Division
Mail Code 174
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, TX 78711-3087
Phone: 512-239-2556

TCEQ Regional Representative:
Texas Commission on Environmental Quality
El Paso Regional Office
401 E. Franklin Ave., Ste 560
El Paso, TX 79901-1212
Phone: 915-834-4949

PERFORMING PARTY PROJECT REPRESENTATIVES:

Printed Name: Elda Rodriguez-Hefner
Title: Air Quality Manager
Environmental Services Department
7969 San Paulo
El Paso, TX 79907
E-mail: Rodriguez-hefnere@elpasotexas.gov
Phone: 915-599-6232
Fax: 915-621-6711

ALTERNATE CONTACT

Printed Name: Miguel Parra
Title: Engineering Section Manager
Environmental Services Department
7969 San Paulo
El Paso, TX 79907
E-mail: parramx@elpasotexas.gov
Phone: 915-599-6235
Fax: 915-621-6711

TCEQ STATE FUNDED GRANT AGREEMENT

Table of Contents

Page

Signature Page i
TCEQ Project Representatives ii
PERFORMING PARTY's Representatives ii
Table of Contents iii

SUPPLEMENTARY CONDITIONS 1

ARTICLE 1. WORK 1
ARTICLE 2. AGREEMENT TERMS 1
ARTICLE 3. AGREEMENT AMOUNT 1
ARTICLE 4. PAYMENT PROCEDURES 2
ARTICLE 5. BASIS FOR CALCULATING PAYMENT 2
ARTICLE 6. FUNDING 2
ARTICLE 7. PERFORMING PARTY'S REPRESENTATIONS 2
ARTICLE 8. CONTRACT DOCUMENTS 3
ARTICLE 9. MISCELLANEOUS 3

GENERAL CONDITIONS 5

ARTICLE 1. DEFINITIONS 5

ARTICLE 2. RESERVED 11

ARTICLE 3. CONTRACT DOCUMENTS: INTENT 11

ARTICLE 4. PERFORMING PARTY'S RESPONSIBILITIES 11
4.2 Supervision and Superintendence 11
4.3 PERFORMING PARTY'S Representative 11
4.5 Personnel 12
4.6 Employment Practices 12
4.7 Americans with Disabilities Act 12
4.8 Materials & Equipment 12
4.10 Title to and Management of Equipment 12
4.23 Substitutes and/or-Equal Items 14
4.25 Concerning Subcontractors, Suppliers and Others 14
4.30 Procurements 15
4.33 Historically Underutilized Businesses 15
4.37 Intellectual Property Requirements 15
4.38 Accessibility Standards 17

4.39 Subgrant Activities 17
4.42 Permits 17
4.43 Laws and Regulations 18
4.45 Uniform Grant and Contract Management Act 18
4.46 Energy Efficiency Standards 18
4.47 Taxes 18
4.48 Records, Documents, Data, Access, and Audit 18
4.55 Data and Publicity 19
4.57 Safety and Protection 19
4.58 Independent Contractor 19
4.59 Lobbying Activities 19
4.61 Accounting Systems 20
4.62 Independent Financial Audit 20
4.63 Hazardous Substances, Waste Disposal and Manifests 21
4.64 Conflict of Interest 21
4.65 Survival of Obligations 21
4.66 Interest and Unexpended Funds 21

ARTICLE 5. TCEQ'S RESPONSIBILITIES 22

ARTICLE 6. CHANGES IN THE WORK 22
6.8 Inclement Weather 23
6.9 Waiver 23

ARTICLE 7. PAYMENTS TO PERFORMING PARTY 24
7.1 Payment based on Reimbursement of Actual Cost of Performance 24
7.2 Payments by TCEQ 24
7.3 Fixed-Amount Cost Reimbursement 24
7.4 Contractual Costs 24
7.5 Comparison of PERFORMING PARTY's Costs 24
7.6 Indirect Cost Rate 25
7.7 Duplication of Effort Prohibited 25
7.8 Payment Request Procedures 25
7.12 Closeout 25
7.21 Cost Provisions Applying Solely to Regional Planning Commissions and Councils of Government 26

ARTICLE 8. TERMINATION 27
8.8 Force Majeure 28

ARTICLE 9. MISCELLANEOUS 28
9.1 Computation of Times 28
9.4 Notice of Claim 29
9.5 Professional Fees and Court Costs Included 29
9.6 Acknowledgment of Financial Support 29

ARTICLE 10. INSURANCE, LIABILITY AND INDEMNIFICATION 29

ARTICLE 11. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE 30
11.2 Performance Measures 30
11.3 Agreement Monitoring and Evaluation Report 30
11.4 Resolution Process for Disallowed /Questioned Costs 30
11.5 Schedule of Remedies available to the TCEQ 30
11.6 Sanctions for Substandard Performance 31
11.7 Cumulative Remedies 31

ARTICLE 12. DISPUTE RESOLUTION 31
12.1 Alternative Dispute Resolution 31

SCOPE OF WORK SECTION 32

1. GRANTS 32

2. ADMINISTRATIVE REGULATIONS 32

3. PERFORMANCE EVALUATIONS OF PERFORMING PARTY 33

4. REQUIREMENTS APPLICABLE TO ALL AFFECTED WORK ACTIVITIES 36
4.2.2 Work Plan Activities 36
4.2.3 Maintain Lists of Sources 37
4.2.5 Enforcement 38
4.2.7 Database Usage 38
4.2.8 Monthly Reporting 40
4.2.9 Training and qualification for investigators 42

5. REQUIRED INVESTIGATION AND ENFORCEMENT PROGRAMS 42
5.1 Air Program Investigation Tasks 43
5.40 Air Program – Stage II Investigation Tasks 48

THE TCEQ STATE FUNDED GRANT AGREEMENT

SUPPLEMENTARY CONDITIONS

TCEQ and PERFORMING PARTY, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

1.1 PERFORMING PARTY shall complete all Work related to Work Plan activities identified in the City of El Paso, related portion the Local Air Program Work Plan for the term of this Agreement. Work is generally described in this ARTICLE, and includes activities consistent with the direction and intent of the Compliance Monitoring Strategy for the Air and/or Stage II programs. Activities to be performed under this Agreement are more fully described in the attached Scope of Work section, which is hereby incorporated by reference into this Agreement.

1.2 The intended outcome is the PERFORMING PARTY's assistance to the TCEQ in the enforcement of the Clean Air Act.

ARTICLE 2. AGREEMENT TERMS

2.1 This Agreement shall have a term commencing on September 01, 2009 and shall terminate on August 31, 2010. Both parties have an option to renew the Agreement for three (3) additional one (1) year periods upon written consent of the parties by an Amendment to this Agreement.

The Annual Performance Evaluation requirements identified in the Scope of Work Section and certain reporting requirements as identified in this Agreement shall survive the termination of this Agreement. Other than for administrative matters, this Agreement shall not extend into a fiscal year for which the Texas Legislature has not appropriated funding necessary to perform this Agreement.

ARTICLE 3. AGREEMENT AMOUNT

3.1 TCEQ and PERFORMING PARTY agree that the maximum amount to be paid by TCEQ for completion of the Work shall not exceed $ 321,074.00 over the Agreement term, unless the parties amend this amount in accordance with the Agreement Documents.

3.2 The term "Local Air Program" is defined as the eligible local air pollution program conducted by PERFORMING PARTY under Section 382.0622, Texas Health and Safety Code. The combined federal and state share of the funding for the PERFORMING PARTY's Local Air Program (including the state funds under this Agreement) shall not exceed 67% (sixty-seven percent) of the PERFORMING PARTY's total cost for the program. The PERFORMING PARTY must provide matching funds such that the combined federal share, derived from the Section 105 pass-through funding from the TCEQ, and the state share, derived from the current Appropriations Act, shall not exceed 67%, or the total amount of this Agreement will be reduced proportionately so that this condition is met.

ARTICLE 4. PAYMENT PROCEDURES

4.1 PERFORMING PARTY shall submit requests for Payment in accordance with ARTICLE 7 of the General Conditions.

4.2 *Quality.* All investigations and investigation documentation must be prepared in accordance with applicable Field Operations Division Standard Operating Procedures (FODSOP), issued protocols and guidance documents, and Enforcement Division Standard Operating Procedures (EnfSOP). Adherence to FODSOP, issued protocols and guidance, and EnfSOP are required for the successful completion of any investigation.

ARTICLE 5. BASIS FOR CALCULATING PAYMENT

5.1 The PERFORMING PARTY shall receive the dollar amount as specified and agreed upon for all properly rendered and received environmental services, investigations and related items as described in Scope of Work Section and detailed within the Local Air Program Work Plan.

5.2 Investigations that are subject to more than one chapter (whether state or federal rule) shall be considered one investigation for payment purposes.

ARTICLE 6. FUNDING

6.1 *Availability of Funds.* The parties agree that this Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited to the availability of funds appropriated by the Texas Legislature for the purposes of this Agreement or for the respective claim, suit, or obligation, as applicable.

6.2 *Source of Funds and Legal Authority.* This Agreement is funded through the FY2010-2011 Appropriations Act; Section 5.229, Texas Water Code; and Sections 382.111-382.115, Texas Health and Safety Code. The PERFORMING PARTY certifies that it has authority to perform the services contracted for by authority granted in (El Paso Municipal Code Chapter 9.36). This Agreement is subject to: the Uniform Grant and Contract Management Act (UGCMA), Texas Government Code, Section 783.001 et seq., and the Uniform Grant Management Standards (UGMS) for State Agencies, 1 Texas Administrative Code, Section 5.141 et seq.

6.3. PERFORMING PARTY agrees to place the above notices relating to availability of funds, the source of funds and legal authority in all subgrants and subcontracts.

ARTICLE 7. PERFORMING PARTY'S REPRESENTATIONS

In order to induce TCEQ to enter into this Agreement, PERFORMING PARTY makes the following representations:

7.1 PERFORMING PARTY is familiar with and understands all applicable federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work.

7.2 PERFORMING PARTY is aware of the general nature of work to be performed by TCEQ and others that relate to the Work as indicated in the Agreement Documents.

7.3 PERFORMING PARTY has given TCEQ written notice of all conflicts, errors, ambiguities or discrepancies that PERFORMING PARTY has discovered in the Agreement Documents and the written resolution thereof by TCEQ is acceptable to PERFORMING PARTY, and the Agreement Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

7.4 PERFORMING PARTY hereby ratifies and attests to all certifications and deliverables it has provided to TCEQ during the offer process and agrees to give prompt written notice to TCEQ if there is any material change in these certifications or deliverables.

7.5 PERFORMING PARTY agrees that it is not a vendor and that this Agreement is not subject to the prompt payment act. TCEQ and PERFORMING PARTY agree to comply with all terms and conditions for payment herein.

ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement between TCEQ and PERFORMING PARTY concerning the Work consist of the following which are attached to and incorporated herein:

8.1 The TCEQ Form: TCEQ State Funded Grant Agreement

8.2 Scope of Work Section of the TCEQ State Funded Grant Agreement.

8.3 The General Conditions of the TCEQ State Funded Grant Agreement.

8.4 Other Documents – Forms to be supplied by TCEQ Project Manager upon request and located on the TCEQ Field Operations Division intranet web pages, FODWEB.

8.4.1 Local Air Program Work Plan, including Work Plan Cost
8.4.2 Investigation Typecode Definitions
8.4.3 HUB Progress Assessment Report
8.4.4 TCEQ Invoice
8.4.5 Financial Status Report

8.5 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: Work Plan Amendments, all Written Amendments, and other documents amending, modifying or supplementing the Agreement Documents pursuant to the General Conditions.

8.6 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 this Agreement.

ARTICLE 9. MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in ARTICLE 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 Notwithstanding any provisions relating to assignment in the Uniform Commercial Code, no delegation by a party hereto of any duties or obligations nor assignment by a party hereto of

any rights under or interests in the Agreement Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to an extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

9.3 TCEQ and PERFORMING PARTY each binds itself, its partners, successors, assigns and representatives to the other party hereto, its partners, successors, assigns and representatives in respect to all covenants, Agreements and obligations contained in the Agreement Documents. This Agreement is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of the TCEQ and any attempted transfer without such consent is void.

9.4 The parties hereby agree that this Agreement does not waive the State's sovereign immunity or the PERFORMING PARTY's governmental immunity relating to suit, liability, and the payment of damages.

9.5 Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and PERFORMING PARTY, who agree that Agreement Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.6 The PERFORMING PARTY acknowledges and agrees that because this Agreement has been executed, and will be administered in Travis County, State of Texas, that in this sense, the Agreement is considered performed in said County. The PERFORMING PARTY acknowledges and agrees that any permissible cause of action involving this Agreement will arise solely in Travis County. If a legal action related to this claim is permissible and there are two (2) or more counties of proper venue under the rules of mandatory, general, or permissive venue, and one such county is Travis County, the PERFORMING PARTY hereby agrees to venue in Travis County. This provision does not waive TCEQ's sovereign immunity, nor does it waive the PERFORMING PARTY's governmental immunity.

9.7 Any notice issued pursuant to these Contract Documents shall be addressed to the respective party at the addresses set out below, or at such other address as they have theretofore specified by written notice. Such notices shall be sent by certified mail, return receipt requested, or by nationally recognized courier, and evidenced by the confirmation of delivery rendered by the courier service, or shall be delivered in hand and a receipt provided therefore. Minor modifications to the Work Plan and notice of updating or clarifying any of the Contract documents or Agreement referenced guidance documents shall be communicated in writing sent by email, U.S. Postal Service via first class mail or hand delivered. Modifications, updates, clarifications and similar written communication shall be considered delivered upon receipt, or in the case of communications sent by first class mail.

9.8 This Agreement is subject to cancellation, without penalty, in whole or in part, if funds are not appropriated by the Texas Legislature, or otherwise made available to TCEQ.

GENERAL CONDITIONS OF THE TCEQ STATE FUNDED GRANT AGREEMENT

ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Agreement Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1.1. *Accrued Expenditures* - means the charges incurred by the PERFORMING PARTY during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

1.2. *Accrued Income* - means the sum of: (1) earnings during a given period from services performed by the PERFORMING PARTY and goods and other tangible property deliverable to purchasers, and (2) amounts becoming owed to the PERFORMING PARTY for which no current services or performance is required by the PERFORMING PARTY.

1.3. *Acquisition Cost* - of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make that property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the PERFORMING PARTY's regular accounting practices.

1.4. *Addenda* - written or graphic instruments issued prior to the execution of the Agreement which clarify, correct or change the Proposal Requirements or the Agreement Documents.

1.5. *Administrative Requirements* - mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

1.6. *Agreement* - refers to the form "TCEQ State Funded Grant Agreement" which contains the salient terms of the contract between TCEQ and the PERFORMING PARTY and covers the Work to be performed; also includes any additional Contract Documents which may be attached to the Agreement and made a part thereof as provided therein.

1.7. *Assessment* - The evaluation process used to measure the performance or effectiveness of a system and its elements, including audit, performance evaluation, management systems review, peer review, inspection, or surveillance.

1.8 *Audit* - A systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives.

1.9 *Awarding Agency* - means the TCEQ.

1.10. *Bonds* - Bid, Performance and Payment bonds and other instruments of security.

1.11. *Cash Contributions* - means the PERFORMING PARTY's cash outlay, including the outlay of money contributed to the PERFORMING PARTY or subgrantee by other public agencies and institutions, and private legislation, federal funds received from other assistance Agreements may be considered as PERFORMING PARTY or subgrantee cash contributions.

1.12. *Common Rule* - means the UGMS which were promulgated by the Texas Governor's Office of Budget and Planning pursuant to the Uniform Grant Conditions and Management Act, Texas Government Code Chapter 783.

1.13. *Contract* - means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

1.14. *Contract Documents* - as set forth in ARTICLE 8 of the Supplementary Conditions of this Agreement.

1.15. *Contract Price* - the moneys payable by TCEQ to PERFORMING PARTY for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of these General Conditions).

1.16. *Contract Times* - the number of days or dates stated in the Agreement to complete the Work so that it is ready for final payment.

1.17. *Cost Sharing or Matching* - means the value of the third party in-kind contributions and the portion of the costs of a State assisted project or program not borne by the State.

1.18. *Cost-type Contract* - means a contract or subcontract under a grant in which the PERFORMING PARTY or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

1.19. *DBE* – Disadvantaged Business Enterprise, within the meaning of the provisions relating to businesses owned or controlled by socially and economically disadvantaged individuals in applicable federal regulations (Title 40 Code of Federal Regulations (CFR) Part 33, 35, and 40). The Environmental Protection Agency's DBE rule revises and replaces its Minority and Women Business Enterprise (MBE/WBE) Program.

1.20. *Defective* - an adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test on approval referred to in the Contract Documents, or has been damaged prior to final payment.

1.21. *Effective Date of the Agreement* - the date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.22. *Equipment* - means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A PERFORMING PARTY may use its own definition of equipment provided that such definition would at least include all equipment defined above. A state awarding agency will advise a PERFORMING PARTY of the rules for capitalizing equipment purchased from state funds and ultimate disposition thereof.

1.23. *Expenditure Report* - means (1) for nonconstruction grants the "Financial Status Report" (or other equivalent report); and (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

1.24. *Final Completion* - the Work is completed in the judgment of TCEQ.

1.25. *General Conditions* - refers to the General Conditions of the TCEQ Federally Funded Grant Agreement.

1.26. *Government* - means a State agency or local government.

1.27. *Grant* - means an award of financial assistance, including cooperative Agreement, in the form of money, or property in lieu of money, by the State to an eligible PERFORMING PARTY. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the PERFORMING PARTY is not required to account for.

1.28. *Grantee* - means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Also means the PERFORMING PARTY.

1.29. *HUB* - Historically Underutilized Business as defined by Texas law. The State Purchasing and General Services Act defines a historically underutilized business as an entity with its principal place of business in Texas in which fifty-one percent (51%) or more of the corporation's stock (or other equitable securities) or partnership's assets and interest are owned by one or more economically disadvantaged persons, who have a proportionate interest and actively participate in the corporation or partnership control, operation, and management. If the business is a sole proprietorship, the economically disadvantaged person must completely own, operate and control the business. Economically disadvantaged persons include members of certain groups including Black Americans, Hispanic Americans, American Women, Asian Pacific Americans and Native Americans.

1.30. *Inspection* - An activity such as measuring, examining, testing, or gauging one or more characteristics of an entity and comparing the results with specified requirements in order to establish whether conformance is achieved for each characteristic.

1.31. *Intellectual Property* - 1) any and all inventions, discoveries, improvements, or creations for which copyright, trade secret, patent or other proprietary rights may be acquired, 2) any photographs, graphic designs, plans, drawings, specifications, computer programs, computer files, documentation, technical reports, operating manuals, or other copyrightable materials, and 3) any other work fixed in any tangible medium of expression which can be perceived, reproduced, or otherwise communicated for which copyright, trade secret, patent or other proprietary rights may be acquired.

1.32. *Intellectual Property Rights* - patent, trademarks, trade secret rights, confidential information rights or any other proprietary rights to which a person may be entitled or may actually possess. Intellectual Property Rights include all rights of ownership and original authorship throughout the world.

1.33. *ISO/IEC* - The International Organization for Standardization and the International Electrotechnical Commission.

1.34. *Laws and Regulations*; Laws or Regulations - any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

1.35. *Liens* - liens, charges, security interests or encumbrances upon real property or personal property.

1.36. *Local Government* - means a county, municipality, city, town, township, local public authority (including public and Indian housing agencies under the United States Housing Act of 1937, 42 U.S.C. §1437 et seq.) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency of instrumentality of a local government.

1.37. *Major Change* - any change in the work that meets the requirements of ARTICLE 6, Section 6.2 of the General Conditions of this Agreement

1.38. *Management Systems Review (MSR)* - The qualitative assessment of a data collection operation and/or organization(s) to establish whether the prevailing quality management structure, policies, practices, and procedures are adequate for ensuring that the type and quality of data needed are obtained.

1.39. *Minor Change* - a written document which provides for minor changes in the work in accordance with these General Conditions, but which does not involve a change in the Contract Price or the Contract Times.

1.40. *MWBE or MBE/WBE* - Minority Business Enterprise / Women Business Enterprise. See *DBE*.

1.41. *Nonconformance* - A deficiency in characteristic, documentation, or procedure that renders the quality or an item or activity unacceptable or indeterminate; non-fulfillment of a specified requirement.

1.42. *Notice of Award* - the written notice by TCEQ to an apparent successful Applicant stating that upon compliance by the apparent successful Applicant with the conditions precedent enumerated therein, within the time specified, TCEQ will sign and deliver the Agreement.

1.43. *Obligations* - means to the amount of Work performed by the PERFORMING PARTY during a given period that may result in reimbursement by the TCEQ during the same or a future period.

1.44. *Outlay* - (expenditures) means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to PERFORMING PARTY and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sums of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the PERFORMING PARTY for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees , and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

1.45. *Peer Review* - A documented, critical review of work generally beyond the state of the art or characterized by the existence of potential uncertainty. The peer review is conducted by qualified individuals (or organizations) that are independent of those who performed the work but are equivalent in technical expertise (i.e., peers) to those who performed the original work. The peer review is conducted to ensure that activities are technically adequate, competently performed, properly documented, and satisfy established technical and quality requirements. The peer review is an in-depth assessment of the assumptions, methodology, acceptance criteria, and conclusions pertaining to specific work and of the documentation that supports them. Peer reviews provide an evaluation of a subject where quantitative methods of analysis or measures of success are unavailable or undefined, such as in research and development.

1.46. *Percentage of Completion Method* - refers to a system under which payments are made for Work according to the percentage of the completed Work, rather than to the PERFORMING PARTY's cost incurred.

1.47. *Performance Evaluation* - A type of audit in which quantitative data generated in a measurement system are obtained independently and compared with routinely obtained data to evaluate the proficiency of an analyst or laboratory.

1.48. *Prior Approval* - means documentation evidencing consent prior to incurring a specific cost.

1.49. *Produced* - participle or passive verb which when used in connection with the term Intellectual Property means conceived, developed, implemented, discovered, invented, first actually reduced to practice or otherwise produced.

1.50. *Project* - the total body of services rendered of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.51. *Project Representative* - the Project Representatives of the TCEQ and the PERFORMING PARTY are identified on page ii of this Agreement.

1.52. *Real Property* - means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

1.53. *Share* - when referring to the TCEQ's portion of real property, equipment or supplies, means the same percentage as the TCEQ's portion of the acquiring party's total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted, not the value of third-party in-kind contributions.

1.54 *Source of Interest to the EPA* - For the purposes of this Agreement, any air pollution site that meets the definition of Major Source as listed in this Agreement or any TCEQ Air Program account whose actual emissions equal or exceed 80% of the major source emissions threshold.

1.55. *Standards* - refers to the UGMS.

1.56. *State* - means the State of Texas.

1.57. *Subcontractor* - an individual, firm, or corporation having a direct contract with PERFORMING PARTY or with any other Subcontractor for the performance of a part of the Work.

1.58. *Subgrant* - means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by the PERFORMING PARTY to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of a grant.

1.59. *Subgrantee* - means the government or other legal entity to which a subgrant is awarded and which is accountable to the PERFORMING PARTY for the use of the funds provided. "Subgrantee" is synonymous with "subrecipient" and refers to any entity receiving grant or contract funds from or through a state agency.

1.60. *Supplementary Conditions* - synonymous with "Program Conditions," the part of the Contract Documents which amends or supplements these General Conditions.

1.61. *Supplies* - means all tangible personal property other than "equipment" as defined in these General Conditions.

1.62. *Surveillance* - Continual or frequent monitoring and verification of the status of an entity and the analysis of records to ensure that specific requirements are being fulfilled.

1.63. *Suspension* - means, depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the PERFORMING PARTY, or subgrantee or a decision to terminate the grant, or (2) an action taken by a TCEQ official in accordance with the Contract Documents, State or Federal law, or Regulations to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

1.64. *Technical Systems Audit (TSA)* - A thorough, systematic, on-site qualitative audit of facilities, equipment, personnel, training procedures, record keeping, data validation, data management, and reporting aspects of a system.

1.65. *Termination* - means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the PERFORMING PARTY or subgrantee. "Termination" does not include: (1) withdrawal of funds awarded on the basis of the PERFORMING PARTY's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a grant; (3) refusal to extend a grant or award additional funds to make a competing or noncompeting continuation, renewal, extension or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from inception.

1.66. *Terms of a Grant or Subgrant* - mean all requirements of the grant or subgrant, whether contained in statutes, regulations, or the Contract Documents.

1.67. *Third Party In-kind Contributions* - mean property or services which benefit a state assisted project or program and which are contributed by third parties without charge to the PERFORMING PARTY, or a cost-type PERFORMING PARTY under the grant Agreement.

1.68. *TCEQ* - the Texas Commission on Environmental Quality.

1.69. *Uniform Grant Management Standards (UGMS)* - means the UGMS which were promulgated by the Texas Governor's Office of Budget and Planning pursuant to the Uniform Grant Conditions and Management Act, Texas Government Code Chapter 783.

1.70. *Unliquidated Obligations* - for reports prepared on a cash basis mean the amount of obligations incurred by the PERFORMING PARTY that has not been paid. Reports prepared on an accrued expenditure basis represent the amount of obligations incurred by the PERFORMING PARTY for which an outlay has not been recorded.

1.71. *Unobligated Balance* - means the portion of the funds authorized by the TCEQ that has not been obligated by the PERFORMING PARTY, and is determined by deducting the cumulative obligations from the cumulative funds authorized.

1.72. *Work* - the entire completed services or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor, services, materials or equipment as required by the Contract Documents.

1.73. *Work Plan* - the Work Plan submitted by the Applicant as amended at the time of award and subsequently according to procedures set forth in these General Conditions. The Work Plan, at a minimum shall consist of the number and types of investigations consistent with the TCEQ objectives of effecting maximum benefit for air pollution control.

1.74. *Written Amendment* - a document signed by PERFORMING PARTY and TCEQ which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

ARTICLE 2. (Reserved)

ARTICLE 3. CONTRACT DOCUMENTS: INTENT

3.1. The Contract Documents comprise the entire Agreement between TCEQ and PERFORMING PARTY concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the laws of the State of Texas.

3.2. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the total Agreement. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or pollution cleanup industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning.

3.3. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of TCEQ as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to TCEQ any duty or authority to supervise or direct the furnishing or performance of the Work or any other provision of the Contract Documents.

ARTICLE 4. PERFORMING PARTY'S RESPONSIBILITIES

4.1. The PERFORMING PARTY shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all services and other work furnished by the PERFORMING PARTY under this Agreement.

Supervision and Superintendence:

4.2. PERFORMING PARTY shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be reasonably necessary to perform the Work in accordance with the Contract Documents. PERFORMING PARTY shall be solely responsible for the means, methods, techniques, sequences and procedures of the Work. PERFORMING PARTY shall be responsible to see that the completed Work complies accurately with the Contract Documents.

PERFORMING PARTY'S Representative

4.3. The PERFORMING PARTY shall identify in writing the person authorized to receive direction from the TCEQ, to manage the work being performed, and to act on behalf of the PERFORMING PARTY.

4.4. The PERFORMING PARTY agrees to make reasonable arrangements necessary to ensure that its authorized Representative, or someone to whom that person has delegated his or her authority, is available at all reasonable times for consultation with the TCEQ. Written notice of any such delegation shall be provided to the TCEQ.

Personnel

4.5. PERFORMING PARTY shall provide competent, suitably qualified personnel to perform the Work as required by the Agreement Documents. PERFORMING PARTY shall at all times maintain good discipline and order on the project.

Employment Practices

4.6. The PERFORMING PARTY agrees that in the performance of this Agreement, it will not discriminate against any employee or applicant because of race, religion, color, sex, age, or national origin and it will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). The PERFORMING PARTY assures that no person will, on the grounds of race, creed, color, disability, national origin, sex, political affiliation or beliefs, be excluded from, be denied the benefit of, or be subject to discrimination under any program or activity funded in whole or part under this Agreement.

Americans with Disabilities Act

4.7. The PERFORMING PARTY shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12131 et seq., as well as state and federal statutes relating to nondiscrimination which include, but are not limited to, those listed in the UGMS.

Materials & Equipment

4.8. Unless otherwise specified in the Contract Documents, PERFORMING PARTY shall furnish and assume full responsibility for all materials, equipment, labor, transportation, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

4.9. All materials and equipment shall be of good quality and to the extent practicable, except as otherwise provided in the Contract Documents. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Title to and Management of Equipment

4.10. Subject to the obligations and conditions set forth in this Agreement, title to all equipment acquired under this Agreement shall vest, upon acquisition or construction, in the PERFORMING PARTY.

4.11. The PERFORMING PARTY agrees to conduct physical property inventories, to maintain property records and necessary control procedures, and to provide adequate maintenance with respect to all equipment acquired under this Agreement.

4.12. The PERFORMING PARTY may develop and use its own property management system which must conform with all applicable State and local laws, rules and regulations. If an adequate system for accounting for personal property owned by the PERFORMING PARTY or its subcontractor is not in place or currently in use, the Property Accounting System Manual issued by the Texas Comptroller of Public Accounts shall be used as a guide for establishing such a system.

4.13. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and the cost

of the property, percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

4.14. A physical inventory of all equipment acquired or replaced under this Agreement having an initial purchase price of Five Thousand Dollars ($5,000) or more, shall be conducted no less frequently than once every two years and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY shall include adequate safeguards to prevent loss, damage, or theft of the acquired property. Any loss, damage or theft shall be investigated. The PERFORMING PARTY agrees to develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such equipment is sold.

4.15. All equipment acquired or replaced under this Agreement shall be used for the duration of its normally expected useful life to support the purposes for which the equipment was acquired whether or not the original projects or programs continue to be supported by federal or state funds.

4.16. Subject to the provisions of this ARTICLE, if no longer needed for the support of the authorized projects or programs referred to in Section 4.15 of this ARTICLE, equipment acquired under this Agreement, whether original or replacement, may be used in support of other activities currently or previously supported by the TCEQ or the Federal Government, or alternatively, may be made available for use on other projects or programs, providing such other use will not interfere with the work on those projects or programs for which such equipment was originally acquired.

4.17. The PERFORMING PARTY may for the purpose of replacing various equipment utilized under this Agreement, either trade in or sell the equipment or property referred to in Section 4.10 and use the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property..

4.18. Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. Methods used to determine per-unit fair market value must be documented, kept on file and made available to the awarding agency upon request. Items of equipment with a current per-unit market value of $5,000 or more may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment. Methods used to determine per-unit fair market value must be documented, kept on file and made available to the awarding agency upon request.

4.19. If prior to the termination date of this Agreement, the PERFORMING PARTY or its subcontractors or subgrantees determine that any equipment acquired with funds provided as a result of this Agreement is no longer needed for support of the programs or projects referred to in Section 4.15, the TCEQ may require the PERFORMING PARTY to transfer title and possession to such equipment to the TCEQ or a third party named by the TCEQ.

4.20. The PERFORMING PARTY agrees that if a determination is made within six years of the initiation date of this Agreement that any equipment acquired with funds provided as a result of this Agreement is no longer needed for support of the programs or projects referred to in Section 4.15, the TCEQ has a right to require the transfer of any equipment having a fair market, per unit value of more than five thousand dollars ($5,000) to the TCEQ or a third party named by the TCEQ.

4.21. The PERFORMING PARTY shall not grant or allow to a third party a security interest in any original or replacement equipment purchased or constructed with funds made available to PERFORMING PARTY under this Agreement.

4.22. The PERFORMING PARTY agrees that, in the event any funds provided under this Agreement are in turn awarded to any subcontractor for the purchase or acquisition of any equipment by such other party, the PERFORMING PARTY's contract with that subcontractor shall include the requirements set forth in these General Conditions.

Substitutes and/or-Equal Items:

4.23. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be accepted by TCEQ.

4.24. Substitute Methods or Procedures: If a specific means, method, technique, sequence or procedure is shown or indicated in and expressly required by the Contract Documents, PERFORMING PARTY may furnish or utilize a substitute means, method, technique, sequence or procedure acceptable to TCEQ. PERFORMING PARTY shall submit sufficient information to allow TCEQ, in TCEQ's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents.

Concerning Subcontractors, Suppliers and Others

4.25. All contractual expenditures using funds provided under this Agreement shall meet all procurement laws and regulations applicable to the PERFORMING PARTY and subcontractor and the UGCMA and the UGMS. Note that competitive bidding will generally be required for contracts other than interlocal and interagency contracts, which are under Texas Government Code, Chapter 791 et seq. Note also that the Common Rule of OMB Circular A-102, as adopted in the UGMS, precludes the use of the cost plus a percentage of cost method of contracting.

4.26. The PERFORMING PARTY shall forward any proposed subagreement for the performance of work required under this Agreement's Scope of Work to TCEQ's Project Representatives prior to execution of the subagreement. The TCEQ may, within twenty-one (21) days of receipt of the proposed subagreement, provide written notice (fax acceptable) to the PERFORMING PARTY questioning whether the subagreement is for a legitimate purpose relating to the satisfaction of this Agreement or has been procured in accordance with the minimum standards of the UGCMA. The PERFORMING PARTY shall not enter into a questioned subagreement until the TCEQ has withdrawn all questions raised in the notice. Neither the TCEQ's failure to question a subagreement nor its subsequent withdrawal of any questions raised regarding a subagreement shall in any way imply the TCEQ's approval of the subagreement's purpose or method of procurement of the subagreement. Further, the terms of this provision do not in any way restrict the TCEQ's rights under this Agreement to subsequently refuse reimbursement for expenses incurred pursuant to the subagreement. The PERFORMING PARTY may require a bid bond to protect the local and state interests by assuring that a bidder will, upon acceptance, execute all required contractual documents within the time period specified.

4.27. No employee, officer or agent of the PERFORMING PARTY shall participate in selection, or in the award or administration of a subagreement supported by this Agreement if a conflict of interest, real or apparent, would be involved. Such a conflict arises when:

4.27.1. The employee, officer or agent,
4.27.2. Any member of his immediate family,
4.27.3. His or her partner, or
4.27.4. An organization which employs, or is about to employ any of the above,

has financial or other interest in the subcontractor selected. The officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to Subcontracts. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the PERFORMING PARTY officers, employees, or agents, or by contractors or their agents. See the UGMS, Part III, Subpart C, Sec.___.36(3).

4.28. The PERFORMING PARTY shall be responsible for the management and fiscal monitoring of all subcontractors and subgrantees. The PERFORMING PARTY shall monitor its subcontractors and subgrantees to ensure that the subcontractors and subgrantees are operating consistently with applicable laws and regulations, applicable contracting policies, and these Contract Documents. The PERFORMING PARTY shall ensure that all subcontractors and subgrantees comply with all record keeping and access requirements set forth in these Contract Documents. The TCEQ reserves the right to perform an independent audit of all subcontractors and subgrantees. PERFORMING PARTY, subcontractors and subgrantees shall maintain detailed records.

4.29. Funds provided by the TCEQ pursuant to this Agreement that are paid to the subcontractor shall be used by the subcontractor solely to satisfy the purposes of the Agreement.

Procurements

4.30. All procurements by the PERFORMING PARTY of goods and/or services under this Agreement shall be conducted in a manner providing full and open competition in accordance with Subpart C, Sec.__.36, Subsections (b) through (I) of Part III of the UGMS.

4.31. PERFORMING PARTY shall perform a cost or price analysis in connection with all procurements in excess of $5,000 which are not competitively procured. A cost analysis will also be required when adequate price competition is lacking and for sole source procurements, unless the reasonableness of the price can be established on the basis of a catalog or market price. Failure to follow these requirements for providing the greatest possible competition in a procurement is grounds for disallowance of costs for reimbursement.

4.32. All subgrants awarded by the PERFORMING PARTY under this Agreement shall be in accordance with Chapter 2261 Texas Government Code and Part III Subpart C, Sec.__.37, Subsection (b) of the UGMS.

Historically Underutilized Businesses

4.33 PERFORMING PARTY agrees that qualified HUBs shall have the maximum practicable opportunity to participate in the performance of the Work.

4.34 PERFORMING PARTY shall submit a completed HUB Progress Assessment Report with each quarterly invoice and payment request submitted under the provisions of ARTICLE 7 of the General Conditions of this Agreement, Payments to PERFORMING PARTY and Completion of the TCEQ State Funded Grant Agreement. If applicable this report shall include the name of the Disadvantaged Business Enterprise (DBE), a description of the work, services or materials provided, the amount paid to the DBE, and the name and telephone number of a contact person within the DBE.

4.35 PERFORMING PARTY failure to comply with this ARTICLE shall be grounds for termination for cause in accordance with ARTICLE 8 of the General Conditions of this Agreement.

4.36 *(Reserved)*

Intellectual Property Requirements

4.37 Intellectual Property

4.37.1 Royalties and Patent Fees. PERFORMING PARTY shall pay all license fees and royalties and assume all costs incident to the use or possession in the performance of the Work or the incorporation in the Work of any Intellectual Property.

4.37.2 Disclosure of Intellectual Property Produced during the Work. PERFORMING PARTY shall promptly notify TCEQ of all Intellectual Property which PERFORMING PARTY or PERFORMING PARTY's employees, subcontractors, or subcontractor's employees may produce,

either solely or jointly with others, during the course of the Work. In addition, PERFORMING PARTY shall promptly notify TCEQ of all Intellectual Property to which PERFORMING PARTY may acquire rights in connection with the performance of the Work. Any notification under this section shall contain sufficient technical detail to convey a clear understanding of the Intellectual Property, and shall identify any publication, sale, public use, or impending publication. Promptly upon request, PERFORMING PARTY shall supply such additional information as TCEQ may reasonably request.

4.37.3 If PERFORMING PARTY fails to protect any Intellectual Property Rights in the Intellectual Property produced in the course of performing the Work, TCEQ shall have full authority to protect, assume and retain all Intellectual Property Rights in any and all such Intellectual Property.

4.37.4. PERFORMING PARTY agrees that PERFORMING PARTY, its agents, and its employees shall not in any manner use, sell, distribute, disclose or otherwise communicate any portion of Intellectual Property owned by or licensed to TCEQ, except in the course of performing the Work, unless PERFORMING PARTY has independent Intellectual Property Rights to such Intellectual Property or written permission from TCEQ.

4.37.5. Grant of License. With respect to such Intellectual Property as is (i) incorporated in the Work (other than Intellectual Property for which TCEQ already possesses equal or greater Intellectual Property Rights by virtue of this Agreement or otherwise), (ii) produced by PERFORMING PARTY or PERFORMING PARTY's employees, subcontractors, or subcontractor's employees during the course of performing the Work under this Contract, or (iii) specifically identified in the Supplemental Conditions as Intellectual Property to which Intellectual Property Rights are granted pursuant to this section, PERFORMING PARTY hereby grants to TCEQ (i) a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, or otherwise use such Intellectual Property and associated use documentation, and (ii) a nonexclusive, perpetual, irrevocable, enterprise-wide license to authorize others to reproduce, publish, or otherwise use such Intellectual Property for TCEQs purposes.

4.37.6. Modification; Derivative Works. TCEQ shall have the right, in its own discretion, to independently modify any Intellectual Property to which license is granted herein for TCEQs own purposes and use, through the services of its own employees or independent contractors. TCEQ shall own all Intellectual Property Rights to such modifications. PERFORMING PARTY shall not incorporate any such modifications into its Intellectual Property for distribution to third parties unless it first obtains a license from TCEQ.

4.37.7 PERFORMING PARTY shall comply with all Laws and Regulations relating to Intellectual Property. PERFORMING PARTY represents and warrants to TCEQ that PERFORMING PARTY will not infringe any Intellectual Property Right of any third party. PERFORMING PARTY further represents and warrants to TCEQ that in the course of performing the Work it will not use or possess any Intellectual Property owned by a third party without paying any required royalty or patent fees. PERFORMING PARTY warrants that it has full title in and ownership of the Intellectual Property and any enhancements, updates or other modifications, or that it has full power and authority to grant all licenses granted herein, and that such license use by the TCEQ will in no way constitute an infringement or other violation of any Intellectual Property right of any third party. The PERFORMING PARTY warrants that it shall have, throughout any applicable license term hereunder, free and clear title to, or the right to possess, use sell, transfer, assign, license, or sublicense, products that are licensed or provided hereunder to the TCEQ by PERFORMING PARTY. Except as permitted in the Contract Documents, PERFORMING PARTY shall not create or permit the creation of any lien, encumbrance, or security interest in the Work or any part thereof, or any product licensed or provided hereunder to TCEQ for which title has not yet passed to TCEQ, without the prior written consent of TCEQ. PERFORMING PARTY represents and warrants to TCEQ that neither it nor any other company or individual performing the Work is under any obligation to assign or give to any third party any Intellectual Property rights granted or assigned to TCEQ, or reserved by TCEQ, pursuant to the Contract Documents.

4.37.8 Intellectual Property Claims. To the fullest extent permitted by law, PERFORMING PARTY shall indemnify, defend with counsel approved by TCEQ, and hold harmless TCEQ, and its officers, directors, employees and agents (indemnitees), from and against all fines, penalties, claims, damages, losses, demands, judgments, settlements, punitive damages, costs of suit, attorneys' fees and delays to other contractors (a demand), whether arising in tort or otherwise, and whether the parties are individually or jointly responsible from any damages, that arise from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of PERFORMING PARTY's performance hereunder or the use by PERFORMING PARTY or by indemnitees at the direction of PERFORMING PARTY of any information, article, or material, whether tangible or intangible, provided that upon becoming aware of a demand or threat of demand under this section, TCEQ shall promptly notify PERFORMING PARTY and PERFORMING PARTY shall be given full opportunity to negotiate a settlement. In the event of a demand or threat of demand, PERFORMING PARTY shall make best efforts to obtain permission for TCEQ to continue use of the allegedly infringing information, article or material; if PERFORMING PARTY is unable to secure such permission, PERFORMING PARTY shall, at PERFORMING PARTY's election, either i) provide a non-infringing substitute or work-around that is substantially similar in feature and functionality to the allegedly infringing information, article or material, or ii) refund to TCEQ all amounts paid for the Work subject to amortization for a five-year product life. In all events, TCEQ shall have the right to participate in the defense of any such suit or proceeding through counsel of its own choosing.

Accessibility Standards

4.38 PERFORMING PARTY expressly acknowledges that state funds may not be expended in connection with the purchase of electronic and information resources unless the system complies with the Electronic and Information Resources Accessibility Standards under 1 Texas Administrative Code (TAC) Chapter 213. Accordingly, the PERFORMING PARTY represents and warrants to the TCEQ that the technology provided to TCEQ for purchase meets the Electronic and Information Resources Accessibility Standards under 1 TAC Chapter 213.

Subgrant Activities

4.39 All subgrants awarded by the PERFORMING PARTY under this Agreement will be awarded on the basis of competitive applications and proposals when feasible. The applications and proposals will be evaluated utilizing criteria including cost comparison, probable quality of goods or services and past performance. Upon request, PERFORMING PARTY must provide evidence to support the selection and award.

4.40 Payments by PERFORMING PARTY to subgrantees shall be solely for reimbursement of actual allowable costs utilizing the same standards and requirements as the reimbursement payments from TCEQ to PERFORMING PARTY set out in this Agreement. No subgrant shall be made on a fixed-amount of cost reimbursement unless this method is specifically approved by the TCEQ based on supporting evidence of proposed subgrantee's actual costs.

4.41 All subgrant agreements must be in writing and must be approved by the TCEQ. The standards and requirements for reimbursements and standards for performance will be incorporated into the subgrant agreements as well as other provisions required by this Agreement.

Permits

4.42 Unless otherwise provided in the Contract Documents, PERFORMING PARTY shall obtain and pay for all construction permits and licenses. PERFORMING PARTY shall pay all charges of utility owners for connections to the Work, and PERFORMING PARTY shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations

4.43 PERFORMING PARTY shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, TCEQ shall not be responsible for monitoring PERFORMING PARTY's compliance with any Laws or Regulations.

4.44 If PERFORMING PARTY performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, PERFORMING PARTY shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom.

Uniform Grant and Contract Management Act (UGCMA)

4.45 The provisions of UGCMA, Texas Government Code, Chapter 783 applies to this Agreement, all amendments thereto, and all subcontracts and subagreements. Compliance with the conditions and requirements contained therein is necessary for the satisfactory performance of the services and work required under this Agreement.

Energy Efficiency Standards

4.46 The PERFORMING PARTY shall follow standards and policies on energy efficiency which are contained in the Texas State Energy Conservation Plan issued in compliance with federal requirements.

Taxes

4.47 Where applicable PERFORMING PARTY shall pay all sales, consumer, use and other similar taxes required to be paid by PERFORMING PARTY in accordance with the Laws and Regulations in connection with the work required by this Agreement.

Records, Documents, Data, Access, and Audit

4.48 The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the Work and requirements of the Contract Documents, including the Agreement or amendments thereto. All financial records shall be maintained in accordance with generally accepted accounting principles, the UGMS, all applicable law, including but not limited to the Texas Public Information Act, and these Contract Documents. The PERFORMING PARTY shall also maintain the financial information and data used in the preparation or support of any request for reimbursement (direct and indirect), price or profit analysis for this Agreement or any subagreement or subcontract 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 PERFORMING PARTY shall provide such facilities as are reasonably necessary for such access and inspection.

4.49 The PERFORMING PARTY agrees that all record keeping, quality assurance requirements, and access requirements shall be applicable to all subcontracts and subagreements.

4.50 The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from access to records and quality activities under this Agreement.

4.51 Records under Sections 4.48 and 4.49 shall be maintained by the PERFORMING PARTY during performance of Work under this Agreement, and for three (3) years after final payments, final expenditure reports and all other pending matters are closed. If any litigation, claim, negotiation, audit, quality assurance assessment, cost recovery, or other action (including actions concerning costs

of items to which an audit exception or nonconformance has been taken or identified) involving such records or corrective actions has been started before the expiration of the three year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later.

4.52 Access to records or work activity is not limited to the required retention periods. The entities designated in Section 4.48 shall have access to records or work activity at any reasonable time for as long as the records or work activity identified pursuant to an assessment is maintained by the PERFORMING PARTY.

4.53 This right-of-access ARTICLE applies to financial and quality records pertaining to this Agreement and all subagreements and amendments. In addition, this right of access ARTICLE applies to all records and work activities pertaining to this Agreement and all subagreements and amendments:

4.53.1 to the extent the records pertain reasonably to Agreement or subcontract performance;

4.53.2 if there is any indication that fraud, gross abuse, or corrupt practices may be involved; or

4.53.3 if the Agreement or subcontract is terminated for default or for convenience.

4.53.4. The Federal Government and its agencies will have the same rights of access to records as are granted to, assigned to, or reserved by the TCEQ under this Agreement.

Data and Publicity

4.55 All data and other information developed under this Agreement shall be furnished to the TCEQ and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, Section 552, Texas Government Code. Upon termination of this Agreement, copies of all pertinent data and information shall be furnished, at no charge to the TCEQ, upon request, to include data bases prepared using funds provided under this Agreement, and become the property of the TCEQ. Except as otherwise provided by these Contract Documents or the Act, the PERFORMING PARTY shall not provide data generated or otherwise obtained in the performance of its responsibilities under this Agreement to any party other than the State of Texas, unless so required by the Texas Public Information Act, or other applicable laws.

4.56 The PERFORMING PARTY agrees to notify and obtain the verbal approval of TCEQ prior to releasing any information to the news media regarding the activities being conducted under this Agreement.

Safety and Protection

4.57 Where applicable, PERFORMING PARTY shall be responsible for requiring subcontractors and subgrantees to maintain and supervise all necessary safety precautions and programs in connection with the Work. PERFORMING PARTY shall take all necessary safety precautions.

Independent Contractor

4.58 In performing any services hereunder, the PERFORMING PARTY is, and undertakes performance as, an independent contractor.

Lobbying Activities

4.59 As set forth in these Contract Documents, and in accordance with the UGMS, and State law, PERFORMING PARTY shall not use funds provided under this Agreement to support political activity either directly or indirectly. This preclusion includes funds paid in reimbursement of direct or indirect costs.

4.59.1 If it is reasonably foreseeable that payments to the PERFORMING PARTY under this Agreement will exceed $100,000, the PERFORMING PARTY shall comply with the following requirements. This ARTICLE applies regardless of whether the PERFORMING PARTY is a for-profit or not-for-profit entity, including a state or local governmental entity.

4.59.2 The PERFORMING PARTY shall comply with the requirements of the Anti-Lobbying Act (Public Law 101-121, Section 319, 31 U.S.C. 1352), and with all applicable regulations, standards, orders, or requirements issued thereunder. Any violation of this provision by the PERFORMING PARTY constitutes grounds for termination of this Agreement for default.

4.59.3 The PERFORMING PARTY shall forward to the TCEQ the Certification it is required to submit under Section 1352(b)(2)(c) of the Act, which requires the recipient of federal funds to certify that it is in compliance with the Act. It shall also forward to the TCEQ any disclosure forms it is required to submit under Section 1352(b)(2)(A)&(B) of the Act, which requires disclosure of lobbying activities paid for with non-federal funds.

4.59.4 PERFORMING PARTY shall require all of its subcontractors under subcontracts that will exceed $100,000: (1) as a condition of the subcontract, to furnish the PERFORMING PARTY with the Certification required under Section 1352(b)(2)(c) of the Act; and (2) to furnish the PERFORMING PARTY with any disclosure forms required under Section 1352(b)(2)(A)&(B) of the Act. PERFORMING PARTY shall promptly forward to the TCEQ any of the forms its subcontractors submit to it.

4.60 *(Reserved)*

Accounting Systems

4.61 The PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with 40 CFR Part 31.20.and all applicable State law, regulations, and policies relating to accounting standards or principles. The PERFORMING PARTY must account for costs in a manner consistent with such standards or principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

Independent Financial Audit

4.62 The PERFORMING PARTY shall engage an independent financial auditor and conduct an annual audit of the PERFORMING PARTY's financial statements in accordance with the Single Audit provisions of the UGMS.

4.62.1 All terms used in connection with audits in this Agreement shall have the definitions and meanings assigned in the Single Audit Circular in the UGMS.

4.62.2 Provisions of the Single Audit Circular in Part IV of the UGMS shall apply to all non-state government entities expending the funds of this grant, whether they are recipients, receiving the funds directly from the TCEQ, or are subrecipients, receiving the funds from a pass-through entity (a recipient or another subrecipient). In addition, the PERFORMING PARTY shall require the independent auditor to supply all audit work papers substantiating the work performed, at the request of the TCEQ or its designee.

Exceptions in Audit

4.62.3 TCEQ is required to take action on exceptions noted in an audit of PERFORMING PARTY's financial records. Therefore, PERFORMING PARTY agrees to submit to TCEQ a copy of the report to any audit conducted of the PERFORMING PARTY's financial records within 20 days of the PERFORMING PARTY's receipt of an audit report. At the same time, PERFORMING PARTY shall also provide a statement containing an explanation of the conditions giving rise to each exception

in the audit report as well as a plan for correction of any significant deficiencies in PERFORMING PARTY's operations or Agreement performance. TCEQ may approve the statement or reject as insufficient. At the option of the TCEQ, the PERFORMING PARTY may revise and resubmit. If the statement is initially or subsequently rejected by the TCEQ with no further opportunity to revise, the TCEQ may suspend payments or may terminate the Agreement for cause and may undertake any other remedies or sanctions provided under this Agreement.

Hazardous Substances, Waste Disposal and Manifests

4.63 PERFORMING PARTY, subcontractors and subgrantees must comply with all applicable Laws and Regulations.

Conflict of Interest

4.64 PERFORMING PARTY shall notify TCEQ immediately upon discovery of any potential or actual conflict of interest. PERFORMING PARTY agrees that TCEQ has sole discretion to determine whether a conflict exists and that TCEQ may terminate the Agreement under ARTICLE 8 of the General Conditions; using the mechanism provided under Section 8.2.1, on the grounds of actual or apparent conflict of interest. See ARTICLE 4, Section 4.27 of these General Conditions concerning conflicts of interest with subgrantees, subcontractors and others.

4.64.1 *Notice of Conflict of Interest:* The PERFORMING PARTY shall notify the TCEQ in writing of any actual, apparent, or potential conflict of interest regarding any individual performing or having access to information regarding the Work. As applicable, the notification shall include both organizational conflicts of interest and personal conflicts of interest. Any individual with a personal conflict of interest shall be disqualified from taking part in any way in the performance of any work that created the conflict of interest.

Survival of Obligations:

4.65 All representations, indemnifications, warranties and guarantees 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 final payment, completion and acceptance of the Work and termination or completion of the Agreement.

Interest and Unexpended Funds

4.66 *Interest Earned on Grant Agreement Funds.* If PERFORMING PARTY earns any interest from grant funds, then PERFORMING PARTY is required to handle interest earned from grant funds in the same manner and under the same conditions as the actual grant funds. This includes at a minimum, describing the expenditure of the interest funds in the plan and budget of PERFORMING PARTY submitted to the TCEQ, and reporting the actual use of that interest to the TCEQ on the financial reports required under the new grant Agreement.

4.67 *Unexpended funds and Interest Remaining at Termination.* The PERFORMING PARTY shall, not later than one hundred and twenty (120) days following termination of this Agreement, or thirty (30) days following submittal of the Fourth Quarter Financial Status Report, whichever is earlier, return to the TCEQ any unexpended disbursements and/or reimbursements remaining in any accounts containing such funds. By not later than the same date, the PERFORMING PARTY, unless authorized otherwise in writing by the TCEQ, shall return to the TCEQ any remaining interest earned, in excess of one hundred dollars ($100). Amounts of earned interest less than one hundred dollars ($100) may be retained by the PERFORMING PARTY for administration expenses.

ARTICLE 5. TCEQ'S RESPONSIBILITIES

5.1 The Executive Director of the TCEQ will identify persons authorized to give direction to the PERFORMING PARTY, and act on behalf of the TCEQ. The persons designated as the TCEQ's authorized representatives are identified on page ii of this Agreement.

5.2 The Executive Director of the TCEQ hereby authorizes such identified person to further delegate his or her authority as necessary, including a delegation of authority to a TCEQ employee.

5.3 The Contract Documents and the UGMS contain provisions that provide for withholding of payment as well as suspension and termination of the Agreement by the TCEQ.

5.4 The TCEQ shall not supervise, direct or have control or authority over, nor be responsible for, PERFORMING PARTY's means, methods, techniques, sequences or procedures of performing the Work or the Safety precautions and programs incident thereto, or for any failure of PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the Work. TCEQ will not be responsible for PERFORMING PARTY's failure to perform or furnish the Work in accordance with the Contract Documents.

ARTICLE 6. CHANGES IN THE WORK

6.1 The Executive Director of the TCEQ, or his Project Representative may, at any time, by written notification to the PERFORMING PARTY, make changes to the scope of this Agreement or in the services or work to be performed. If such changes cause an increase or decrease in the PERFORMING PARTY's cost of, or time required for, performance of any services under this Agreement, whether or not changed by an order, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly. Any claim of the PERFORMING PARTY for adjustment under this clause must be asserted in writing within thirty (30) days after the date of receipt by the PERFORMING PARTY of the notification of change, unless the Executive Director of the TCEQ or his Project Representative grants a further period of time before the date of final payment under this Agreement.

6.2. An Amendment (Major Change) will include one or more of the following:

6.2.1 an increase or decrease in the amount of compensation to the PERFORMING PARTY;

6.2.2 an extension or shortening of the term of the Agreement;

6.2.3 a significant change in the scope of the Agreement or the services to be performed; or

6.2.4 any action that is beyond the authority of the Executive Director or the Project Representative of the TCEQ.

6.3 Implementation of a Major Change must be preceded by a formal written amendment to the Agreement. Requests for an Amendment must be in writing and be submitted to the TCEQ Project Representatives prior to initiating changes. The amendment must contain a description of the proposed change. The amendment must be signed by persons authorized to bind each party in contract. Any amendment that will exceed the contractual authority of the Executive Director of the TCEQ also requires the consent, at Agenda, of a majority of Commissioners of the TCEQ.

6.4 Any proposed change that is not a Major Change (Amendment) may qualify as a Minor Change. A Minor Change shall require written approval by a TCEQ Project Representative, but shall not require a formal amendment to the Agreement. The request for a Minor Change shall be submitted to the TCEQ Project Representatives identified on page ii of this Agreement. Any Minor Change request shall include all of the proposed changes, the justification for the change, and a copy of the proposed revision. Approval of the Minor Change must be obtained prior to implementing any of the proposed changes. Specifically, the TCEQ will not review the PERFORMING PARTY's requests for

reimbursement for activities that have not been included in an approved work plan. A copy of the authorization must be retained in the appropriate file of both the PERFORMING PARTY and the TCEQ.

6.5 If the PERFORMING PARTY requests a Minor Change and a TCEQ Project Representative does not approve the request as a Minor Change, then the change shall be deemed a Major Change and the PERFORMING PARTY may only obtain authorization to proceed in accordance with Section 6.3 of this ARTICLE.

6.6 PERFORMING PARTY is permitted to rebudget within the approved direct cost budget to meet any unanticipated requirements and may make limited program changes to the approved project. Certain types of these changes require the prior written approval of the TCEQ. Applicable cost principles set forth in 40 CFR 31.22 contain additional requirements for prior approval of certain types of costs and apply to all grants and subgrants. Prior approval shall be required as follows:

6.6.1 Any change resulting in the need for additional funding;

6.6.2 Cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs of projects and which exceed or are expected to exceed the total budget by ten percent (10%);

6.6.3 Transfers of funds allotted for training allowances.

6.6.4 Changes in key personnel in cases where specified in an application or grant award.

6.6.5 Subcontracting those activities which are central to the purposes of the award

6.7 Any request shall be in writing to TCEQ and the TCEQ shall promptly review and approve or disapprove the request in writing. If such changes require federal prior approval, TCEQ shall obtain that approval before approving the request

Inclement Weather

6.8 A deadline set forth in the schedule of deliverables may be extended by a period equivalent to the time lost because of inclement weather that precludes work towards the completion of that deliverable. The PERFORMING PARTY shall maintain, and make available at the TCEQ's request, daily records adequately supporting its claim that inclement weather precluded work towards the completion of a deliverable. The PERFORMING PARTY shall make best attempts to recoup time lost due to inclement weather. The PERFORMING PARTY shall notify the TCEQ in writing (fax acceptable) prior to the deliverable deadline of the deadline extension pursuant to this ARTICLE. Extensions of a deliverable deadline pursuant to this ARTICLE will constitute a minor change. No extension under this section shall extend the terms of this Agreement. The TCEQ reserves the right to reject, in good faith, within 30 days of receipt of the notification of the deadline extension, the PERFORMING PARTY's claim that inclement weather precluded work towards the completion of a deliverable.

Waiver

6.9 Unless authorized in accordance with these Contract Documents (relating to Changes), or in writing by the TCEQ, no waiver of any obligation of the PERFORMING PARTY, the authorized waiver by the TCEQ of such obligation shall not constitute a continuing waiver of the obligation. No waiver by the TCEQ Executive Director shall constitute a waiver of the TCEQ's subsequent right to demand and receive performance within a reasonable time to be specified by the TCEQ, in accordance with all the provisions of this Agreement.

ARTICLE 7. PAYMENTS TO PERFORMING PARTY

Payment based on Reimbursement of Actual Cost of Performance

7.1 Allowable Costs. Payments from the TCEQ to the PERFORMING PARTY are for reimbursement of PERFORMING PARTY's actual allowable costs of PERFORMING PARTY's performance. Actual costs include reasonable and necessary direct and indirect costs. Allowable costs are those deemed allowable by the TCEQ in accordance with the requirements of this Agreement and the following which are hereby incorporated into this Agreement:

7.1.1 UGMS prepared and promulgated by the office of the Governor of Texas;
7.1.2 Rules and guidelines of the office of the Governor of Texas
7.1.3 Allowable Expenditure Guidelines of the TCEQ
7.1.4 Applicable rules and policies of the TCEQ
7.1.5 Applicable State law
7.1.6 For funds received from a federal government source, applicable federal regulations and law.

Payments by TCEQ

7.2 PERFORMING PARTY must request payment by submitting one copy of an itemized invoice in a format provided by the TCEQ, and such other necessary forms as the TCEQ requires relating to the expenditure of funds. PERFORMING PARTY shall also submit any supporting documentation required by TCEQ. The TCEQ Contract Manager and Project Manager will review the submittal and approve or reject the request for payment in accordance with this Contract and TCEQ policy and procedures. PERFORMING PARTY must make any revisions required by the TCEQ in order to gain approval. TCEQ is not obligated to make payment until the request for payment is approved by TCEQ. TCEQ will not in bad faith delay or withhold payment to the PERFORMING PARTY.

Fixed-Amount Cost Reimbursement

7.3 In accordance with Chapter 2261 Texas Government Code, all payments by TCEQ to PERFORMING PARTY are based on reimbursement of PERFORMING PARTY's actual costs incurred in performing the Work. This Agreement utilizes a pre-determined fixed-amount of reimbursement. If in fact the pre-determined fixed-amount exceeds the actual costs of performance, TCEQ may recover the excess amount paid by 1) rejecting all or part of any reimbursement requests by PERFORMING PARTY and retaining amounts sufficient for repayment; or 2) by demanding and receiving repayment of the amount from PERFORMING PARTY. TCEQ may also use any other remedies and sanctions available under this Agreement.

Contractual Costs

7.4 PERFORMING PARTY's contractual costs must comply with allowable costs requirements. PERFORMING PARTIES which are governmental entities must engage in contractor selection on a competitive basis when required by law or regulation and abide by their established competitive procurement policies. If PERFORMING PARTY has no competitive procurement policy or is a private entity, PERFORMING PARTY must generally select contractors by evaluation and comparison of price, quality of goods or services and past performance.

Comparison of PERFORMING PARTY's Costs

7.5 Upon request by the TCEQ, the PERFORMING PARTY shall provide a report to verify that its costs of performance are reasonably comparable to prices generally charged for similar goods or services.

Indirect Cost Rate

7.6 If indirect costs are to be paid under this Agreement, PERFORMING PARTY shall also submit an indirect cost proposal and a copy of an approval document reflecting that the proposed indirect cost rate has been approved by a federal agency or a federally certified State or local agency.

Duplication of Effort Prohibited

7.7 In addition to the funds provided to PERFORMING PARTY under this Grant Agreement, the TCEQ may provide funds to PERFORMING PARTY under a separate Grant Agreement (so that funds of two or more TCEQ grants are funding a single activity of PERFORMING PARTY). PERFORMING PARTY must monitor all activities to ensure that the grant funds complement one another and do not result in double payments for the same activity.

Payment Request Procedures

7.8. All requests for reimbursement under this Agreement shall be submitted in accordance with the requirements set forth in this ARTICLE.

7.9 On a quarterly basis, within thirty (30) days after the end of a quarter, the PERFORMING PARTY shall submit one copy of an itemized invoice in a format provided by the TCEQ, along with any other documentation deemed necessary by TCEQ for processing, including the HUB PAR form, Quarterly Financial Status Report (FSR), and the Crystal Reports in order to obtain payment for tasks completed under this Agreement. Completed request for reimbursement packages should be mailed or delivered to the TCEQ Contract Manager listed in the TCEQ Representatives identified on page ii of this Agreement.

7.10 The TCEQ Contract Manager and Project Manager will review the invoice and other necessary documents for request for payment for services performed as identified in Section 7.8 of this ARTICLE and as required in Scope of Work Section. If the review indicates that additional information is required for payment, the TCEQ Contract Manager will provide a written explanation of why the request or the work identified in the request is unacceptable. If the request does not satisfactorily demonstrate the accomplishment of the required tasks, the TCEQ Contract Manager will not authorize payment on the accompanying payment request until such time as deficiencies have been corrected pursuant to ARTICLE 7.2 of this section.

7.11 TCEQ is not obligated to make payment until the request for reimbursement is approved by TCEQ. Further, the TCEQ reserves the right to suspend payment for any incomplete, inconsistent or incorrect services or reports as required by this Agreement until the PERFORMING PARTY satisfactorily completes, revises, or corrects such services or reports. TCEQ will not in bad faith delay or withhold payment to the PERFORMING PARTY.

Closeout

7.12 When it is determined that all applicable administrative activities and all required work of the grant have been completed, the TCEQ shall close out the award. Within thirty (30) days after the expiration or termination of the grant, the PERFORMING PARTY must submit all financial, performance, and other reports required as a condition of the grant. These reports may include, but are not limited to:

7.12.1 All performance or progress reports required by this Agreement.
7.12.2 Financial Status Report
7.12.3 Final request for payment
7.12.4 Invention disclosure (if applicable).
7.12.5 State-owned property report (if applicable).

7.13 In accordance with the UGMS, a PERFORMING PARTY must submit an inventory of all state-owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the TCEQ of property no longer needed.

7.14 Within ninety (90) days of receipt of the reports set forth above, the TCEQ will make upward or downward adjustments to the allowable costs. The TCEQ agency will make prompt payment to the PERFORMING PARTY for allowable reimbursable costs. Closeout of the grant does not affect:

7.14.1 The TCEQ's right to disallow costs and recover funds on the basis of a later audit or other review;
7.14.2 The PERFORMING PARTY's obligation to return any funds due as a result of later refunds, corrections, or other transactions;
7.14.3 Records retention as required herein;
7.14.4 Property management requirements set forth herein; and
7.14.5 Audit requirements set forth herein.

7.15 The PERFORMING PARTY must immediately refund to the TCEQ any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grant.

7.16 Any funds paid to a PERFORMING PARTY in excess of the amount to which the PERFORMING PARTY is finally determined to be entitled under the terms of the award constitute a debt to the TCEQ. If not paid within a reasonable period after demand, the TCEQ may reduce the debt by:

7.16.1 Making an administrative offset against other requests for reimbursement;
7.16.2 Withholding advance payments otherwise due to the PERFORMING PARTY, or
7.16.3 Other action permitted by law.

7.17 Except where otherwise provided by statutes or regulations, the TCEQ will charge interest on an overdue debt in accordance with the UGMS. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

7.18 Upon satisfactory completion of the work performed hereunder and prior to final payment under this Agreement for such work, or prior to settlement upon termination of this Agreement and as a condition thereto, the PERFORMING PARTY shall execute and deliver to the TCEQ a release of all claims for payment of any funds due and payable by the TCEQ pursuant to the terms of this Agreement. Such release shall be conditioned upon payment of all fund amounts due and payable to PERFORMING PARTY under this Agreement, and limited to only those claims which reasonably could have been foreseen at the time the release is executed. PERFORMING PARTY reserves the right to identify claims to be excluded thereby.

7.19 The PERFORMING PARTY shall provide to the TCEQ documentation showing all tasks that have been completed by the PERFORMING PARTY.

7.20 Final Payment under this Agreement or settlement upon termination shall not constitute a waiver of the TCEQ's claims against the PERFORMING PARTY.

Cost Provisions Applying Solely to Regional Planning Commissions and Councils of Government

7.21 The provisions of this section apply solely to the PERFORMING PARTY, subgrantees and other recipients of the funds under this Grant Agreement defined as a "Regional Planning Commission" as defined in Chapter 391 of the Texas Local Government Code, which includes, among others, a Council of Government. In the event of conflict with other provisions of the Agreement Documents, the provisions of this ARTICLE prevail.

7.21.1 PERFORMING PARTY shall comply with all requirements and rules adopted by the Office of the Governor of Texas pursuant to Section 391.009, Texas Local Government Code relating to the operation and oversight of Regional Planning Commissions.

7.21.2 PERFORMING PARTY shall comply with the requirement of Chapter 391, Texas Local Government Code by adopting competitive procurement methods equivalent to Chapter 252, Texas Local Government Code for the purchase of all goods and services. PERFORMING PARTY shall notify the TCEQ upon adoption of these methods.

7.21.3 PERFORMING PARTY shall comply with all other requirements of Chapter 391 Texas Local Government Code with special attention to the following restrictions on the use of funds provided under this Agreement:

7.21.3.1	Contracts with or employment of lobbyists
7.21.3.2	Lobbying activities by employees
7.21.3.3	Auto allowance of members of the governing body
7.21.3.4	Travel reimbursements at the state rate
7.21.3.5	Alcoholic beverages and entertainment
7.21.3.6	Indirect cost rate limited to 15% of total direct expenditures
7.21.3.7	Classification salary schedules and appropriate exempt positions.

7.22 If indirect costs are to be paid under this Agreement, PERFORMING PARTY shall also submit an indirect cost proposal and a copy of an approval document reflecting that the proposed indirect cost rate and an analysis of the determination for the proposed indirect cost rate.

ARTICLE 8. TERMINATION

8.1 This Agreement shall terminate upon full performance of all requirements contained herein, unless extended in writing.

8.2 This Agreement may be terminated in whole or in part by either party in the event of a material failure to comply with the Agreement terms, in accordance with the UGMS: Provided that no such termination may be effected unless the other party is given

8.2.1 not less than ten (10) working days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and

8.2.2 an opportunity for consultation with the terminating party prior to termination.

8.3 This Agreement may be terminated in whole or in part in writing by the TCEQ for its convenience, in accordance with the UGMS: Provided that the PERFORMING PARTY is given not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate. Circumstances in which the TCEQ may terminate for convenience include, but are not limited to, the Texas Legislature's withdrawal of appropriations for this project.

8.4 If the TCEQ terminates the Agreement for a material failure to comply with the Agreement terms under Section 8.2 or the TCEQ terminates the Agreement for convenience under Section 8.3, an adjustment in the Agreement amount shall be made in accordance with the UGMS.

8.5 Upon receipt of a termination action pursuant to Sections 8.2 or 8.3 above, the PERFORMING PARTY shall:

8.5.1 promptly discontinue all services affected (unless the notice directs otherwise), and

8.5.2 deliver or otherwise make available to the TCEQ all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the PERFORMING PARTY in performing this Agreement, whether completed or in the process.

8.6 If, after termination for failure of the PERFORMING PARTY to fulfill contractual obligations, it is determined that the PERFORMING PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the TCEQ.

8.7 If any delay or failure of performance is caused by a *force majeure* event as described in the *force majeure* ARTICLE of this Agreement, either party may in its sole discretion terminate this Agreement in whole or part pursuant to this ARTICLE.

Force Majeure

8.8 A *force majeure* event shall be defined to include decrees of or restraints by a governmental instrumentality, acts of God (except that rain, wind, flood or other natural phenomena normally expected for the locality shall not be construed as an act of God), work stoppages due to labor disputes or strikes, fires, explosions, epidemics, riots, war, rebellion, and sabotage.

8.9 Provided this Agreement has not been terminated, and subject to the conditions below, if a delay or failure of performance by either party results from the occurrence of a *force majeure* event, the delay shall be excused and the time fixed for completion of the work extended by a period equivalent to the time lost because of the event if, and to the extent that:

8.9.1 the delay or failure was beyond the control of the party affected and not due to its fault or negligence; and

8.9.2 the delay or failure was not extended because of the affected party's failure to use all diligence to overcome the obstacle or to resume performance immediately after the obstacle was overcome.

8.10 No time extension shall be granted under this ARTICLE unless the party seeking relief has notified the other in writing within a reasonable time after commencement of the event, of the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay, and the timetable by which the PERFORMING PARTY intends to implement these measures. The party seeking relief shall also give written notice of the ending of the event within a reasonable time after the event has ended. Both TCEQ and PERFORMING PARTY shall not unreasonably deny a written request for relief by the other.

8.11 The TCEQ shall be responsible for costs related to a *force majeure* event only if they are incurred by the PERFORMING PARTY after the prior written request by the TCEQ Project Representative, to incur such costs in connection with any *force majeure* event. Neither the TCEQ nor the PERFORMING PARTY shall have, and both hereby waive, any claim whatever for any damages resulting from delays caused by *force majeure* events.

ARTICLE 9. MISCELLANEOUS

Computation of Times:

9.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a federal holiday, such day will be omitted from the computation.

9.2 A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

9.3 A working day is any day that both the TCEQ and the PERFORMING PARTY are open for business.

Notice of Claim:

9.4 Should TCEQ or PERFORMING PARTY suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this section shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or sovereign immunity.

Professional Fees and Court Costs Included:

9.5 Whenever reference is made to "claims, costs, losses, and damages," it shall include in each case, but not be limited to, all fees and charges of TCEQ, architects, attorneys and other professionals and all court or other dispute resolution costs.

Acknowledgment of Financial Support

9.6 The PERFORMING PARTY shall acknowledge the financial support of the TCEQ whenever work funded, in whole or part, by this Agreement is publicized or reported in news media or publications. All reports and other documents completed as a part of this Agreement, other than documents prepared exclusively for internal use within the TCEQ, shall carry the following notation on the front cover or title page:

PREPARED IN COOPERATION WITH THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

The preparation of this report was financed through grants from the State of Texas through the Texas Commission on Environmental Quality

ARTICLE 10. INSURANCE, LIABILITY AND INDEMNIFICATION

10.1 To the extent permitted by law, the PERFORMING PARTY agrees to indemnify and hold harmless the TCEQ and all of its employees and officers against and from any and all liability, loss, or damage arising out of the performance of this Agreement. To the extent that any activity conducted by PERFORMING PARTY with funds provided under this Agreement entails significant risk of loss or injury to individuals and third parties or their property, the PERFORMING PARTY shall secure and maintain insurance sufficient to protect PERFORMING PARTY and the TCEQ, and its employees and officers against claims arising from the conduct of such activities.

10.2 In all subcontracts and subgrants, PERFORMING PARTY shall require its subcontractors and subgrantees to obtain and maintain, at their own expense, insurance as will protect the subcontractor, the PERFORMING PARTY and the TCEQ, its employees, and its officers from all such claims arising from the performance by the PERFORMING PARTY's subcontractors or subcontractors' employees resulting from the functions and services required under this Agreement, including workers compensation in accordance with Texas statutory requirements.

10.3 PERFORMING PARTY shall purchase and maintain Directors and Officers insurance or equivalent insurance coverage or other financial assurance sufficient to protect the interests of the state in the event of an actionable act or omission by a director or officer of the PERFORMING PARTY. Self-insurance may satisfy the requirements of this section if the PERFORMING PARTY is a home rule municipality and the PERFORMING PARTY's self insurance covers acts or omissions of officers or directors.

ARTICLE 11. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

11.1 In accordance with Chapter 2261, Texas Government Code, the TCEQ is required to monitor PERFORMING PARTY's performance under this Agreement. Therefore, PERFORMING PARTY agrees that the following are appropriate standards for PERFORMING PARTY's performance during the Agreement:

11.1.1 **Timeliness of Work.** Standard: Work is provided on schedule.

11.1.2 **Quality of Work.** Standard: PERFORMING PARTY's Work conforms to the requirements of the Agreement and is technically accurate.

11.1.3 **Subcontract Activities.** Standard: PERFORMING PARTY's subcontract and subgrant activities comply with all TCEQ contract requirements regarding subcontracts especially competitive procurement methods for goods and services, use of required subcontract provisions, and monitoring performance of subcontractors and subgrantees.

11.1.4 **Administrative and Financial Operations.** Standard: PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in the contract especially record-keeping, reimbursement requests, audits, allowable costs, and restricted expenditures.

Performance Measures

11.2 TCEQ will monitor PERFORMING PARTY 's performance and evaluate the level of compliance with the standards utilizing the following performance measures:

Satisfactory: PERFORMING PARTY generally complied with the standard, consistently; occasional deficiencies may have occurred which were corrected on a timely basis.

Unsatisfactory: Significant deficiencies have occurred, or PERFORMING PARTY frequently or substantially failed to comply with the standard.

Agreement Monitoring and Evaluation Report

11.3 In accordance with Chapter 2261 Texas Government Code, TCEQ will monitor and evaluate PERFORMING PARTY's performance utilizing the performance standards and performance measures set out in this Agreement. TCEQ will prepare a cumulative written report of the evaluation upon termination or expiration of the Agreement and also as frequently as determined appropriate by the TCEQ.

Resolution Process for Disallowed /Questioned Costs:

11.4 The PERFORMING PARTY has the right to dispute any such determination by the TCEQ, utilizing the process identified in ARTICLE 12 of this section.

Schedule of Remedies available to the TCEQ

11. 5 In accordance with Chapter 2261 Texas Government Code, the following Schedule of Remedies applies to this Agreement in the event of substandard performance or other failure to conform to the requirements of the Agreement or applicable law.

11.5.1 Reject substandard performance and request corrections without charge to the TCEQ.

11.5.2 Issue notice of substandard performance or other non-conforming act or omission.

11.4.3 Request and receive return of any over payments or inappropriate payments.

11.4.4 Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity.

11.5.5 Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity.

11.5.6 Reject reimbursement request and withhold all or partial payments. Funds may be retained by the TCEQ for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law.

11.5.7 Terminate the Agreement, demand and receive: return of all equipment purchased of contract funds, return of all unexpended funds, and repayment of expended funds.

11.5.8 Withhold payment to the PERFORMING PARTY for future air program activities and/or result in the PERFORMING PARTY becoming ineligible for future funding.

Sanctions for Substandard Performance

11.6 If the TCEQ evaluation finds PERFORMING PARTY's performance to be substandard, TCEQ may provide its written evaluation report to other governmental entities at any time. TCEQ may also provide its written evaluation report to the public as authorized by law.

Cumulative Remedies

11.7 TCEQ may avail itself of any remedy or sanction provided in this Agreement or in law to recover any losses rising from or caused by the PERFORMING PARTY's substandard performance or any non-conformity with the Agreement or the law. The remedies and sanctions available to TCEQ in this Agreement shall not limit the remedies available to the TCEQ under law.

11.8 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the Schedule of Remedies, obligations imposed upon PERFORMING PARTY by these General Conditions, and all other rights and remedies available to TCEQ thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available, by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this section will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

ARTICLE 12. DISPUTE RESOLUTION

Alternative Dispute Resolution

12.1 The dispute resolution process provided for in Chapter 2260 of the Texas Government Code and applicable rules of the TCEQ must be used by the Contractor to attempt to resolve all disputes arising under this Agreement.

SCOPE OF WORK SECTION

The PERFORMING PARTY shall perform the following tasks by the deadlines indicated in this Scope of Work section. Only work related to tasks listed in the Notice to Proceed for which the funding level is listed as greater than zero are subject to the requirements of this Scope of Work section.

1. Grants

The PERFORMING PARTY shall complete all the Work described in this Scope of Work section and shall fully comply with all requirements.

2. Administrative Regulations

2.1 Changes to Documents. The TCEQ may update, add new, or remove any or all of the forms and other documents referenced in this Agreement as either a minor or major amendment to this Agreement, depending upon the nature of the change provided TCEQ provides notice to the PERFORMING PARTY at least fifteen (15) working days prior to the new document becoming part of the Contract Documents.

2.2 Changes to Guidance Documents. The TCEQ may update, add new, or remove any or all of the guidance documents referenced in this Agreement. The TCEQ shall promptly notify the PERFORMING PARTY in writing of any changes to the guidance documents, and will attach a copy of the updated documents and/or an electronic address of the location of the electronic document. The PERFORMING PARTY shall implement updated editions of any such documents within the time frames specified within each of the documents or within the communication describing the document change or within thirty (30) days of receipt, whichever comes first. If the PERFORMING PARTY does not agree to comply with updated editions of these documents, the PERFORMING PARTY shall have the option of declining to perform a particular task (as task is defined by this Scope of Work) which requires use of these documents. If the PERFORMING PARTY declines to perform all or part of a task, it will not receive any payment for that task.

2.3 Fiscal Analysis of Fixed Payment. Within thirty (30) days after the beginning of each fiscal year of this Agreement term, the PERFORMING PARTY shall submit to the TCEQ documentation showing how it will provide matching funds for its share of the State Compliance Agreement funds as required by ARTICLE 3, Section 3.2 of the Supplementary Conditions of this Agreement. Documentation shall also include the indirect rate, basis for indirect rate, list of current and known future expenses, and an itemized breakdown of direct charges. If the PERFORMING PARTY does not utilize an indirect rate, it must state so in the documentation.

2.4 Requests for Payment. On a quarterly basis from the beginning of the Agreement Term, the PERFORMING PARTY shall submit requests for payment to the TCEQ Contract Manager in accordance with ARTICLE 7of the General Conditions of this Agreement.

2.5 Reserved.

2.6 Financial Status Report. Each quarterly request for payment must include a quarterly Financial Status Report (FSR). The PERFORMING PARTY shall submit the final FSR with the fourth quarter invoice for each fiscal year of this Agreement. With each FSR, the PERFORMING PARTY shall submit a list of property purchased wholly or partially with funds from this Agreement and having a unit acquisition cost of $5000 or more. The FSR shall be completed in accordance with the most recent version of the FSR Form and Instructions. The FSR shall satisfy state financial reporting requirements for this Agreement. The requirements of this paragraph shall survive the termination of this Agreement.

2.7 A copy of the annual independent financial audit required by the UGMS shall be provided by the PERFORMING PARTY to the TCEQ Contract Manager within nine (9) months after the end of the PERFORMING PARTY's fiscal year for each fiscal year of the contract period.

2.8 The PERFORMING PARTY shall implement and maintain internal quality control procedures to ensure completeness and accuracy of all Agreement deliverables.

2.9 Annual Work Plan Development. Work Plans shall be submitted by August 1 of each fiscal year of this Agreement, and a consensus shall be reached on the Work Plan by August 15 of each fiscal year. The developed Work Plan shall be comprised of work consistent with the direction and intent of the Compliance Monitoring Strategy and the Risk-based Investigation Strategy for the TCEQ Air and/or Stage II programs. To the extent practical, the Work Plan shall be implemented so that one-fourth (1/4) of the Work Plan activities are completed within each fiscal year quarter.

3. Performance Evaluations of PERFORMING PARTY

Consistent with ARTICLE 11 of the General Conditions of this Agreement (related to Standards for PERFORMING PARTY's PERFORMANCE), the TCEQ will evaluate the PERFORMING PARTY's work.

3.1 Ongoing work product evaluations. The TCEQ will make evaluations of PERFORMING PARTY's work in an ongoing manner throughout the Agreement term. Evaluations will be conducted of PERFORMING PARTY's work product utilizing standardized procedures and will typically be conducted by one or more persons designated with that task by the TCEQ Regional Representative. At least two of the ongoing evaluations shall be conducted in conjunction with oversight investigations. An oversight investigation may be either a joint or follow-up investigation. A joint investigation is defined as an investigation in which a TCEQ representative accompanies the PERFORMING PARTY during an investigation for the primary purpose of PERFORMING PARTY program oversight. A follow-up investigation is an investigation conducted by a TCEQ representative for the primary purpose of PERFORMING PARTY program oversight at a site where the PERFORMING PARTY had recently completed an investigation.

The TCEQ provides written assessments of each work product evaluated, including oversight investigation results and file reviews. Written work product evaluations will be provided to the PERFORMING PARTY's representative responsible for the day to day implementation of the program by the 7th working day of each month for work product evaluations conducted in the preceding month, or at another mutually agreed upon time during the month. The review and evaluation of work products by the TCEQ is not a substitute for the PERFORMING PARTY's supervisory review. The PERFORMING PARTY's supervisory staff maintains full responsibility for assuring the quality of investigations and reports, as well as all related documentation, including data entry, in accordance with agency directives and the terms of this contract.

3.2 Periodic program evaluation meetings. The intention of periodic program evaluations is to ensure ongoing program effectiveness. Evaluations of the PERFORMING PARTY are based on both individual work product evaluations and trends identified through work product evaluations as well as performance under the various activities required under the Agreement. Program evaluation meetings will be held at least quarterly during the course of this Agreement term. The meetings will include at least the TCEQ Regional Representative or his/her designee, the TCEQ Air and Waste Section Managers and the PERFORMING PARTY's representative responsible for day to day program oversight. Standing topics for each meeting should include at least the following topics:

- Updates on progress made on the work plan;
- Updates on program implementation issues;
- Work plan development for future years;
- Discussions on progress implementing corrective action plans, if any, and;
- Discussions related to the various work product evaluations conducted by the TCEQ.

If the TCEQ work product evaluations conducted since the previous meeting result in the TCEQ identifying deficiencies or a trend toward unsatisfactory performance, the discussions will include the conditions that contributed to the deficiency or trend. The TCEQ Regional Representative or designee will document the meeting and will provide meeting minutes or a meeting summary to the PERFORMING PARTY's representative within three calendar weeks of the meeting.

3.3 Unsatisfactory Performance. If after discussions with the PERFORMING PARTY during the program evaluation meeting, the TCEQ Regional Representative determines that a structural or procedural problem is the likely source of the deficiency or trend, the TCEQ Regional Representative will document this issue and notify the PERFORMING PARTY, in writing, of the suspected program deficiency or unsatisfactory performance within thirty (30) days of the date of discovery.

The PERFORMING PARTY shall provide a written response to the TCEQ within thirty (30) days of receiving the TCEQ notification. The PERFORMING PARTY shall provide either an explanation of why no program deficiency should be found, or a corrective action plan where one is warranted. For disputed findings, the PERFORMING PARTY shall include any new information in the explanation that was not previously presented. Any corrective action plan shall include a statement of the problem being addressed by the corrective action plan, the identification of measures implemented to correct the specific problems identified, structural or procedural measures that have been or will be taken to preclude similar problems from recurring, a time line for implementation of such measures, and milestones and measures to be used to demonstrate improvement. The plan will be reviewed for approval by the appropriate TCEQ representatives. Upon acceptance, the plan shall be implemented immediately by the PERFORMING PARTY.

3.4 Correction to unsatisfactory performance. The efficacy of any plans submitted under Paragraph 3.3 of this section will be assessed through the review of documentation submitted in support of the plan, and through subsequent periodic work product evaluations and demonstrations made by the PERFORMING PARTY concerning progress made to correct the underlying cause of the unsatisfactory performance. Demonstrations concerning corrective action plans shall be provided to the TCEQ by the PERFORMING PARTY during the periodic program evaluation meetings unless the TCEQ specifically agrees to an alternative schedule or venue of demonstrations.

3.5 Sanctions for unsatisfactory performance. The TCEQ may avail itself of any remedies identified in ARTICLE 11 of the General Conditions of this Agreement after the TCEQ makes a written finding to the PERFORMING PARTY of unsatisfactory performance. Where TCEQ has reimbursed the PERFORMING PARTY for work later discovered to be unsatisfactory, the TCEQ can invoke one or more remedies enumerated in ARTICLE 11 of the General Conditions, as appropriate, to address the problem, unless the PERFORMING PARTY corrects the unsatisfactory performance within a time frame defined by the TCEQ and the PERFORMING PARTY. The TCEQ can offset a payment of a prospective invoice by an amount corresponding to a previous payment to the PERFORMING PARTY for work that the TCEQ later discovers to be substandard.

3.6 Performance Evaluation addressing performance for work approved in the Consolidated Compliance and Enforcement Data System (CCEDS).

3.6.1 If the TCEQ identifies deficiencies in the air program compliance and enforcement activities required by a previous Agreement between the TCEQ and the PERFORMING PARTY, the PERFORMING PARTY shall, within 60 days after receipt of TCEQ comments or as recommended by the TCEQ, correct any similar deficiencies in the work performed under that Agreement and report to the TCEQ any deficiencies that cannot be corrected within the 60 days.

3.7 Annual Performance Evaluation. The TCEQ will perform an evaluation of the work completed and approved in CCEDS each fiscal year of this Agreement. The framework of the Annual Performance Evaluation will be based on the following: (1) the PERFORMING PARTY's performance of the tasks required by this Agreement and applicable TCEQ guidance; (2) the PERFORMING PARTY's response to the questionnaire described in Paragraph 3.7.1 below; (3) the results of the Region oversight investigations and file reviews described in Paragraph 3.1; (4) the quarterly and/or monthly meeting reports described in Paragraph 3.2; and (5) the PERFORMING PARTY's documentation of compliance with the financial management requirements of the contract.

3.7.1 August 1 – The Annual Performance Evaluation Questionnaire will be mailed to the PERFORMING PARTY. By the first day of August of each fiscal year covered in this Agreement, the TCEQ Contract Manager will provide an Annual Performance Evaluation Questionnaire to be completed by the PERFORMING PARTY. The response to the questionnaire will be used as the basis for the evaluation of air program compliance and enforcement activities which have occurred during the fiscal year.

3.7.2 September 15 – The PERFORMING PARTY's response to the questionnaire is due to the TCEQ. By September 15 following the receipt of the questionnaire identified in Paragraph 3.7.1 above, the PERFORMING PARTY shall provide a written response to the questionnaire with appropriate attachments to the TCEQ Contract Manager. An electronic copy shall also be sent to the TCEQ Project Manager and the Regional Representative.

3.7.3 October 15 – The Annual Performance Evaluation meeting schedule will be finalized. By October 15 following the receipt of the questionnaire identified in Paragraph 3.7.1 above, the TCEQ Project Manager will provide the PERFORMING PARTY with a schedule for the meeting.

3.7.4 One week prior to the scheduled Annual Performance Evaluation meeting, the TCEQ Project Manager will provide a draft copy of the Annual Performance Evaluation Report to the PERFORMING PARTY.

3.7.5 The meeting will be completed by January 31st following the receipt of the draft Report. The meeting will include a discussion of the preliminary findings and recommendations identified in the Report.

3.7.6 45 Days - Within forty-five (45) days of the Annual Performance Evaluation meeting, the TCEQ Project Manager will provide a revised, draft Annual Performance Evaluation Report to the PERFORMING PARTY. The draft will incorporate comments from the meeting and follow-up information, as applicable.

3.7.7 10 Days - Within ten (10) days of receipt of the revised, draft Annual Performance Evaluation Report, the PERFORMING PARTY shall provide any written comments or corrections to the draft Report to the TCEQ Project Manager.

3.7.8 30 Days - Within thirty (30) days of receipt of the final, signed Annual Performance Evaluation Report covering the PERFORMING PARTY's performance for the fiscal year, the PERFORMING PARTY shall provide a written response to the TCEQ Project Representatives for review concerning any deficiencies or unsatisfactory performance (referred to as deficiencies in Paragraphs 3.7.8 and 3.7.9 of this section) noted in the Annual Performance Evaluation Report, if applicable. The response shall include a description of the nature and extent of each deficiencies' impact on data quality, the specific corrective actions taken or planned to address the deficiencies, actions taken or planned to prevent recurrence, a schedule, not to exceed sixty (60) days from the date of receipt of the Report, to bring any deficiencies up to TCEQ standards, and the means to be used to document completion of each action. For any deficiency which can not be rectified within the sixty (60) day time frame, the PERFORMING PARTY shall include a discussion of the limitations to completing the issue, the specific corrective actions planned to address the deficiency, a provision for a final report, and a schedule to identify the time frame for compliance with TCEQ standards.

3.7.9 60 Days - Within sixty (60) days after receipt of the TCEQ comments or as recommended by the TCEQ, the PERFORMING PARTY shall provide the TCEQ Project Representatives with a written report documenting the actions taken to correct the deficiencies. If the deficiencies are not corrected to the satisfaction of the TCEQ, in addition to other rights the TCEQ may have against the PERFORMING PARTY, it may result in the TCEQ withholding payment to the PERFORMING PARTY for future Agreement activities and/or in the PERFORMING PARTY becoming ineligible for future funding.

4. Requirements Applicable to All Affected Work Activities.

The following requirements apply to each Work Plan task (activity) that is listed in Section 5 of this Scope of Work section.

4.1 Payment. The PERFORMING PARTY shall receive the dollar amount specified and agreed upon in this Agreement for each completed Work Plan task listed in Section 5 of this Scope of Work. No additional compensation will be paid for any Work Plan tasks not included in this Scope of Work section or in excess of the number specified in the Work Plan unless the Work Plan is modified by mutual agreement of both parties.

4.2 Responsibility of PERFORMING PARTY: A complete work task under this Agreement shall include all of the general requirements applicable to all affected work task types as described in this paragraph and all the requirements specific for each work task type described in Section 5 of this Scope of Work. In order to receive the compensation set out in ARTICLE 5 of the Supplementary Conditions of this Agreement, the PERFORMING PARTY must fulfill all of the following subparagraphs, including investigation and enforcement or task handling, direct data entry, and training for each of the relevant work types described in Section 5 of this Scope of Work:

4.2.1 Program: The PERFORMING PARTY shall implement and conduct a program for each task type identified in Section 5 of this Scope of Work section and conduct the relevant activities related to those paragraphs. In the process of conducting work under this Agreement, the PERFORMING PARTY shall comply with the requirements of the most recent applicable versions of the TCEQ Records Management procedures, Public Information Request procedures, and Enforcement procedures, in addition to the guidance documents and policies on the TCEQ Field Operations Division intranet web pages, FODWEB.

4.2.2 Work Plan Activities

4.2.2.1 The PERFORMING PARTY shall prepare and submit a detailed proposed Work Plan. The Work Plan shall be submitted in a format approved by the TCEQ. When developing the Work Plan the PERFORMING PARTY shall select the number and type of investigations consistent with the Compliance Monitoring Strategy and Risk Based Investigation Strategy of the TCEQ effecting maximum benefit for air pollution control consistent with TCEQ objectives. Planned investigations conducted at the same site in successive fiscal years may only be scheduled for such repeat planned investigations where the Compliance Monitoring Strategy and Risk Based Investigation Strategy requires such or after prior approval by the TCEQ. TCEQ may approve all or part of the activities proposed in the submitted Work Plan. Approval will be in the form of a written Notice to Proceed that will document the portion of the Work Plan that was approved. Upon approval, PERFORMING PARTY may recover reimbursable costs for the completion of approved Work Plan activities.

4.2.2.2 The PERFORMING PARTY shall plan for and conduct the number and type of Work Plan activities as identified in the Notice to Proceed for the respective local program. The parties to this Agreement may provide for fewer investigations or activities, or a smaller percentage of investigations or activities, or investigations or activities of different types by making a Minor Change or Written Amendment, to the work plan, as defined in ARTICLE 6 of the General Conditions of this Agreement.

4.2.3 Maintain Lists of Sources. The PERFORMING PARTY shall develop and maintain a list of sources subject to recurring planned investigations resulting from applying the Compliance Monitoring Strategy and Risk Based Investigation Strategy for the Air and Waste Programs.

4.2.3.1 Sources of Interest to EPA. For air pollution control subject sources, the list shall include those sources which meet the definition of "Sources of Interest to the EPA" as defined in the General Conditions of this Agreement. The list of sources, with identification of the actual investigation type codes for the past five (5) years and the type code proposed for the applicable fiscal year, will be submitted with the proposed Work Plan by August 1 of each fiscal year of this Agreement. The PERFORMING PARTY and the TCEQ agree that the list of sources of interest to the EPA constitutes the list of sources subject to this investigation and enforcement program in accordance with the Compliance Monitoring Strategy. Upon approval of the Work Plan and list of sources, the TCEQ Project Manager will issue a Notice to Proceed with a copy of the approved Work Plan and the list of sources. No additional compensation will be paid for any investigations conducted at sources of interest that are not listed in the Notice to Proceed unless the list is modified via a Minor Change to this Agreement. No modification in the type of investigation conducted at the sources during the fiscal year may be made except through a Minor Change to this Agreement.

For the list of sources submitted to the TCEQ with the proposed Work Plan for each fiscal year of this Agreement, the PERFORMING PARTY shall update and maintain the list to identify any changes to existing sources, the dates associated with the changes and propose any new sources that should be added to that list along with an explanation of why such changes should be made.

4.2.3.2 Reid Vapor Pressure or Oxygenate Requirements. A list of the sources subject to these requirements, which includes the identification of those proposed for investigation in the applicable fiscal year, shall be submitted with the proposed Work Plan by August 1 of each fiscal year covered by this Agreement. The list shall include those sources subject to 100% of the EPA annual inspection commitment for sources subject to Reid Vapor Pressure and Oxygenate sampling requirements.

4.2.3.3 Stage II – List of All Facilities. The PERFORMING PARTY shall identify and maintain a list identifying those motor vehicle fuel dispensing facilities within the PERFORMING PARTY's territorial jurisdiction where Stage II vapor recovery equipment is required pursuant to the TCEQ rules (30 TAC 115.221 – 115.229 and 115.241 – 115.249). The list of these sources shall be utilized when developing and implementing Work Plans, and therefore should be maintained as the fiscal year progresses, but must be as accurate as possible prior to Work Plan development in any given fiscal year.

Stage II – List of Newly Identified or Closed Facilities. A listing of Stage II facilities which were newly identified or which were identified as closed or no longer in business shall be created, updated and maintained, and submitted by the PERFORMING PARTY to the TCEQ Regional Representative during the quarterly meetings. The list shall include the total number of facilities identified during the calendar quarter and the cumulative number identified since the beginning of the fiscal year covered by this Agreement.

4.2.4 Unless otherwise specifically directed in writing by TCEQ, an investigation is considered a "complete work task" only after it is an approved investigation in CCEDs. The PERFORMING PARTY shall only invoice "complete" investigations. All investigations completed by the PERFORMING PARTY shall be entered into CCEDS in accordance with the TCEQ guidance manuals available on FODWEB.

4.2.5 Enforcement:

4.2.5.1 The PERFORMING PARTY shall issue Notices of Violations (NOVs) and initiate appropriate enforcement actions on all violations detected during any Work Plan related investigation for which the PERFORMING PARTY is responsible, even when violations are discovered at the site that may be unrelated to the primary purpose of the investigation being conducted. The violation may be associated to another investigation type in Section 5, but can not be related to a program not covered by this Agreement.

4.2.5.2 The PERFORMING PARTY shall refer cases requiring consideration for enforcement action to the TCEQ Enforcement Division within sixty (60) days from the last day of the investigation in which the violation was documented unless an otherwise specifically identified deadline is established in the Contract Documents or guidance documents for the enforcement action and related investigation type.

4.2.5.3 Contingent upon the passing of enabling resolutions as required by Section 7.352, Texas Water Code, the PERFORMING PARTY may bring enforcement actions under Section 7.351, Texas Water Code. The PERFORMING PARTY must name TCEQ as a necessary and indispensable party to any such action, in accordance with Section 7.35, Texas Water Code

4.2.5.4 Contingent upon Commission approval, subsequent direction by TCEQ and Agreement by the PERFORMING PARTY, the PERFORMING PARTY shall issue Field Citations for violations detected during any Work Plan investigation for which the PERFORMING PARTY is responsible and for which the field citation program applies.

4.2.6 Reserved.

4.2.7 Database Usage. Unless otherwise specifically directed, all investigation and enforcement tasks performed under this Agreement shall be documented in CCEDS in a manner consistent with the various guidance documents created for that purpose related to investigations, enforcement, CCEDS, Field Operations Division Standard Operating Procedures (FODSOP), and Enforcement Division Standard Operating Procedures (EnfSOP). In addition, all incidents reported to the PERFORMING PARTY shall be documented in CCEDS in the manner required by the investigation protocols related to the incident type and by the CCEDS manual. Data entry of all

required enforcement and investigation data into CCEDS shall be an ongoing requirement through out the term of this Agreement.

4.2.7.1 Mutual Obligations of Parties related to CCEDS - TCEQ Support

4.2.7.1.1 The TCEQ will provide phone support (512-239-6231), as outlined in the CCEDS User Manual during normal business hours to guide PERFORMING PARTY's technical personnel in trouble-shooting network and application issues.

4.2.7.1.2 The TCEQ will provide the appropriate level of technical support, including but not limited to, on-site support to facilitate the timely correction of technical problems, to facilitate the PERFORMING PARTY in the completion of data entry and reporting obligations.

4.2.7.1.3 TCEQ is responsible for the installation, termination and maintenance of the data circuit from TCEQ to the Point of Presence at the Local Programs site. TCEQ is responsible for terminating the circuit into the local router. Local router is owned, operated and maintained by TCEQ.

4.2.7.1.4 The TCEQ will configure all TCEQ network software to TCEQ standards.

4.2.7.1.5 The TCEQ will provide information on the TCEQ Wide Area Network (WAN) and applications to the PERFORMING PARTY as needed.

4.2.7.2 Mutual Obligations of Parties related to CCEDS - PERFORMING PARTY support:

4.2.7.2.1 The PERFORMING PARTY is responsible for extension of connectivity from the local router to an ethernet switch and distribution on a local area network to each workstation.

4.2.7.2.2 The PERFORMING PARTY shall configure all network hardware and software on the segment of their network connected to the TCEQ WAN in order to maintain compatibility with TCEQ standards and to assure that TCEQ applications can properly operate on the network segment.

4.2.7.2.3 The PERFORMING PARTY network segment connected to the TCEQ WAN will be a separate and distinct network with no connections to other Local Area Networks (LANs), WANs or data circuits.

4.2.7.2.4 The PERFORMING PARTY shall provide a primary and secondary automation point of contact, responsible for security of the network and equipment used by PERFORMING PARTY staff, responding to TCEQ inquiries, requests for network assistance and communicating automation questions and/or problems to the TCEQ WAN manager or TCEQ Automation staff.

4.2.7.2.5 The PERFORMING PARTY shall allow TCEQ technical staff physical and electronic, and logical network access for application support and security monitoring.

4.2.7.2.6 The PERFORMING PARTY shall obtain approval from the TCEQ Information Resources Division, Customer Support Section, LAN Services Team (Regional) at 512-239-0800 prior to making network segment configuration changes that may negatively impact access to the TCEQ WAN or the TCEQ applications.

4.2.7.3 Computer Access – New Staff. It is the responsibility of the PERFORMING PARTY to notify the TCEQ Regional Representative and the TCEQ Project Manager through electronic mail, as soon as possible prior to any new hire start date. The notification shall include the name, electronic address, phone number, and start date for the new staff person that will complete any of the requirements of this Agreement. The TCEQ Regional Representative shall complete a computer access form to request the TCEQ Information Resource Division provide the new staff with the appropriate access, including the agency reporting application, CCEDS reports, Central Registry, and the TCEQ Field Operations Division guidance on FODWEB.

4.2.7.4 Computer Access – Terminated Staff. It is the responsibility of the PERFORMING PARTY to notify the TCEQ Regional Representative and the TCEQ Project Manager through electronic mail, as soon as possible prior to the termination date, and no later than 24 hours after the termination date of applicable staff terminated from the PERFORMING PARTY's employment, or from the program covered by this Agreement. The notification shall include the name, electronic address, phone number, and termination date for the staff person that has completed any of the requirements of this Agreement. The TCEQ Regional Representative shall complete a computer access form to request the TCEQ Information Resource Division terminate the access for that person for the same applications noted in the new staff access form.

4.2.7.5 Quality and Timeliness: Timely, accurate, and complete data entry related to all Work Plan items is essential to completion of the work, and must be accomplished in accordance with the Agreement and relevant guidance documents. The data entry and/or submission of reports delayed by the PERFORMING PARTY due to the unavailability of TCEQ data systems when the unavailability is due to the TCEQ systems shall not be deemed untimely and/or deficient.

4.2.7.6 Database Training. The PERFORMING PARTY shall attend TCEQ-sponsored database application training on an as-scheduled basis. It shall be the responsibility of the PERFORMING PARTY to ensure that its staff is adequately trained and qualified in order to perform designated tasks.

4.2.8 Monthly Reporting. The PERFORMING PARTY shall provide the following documentation to the TCEQ Regional Representative within seven (7) working days after the end of each calendar month of the fiscal year for which this Agreement is in effect. Where the information necessary to complete the monthly Work Plan task progress reports is required to reside in CCEDS or other TCEQ data systems, the reports may be generated from that data. Where possible, Crystal Reports will be the preferred mechanism of generating the reports and as they are developed, will be an acceptable mechanism of providing the reports. The monthly reporting must contain at least the following elements:

4.2.8.1 A summary report of progress against the Work Plan specifying the number and type of Work Plan activities approved for the month, and a year-to-date listing

of progress for each Work Plan type listed in the Scope of Work section showing both activities performed, and activities completed and approved. The listing of activities approved for the month shall include sources investigated by name, regulated entity number, and investigation type code.

4.2.8.2 A listing of any Work Plan revision(s) detailing changes that have been made in the Work Plan for the month and indicating the approval date and approving parties of each change. Properly executed minor or major amendments may suffice for this section of the report.

4.2.8.3 A listing by type of enforcement initiated (NOV) or Notice of Enforcement (NOE) during the month. For each activity initiated, indicate the type of enforcement activity initiated, the rules violated, and the resolution of each enforcement action initiated.

4.2.8.4 A listing of each Work Plan task approved more than thirty (30) days after the required deadline and an explanation of why that delay occurred, and what action has been implemented to minimize recurrence of similar delays.

4.2.8.5 Investigation Reports or activity results: For the activities approved during the month, the PERFORMING PARTY shall submit each original investigation report, or list of reports, as agreed upon by both the TCEQ Regional Representative and the PERFORMING PARTY and any associated or referenced attachments. Enforcement referral packages (including any work product referenced attachments) approved during the month shall also be submitted. Enforcement referral packages will be forwarded by the PERFORMING PARTY to the TCEQ in accordance with Paragraph 4.2.5 of this Scope of Work section. A copy of each report and package should be retained in the PERFORMING PARTY's files.

4.2.8.6 The monthly report shall also include additional reporting as may be required in the applicable paragraphs of Section 5 of this Scope of Work section.

4.2.8.7 Exceptions and Deadlines. The PERFORMING PARTY shall include a section in the monthly report detailing each of the following:

4.2.8.7.1 Identification of each enforcement action not completed within the prescribed time frame and an explanation for the untimeliness, including the identification of any violation situation indicated to include a High Priority Violation (HPV) that has not or will likely not meet the timeliness requirements.

4.2.8.7.2 Identification of, and response to, any enforcement variance requests described in the most current version of the TCEQ Enforcement Initiation Criteria (EIC) guidance document on FODWEB.

4.2.8.8 Organizational Chart. The PERFORMING PARTY shall include a current organizational chart. The chart shall include the date of the latest revision, and delineate, by name and title, all staff utilized to complete the requirements of this contract. Any vacant positions and the date the vacancy began shall also be included in the chart. The organizational chart shall only be required in the Monthly Report if there were changes in any of the information since the last submittal.

4.2.9 Training and qualification for investigators may include, but is not limited to:

4.2.9.1 Annual TCEQ Air Investigators Training and Annual PST Stage II Training, as appropriate, and as specified in Paragraph 5.40.4, Scope of Work section.

4.2.9.2 Visible Emissions Evaluator's Certification (required for investigators who will be making opacity readings using EPA Method 9).

4.2.9.3 Training related to TCEQ database use when available.

4.2.9.4 Training and certification of Emissions Evaluators performing stack test pretest meetings, observations and report reviews.

4.2.9.5 Training related to Complaint Investigations and Odor Protocol when made available to the PERFORMING PARTY.

4.2.9.6 Training related to the TCEQ Field Citation Program. Prior to implementing the Field Citation Program in accordance with Paragraph 4.2.5.4. of the Scope of Work section, the PERFORMING PARTY shall obtain training related to the TCEQ Field Citation Program.

4.2.9.7 Training appropriate to maintain the qualifications of the investigator that performs the assigned tasks listed in the approved Work Plan. A professional development plans (PDP) shall be maintained for each investigator on an annual basis, and shall be available for review upon request by the TCEQ. The TCEQ guidance for the types of training and professional development should be used in the development of the PDP.

It shall be the responsibility of the PERFORMING PARTY to identify and obtain any necessary safety training.

4.2.10 Managers or manager-appointed representatives for the PERFORMING PARTY shall attend TCEQ-sponsored Managers' Meetings in Austin, Texas, or teleconference calls, as scheduled.

5. Required Investigation and Enforcement programs:

A complete task under each of these items shall include all of the general requirements of Section 4 of this Scope of Work section and additionally any specific guidance listed below. For all investigation types:

- The PERFORMING PARTY shall conduct investigations of the listed types within its jurisdiction, and as identified in the Notice to Proceed. The investigations received or referred to it shall be completed consistent with the plan of reviewing such reports as described in the TCEQ guidance documents, policy determinations, and definitions of terms on FODWEB.
- It shall be the responsibility of the PERFORMING PARTY to acquire and maintain the equipment necessary for the investigation.
- The PERFORMING PARTY shall conduct complete enforcement activities within the time frames established in the various investigation protocols and the EIC, being particularly careful to meet any enforcement driven deadlines related to EPA's High Priority Violation (HPV) policy that are reflected in the various investigation and enforcement guidance documents.

AIR PROGRAM INVESTIGATION TASKS

5.1 **ARSV – Air Surveillance, Special Investigation Training/Equipment.**

Provide a section in the monthly report indicating training received under this task and progress made in acquiring any equipment.

5.2 **BD04 - Investigation of Vehicle Emissions Controls at Used Car Lots**

5.3 **BD05 – Determination of Gasoline Reid Vapor Pressure Investigations (RVP). El Paso Local Program only.**

5.4 **BD14 – Fuel Oxygenate Determination Investigations (OXY). El Paso Local Program only.**

5.5 **BURN – Investigations Related to Outdoor Burning and Burning Approval**

Response to Events. The PERFORMING PARTY shall conduct Investigations related to outdoor burning within its jurisdiction received by or referred to it as expeditiously as possible.

5.6 **CAPC - Compliance Investigation of an Approved CAP**

5.7 **CHRONC - On-site follow-up compliance investigation stemming from a chronic finding by the commission**

5.8 **CMPL - Complaint Investigations**

5.8.1 The PERFORMING PARTY shall respond to all air pollution complaints within its jurisdiction received or referred to it in a time frame at least as quickly as that required in the incident guidance documents on FODWEB. Any investigation performed which is not identified in the Notice to Proceed and is not listed in this section shall be considered outside the scope of this Agreement. However, if a violation is detected, it may be referred to TCEQ for consideration of enforcement action, where appropriate.

5.8.2 Disclosure of Confidential Information. The PERFORMING PARTY shall protect from disclosure information regarding the identity of a complainant to the extent allowed by the Texas Public Information Act, Texas Government Code Chapter 552 (See also Guidance Document, Attorney General of Texas Open Records Decision No. 391 (1983)). In the event that information which tends to identify a complainant is requested pursuant to the Texas Public Information Act, PERFORMING PARTY shall seek to protect that information through a request for opinion of the Office of the Attorney General. The PERFORMING PARTY shall also maintain an information file about each complaint filed with the PERFORMING PARTY.

5.8.3 Special Reporting.

5.8.3.1 In accordance with Section 5.177, Texas Water Code, the PERFORMING PARTY shall provide to complainants a quarterly status report for any unresolved written complaint received from within its jurisdiction.

5.8.3.2 The PERFORMING PARTY shall make available to the TCEQ, monthly and upon request, information regarding the investigation and handling of Stage II vapor recovery related complaints.

5.8.3.3 The PERFORMING PARTY shall include both the number of air program and Stage II program complaints received in the month covered by the report and cumulative total for the year.

5.8.4 Coordination with TCEQ. The PERFORMING PARTY shall immediately coordinate with the appropriate TCEQ regional office and, as necessary, the Office of Compliance & Enforcement, Enforcement Division, on action to respond to any complaints that are substantial in terms of concentration, duration, or potential health impacts.

5.8.5 Violations Detected. The PERFORMING PARTY shall issue a notice of violation and initiate the enforcement action on all cases of nuisance, confirmed complaints, or any other violations of state air pollution laws or rules detected during a complaint investigation, as required by the most recent version of each of the documents on FODWEB.

5.8.6 Information Access. The PERFORMING PARTY shall make available to the TCEQ, upon request, information regarding the investigation and handling of complaints. Available information shall include the number of air pollution complaints investigated by the PERFORMING PARTY each month.

5.8.7 Timeliness of Data Entry. The PERFORMING PARTY shall enter all complaint information into CCEDS as soon as practicable after receiving the complaint.

5.8.8 Training. Complaint Coordinator Training, when provided by the TCEQ is required for appropriate staff and a manager, as changes may affect handling procedures.

5.9 **ENF FI - Agreed Order follow-up Investigations**

Response to Events. The PERFORMING PARTY shall conduct any ENF FI Investigations within its jurisdiction received or referred to it in a timely manner.

5.10 **FI – Notice of Violation (NOV) follow-up investigations**

5.11 **INES - Investigations related to reviewing reports received from sources subject to the National Emissions Standards for Hazardous Air Pollutants (NESHAPs, 40 CFR 61)**

5.12 **INSP - Investigations related to reviewing reports received from sources subject to the New Source Performance Standards (NSPS, 40 CFR 60)**

5.13 **MNSR – Minor New Source Review. Same as an NSR1, except not at a source of interest to EPA.**

5.14 **NMCL - Non-Major Checklisted source comprehensive investigation. Comprehensive investigation at a source that is not of interest to EPA.**

5.15 **NMNC - Non-Major Non-Checklisted source comprehensive investigation. Comprehensive investigation at a source of interest to EPA.**

5.16 **NSR1 - New Source Review, Permit Level 1. On-Site NSR Level 1 permit review of all preconstruction authorizations at a source of interest to EPA.**

5.17 NSR2 – New Source Review, Permit Level 2. On-Site NSR Level 2 permit review limited to flexible permits.

5.18 NSR3 – New Source Review, Permit Level 3. On-Site NSR Level 3 permits review. In-depth review of preconstruction authorization, leak detection and repair (LDAR) programs, industrial cooling tower emissions, and determining VOC emissions from Organic Process Leaks (OpLeaks).

5.19 OACC – Office review of Annual Compliance Certification. Title V permit review of annual compliance certification and deviation reports for the applicable period.

5.20 OBCC – Observation of Continuous Emissions Monitoring (CEM) Certification test.

Training. No work of this type will be performed unless the work is conducted by a person who has successfully completed the Emissions Evaluator Certification test, administered by the TCEQ, unless that person is working directly under the guidance of persons specifically designated by the TCEQ.

5.21 OBPT – Observation of Performance Test for a stack.

Training. No work of this type will be performed unless the work is conducted by a person who has successfully completed the Emissions Evaluator Certification test as administered by the TCEQ unless that person is working directly under the guidance of persons specifically designated by the TCEQ.

5.22 OPCC – Office review of Permit Compliance Certification. Evaluation of all Title V permit requirements through a record review.

5.23 PMPR - Permit Provisions Review investigation. Investigation in response to request for comment on permit provision.

Special Reporting. In addition to the data entry requirements listed in Section 4 of this part, response to these investigations will also include reporting to the Air Permits program in the manner described in the referenced guidance documents.

5.24 PMSI – Permit Site Review Investigation. On-site or in-office review in response to request for comment or approval for site evaluation.

Special Reporting. In addition to the data entry requirements listed in Section 4 of this part, response to these investigations will also include reporting to the Air Permits program in the manner described in the referenced guidance documents.

5.25 POSI – Portable Permit Site Review Investigation. On-site or in-office review in response to request for comment or approval of siting for portable permitted unit, or relocation.

Special Reporting. In addition to the data entry requirements listed in Section 4 of this part, response to these investigations will also include reporting to the Air Permits program in the manner described in the referenced guidance documents.

5.26 **PRES – Pre-test meeting. Covers stack performance test, CEM certification test, or PEMS certification test.**

Training. No work of this type will be performed unless the work is conducted by a person who has successfully completed the Emissions Evaluator Certification test as administered by the TCEQ unless that person is working directly under the guidance of persons specifically designated by the TCEQ.

5.27 **RARR – Relative Accuracy Report Review. In-office review of RATA Report.**

Training. No work of this type will be performed unless the work is conducted by a person who has successfully completed the Emissions Evaluator Certification test as administered by the TCEQ unless that person is working directly under the guidance of persons specifically designated by the TCEQ.

5.28 **RCHRON – Review to determine whether excessive emissions events at source are chronic.**

Scope of Investigation. The scope of the investigation is outlined in the current protocol which covers this investigation type. The Commission reserves the authority to issue, based on determinations made by the Executive Director, orders finding that a site has chronic excessive emissions events. Therefore, the PERFORMING PARTY must make a recommendation, in writing, to the TCEQ regional office on forwarding such findings. The PERFORMING PARTY will work in conjunction with the appropriate TCEQ Air Section Manager or his/her designee for initiating chronic excessive emissions events recommendations.

5.29 **RCSP – Rock Crusher Standard Permit review. On-site or in-office review of a request for authorization under Tier II of the standard permit for temporary rock crushers.**

Special Reporting. In addition to the data entry requirements listed in Section 4 of this part, response to these investigations will also include reporting to the Air Permits program in the manner described in the referenced guidance documents.

5.30 **RPCAP – Review of Proposed Corrective Action Plan (CAP) or Letter of Intent (LOI). Documents approval or denial of plan.**

Scope of Investigation. The scope of the investigation is outlined in the current protocol which covers this investigation type. The TCEQ Executive Director reserves the authority to approve or deny any CAP or Permit Request to address excessive emissions events. Therefore, the PERFORMING PARTY may neither approve nor deny CAPs, but rather, they must make a recommendation, in writing, to the TCEQ regional office on approval or denial of such a plan or permitting request. Where this issue arises, the PERFORMING PARTY will work in conjunction with the appropriate TCEQ Air Section Manager or his/her designee for handling CAPs or CAP denials for a timely resolution of the situation.

5.31 **RPCC – Review of Permit Compliance Certification under certain conditions. Used only with the approval of Division management.**

5.32 **RPFT – Review Performance Test, or monitoring system certification test report. Includes review of stack performance test, CEMs certification test, or PEMS certification test.**

5.32.1 Response to Events. The PERFORMING PARTY shall conduct investigations of the listed types within its jurisdiction received or referred to it as expeditiously as possible.

5.33.2 Training. No work of this type will be performed unless the work is conducted by a person who has successfully completed the Emissions Evaluator Certification test as administered by the TCEQ unless that person is working directly under the guidance of persons specifically designated by the TCEQ.

5.33 RR07 – Review Reports related to 30 TAC Chapter 117.

5.34 RR63 – Review Reports required by 40 CFR Part 63, Maximum Achievable Control Technology standards (MACT).

5.35 RRGR – Review Reports of General type. Review reports received from, not otherwise listed specifically in the Work Plan, including, 30 TAC 115, related to Control of Volatile Organic Compounds, 30 TAC 106, related to Permits by Rule, or 30 TAC 116, related to Permits.

5.37 SFCI – Site Full Compliance Investigation. Used only after all Title V permits at the site have been conducted at a source of interest to EPA.

5.37 SPCI – Site Permit Compliance Investigation. Complete compliance evaluation of all requirements within a single Title V permit at a source of interest to EPA.

5.38 SSMCI – Site Synthetic Minor Compliance Investigation. Investigation conducted for a synthetic minor source. Complete 20% of sites every 5 years.

5.39 Upset Maintenance Level 1, 2, & 3 (UML1, UML2 & UML3) - Emissions Events Investigations.

UML1 – Investigation of emissions events involving a single event (or related events) requiring on-site response as soon as practicable, but not later than 24 hours from notification.

UML2 – Field investigation of emissions events which involves review of all emissions events, scheduled maintenance, startup, and shutdowns, and excess opacity only events for an entire site for the previous 12-month period.

UML3 – On-site or in-house review of an emissions event or scheduled maintenance, startup, or shutdown activity not requiring immediate on-site response.

The following requirements apply to UML1, UML2, & UML3 investigations:

5.39.1 Any UML investigation should follow the investigation descriptions and techniques defined in the current protocol covering this investigation type.

5.39.2 Coordination with TCEQ. The PERFORMING PARTY shall immediately coordinate with the appropriate TCEQ regional office and, as necessary, the Office of Compliance & Enforcement, Enforcement Division, on action to respond to any Emissions Events or Scheduled Maintenance, Startup, or Shutdown activities that are substantial in terms of concentration, duration, or potential health impacts, or that meet the criteria of a UML1 investigation.

5.39.4 Timeliness of Data Entry. The PERFORMING PARTY shall enter all Emissions Events or Scheduled Maintenance, Startup, or Shutdown information into CCEDS as soon as practicable after receiving the notification.

5.39.6 Training. Emissions Events training, when provided by the TCEQ is required for appropriate staff and a manager, as changes may affect handling procedures.

AIR PROGRAM – STAGE II INVESTIGATION TASKS

5.40 **TOB – Test Observation of a Stage II System. Includes observation of the vapor recovery equipment of regulated gasoline dispensing entities during the system test by a contractor.**

CEI - Compliance Evaluation Investigation of a Stage II system. Complete investigation of equipment and records.

CSE – Compliance Schedule Evaluation. A follow-up to a Stage II investigation in response to violations cited during an investigation.

RR - Record Review of Stage II Investigation. Review of records submitted in response to a request or in response to violations cited during the investigation.

The following requirements apply to Stage II investigations:

5.40.1 The Stage II Vapor Recovery investigation and enforcement program includes investigation and enforcement with respect to both Stage I and Stage II vapor recovery equipment and requirements at motor vehicle fuel dispensing facilities where Stage II vapor recovery equipment is required.

5.40.2 The PERFORMING PARTY shall issue a notice of violation and initiate the enforcement action on all cases of nuisance, confirmed complaints, or any other violations of state air pollution laws or rules detected during a complaint investigation, as required by the most recent version of each of the documents previously cited in Paragraph 4.2.1 of this Scope of Work section.

5.40.3 The PERFORMING PARTY shall enter all Stage I and Stage II investigation information into CCEDS within the time frames specified in the relevant documents.

5.40.4 Investigators conducting Stage I and II Vapor Recovery work shall attend the TCEQ-sponsored Stage II Vapor Recovery Annual Training on an as-scheduled basis. Participation by one of the PERFORMING PARTY's representatives on the Stage II Committee meetings is required.

5.41 Investigation Quality Review (QR) Activities

The PERFORMING PARTY is responsible for the development of an Investigation QR program. The guidelines available on FODWEB may be followed by the PERFORMING PARTY when implementing their program.

END OF CONTRACT

CONTRACT NUMBER 582-10-90258

AMENDMENT # 1
TO
LOCAL AIR PROGRAM CONTRACT

The Texas Commission on Environmental Quality ("TCEQ") and The City of El Paso ("PERFORMING PARTY"), hereby agree to amend Contract # 582-10-90258. The purposes for this amendment are to: (1) reflect the parties' agreement to renew the contract for Fiscal Year (FY) 2011, (2) increase the current contract amount (Maximum TCEQ Obligation), and (3) update the PERFORMING PARTY's contact information. This amendment is entered into by the parties pursuant to ARTICLE 2 of the SUPPLEMENTARY CONDITIONS in the Contract. Effective by this amendment, the parties agree to amend the terms of the Contract as follows:

1. Pursuant to paragraph 2.1 of the Supplementary Conditions of the Contract, the parties elect to renew the Contract term for the Contract period from **September 1, 2010** through **August 31, 2011** (renewal option #1). By this amendment, the Contract is amended to reflect a change in the Expiration Date from August 31, 2010 to August 31, 2011 for the Renewal Period.

2. The Maximum TCEQ Obligation stated on the Contract Signature Page is hereby amended by an increase of **$321,074.00**. Effective by this amendment the Maximum TCEQ Obligation is amended to read as follows:

Fiscal Year	Maximum TCEQ Obligation (per year price)
FY10	$321,074.00
FY11 Renewal #1	$321,074.00
Total Contract Price (Maximum TCEQ Obligation)	$642,148.00

Amendment History	
Original Amount of Contract FY10	$321,074.00
Amendment No. 1 FY11	$321,074.00
Maximum TCEQ Obligation	**$642,148.00**

3. The listing of PERFORMING PARTY PROJECT REPRESENTATIVES is amended as follows:

Printed Name: Alberto Melero
Title: Code Compliance Supervisor
Environmental Services Department
7969 San Paulo
El Paso, TX 79907
E-mail: albert.melero@elpasotexas.gov
Phone: 915-599-6231
Fax: 915-621-6711

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FY 2011
COMPLIANCE
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ALTERNATE CONTACT

Printed Name: Miguel Parra
Title: Engineering Division Manager
Environmental Services Department
7969 San Paulo
El Paso, TX 79907
E-mail: parramx@elpasotexas.gov
Phone: 915-599-6235
Fax: 915-621-6711

All other conditions and requirements of Contract Number 582-10-90258 remain unchanged.

TCEQ:
Texas Commission on Environmental Quality

By: _____
(Signature)

Zak Covar
(Printed Name)

Deputy Executive Director
(Title)

8/23/10
(Date Signed)

PERFORMING PARTY:
The City of El Paso

By: _____
(Signature)

Joyce A. Wilson
(Printed Name)

City Manager
(Title)

8/3-10
(Date Signed)