

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

DEPARTMENT: Environmental Services
AGENDA DATE: August 9, 2011
CONTACT PERSON/PHONE: Ellen A. Smyth, P.E., (915) 621-6719
DISTRICT (S) AFFECTED: All Districts

SUBJECT:

Approve a Pass-Thru Grant Contract with the Texas Commission on Environmental Quality (TCEQ)

BACKGROUND / DISCUSSION:

The purpose of this contract is allow the City to assist the TCEQ in the operation, maintenance, data review, data reporting, training on, and special purpose monitoring of air monitoring equipment at six locations with the City. The grant amount is for \$ 280,132 for the period of September 1, 2011 through August 31, 2013. City matching funds are required in the amount of \$46,222.

PRIOR COUNCIL ACTION:

June 2009

AMOUNT AND SOURCE OF FUNDING:

\$46,222 Matching Amount
Fund: 40429
Account: G340216
Deptid: 34010289

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

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

THAT the City Manager be authorized to sign Pass-thru grant No. 582-12-10010 (the "Contract") by and between the City of El Paso and the Texas Commission of Environmental Quality ("TCEQ"), in the amount of \$280,132 for the period of September 1, 2011 through August 31, 2013, to conduct air monitoring for criteria pollutants, data collection and data submittal to TCEQ and the Environmental Protection Agency. City matching funds are required in the amount of \$46,222. 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.

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

TCEQ FEDERALLY FUNDED GRANT AGREEMENT

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

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 as specified or indicated in the Contract Documents. The Work is generally described as follows:

Air Pollution Control Services performed within the jurisdiction of the City of El Paso Air Pollution Control Program, as more fully described in the Scope of Work, which is attached hereto and incorporated for all purposes.

1.2. Statutory authority for this Grant is for performing the work in the Current Appropriations Act; Tex. Water Code §§ 5.229 and 7.351- 7.358; and Tex. Health and Safety Code §§ 382.033 and 382.111-382.115.

ARTICLE 2. CONTRACT TIMES

2.1. This Agreement shall begin on September 1, 2011 or date of last Contract signature, whichever is later, and shall terminate on full performance which is due on August 31, 2013. However, certain reporting requirements of this Contract shall survive the termination of this Contract. This Agreement shall immediately terminate at the end of any State fiscal year for which the Texas Legislature, the U.S. Congress, and/or the U.S. Environmental Protection Agency (hereinafter referred to as the "EPA") fails to appropriate and/or provide the funds necessary to perform pursuant to this Agreement.

ARTICLE 3. CONTRACT AMOUNT

3.1. The total amount of this Agreement shall not exceed \$280,132.00 unless the parties amend this amount in accordance with the Contract Documents. TCEQ and PERFORMING PARTY agree that the maximum amount to be reimbursed by TCEQ for completion of the Work shall not exceed \$187,688.00. The total amount of the Agreement is based upon the PERFORMING PARTY's actual allowable and eligible costs of performing the Work, contingent upon the Performing Party providing and documenting Matching funds totaling \$92,444.00 (\$46,222.00 maximum Match each year). The amount referenced above to be reimbursed by TCEQ, will be divided up over a two (2) year period (\$93,844.00 maximum for each fiscal year).

~~Upon receipt of funds from the EPA for a second year, the TCEQ will continue this Contract for the period of September 1, 2012 through August 31, 2013. Any unused funds from the first year of the contract may be carried forward by the Performing Party into the 2nd year of the contract by adjusting their Contract Cost Budget and notification to the TCEQ.~~

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 total combined federal and State share of the funding for the PERFORMING PARTY's Local Air Program shall not exceed 67% (sixty-seven percent) of the PERFORMING PARTY's total cost for the program; with the local share being based on the local dollars allocated pursuant to maintenance-of-effort requirements for federal air pollution grants. The PERFORMING PARTY must provide Matching funds such that the combined federal share, derived from Section 105 funding, and the State share, derived from the current Appropriations Act (Rider 5), shall not exceed 67%, or the total amount of this contract may be reduced proportionately so that this condition is met.

ARTICLE 4. PAYMENT PROCEDURES

4.1. PERFORMING PARTY shall submit Applications for Payment in accordance with the General Conditions and Scope of Work (in the document titled " Contract Costs Budget").

ARTICLE 5. FUNDING

5.1. 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.

5.2. Source of Funds and Legal Authority. (This Agreement is funded through the Performance Partnership Grant (PPG) CFDA #66.605 pass-through funds from the U.S. EPA to TCEQ through the Current Appropriations Act; Tex. Water Code §§ 5.229 AND 7.351- 7.358; and Tex. Health and Safety Code §§ 382.033 AND 382.111-382.115. The PERFORMING PARTY certifies that it has authority to perform the work contracted for by authority granted in the El Paso City Code, Chapter 9.36. This Agreement is subject to the Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Uniform Grant Management Standards for State Agencies, and Bulletins of the Office Management and Budget (OMB-87.)

5.3. 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 6. PERFORMING PARTY'S REPRESENTATIONS

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

- 6.1. PERFORMING PARTY has examined and carefully studied the Contract Documents.
- 6.2. PERFORMING PARTY is familiar with and understands all federal, State and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work.
- 6.3. PERFORMING PARTY is aware of the general nature of work to be performed by TCEQ and others that relates to the Work as indicated in the Contract Documents.
- 6.4. PERFORMING PARTY has correlated the information known to PERFORMING PARTY, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with Contract Documents.
- 6.5. PERFORMING PARTY has given TCEQ written notice of all conflicts, errors, ambiguities or discrepancies that PERFORMING PARTY has discovered in the Contract Documents and the written resolution thereof by TCEQ is acceptable to PERFORMING PARTY, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- 6.6. PERFORMING PARTY agrees that it is not a vendor and that this Contract is not subject to the Prompt Payment Act.

ARTICLE 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement between TCEQ and PERFORMING PARTY concerning the Work consist of the following:

- 7.1. The TCEQ Form: Federally Funded Grant Agreement.
- 7.2. The General Conditions of the TCEQ Federally Funded Grant Agreement.
- 7.3. The Federal Terms and Conditions

- 7.4. Scope of Work.
- A. Statement of Services
 - B. Deliverables
 - C. Contract Costs Budget Sheet

7.5. Other Documents.

EXHIBITS

- A. Exhibit A-1: Funding Application Package
- B. Exhibit A-2: EPA QA/R-2 (March 2001)
- C. Exhibit A-3: EPA QA/R-5 (March 2001)
- D. Exhibit A-4: Quarterly Report Checklist
- E. Exhibit A-5: TCEQ Federal Funding Transparency Act Reporting Form

FORMS

- F. Form B-1: HUB Progress Assessment Report
- G. Form B-2: TCEQ STATE PURCHASE VOUCHER
- H. Form B-3: TCEQ Invoice
- I. Form B-4: Financial Status Report
- J. Form B-5: Federal Conditions
- K. Form B-6: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Lower Tier
- L. Form B-7: Certification Regarding Lobbying, Disclosure of Lobbying Activities
- M. Form B-8: Cost or Price Summary and Instructions
- N. Form B-9: EPA FORM 6100-2 (DBE Subcontractor Participation Form)
- O. Form B-10: EPA FORM 6100-3 (DBE Subcontractor Performance Form)
- P. Form B-11: EPA FORM 6100-4 (DBE Subcontractor Utilization Form)

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

7.7. There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified or supplemented only as provided in the General Conditions.

ARTICLE 8. MISCELLANEOUS

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

8.2. 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 Contract 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 Contract 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.

8.3. 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 Contract Documents.

8.4 The parties hereby agree that this Agreement does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. The parties further agree that 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 that respective claim, suit, or obligation.

8.5. 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 Contract 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.

8.6. The PERFORMING PARTY acknowledges and agrees that because this Agreement has been executed, and will be administered in Travis County, Texas, that in this sense, the Agreement is to be 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.

8.7. 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 shall be delivered in hand and a receipt provided therefore. Any notice or other written communication shall be considered delivered five (5) days after the date postmarked, provided it is sent in accordance with this Article.

ADDRESSES FOR NOTICE:

TCEQ:

Lloyd Lawrence
(Printed Name) (Contract Manager)

Field Operations Support Division
Texas Commission on Environmental Quality
P. O. Box 13087, MC-165
Austin, Texas 78711-3087
(Address)

PERFORMING PARTY:

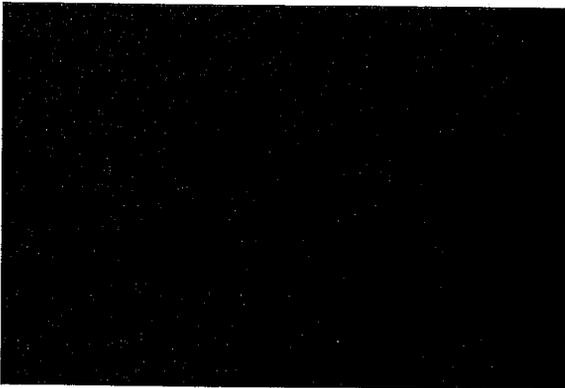
Albert Melero
(Printed Name) (Project Manager)

Air Quality Program
City of El Paso, Environmental Services
7968 San Paulo Drive
El Paso, TX 79907
(Address)

IN WITNESS WHEREOF, TCEQ and PERFORMING PARTY have signed three (3) originals of this Agreement. One (1) counterpart will be delivered to PERFORMING PARTY and two (2) counterparts will be delivered to TCEQ.

This Agreement will be effective on September 1, 2011, or upon execution by both Parties, whichever is later.

Texas Commission on Environmental Quality



Signature: _____

Printed Name: JOYCE WILSON

Title: CITY MANAGER

Date: _____

City of El Paso

A small, handwritten mark or signature in the bottom right corner of the page.

~~GENERAL CONDITIONS OF THE TCEQ FEDERALLY FUNDED GRANT
AGREEMENT~~

ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract 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 Contract which clarify, correct or change the Proposal Requirements or the Contract 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 Federally 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 Uniform Grant Management Standards which were promulgated by the Texas Governor's Office of Budget and Planning pursuant to the Uniform Grant Conditions and Management Act, Tex. Gov't 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 the Agreement.
- 1.15. *Contract Price* - the monies 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 Match* - 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 (40 CFR Part 33, 35, and 40). The Environmental Protection Agency's DBE Program revises and replaces the 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 or 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 \$1,000 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. *MBE/WBE (or MWBE)* - Minority Business Enterprise / Women Business Enterprise. The MBE/WBE program falls under the umbrella of the Federal DBE program, which includes small businesses and veterans.

1.40. *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.

1.41. *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 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) mean 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 designated in the Supplementary Conditions.

1.52. *Quality Assurance (QA)* - An integrated system of management activities involving planning, implementing, assessment, reporting, and quality improvement to ensure that a process, item, or service is of the type and quality needed and expected by the customer.

1.53. *Quality Assurance Project Plan (QAPP)* - A formal document describing in comprehensive detail the necessary quality assurance, quality control, and other technical activities that must be implemented to ensure that the results of the Work performed will satisfy the stated performance criteria.

1.54. *Quality Control (QC)* - The overall system of technical activities that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established by the customer; operational techniques and activities that are used to fulfill requirements for quality.

1.55. *Quality Management Plan (QMP)* - A formal document or manual, usually prepared once for an organization, that describes the quality system in terms of organizational structure, functional responsibilities of management and staff, lines of authority, and required interfaces for those planning, implementing, and assessing all activities conducted.

1.56. *Quality System* - A structured and documented management system (1) describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring quality in its work processes, products (items), and services and (2) providing the framework for planning, implementing, and assessing work performed by the organization and for carrying out required quality assurance and quality control.

1.57. *Quality System Audit* - A systematic and independent examination and evaluation to determine whether an organization's quality system complies with planned arrangements and whether these arrangements are implemented effectively and are suitable for achieving objectives.

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

1.59. *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.

1.60. *Standards* - refers to the Uniform Grant Management Standards.

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

1.62. *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.

1.63. *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 a contractual legal Agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "Grant."

1.64. *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.

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

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

1.67. *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.

1.68. *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.

1.69. *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.

1.70. *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.

1.71. *Terms of a Grant or Subgrant* - mean all requirements of the Grant or Subgrant, whether contained in Statutes, Regulations, or the Contract Documents.

1.72. *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.

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

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

1.75. *Unliquidated Obligations* - for reports prepared on a cash basis mean the amount of Obligations incurred by the PERFORMING PARTY that has not been paid. For reports prepared on an accrued expenditure basis they represent the amount of Obligations incurred by the PERFORMING PARTY for which an Outlay has not been recorded.

1.76. *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.

1.77. *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.

1.78. *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 consists of written technical descriptions of, equipment, schedules, standards & workmanship as applied to the Work and certain administrative details applicable thereto.

1.79. *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. PRELIMINARY MATTERS

Commencement of Contract Term

2.1. The Contract Term will commence on the Effective Date of the Agreement.

ARTICLE 3. CONTRACT DOCUMENTS: INTENT

Intent

3.1. The Contract Documents comprise the entire Contract 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 Contract. 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. The 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 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 ensure that the completed Work complies accurately with the Contract Documents.

PERFORMING PARTY's Representative

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

Personnel

4.5. The PERFORMING PARTY shall provide competent, suitably qualified personnel to perform the Work as required by the Contract 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 Contract, 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 Contract.

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 Uniform Grant Management Standards.

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 new, 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 Contract, title to all equipment acquired under this Contract shall vest, upon acquisition or construction, with 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 Contract.

4.12. The PERFORMING PARTY may develop and use its own property management system which must conform to 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, identification of the title holder, the acquisition date, 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 Contract having an initial purchase price of One Thousand Dollars (\$1,000) or more shall be conducted no less frequently than once every two (2) 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 Contract shall be used for the duration of its normally expected useful life to support the purposes of this Contract 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 Paragraph 4.15 of this Article, equipment acquired under this Contract, 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 Contract, either trade in or sell the equipment or property referred to in Paragraph 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 \$1,000 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 \$1,000 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 Contract, the PERFORMING PARTY or its Subcontractors or Subgrantees determine that any equipment acquired with funds provided as a result of this Contract is no longer needed for support of the Programs or Projects referred to in Paragraph 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 (6) years of the initiation date of this Contract that any equipment acquired with funds provided as a result of this Contract is no longer needed for support of the Programs or Projects referred to in Paragraph 4.15, the TCEQ has a right to require the transfer of any equipment having a fair market, per unit value of more than one thousand dollars (\$1,000) 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 Contract.

4.22. The PERFORMING PARTY agrees that, in the event any funds provided under this Contract 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 Uniform Grant and Contract Management Act and the Uniform Grant Management Standards. Note that competitive bidding will generally be required for contracts other than interlocal and interagency contracts, which are under TEX. GOV. CODE, Chapter 791 et seq. Note also that the Common Rule of OMB Circular A-102, as adopted in the Uniform Grant Management Standards, 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 Contract's Scope of Work to TCEQ's Project Representative 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 Contract 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 Uniform Grant Management Standards, Part III, Subpart C, Sec. ____36(b)(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 implement and maintain a Quality Assurance Program that addresses quality-related activities performed under this Contract and conforms to the American National Standards Institute (ANSI) /the American Society for Quality (ASQ) E4-2004 *Quality Systems for Environmental Data and Technology Programs - Specification with Guidance for Use*, the U.S Environmental Protection Agency (EPA) *Requirements for Quality Management Plans* EPA QA/R-2 and with the TCEQ *Quality Management Plan*. The TCEQ, Quality Assurance specialists, or any of their authorized representatives shall have access to all such Work activities, monitors, records, documents and other evidence for the purpose of management systems review, inspection, audit, surveillance, peer review, excerpts, transcriptions and/or copying during normal business hours. The PERFORMING PARTY shall provide proper access.

Laboratory data produced on or after July 1, 2008, must be produced by a laboratory accredited by TCEQ according to Title 30 Texas Administrative Code (TAC) Chapter 25 (relating to Environmental Testing Laboratory Accreditation and Certification) Subchapters A and B as amended, for the matrices, methods, and parameters of analysis, unless TCEQ agrees in writing to allow one of the regulatory exceptions specified in 30 TAC §25.6.

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 UGMS.

4.31. PERFORMING PARTY shall perform a cost or price analysis in connection with all procurements in excess of \$2,000 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 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 UGMS.

Historically Underutilized Businesses

4.33. State of Texas certified Historically Underutilized Businesses (HUBs) are certified DBEs. PERFORMING PARTY agrees that the requirements relating to DBEs, including those under Article 8 of the Federal Terms and Conditions of this Contract, also apply to HUBs.

4.34. PERFORMING PARTY will submit a completed HUB Progress Assessment Report with each reimbursement request submitted. At a minimum this report shall include the name of the 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 shall require its Subcontractors to take the actions listed in Article 8 of the Federal Terms and Conditions, 5.1 - 5.8 in all of its subcontracts that contemplate the letting of lower-tier subcontracts.

4.36. PERFORMING PARTY's failure to comply with this Article shall be grounds for termination for cause in accordance with the Article entitled, "Termination."

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 and EPA 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 Paragraph 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 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.

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, or (iii) specifically identified in the Supplemental Conditions as Intellectual Property to which Intellectual Property Rights are granted pursuant to this Paragraph, 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 TCEQ's 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 TCEQ's 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. The 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. To the fullest extent permitted by Laws and Regulations, PERFORMING PARTY shall indemnify and hold harmless TCEQ, and its officers, directors, employees and agents, as more fully specified in these General Conditions, from and against all fines, penalties, claims, damages, losses, demands, judgments, settlements, punitive damages, costs of suit, attorneys' fees and delays to the contractors, whether arising in tort or otherwise, and whether the parties are individually or jointly responsible from any damages, that arise out of, result from or relate to any infringement of property, contractual, or employment rights or Intellectual Property Rights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any Intellectual Property. PERFORMING PARTY agrees that it will make no settlement which prevents TCEQ from continuing use of the Intellectual Property without TCEQ's prior written approval. 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.

4.37.9. Federal Intellectual Property requirements. A nonexclusive, perpetual, irrevocable license to use, copy, publish, and modify any Intellectual Property to which rights are granted or assigned to TCEQ in this Contract are hereby also granted to, assigned to, or reserved by the Federal Government. To the extent consistent with the rights of third parties, the Federal Government shall also have the right to sell any Intellectual Property right it reserves or acquires through this Contract.

Technology Access Clause

4.38. The 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 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 will 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 will 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. The 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

4.45. The provisions of Uniform Grant and Contract Management Act, 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 Uniform Grant Management Standards 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 proper facilities for such access and inspection.

The PERFORMING PARTY, Subcontractors and Subgrantees shall implement and maintain a Quality Assurance Program that addresses quality-related activities performed under this Contract and conforms to the American National Standards Institute (ANSI) /the American Society for Quality (ASQ) E4-2004 *Quality Systems for Environmental Data and Technology Programs - Specification with Guidance for Use*, the U.S Environmental Protection Agency (EPA) *Requirements for Quality Management Plans* EPA QA/R-2 and with the TCEQ *Quality Management Plan*. The TCEQ, Quality Assurance specialists, or any of their authorized representatives shall have access to all such Work activities, monitors, records, documents and other evidence for the purpose of management systems review, inspection, audit, surveillance, peer review, excerpts, transcriptions and/or copying during normal business hours. The PERFORMING PARTY shall provide proper access.

Laboratory data produced on or after July 1, 2008, must be produced by a laboratory accredited by TCEQ according to Title 30 Texas Administrative Code (TAC) Chapter 25 (relating to Environmental Testing Laboratory Accreditation and Certification) Subchapters A and B as amended, for the matrices, methods, and parameters of analysis, unless TCEQ agrees in writing to allow one of the regulatory exceptions specified in 30 TAC §25.6.

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 Paragraph 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 (3) 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 (3) 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 Paragraph 4.48 shall have access to records or Work activity at any reasonable time for as long as the records or nonconformance identified pursuant to an Assessment are maintained.

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.

4.54. 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 Contract.

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, TEX. GOV'T CODE § 552 ("Act"). Upon termination of this Agreement, all copies of data and information shall be furnished, at no charge to the TCEQ, upon request, to include databases 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 Contract to any party other than the State of Texas and its authorized agents.

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 Uniform Grant Management Standards, 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 Contract 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) (hereinafter, "Act"), 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 Contract 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.

Performance Reports

4.60. In accordance with the Uniform Grant Management Standards, the PERFORMING PARTY shall submit written progress reports documenting all activities during a quarter pursuant to the Schedule of Deliverables set forth in the Work Plan. In the absence of a schedule in the Work Plan, the PERFORMING PARTY shall submit the reports not later than thirty (30) days after the close of each quarter. The reporting periods shall correspond to the State of Texas fiscal year (September-November; December-February, March-May; June-August).

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 §31.20 and all applicable State laws and 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 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 UGMS.

4.62.2. Provisions of the Single Audit Circular in Part IV of 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 from any audit conducted of the PERFORMING PARTY'S financial records within 20 days of PERFORMING PARTY'S receipt of an audit report. At the same time, PERFORMING PARTY will 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 Contract 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 Contract for cause and may undertake any other remedies or sanctions provided under this Contract.

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 at any time, on the grounds of actual or apparent conflict of interest. See Paragraph 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.

Debarment:

4.66. On or prior to the Effective Date of this Contract, PERFORMING PARTY must submit a *Certification Regarding Debarment, Suspension, and Other Responsibility Matters*. This certification must be submitted on forms provided by the TCEQ. A copy of the Certification is attached hereto and incorporated in the Application for Federal Assistance. PERFORMING PARTY shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." PERFORMING PARTY must also submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters / Lower Tier for each Subcontractor it employs to conduct the Work. These certifications must be submitted on forms provided by the TCEQ. PERFORMING PARTY shall not subcontract any part of the services under this Contract to an entity that has been debarred. Recipient may access the Excluded Parties List System at www.epls.gov.

ARTICLE 5. TCEQ'S RESPONSIBILITIES

5.1. The Executive Director of the TCEQ will identify a person authorized to give direction to the PERFORMING PARTY, and act on behalf of the TCEQ. The person designated as the TCEQ Authorized Representative is identified on Page 6 of this Contract.

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 Uniform Grant Management Standards 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 Contract.

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 Representative 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 the written agreement of both Project Representatives, but shall not require a formal amendment to the Contract. 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 the Project Representative of the TCEQ 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 Part 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;
or

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

6.8 Changes to the services or Work to be performed shall be included as revisions in the Quality Assurance Project Plan for this Contract.

Inclement Weather

6.9. 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 Paragraph shall extend the terms of this Contract. The TCEQ reserves the right to reject, in good faith, within thirty (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

6.10. Unless authorized in accordance with these Contract Documents (relating to Changes), or in writing by the TCEQ, the authorized waiver by the TCEQ of any obligation of the PERFORMING PARTY 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 provisions of this Contract.

ARTICLE 7. PAYMENTS TO PERFORMING PARTY

Payment based on Reimbursement of Actual Cost of Performance

Allowable Costs

7.1 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 Contract and the following which are hereby incorporated into this Contract:

- 7.1.1. Uniform Grant Management Standards 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. Applicable rules and policies of the TCEQ;
- 7.1.4. Applicable State law;
- 7.1.5. For funds received from a Federal Government source, applicable Federal laws and regulations. For example, 40 CFR §31.3 (e.g., payments for expenses incurred, time and materials, or hourly rates), all payments where PERFORMING PARTY'S services have not been competitively procured, shall be based on allowable costs (refer to 40 CFR §31.22), and shall be based on a cost or price summary, and Title 48 CFR Part 31.

Eligible costs are: 1) those costs authorized in this Agreement and; 2) for activities performed in compliance with the Agreement.

Payments by TCEQ

7.2 PERFORMING PARTY must request payment by submitting one (1) copy of an itemized invoice in a format provided by the TCEQ (Form B-3), a properly completed TCEQ Purchase Voucher (Form B-2), the Financial Status Report Form, (Form B-4) and such other forms as the TCEQ requires. PERFORMING PARTY must complete the entire Quarterly Report Checklist (Exhibit A-4). PERFORMING PARTY will also submit any supporting documentation required by TCEQ. TCEQ will review the submittal and approve or reject the request for payment. 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.

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.

7.3.1 This Contract contains a *Contract Costs Budget* indicating expected Contract-related costs for the required Work. PERFORMING PARTY will be paid on the basis of reimbursement of actual costs. At the intervals specified in the *Contract Costs Budget*, PERFORMING PARTY may submit a request for reimbursement of actual costs it has incurred. All such requests must be accompanied by supporting documentation as required by this Agreement. PERFORMING PARTY agrees that TCEQ's obligation to reimburse the PERFORMING PARTY'S costs will remain within the *Contract Costs Budget* and that cumulative transfers will not exceed ten (10%) percent of the total reflected therein.

7.4. The PERFORMING PARTY has submitted a cost analysis in its Funding Application budget estimate. The PERFORMING PARTY and the TCEQ acknowledge that this cost analysis is the basis upon which the *Contract Costs Budget* has been developed.

7.5. Because certain Field Operations Support Division Program activities may not be performed in a given month, the PERFORMING PARTY shall perform a quarterly review of the Field Operations Support Division Program activities it actually performs or expects to actually perform during that quarter. In this review, the PERFORMING PARTY shall determine whether the nearest practicable estimate of its actual cost of providing those services for that quarter is within the constraints established elsewhere in this Agreement.

7.6. The PERFORMING PARTY shall make its review and determination available to the TCEQ upon request. The TCEQ may perform an independent review (in accordance with Article 4.50 (Record Documents, Data, Records Access and Audit) of the General Conditions and make its own independent determination, or may make its own independent determination based upon the PERFORMING PARTY'S review.

Contractual Costs

7.7. 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 in accordance with their established 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

7.8. In accordance with Section 2261.203 Texas Government Code, the TCEQ is required to perform a comparison of costs reimbursed under this Agreement. PERFORMING PARTY will 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

7.9. The indirect cost rate for this Agreement is that rate specified in the *Contract Costs Budget*. The rate in effect on the Effective Date of this Agreement must remain in effect for the applicable period of the Agreement.

Duplication of Effort Prohibited

7.10. 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 (2) or more Grants are to be provided to a single activity of the 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

7.11. All requests for reimbursement under this Contract shall be submitted in accordance with the requirements set forth in this Article.

7.12. On a quarterly basis, within thirty (30) days after the end of a quarter, the PERFORMING PARTY shall submit one (1) copy of a properly completed State of Texas Purchase Voucher (Form B-2), an itemized invoice provided by the TCEQ (Form B-3), a Financial Status Report (FSR) (Form B-4) and a Quarterly Report Checklist incorporated herein as Exhibit A-4, in order to obtain payment for tasks completed under this Agreement. The PERFORMING PARTY will indicate the Match Amount in the space provided on the FSR. A description of the services provided by your Match Amount should be described in the FSR on the supplemental pages attached to the form. The itemized invoice includes on a separate line, the total amount that is being matched by the PERFORMING PARTY. The PERFORMING PARTY shall complete a quarterly HUB Progress Assessment Report, incorporated herein as Form B-1, and submit this Report with each quarterly invoice and voucher. Completed vouchers, invoices, and reports shall be mailed or delivered to the following address:

Attn: Mr. Lloyd Lawrence
TCEQ
Field Operations Support Division, MC-165
P.O. Box 13087
Austin, TX 78711-3087

7.13. The TCEQ Project Representative will review the purchase vouchers, invoices, the quarterly FSR, and Quarterly Report Checklists for requests for payment of services performed as identified in Section A (Statement of Work) and Section B (Deliverables) and will notify the PERFORMING PARTY that the requests are acceptable or will provide an explanation of why the requests or the Work identified in the requests are unacceptable. If the requests do not satisfactorily demonstrate the accomplishment of the required tasks, the TCEQ Project Representative will not authorize payment on the accompanying voucher and invoice until such time as deficiencies have been corrected.

7.14. 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 Contract until the PERFORMING PARTY satisfactorily completes, revises, or corrects such services or reports.

7.15. The TCEQ will not issue any payment of an approved reimbursement request from the PERFORMING PARTY until the TCEQ receives from the EPA funds specifically awarded for activities provided by the PERFORMING PARTY under this Agreement.

7.16. Failure on the part of the PERFORMING PARTY to comply with the conditions set forth in this Agreement may be grounds for termination of this Contract for cause, and revocation of any unexpended funds.

7.17. Nothing in this Article shall be construed to prevent the TCEQ or the PERFORMING PARTY from exercising any of its rights under this Agreement including but not limited to those relating to termination and remedies.

7.18. TCEQ is not obligated to make payment until the request for reimbursement is approved by TCEQ. TCEQ may reject payment requests not submitted in accordance with these Contract Documents. TCEQ may reject payment requests submitted less than thirty (30) days after the close of each quarter, or prior to TCEQ's acceptance of the deliverables due in the quarter for which the payment request applies. TCEQ shall have thirty (30) days after receipt to review and determine the acceptability of a deliverable. If TCEQ has neither accepted nor rejected a deliverable within thirty (30) days of receiving it, PERFORMING PARTY shall be entitled to submit a payment request as if that deliverable had been accepted, BUT IN NO CASE SHALL TCEQ BE DEEMED TO HAVE ACCEPTED THE DELIVERABLE. TCEQ reserves the right to suspend payment for any incomplete, inconsistent or incorrect services or reports as required by this Contract until the PERFORMING PARTY satisfactorily completes, revises, or corrects such services or reports, whether or not the deliverable is rejected within thirty (30) days.

Closeout

7.19. When it is determined that all applicable administrative activities and all required Work have been completed, the TCEQ shall close out the award. Within sixty (60) days after the expiration or termination of the Contract, the Performing Party must submit all financial, performance, and other reports as required. These reports may include, but are not limited to:

7.19.1. All Performance or Progress Reports required by this Agreement.

7.19.2. Financial Status Report (Form B-4).

7.19.3. Final Request for Payment. (Including Forms B-1, B-2, B-3)

7.19.4. Invention disclosure (if applicable).

7.19.5. State-owned Property Report (if applicable).

7.20. In accordance with the Uniform Grant Management Standards, the 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 for property no longer needed.

7.21. 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 will make prompt payment to the PERFORMING PARTY for allowable reimbursable costs. Closeout of the Grant does not affect:

7.21.1. The TCEQ's right to disallow costs and recover funds on the basis of a later audit, quality assurance assessment, or other review;

7.21.2. The PERFORMING PARTY'S obligation to return any funds due as a result of later refunds, corrections, or other transactions;

7.21.3. Records retention as required herein;

7.21.4. Property management requirements set forth herein; and

7.21.5. Audit, including quality assurance assessment, requirements set forth herein.

7.22. 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 another Grant.

7.23. 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:

7.23.1. Making an administrative offset against other requests for reimbursement;

7.23.2. Withholding advance payments otherwise due to the PERFORMING PARTY, or

7.23.3. Other action permitted by law.

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

7.25. Upon satisfactory completion of the Work performed hereunder, acceptance of such Work by the TCEQ Project Representative, and prior to final payment under this Contract for such Work, or prior to settlement upon termination of this Contract 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 Contract. Such release shall be conditioned upon payment of all fund amounts due and payable to PERFORMING PARTY under this Contract, and limited to only those claims which reasonably could have been foreseen at the time the release was executed. PERFORMING PARTY reserves the right to identify claims to be excluded thereby.

7.26. The PERFORMING PARTY shall provide to the TCEQ documentation showing all tasks that have been completed by the PERFORMING PARTY. The PERFORMING PARTY agrees that the determination of satisfactory completion of any and all Work or other services performed or furnished under this Contract will be based on the judgment of the staff of the TCEQ, which judgment will be exercised in a reasonable manner and in good faith.

7.27. Final payment under this Contract or settlement upon termination shall not constitute a waiver of the TCEQ's claims against the PERFORMING PARTY. The TCEQ may refuse to reimburse expenditures for which the PERFORMING PARTY submits a voucher more than sixty (60) days after the termination date of this Contract.

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 the TCEQ in the event of a material failure to comply with the Contract terms, in accordance with the Uniform Grant Management Standards: provided that no such termination may be effected unless the other party is given:

8.2.1. not less than ten (10) 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 Uniform Grant Management Standards: 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 Contract for a material failure to comply with the Contract terms under Section 8.2 or the TCEQ terminates the Contract for convenience under Section 8.3, an adjustment in the Contract amount shall be made in accordance with the Uniform Grant Management Standards.

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 Contract, 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 Contract, the TCEQ may in its sole discretion terminate this Contract 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 Contract 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.

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.

Notice of Claim:

9.3. 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 Paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose or sovereign immunity.

Professional Fees and Court Costs Included:

9.4. 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

9.5. The PERFORMING PARTY shall acknowledge the financial support of the TCEQ and the U.S. EPA whenever Work funded, in whole or part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, 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 AND
U.S. ENVIRONMENTAL PROTECTION AGENCY***

The preparation of this report was financed through grants from the U.S. Environmental Protection Agency 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 will 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 Contract, including workers compensation in accordance with Texas statutory requirements.

10.3. PERFORMING PARTY will 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 actor or omission by a director or officer of the PERFORMING PARTY.

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 Contract. Therefore, PERFORMING PARTY agrees that the following are appropriate standards for PERFORMING PARTY's performance during the Contract:

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 Contract 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 using the TCEQ Contractor Evaluation form.

Contract 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 Contract. TCEQ will prepare a cumulative written report of the evaluation upon termination or expiration of the Contract and also as frequently as determined appropriate by the TCEQ.

11.3.1. Within thirty (30) days of receipt of each of the FY-2012 and FY-2013 End-of-Year Assessments, the PERFORMING PARTY shall provide information to the TCEQ concerning action(s) that will be taken to correct any deficiencies noted in the report. This

response will include a description of the nature and extent of each deficiency's impact on data quality, the specific corrective actions taken or planned to address the deficiencies, actions taken or planned to prevent recurrence, a schedule to bring any deficiencies in the ambient air monitoring program up to TCEQ standards, the means to be used to document completion of each action, and it will identify resources to accomplish the necessary corrections.

11.3.2. Within ninety (90) days after receipt of TCEQ comments or as recommended by the TCEQ, the PERFORMING PARTY shall correct deficiencies and report to the TCEQ any deficiencies that cannot be corrected within the allocated time-frame. 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 monitoring activities and/or in the PERFORMING PARTY becoming ineligible for future funding.

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, below.

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 Contract in the event of substandard performance or other failure to conform to the requirements of the Contract 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.

11.5.3. Request and receive return of any over-payments or inappropriate payments.

11.5.4. 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 Contract, demand and receive: return of all equipment purchased with Contract funds, return of all unexpended funds, and repayment of expended funds.

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 Contract or in law to recover any losses rising from or caused by the PERFORMING PARTY's substandard performance or any non-conformity with the Contract or the law. The remedies and sanctions available to TCEQ in this Contract 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 there under, 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 Paragraph 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 Contract.

SCOPE OF WORK

A. STATEMENT OF SERVICES

The PERFORMING PARTY shall perform the tasks described in this Scope of Work as well as comply with all deadlines as they are more fully set out in this Scope of Work.

The PERFORMING PARTY will operate equipment at the following sites:

Tillman Health Center – Carbon Monoxide, PM10 (Collocated), Total Suspended Particulate-Lead (Collocated), and Meteorological Parameters

Skyline Park – Total Suspended Particulate-Lead

Ivanhoe Fire Station – Ozone, PM10

Kern Fire Station – Total Suspended Particulate-Lead

Van Buren – PM10, TEOM PM2.5, meteorological parameters

Riverside High School – PM10

Ascarate - Total Suspended Particulate-Lead monitoring

Chamizal - PM Coarse

1. Grants

The PERFORMING PARTY shall fully comply with and complete all requirements and output objectives under any U.S. Environmental Protection Agency (EPA) grant agreements from which it receives funds for the period of this Agreement. This task shall apply, but not be limited, to grants awarded under Section 105 of the Federal Clean Air Act.

2. Administrative Regulations

The PERFORMING PARTY shall provide adequate recordkeeping and reporting to ensure conformance to the financial, property, and procurement regulations. Guidelines or criteria for accomplishment: Treasury Circular 1075; Chapters 1000 and 2000; OMB Circular A-102, A-133, and A-87; 40 CFR 31; 40 CFR 35.

The TCEQ or the EPA, as appropriate, may update any or all of the exhibits referred to in this Agreement. The PERFORMING PARTY shall implement updated editions of any such updated exhibits within thirty (30) days of receipt.

2.1. Funding Application Package

Within thirty (30) days of receipt of funding allocation notification and current Funding Application Package, incorporated herein as Exhibit A-1, the PERFORMING PARTY shall submit to the TCEQ its FY-2012 and 2013 funding application. The application shall include the following:

2.1.1 Grant funds requested in the application shall in no event exceed the amount referred to in the funding allocation notification. Submittal of an application in an

amount greater than the PERFORMING PARTY's funding allocation shall result in the TCEQ's immediate rejection of such application and the PERFORMING PARTY shall reapply in conformance with the allocation notification amount.

2.1.2 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 total combined Federal and State share of the funding for the PERFORMING PARTY's Local Air Program shall not exceed sixty seven percent (67%) of the PERFORMING PARTY's total cost for the program; with the local share being based on the local dollars allocated pursuant to maintenance-of-effort requirements for Federal air pollution grants. The PERFORMING PARTY must provide matching funds such that the combined Federal share, derived from Section 105 funding, and the State share, derived from the current Appropriations Act (Rider 5), shall not exceed sixty seven percent (67%), or the total amount of this Contract may be reduced proportionately so that this condition is met.

2.1.3 The PERFORMING PARTY must ensure that all required Federal certifications as appears in the Funding Application Package, Exhibit A-1, are completely filled out and signed as necessary.

2.1.4 The PERFORMING PARTY must ensure that all required Federal inventory provisions are addressed in the Funding Application Package, Exhibit A-1. (See Section 2.5 below.)

2.1.5 The budget is effective for the term of this Contract. The PERFORMING PARTY may move funds between budget categories up to a maximum of ten percent (10%) of the total Contract amount. Any changes beyond ten percent (10%) may be made only with the written consent of the TCEQ.

2.2 Requests for Payment

On a quarterly basis, the PERFORMING PARTY shall submit requests for payment to TCEQ in accordance with Article 7 of the General Conditions.

2.3 Requests for Rebudget Approval

As needed, the PERFORMING PARTY shall submit to the TCEQ a request for rebudget approval according to the requirements described in 40 CFR 31.30 (c) (iii) or (d) (1-3). Within thirty (30) days of request, the TCEQ will provide comments or approve the request.

2.4 Purchase of Property Items

Prior to purchase, the PERFORMING PARTY shall submit a request and a justification to the TCEQ for approval to purchase property items with a unit acquisition cost of \$1,000 or more, if purchased with funds provided by contracts and/or matching funds with the TCEQ.

2.5 Physical Inventory Processing

Pursuant to 40 CFR 31.32, the PERFORMING PARTY shall be solely responsible for physical inventory processing as follows:

2.5.1 The PERFORMING PARTY shall perform an annual physical inventory of total property purchased with funds provided by contracts with the TCEQ.

2.5.2 The PERFORMING PARTY shall submit a report to the TCEQ of any unresolved shortages and unprogrammed losses exceeding \$1,000 purchased with funds provided by contracts with the TCEQ.

2.5.3 On an ongoing basis and as needed, the PERFORMING PARTY shall request disposition of non-expendable personal property purchased with funds provided by contracts with the TCEQ.

2.5.4 On an ongoing basis, the PERFORMING PARTY shall maintain property records as required.

2.6 Financial Status Report

By September 30 of each fiscal year, the PERFORMING PARTY shall submit a **final** Financial Status Report (FSR) for this Contract, in accordance with EPA Fiscal Guidance 40 CFR 31.41. With the final FSR, the PERFORMING PARTY shall submit a list of property purchased wholly or partially with funds from this Contract and having a unit acquisition cost of \$1,000 or more. The FSR shall satisfy State financial reporting requirements for this Contract. This requirement for a final FSR is in addition to the FSR required to be submitted with each invoice. The requirements of this Section shall survive the termination of this Agreement.

2.7 Quality Assurance Audit

The Quality Assurance Audit will consist of an End-of Year Questionnaire plus any on-site evaluations deemed necessary by the lead TCEQ Quality Assurance Specialist. The TCEQ will submit to the EPA the results of any Quality Assurance Assessments conducted on the activities of the PERFORMING PARTY and its progress in meeting contract requirements. The report will include quality assurance findings and recommended solutions to any quality assurance problems noted. A copy of the report will be provided to the PERFORMING PARTY. The requirements regarding any Quality Assurance Assessment shall survive the termination of this Agreement. The Quality Assurance Assessment will be conducted as an on-site evaluation as deemed necessary by the lead TCEQ Quality Assurance Specialist. An End-of-Year Questionnaire will be used and conducted as follows:

2.7.1 FY2011 End-of-Year Questionnaire (covering 9/1/10 through 8/31/11) and FY2012 End-of-Year Questionnaire (covering 9/1/11 through 8/31/12)

If the TCEQ identifies deficiencies in the Ambient Air Monitoring Program upon its FY-11 End-of Year Questionnaire or on-site evaluation required by previous

agreement, or upon its FY12 Quality Assurance Audit, the PERFORMING PARTY shall, within ninety (90) days after receipt of TCEQ comments or as recommended by the TCEQ, correct any similar deficiencies in the Work performed under this Contract and report to the TCEQ any deficiencies that cannot be corrected within the allocated time-frame. 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 monitoring activities and/or in the PERFORMING PARTY becoming ineligible for future funding.

2.7.2 FY-2011 Quality Assurance Audit (covering 9/1/10 through 8/31/11)
FY-2012 Quality Assurance Audit (covering 9/1/11 through 8/31/12)

- a. Within thirty (30) days of receipt, the PERFORMING PARTY shall provide a written response to the End-of-Year Questionnaire to the TCEQ.

2.7.3 Within thirty (30) days of receipt of each of the FY-2011 and FY-2012 Quality Assurance Audits, the PERFORMING PARTY shall provide information to the TCEQ concerning action(s) that will be taken to correct any deficiencies noted in the report. This response will include a description of the nature and extent of each deficiency's impact on data quality, the specific corrective actions taken or planned to address the deficiencies, actions taken or planned to prevent recurrence, a schedule to bring any deficiencies in the Ambient Air Monitoring Program up to TCEQ standards, the means to be used to document completion of each action, and it will identify resources to accomplish the necessary corrections.

2.7.4 Within ninety (90) days after receipt of TCEQ comments or as recommended by the TCEQ, the PERFORMING PARTY shall correct deficiencies and report to the TCEQ any deficiencies that cannot be corrected within the allocated time-frame. 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 monitoring activities and/or in the PERFORMING PARTY becoming ineligible for future funding.

3. Quality Assurance Plans

A complete task under this Section shall include all of the requirements listed below. In order to receive the payment set out in the Scope of Work (Contract Costs Budget), the PERFORMING PARTY must fulfill all of the following subsections. Guidelines or criteria for accomplishment: Sec. 319, CAA; 40 CFR, Parts 50, 51, 53, and 58; EPA QA/R2; EPA QA/R5; EPA QA G4; EPA QA/G-6; EPA QA/G-7; EPA QA/G9.

3.1 Quality Management Plan

By March 1 of each fiscal year, the PERFORMING PARTY shall submit to the TCEQ its revised/updated Quality Management Plan or a certification that no changes were made. The Quality Management Plan must adhere to EPA QA/R2 guidance incorporated herein as Exhibit A-2. Failure to have an approved plan may result in withholding of all Section 105 Contract funding until the plan is submitted and approved by the TCEQ. Services or Work performed under this Contract by the Contractor and any Subcontractor shall conform to the Quality Management Plan.

3.2 Quality Assurance Project Plan

By August 1 of each fiscal year, the PERFORMING PARTY shall submit to the TCEQ its revised/updated Quality Assurance Project Plan associated with this Scope of Work or a certification that no changes were made, or sign onto the TCEQ NAMS/SLAMS/BORDER QAPP. The Quality Assurance Project Plan must adhere to EPA QA/R5 guidance incorporated herein as Exhibit A-3, and requirements must be at least as stringent as those described in the TCEQ NAMS/SLAMS Network and U.S./Border Support Activities Quality Assurance Project Plan. **Failure to have an approved plan may result in withholding of all Section 105 Contract funding until the plan is submitted and approved by the TCEQ.** Services or Work performed under this Contract by the Contractor and any Subcontractor shall conform to the Quality Assurance Project Plan. By mutual agreement, Contractor and TCEQ may amend the QAPP as necessary to reflect changes in the Services or Work to be performed under this Contract.

4. Field Operations Support Division Program

The PERFORMING PARTY shall provide support of the Texas Ambient Air Monitoring network objectives for FY-2012 and FY2013 by operating and submitting data for air pollution monitoring sites. The PERFORMING PARTY shall ensure that the monitoring sites are operated in compliance with applicable regulations.

The PERFORMING PARTY shall implement and conduct a Field Operations Support Division Program as required by the following:

4.1 Maintenance and Repair of Equipment

The PERFORMING PARTY shall be responsible for all the maintenance and/or all the repair of any of its equipment at these sites.

4.2 Training

The PERFORMING PARTY shall ensure that its staff is adequately trained and qualified in order to perform designated tasks. Representatives for the PERFORMING PARTY are expected to attend TCEQ provided training, workshops, and/or other activities designed to increase technical capabilities required to support this Agreement. It shall be the responsibility of the PERFORMING PARTY to identify and obtain any necessary safety training. The PERFORMING PARTY shall provide a quarterly report to the TCEQ pursuant to Article 7 of the General Conditions of this Agreement of attendance by staff of training, workshops, and/or

other activities designed to increase technical capabilities of the PERFORMING PARTY's personnel. The report shall include any safety training that the PERFORMING PARTY's personnel attended. This report shall be discussed during the End-of-Year Assessment.

4.3 Quality Assurance/Quality Control Assessments

4.3.1 On a quarterly basis, the PERFORMING PARTY shall perform performance evaluations for accuracy on at least twenty five percent (25%) of the NAMS/SLAMS designated monitors unless the Performing Party signs onto the QAPP for Ambient Air Monitoring in Texas for SLAMS/Border, PM_{2.5}, and PAMS Programs, where TCEQ will perform this duty. All NAMS/SLAMS monitors will be assessed at least once a year. If the data quality objectives are not met, the PERFORMING PARTY must produce in writing an assignable cause for not meeting this specification, the specific corrective actions taken or planned to address the nonconformance, actions taken or planned to prevent recurrence, the timetable for completing each action, and the means to be used to document completion of each action. The TCEQ reserves the right to reject the affected data sets and payment may be withheld if seventy-five (75%) percent data return per quarter is not accomplished.

4.3.2 On an ongoing basis, the TCEQ reserves the right to assess, which includes performance evaluation, inspection, surveillance, peer review, or audit monitors operated by the PERFORMING PARTY. Such Assessments are expected to be announced and access to the monitors and the associated measurement data are expected to be coordinated with the PERFORMING PARTY's staff. At least one (1) assessment per year should be expected. More frequent assessments may occur if significant or persistent data quality issues occur.

4.4 Air Quality Data (AQD) Reporting

The PERFORMING PARTY shall submit to the TCEQ all air quality data (including any required metals analysis) in a mutually agreed upon format for the preceding quarter for all monitors as designated by the TCEQ, including NAMS, and SLAMS. To satisfy Federal requirements, this data shall be submitted within forty five (45) days after the end of the Federal calendar quarter. All air quality data submittals shall be accompanied by the precision and accuracy reports for ambient monitors as designated by the TCEQ, including all NAMS, and SLAMS, which describe the quality of the data submitted.

4.4.1 Because the Federally mandated time-frames do not coincide with the Contract period, the data submittal required in Section 4.4 (Air Quality Data Reporting) may be evaluated by the TCEQ after payment has been made to the PERFORMING PARTY or after the Contract period has expired for monitoring services. Any deficiency related to the quality and/or timeliness of the data submittal report will be documented and reported by the TCEQ to the PERFORMING PARTY. If the deficiencies are not corrected to the satisfaction of the TCEQ, it may result in the TCEQ withholding payment to the PERFORMING PARTY for future monitoring activities and/or in the PERFORMING PARTY becoming ineligible for future funding.

4.5 Notice of Special Purpose Monitoring

At least thirty (30) days before monitoring begins or as soon as is practicable, the PERFORMING PARTY shall provide written notification to the TCEQ Field Operations Support Division and the TCEQ Regional Office of any special purpose monitoring to be performed. This notification shall include a summary report describing special purpose monitoring to be conducted. If the monitoring is anticipated to continue for a period greater than ninety (90) days, quarterly accuracy audits and biweekly precision checks, in the case of continuous monitoring, shall be performed.

4.6 Reporting of Special Purpose Monitoring Data

With quarterly data, the PERFORMING PARTY shall submit data to the TCEQ in a mutually agreed upon format for special purpose monitoring conducted. A summary report of monitoring results will be submitted within forty five (45) days after completion of monitoring.

4.7 NAMS/SLAMS Network Review

If the PERFORMING PARTY makes any changes to its local network during a quarter, the Performing Party shall provide a status report of its local network to evaluate the adequacy of the existing network to meet the State and Federal monitoring objectives. Guidelines or criteria for accomplishment: 40 CFR, Part 58. The network review process shall be conducted as follows:

4.7.1 By May 1 of each fiscal year, the TCEQ will provide a draft of any proposed revisions to the PERFORMING PARTY for review, evaluation, and any additional proposals for NAMS/SLAMS network.

4.7.2 By March 14 of each fiscal year, the PERFORMING PARTY shall submit a review and evaluation document, including recommendations for network changes to the TCEQ.

4.7.3 By July 1 of each fiscal year, the TCEQ will submit a modified NAMS/SLAMS review and evaluation document to the EPA. A copy of the final document will be provided to the Performing Party.

4.7.4 On an ongoing basis, TCEQ will notify the PERFORMING PARTY of EPA approved changes to NAMS/SLAMS network.

B. DELIVERABLES

The PERFORMING PARTY shall provide the appropriate TCEQ office with the reports required below to provide the information on Tasks listed in the Scope of Work (Statement of Services) of this Agreement:

1. Administrative Regulations

The requirements regarding the End-of-Year Assessment and the following reports shall survive the termination of this Agreement.

a. By September 30 of each fiscal year, the PERFORMING PARTY shall submit a final Financial Status Report (FSR) for this Contract, as prescribed under Section 2.6 in Scope of Work (Statement of Services) of this Agreement.

b. Each fiscal year within thirty (30) days of receipt, the PERFORMING PARTY shall provide a written response to the End-of-Year Questionnaire to the TCEQ, as prescribed under Section 2.7.2 in Scope of Work (Statement of Services) of this Agreement.

c. Within thirty (30) days of receipt of each of the FY-2011 and FY2012 Quality Assurance Audits, the PERFORMING PARTY shall provide to the TCEQ information concerning action(s) that will be taken to correct any deficiencies noted in the report, as prescribed under Sections 2.7.3 and 2.7.4 in the Scope of Work (Statement of Services) of this Agreement.

d. Within thirty (30) days of receipt at PERFORMING PARTY's OFFICE a copy of the annual independent single audit required by OMB Circular A-133 shall be provided by the PERFORMING PARTY to the TCEQ Project Manager.

e. All other deliverables required under this Contract.

2. Quality Assurance Plans

a. By March 1 of each fiscal year, the PERFORMING PARTY shall submit to the TCEQ its revised/updated Quality Management Plan or a certification that no changes were made, as prescribed under Section 3.1 in the Scope of Work (Statement of Services) of this Agreement.

b. By August 1 of each fiscal year, the PERFORMING PARTY shall either sign onto the QAPP for Ambient Air Monitoring in Texas for SLAMS/Border, PM_{2.5}, and PAMS Programs or submit to the TCEQ its revised/updated Quality Assurance Project Plan associated with this Scope of Work or a certification that no changes were made, as prescribed under Section 3.2 in the Scope of Work (Statement of Services) of this Agreement.

3. Field Operations Support Division Program

The requirements of this Section shall survive the termination of the Agreement.

a. The PERFORMING PARTY shall submit a Quarterly Report Checklist incorporated herein as Exhibit A-4, pursuant to Article 7 of the General Conditions and Form B-1 with every invoice. The Checklist, along with the required State of Texas Purchase Voucher, the Financial Status Report, and the TCEQ Invoice, will serve as a request for payment of services by certifying that the PERFORMING PARTY is supporting the Texas Ambient Air Monitoring network as prescribed under Section 4 in the Scope of Work (Statement of Services) of this Agreement.

b. Within forty five (45) days after the end of the Federal calendar quarter, the PERFORMING PARTY shall submit to the TCEQ all air quality data (including metals analysis) in a correct AIRS format for the preceding quarter for all monitors as designated by the TCEQ, including NAMS, SLAMS, as prescribed under Section 4.4 in the Scope of Work (Statement of Services) of this Agreement.

c. At least thirty (30) days before monitoring begins or as soon as is practicable, the PERFORMING PARTY shall provide written notification to the TCEQ Field Operations Support Division Program and the TCEQ Regional Office of any special purpose monitoring to be performed, as prescribed under Section 4.5 in the Scope of Work (Statement of Services) of this Agreement.

d. With quarterly data, the PERFORMING PARTY shall submit data to the TCEQ in the correct AIRS format for special purpose monitoring conducted. A summary report of monitoring results will be submitted after completion of monitoring, as prescribed under Section 4.6 in the Scope of Work (Statement of Services) of this Agreement.

e. The PERFORMING PARTY shall provide a status report of its local network, as changes occur in the network, to the TCEQ, to evaluate the adequacy of the existing network to meet the State and Federal monitoring objectives, as prescribed under Section 4.7 in the Scope of Work (Statement of Services) of this Agreement.

Contract Costs Budget

ARTICLE 1. AUTHORIZED EXPENSE BUDGET PER YEAR

1.1. The authorized expenses, acquisitions, or expenditures under this Contract for each year are as follows:

Budget Category	Budget ³
Personnel/Salary	\$76,600.00
Fringe Benefits ¹	\$29,108.00
Travel	\$0.00
Supplies	\$6,332.00
Equipment	\$0.00
Contractual	\$8,000.00
Other	\$2,000.00
Other - Third Party In-kind	\$0.00
Total Direct Costs	\$122,040.00
Authorized Indirect Costs	<u>\$18,026.00</u>
TCEQ Share	\$93,844.00
Grantee Cost Share	<u>\$46,222.00</u>
TOTAL COSTS	\$140,066.00

1. Fringe benefits shall be reimbursed at actual costs and shall not exceed forty percent 38% of total direct personnel/salary costs for the applicable period of the term of the Contract. Prior to the termination date of this Contract, an audited fringe rate which is different from the above stated percentage of total direct personnel/salary costs for the applicable period of the term of the Contract may be accepted by Commission. If cumulative transfers among the budgeted cost categories caused by this approved change in fringe rate exceed ten percent (10%) of the total costs, the Commission and PERFORMING PARTY must negotiate a new contract budget and incorporate such into this Contract by way of a contract amendment.

The PERFORMING PARTY agrees to reimburse the Commission any overpayments received as a result of the above stated rate being higher than the approved final audited fringe rate for the period under consideration. Nothing in this Section, or the results of any fringe rate audit or final fringe rate approval, shall cause the Commission to owe the PERFORMING PARTY more than the "Total Costs" or result in a reduction in the deliverables as set forth in the Scope of Work. If the final fringe rate is higher than the provisional rate, an adjustment may be made in a future year contract.

2. The indirect rate currently authorized (for the purpose of calculating amounts to be reimbursed by the TCEQ) shall not exceed 17.053% of salaries & fringe benefits (distribution base) for the applicable period of the term of the Contract, subject to the provisions outlined in the Indirect Cost Rate Section of this Article.

TCEQ and Performing Party agree that costs shall not be categorized as both indirect costs and as "other" direct costs. To facilitate this end, Performing Party shall provide to TCEQ a quarterly narrative of expenditures under the indirect cost category. If a particular cost has been categorized as both indirect and direct (other), then Performing Party shall return the overpaid costs to TCEQ, or TCEQ will count the overpaid cost as an offset against future invoices.

3. The funds budgeted by category reflect one hundred percent 100% of the sum of local match and TCEQ/Federal amounts, as applicable. The local match rate is thirty three percent 33% and the TCEQ/Federal share represents sixty seven percent 67%.

1.2. The PERFORMING PARTY is responsible, throughout the term of this Contract, for tracking and ensuring that expenditure amounts under this Contract remain within the various budgeted cost categories set forth in this Article. If, after taking into consideration the requirements set forth in this Article, the PERFORMING PARTY determines that changes or adjustments to any of the current cost category amounts are likely to be necessary, the PERFORMING PARTY shall submit a Budget Revision Form to the TCEQ for review and approval.

1.3. **Indirect Cost Rate:** The Commission and the PERFORMING PARTY must choose one (1) of the following options relating to indirect rate, and identify that option clearly in the contract budget. If no option is selected, indirect rate will NOT be reimbursed.

Option One:

1.3.1. The PERFORMING PARTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.

1.3.2. The PERFORMING PARTY shall maintain all indirect rate records for the Commission's inspection or submit records as per the Agency's request.

1.3.3. PERFORMING PARTY agrees to utilize the provisional rate as established below and agrees to conduct an indirect rate audit. A final indirect rate will be established based on the actual allowable costs, as provided in UGMS, for the period as established by an audit conducted by a currently licensed independent certified public accountant and submitted to the PERFORMING PARTY and the Commission. This indirect rate audit may be conducted at the same time as any other audit required of the PERFORMING PARTY. The cost of the indirect rate audit will be accounted for within the indirect rate, and not directly charged to the Commission. If the indirect rate audit is not provided to the Commission within the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the audit period, Option Two (below) will apply.

(i) In accordance with OMB Circular A-87 and the UGMS, when the PERFORMING PARTY has a Federal cognizant agency or a State coordinating agency, the PERFORMING PARTY must submit the indirect rate approved by the Federal cognizant agency or State coordinating agency within the past twenty four (24) months as the provisional indirect rate.

(ii) Alternatively, if the PERFORMING PARTY does not have an assigned Federal cognizant agency or a designated State coordinating agency or if no rate is approved by the designated oversight agency, the Commission and the PERFORMING PARTY may negotiate a provisional indirect rate in accordance with UGMS.

(iii) In the event, prior to the termination date of this Contract, an audited indirect rate which is different from the initial provisional indirect rate set forth in this Section is accepted by Commission, the Commission and PERFORMING PARTY may negotiate a new contract budget and incorporate such into this Contract by way of a contract change.

(iv) The provisional rate will be included in the Authorized Expense Budget and shall remain in effect subject to determination of a final indirect rate which is based on an audit of the contract period, performed by a currently licensed independent certified public accountant, which specifically examines and reports the indirect rate for the PERFORMING PARTY's accounting period(s) covered under this Contract.

(v) The PERFORMING PARTY agrees to reimburse the Commission any overpayments received as a result of this provisional rate being higher than the approved final audited indirect rate for the period under consideration. Nothing in this Section, or the results of any indirect cost audit or final indirect rate approval, shall cause the Commission to owe the PERFORMING PARTY more than the "Total Obligation Amount" or result in a reduction in the deliverables set forth in the Scope of Work. If the final indirect rate is higher than the provisional rate, an adjustment may be made in a future year contract.

Option Two:

1.3.4. Indirect Cost Rates. The PERFORMING PARTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.

1.3.5. The PERFORMING PARTY shall maintain all indirect rate records for the Commission's inspection or submit records as per the agency's request.

1.3.6. PERFORMING PARTY agrees to an indirect rate of ten percent 10% or less of the direct salary and wage costs of providing the service, in accordance with UGMS Part II, Attachment E, Paragraph E.2.d. No audit of this rate will be required by the Commission.

Option Three:

1.3.7. PERFORMING PARTY agrees to direct bill all costs and not require indirect cost for the Contract.

1.4. When the PERFORMING PARTY applies for final payment, the PERFORMING PARTY will certify on a written form provided by TCEQ that the PERFORMING PARTY has not engaged in the lobbying of the Federal government or in litigation against the United States unless authorized under existing law.

ARTICLE 2. SUBMITTAL OF PAYMENT REQUESTS

Payment requests must be submitted at the interval specified below (whichever is checked; if none is checked, payment requests must be submitted monthly; if more than one is checked, invoices must be submitted when both requirements are met):

monthly

upon completion of deliverables specified herein (see _____).

upon completion of all Work

X Other (specify) Quarterly - To be received within thirty (30) days after the end of the quarter. Included with the invoice which shall be provided in a format acceptable to the TCEQ, will be the FSR (Financial Status Report) and the HUB PAR form.

THE EXHIBITS AND FORMS LISTED BELOW ARE SEPARATE ATTACHMENTS

- A-1 (Funding Application Package)
- A-2 (EPA QA/R-2) - Requirements for Quality Management Plans
- A-3 (EPA QA/R-5) - Requirements for Quality Assurance Project Plans
- A-5 TCEQ Federal Funding Transparency Act Reporting Form

FY-2012 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

A-6. Have you provided written response to the FY-2011 End-of-Year Review questionnaire by the deadline of September 30, 2011 or within thirty (30) days after receipt of the questionnaire?

- Yes. It was submitted on _____.
- No. Please explain.
- NA. Due in the 1st quarter of the Contract only.

A-7. Within thirty (30) days of receipt of your FY-2011 End-of-Year Review Assessment did you provide information concerning actions to be taken to correct any deficiencies found during the End-of-Year Review?

- Yes.
- No. Please explain.
- N/A. We had no deficiencies.
- N/A. Not due this quarter.

A-8. Have the deficiencies been corrected?

- Yes.
- No. We are still within the ninety (90) day window.
- No. There are deficiencies that cannot be corrected within the allotted time-frame. An explanation is attached.
- N/A.

A-9. Have you performed a physical inventory of total property purchased with funds provided by contracts with the TCEQ by the deadline of August 31, 2012?

- Yes. The report is available in our office.
- No. Please explain.
- NA. Due in the 4th quarter of the Contract only.

A-10. Have you reported any unresolved shortages and unprogrammed losses exceeding \$1,000 by the deadline of August 31, 2012?

- Yes. The report was made on _____.
- No. We have none to report.
- NA. Due in the 4th quarter of the Contract only.

FY-2012 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

A-11. Is the final Financial Status Report for this Contract, along with a list of property costing \$1,000 or more and purchased with contract funds, attached to this reimbursement request and being submitted no later than the deadline of September 30, 2012?

- Yes.
 No. Please explain.
 NA. Due in the 4th quarter of the Contract only.

A-12. Have you submitted your funding application for FY-2012 within thirty (30) days of receipt of funding allocation notification and current Funding Application Package?

- Yes. It was submitted on _____.
 No. Projected submittal date: _____.
 NA. Due in the 4th quarter of the Contract only.

A-13 You are required to provide matching funds of not less than thirty three percent (33%) for the Section 105 Contract, part of which can be funds from the State Compliance Contract. Funding allocated for Title V activities in the State Compliance Contract cannot be used as match. You must demonstrate that funds provided to your program under the Section 105 Contract do not cause failure of the match requirements under the State Compliance Contract, which requires that no more than sixty seven percent (67%) of total funding for this program comes from State and Federal sources. Please list the breakdown for your FY- 2012 air program:

State Compliance Contract	\$	%
Section 105 Contract	\$	%
Other 105 Funds*	\$	%
City/County Funds	\$	%
Total	\$	100%

* In order to accurately calculate your match under the terms of the State Compliance Contract and the Section 105 Contract, you must include any additional 105 funding you have received directly from the EPA that is not processed through the TCEQ.

FY-2012 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

B. Quality Assurance Planning

B-1. Have you submitted a revised/updated Quality Management Plan or certification of no changes by the deadline of March 1, 2012?

- Yes. The report was submitted on _____.
- No. Please explain.
- NA. Not due this quarter.

B-2. Have you submitted the Quality Assurance Project Plan or certification of no changes by the deadline of August 1, 2012?

- Yes. It was submitted on _____.
- No. Please explain.
- NA. Not due this quarter.

FY-2012 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

C. Field Operations Support Division Program

C-1. Have there been any changes to your Scope of Work as outlined in Attachment A (Statement of Services to be performed)?

Yes.
 No.

C-2. Did your monitoring staff participate in any applicable training activities during this reporting period?

Yes. Please list.
 No.

C-3. Have you performed accuracy audits on at least twenty five percent (25%) of the NAMS/SLAMS/PAMS designated monitors during this reporting period?

Yes. The report for this will be submitted within forty five (45) days of the end of the quarter.
 No.

C-4. Have you collected air quality data during this quarter which you will submit to TCEQ in a mutually agreed upon format?

Yes. The report will be submitted no later than _____.
 No.

C-5. Was precision and accuracy data collected to quality assure the air data?

Yes. The report will be submitted no later than _____.
 No.

C-6. Have you experienced any significant equipment failure or instrument malfunction?

Yes. Please explain.
 No.

C-7. Has thirty (30) days written notice been given prior to the start of any special purpose monitoring?

Yes. Notice and a summary report submitted on _____.
 No.
 N/A. We have no new SPMs.

FY-2012 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

C-8. Has reporting of Special Purpose Monitoring data been submitted in a mutually agreed upon format with quarterly data?

- Yes.
 No. Please explain.
 N/A.

C-9. Has a summary report of Special Purpose Monitoring results been submitted in a mutually agreed upon format upon completion of monitoring?

- Yes. Report was submitted on _____.
 No. Please explain.
 N/A.

C-10. Have you submitted a review and evaluation document, including recommendations for network changes, for the NAMS/SLAMS Network Review by the deadline of May 1?

- Yes. Submitted on _____ for ____ quarter.
 No.

C-11. Have you submitted the required Quarterly Status Report for evaluating adequacy of the existing network to meet State and Federal standards?

- Yes.
 No. Please explain.
 NA

C-12. If any changes were made to your local monitoring network during a quarter, have you determined whether the nearest practicable estimate of your actual cost (including your required match of thirty three percent (33%)) for the Field Operations Support Division Program activities is less than or equal to the cumulative fixed monthly fee?

- Yes.
 No.

FY-2012 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

Sections A - C are all part of this Checklist.

Authorized Signatory of Performing Party

Date

Printed Name of Signatory

FY-2013 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

A-6. Have you provided written response to the FY-2012 End-of-Year Review questionnaire by the deadline of September 30, 2012 or within thirty (30) days after receipt of the questionnaire?

- Yes. It was submitted on _____.
- No. Please explain.
- NA. Due in the 1st quarter of the Contract only.

A-7. Within thirty (30) days of receipt of your FY-2012 End-of-Year Review Assessment did you provide information concerning actions to be taken to correct any deficiencies found during the End-of-Year Review?

- Yes.
- No. Please explain.
- N/A. We had no deficiencies.
- N/A. Not due this quarter.

A-8. Have the deficiencies been corrected?

- Yes.
- No. We are still within the ninety (90) day window.
- No. There are deficiencies that cannot be corrected within the allotted time-frame. An explanation is attached.
- N/A.

A-9. Have you performed a physical inventory of total property purchased with funds provided by contracts with the TCEQ by the deadline of August 31, 2013?

- Yes. The report is available in our office.
- No. Please explain.
- NA. Due in the 4th quarter of the Contract only.

A-10. Have you reported any unresolved shortages and unprogrammed losses exceeding \$1,000 by the deadline of August 31, 2013?

- Yes. The report was made on _____.
- No. We have none to report.
- NA. Due in the 4th quarter of the Contract only.

FY-2013 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

A-11. Is the final Financial Status Report for this Contract, along with a list of property costing \$1,000 or more and purchased with contract funds, attached to this reimbursement request and being submitted no later than the deadline of September 30, 2013?

- Yes.
 No. Please explain.
 NA. Due in the 4th quarter of the Contract only.

A-12. Have you submitted your funding application for FY-2013 within thirty (30) days of receipt of funding allocation notification and current Funding Application Package?

- Yes. It was submitted on _____.
 No. Projected submittal date: _____.
 NA. Due in the 4th quarter of the Contract only.

A-13 You are required to provide matching funds of not less than thirty three percent (33%) for the Section 105 Contract, part of which can be funds from the State Compliance Contract. Funding allocated for Title V activities in the State Compliance Contract cannot be used as match. You must demonstrate that funds provided to your program under the Section 105 Contract do not cause failure of the match requirements under the State Compliance Contract, which requires that no more than sixty seven percent (67%) of total funding for this program comes from State and Federal sources. Please list the breakdown for your FY-2013 air program:

State Compliance Contract	\$	%
Section 105 Contract	\$	%
Other 105 Funds*	\$	%
City/County Funds	\$	%
Total	\$	100%

* In order to accurately calculate your match under the terms of the State Compliance Contract and the Section 105 Contract, you must include any additional 105 funding you have received directly from the EPA that is not processed through the TCEQ.

FY-2013 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

B. Quality Assurance Planning

B-1. Have you submitted a revised/updated Quality Management Plan or certification of no changes by the deadline of March 1, 2013?

- Yes. The report was submitted on _____.
- No. Please explain.
- NA. Not due this quarter.

B-2. Have you submitted the Quality Assurance Project Plan or certification of no changes by the deadline of August 1, 2013?

- Yes. It was submitted on _____.
- No. Please explain.
- NA. Not due this quarter.

FY-2013 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

C. Field Operations Support Division Program

C-1. Have there been any changes to your Scope of Work as outlined in Attachment A (Statement of Services to be performed)?

Yes.
 No.

C-2. Did your monitoring staff participate in any applicable training activities during this reporting period?

Yes. Please list.
 No.

C-3. Have you performed accuracy audits on at least twenty five percent (25%) of the NAMS/SLAMS/PAMS designated monitors during this reporting period?

Yes. The report for this will be submitted within forty five (45) days of the end of the quarter.
 No.

C-4. Have you collected air quality data during this quarter which you will submit to TCEQ in a mutually agreed upon format?

Yes. The report will be submitted no later than _____.
 No.

C-5. Was precision and accuracy data collected to quality assure the air data?

Yes. The report will be submitted no later than _____.
 No.

C-6. Have you experienced any significant equipment failure or instrument malfunction?

Yes. Please explain.
 No.

C-7. Has thirty (30) days written notice been given prior to the start of any special purpose monitoring?

Yes. Notice and a summary report submitted on _____.
 No.
 N/A. We have no new Special Purpose Monitoring.

FY-2013 SECTION 105 CONTRACT QUARTERLY REPORT
Check List for Reimbursement Request Approval

C-8. Has reporting of Special Purpose Monitoring data been submitted in a mutually agreed upon format with quarterly data?

- Yes.
 No. Please explain.
 N/A.

C-9. Has a summary report of Special Purpose Monitoring results been submitted in a mutually agreed upon format upon completion of monitoring?

- Yes. Report was submitted on _____.
 No. Please explain.
 N/A.

C-10. Have you submitted a review and evaluation document, including recommendations for network changes, for the NAMS/SLAMS Network Review by the deadline of May 1?

- Yes. Submitted on _____ for ____ quarter.
 No.

C-11. Have you submitted the required Quarterly Status Report for evaluating adequacy of the existing network to meet State and Federal standards?

- Yes.
 No. Please explain.
 NA

C-12. If any changes were made to your local monitoring network during a quarter, have you determined whether the nearest practicable estimate of your actual cost (including your required match of thirty three percent (33%)) for Field Operations Support Division Program activities is less than or equal to the cumulative fixed monthly fee?

- Yes.
 No.

Sections A - C are all part of this Checklist.

Authorized Signatory of Performing Party

Date

Printed Name of Signatory

Part A. Identifying Information.

1. TCEQ Contract No.: _____ 2. Your Invoice No. _____
 3. Work Order No. (if applicable) _____ 4. For work completed between ____ / ____ / ____ and ____ / ____ / ____
 5. Prime Contractor ("You"): _____ 6. Prime Contractor Vendor ID #: _____
 7. Contact: _____ 8. Phone: (____) _____ - _____
 9. Is the Prime Contractor a Texas certified HUB and performing at least 25% of the total value of the contract? Yes ___ No ___

Part B. Current Invoice FOR HUB and/or Non-HUB Subcontracting Information.

10. Check box if no HUB and/or Non-HUB subcontractors have been used this period, otherwise fill out below listed table:

Name and Address of HUB and/or Non-HUB Subcontractor	Vendor ID No.	Type of HUB	Provided*:	Value of this subcontractor's participation for this invoicing period
_____	_____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$ _____
_____	_____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$ _____
_____	_____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$ _____
Total				\$ _____

* If subcontractor's services include both labor and materials, check "services" only.

Note: If you need room to list more subcontractors, enter this information on a plain sheet of paper and attach it to this form.

11. Total of current invoice: \$ _____
 12. Total of current invoices from certified HUB subcontractors: \$ _____
 13. Percent of HUB expenditures for this invoice: _____ %
 (line 12 ÷ line 11) x 100

Part C. Total Contract/HUB Subcontracting Information

14. Total amount invoiced to date: \$ _____
 15. Total invoiced from certified HUB Subcontractors to date: \$ _____
 16. Percent of HUB invoices for total contract to date: _____ %
 (line 15 ÷ line 14) x 100
 17. HUB subcontracting goal for this contract: _____ %

Part D. Affirmation. The information provided on this form is complete and correct. You or *our representative must sign here:*

18. Name: _____ Signature _____ 19. Date: _____

Part E. Other Information. For TCEQ use only. (Project manager: Complete this box and sign.)

Type of funding: State Federal Both Date In: ____ / ____ / ____ PCA Code(s) _____
 Check if prime contractor is one of the following: Printed Name: _____
 River Authority Interlocal
 Index: _____ COBJ: _____ Signature: _____

General Information

The purpose of this form is to help the Texas Commission on Environmental Quality (TCEQ, "us") to track the value of business we do with Texas-certified "historically underutilized businesses" (HUBs) and federally designated "minority- or woman-owned business enterprises" (MWBEs). In this form, the acronym "HUB" refers to both of these classes of businesses.

Do I Have to Complete This Form?

If we have awarded you a contract to provide us with professional services, other services, or commodities *and* your contract contains a subcontracting plan, then you must complete this form each time you submit an invoice or set of invoices to us—even if no subcontracting occurred during the period covered by these invoices.

If you are a HUB, you must perform at least 25 percent of the total value of the contract with your own or leased employees as defined by the Internal Revenue Service in order for the agency to receive 100 percent HUB credit for the entire contract. You may subcontract more than 75 percent of the contract with HUBs or non-HUB subcontractors, but you must report to us the value—both dollar amount and percentage—of your contract that was actually performed by you and your subcontractors during each invoicing period.

Where Do I Turn This Form In?

When you have completed this form, attach it to your invoices and submit it to our project manager for your contract.

Where Can I Get More Answers?

If you have any other questions, call the project manager named on your contract or our HUB Program Director: (512/239-1273).

Definitions

These brief definitions may help you complete this form. For terms where a full legal definition may be helpful, we have cited the rule or law that gives that definition.

Commodities—materials, supplies, or equipment. May include consumable articles (for example, office supplies) or durable items (for example, computers, furniture, or equipment).

Other services—all services other than construction and professional services, including consulting services (Texas Government Code, Chapter 2254, Subchapter B).

Prime contractor (or "prime")—any business, agency, or individual who provides commodities or services to us under a purchase order or other contract.

Professional services—services of accountants, architects, engineers, land surveyors, optometrists, and physicians (Texas Government Code, Chapter 2254, Subchapter A).

Services—(1) functions performed for us by an outside source—for example, equipment repair, consulting, hazardous waste disposal, or work by short-term temporary employees.

(2) similar functions performed for the prime contractor by an outside source.

Subcontractor—any business, agency, or individual (other than an employee) who provides commodities or services to the prime contractor.

Total contract (Item 14)—on this form, total value of your contract with us, including all monetary amendments, if any.

Vendor ID No.—the 11-digit taxpayer identification number assigned to this subcontractor by Comptroller of Public Accounts. The subcontractor should be able to provide you with this number.

Instructions

1. TCEQ Contract No. - Enter the contract number we have assigned to this contract. This number appears on the first page of the contract.
2. Your Invoice No. - Enter your invoice number for each invoice you are submitting with this form.
3. Work Order No. - If applicable, enter your work order number for the site, phase, or program.
4. For work completed between - Enter the period of time in which the work covered by these invoices was carried out.
5. Prime Contractor - Enter the name of the contractor to which we awarded this contract.
6. Prime Contractor Vendor ID# - Enter the 11-digit vendor identification number the Comptroller of Public Accounts has assigned the prime contractor.
7. Contact - Enter the name of the person authorized to complete this form for the prime contractor. We will contact this person if we have any questions about the information you have provided on this form.
8. Phone - Enter the phone number at which we can reach the contact person named in Item 7.
9. Indicate "Yes" or "No".

10. HUB and/or Non-HUB Subcontractor Information - First column—Enter the complete name and address of each subcontractor. Enter information about this subcontractor in the remaining columns of this row. Check box if no subcontractors were used during this invoicing period.

Second column—Enter the 13-digit vendor identification number the Comptroller of Public Accounts has assigned to this HUB subcontractor.

Third column—You have three options:

- If this subcontractor is a minority-owned business enterprise, check “MBE.”
- If this subcontractor is a woman-owned business enterprise, check “WBE.”
- If this subcontractor qualifies as both an MBE and a WBE, check both boxes.

Fourth column—Indicate, by checking the appropriate box, whether the subcontractor provided services or commodities. (If both, check “services” only.)

Fifth column—Enter the total of all invoices attached for this HUB subcontractor.

11. Total of current invoice - Enter the total of the Prime Contractor’s current invoice.

12. Total of current invoices from certified HUB subcontractors - Enter the total amount of all attached invoices from HUBs.

13. Percent of HUB expenditures for this invoice - Use the instructions on the PAR form to calculate the percentage of this invoice that HUB subcontractors have completed.

14. Total amount invoiced to date - Enter the total of all invoices you have submitted to us to date for this contract, including the invoices attached to this PAR form.

15. Total of HUB expenditures on the total contract to date - Enter the total of all HUB subcontractor invoices for this contract to date.

16. Percent of HUB invoices for the total contract to date - Use the instructions on the PAR form to calculate the percentage of this contract that HUB subcontractors have completed to date.

17. HUB Subcontracting goal for this contract - The HUB goal is stated as a percentage in your contract. Enter the HUB goal here.

18. Name and Signature - The contractor or authorized representative of the contractor.

19. Date - Enter the date you completed this report.

TCEQ PURCHASE VOUCHER Page _____ of _____

Agency No. 582		Agency Name Texas Commission on Environmental Quality				Current Document No.			
1. Date TCEQ Received Invoice		2. Service Dates		3. Contract/Purchase Order Date		4. Requested Payment Date		5. Payment Due Date	
6. Payee Identification No.				8. Voucher Prepared By: _____ Date: _____					
7. Pay To (Payee Name /Address):				9. Contract Voucher Auditor: _____ Date: _____					
				10. FINAL BILLING YES NO (Please circle one)					
DOCS FX	REF DOC	SFX	TRANS CODE 231	INDEX	MOD P	AY	11. PCA	PCC	
001									
SEQ NO.	REQ NO	COMP OBJ	AGY OBJ	12. AMOUNT		RVS	RTI NUMBER		
	13. INVOICE NUMBER	DESCRIPTION		14. CONTRACT NO.	GRANT NO.	PROJECT NO.			
DOCS FX	REF DOC	SFX	TRANS CODE 231	INDEX	MOD P	AY	11. PCA	PCC	
001									
SEQ NO.	REQ NO	COMP OBJ	AGY OBJ	12. AMOUNT		RVS	RTI NUMBER		
	13. INVOICE NUMBER	DESCRIPTION		14. CONTRACT NO.	GRANT NO.	PROJECT NO.			
15. DESCRIPTION OF GOODS or SERVICES				16. QUANTITY	17. UNIT PRICE	18. AMOUNT			
LEGAL DESCRIPTIVE TEXT:									
I approve this voucher for payment. The above goods or services correspond in every particular with the contract under which they were purchased. The invoice for the goods or services is correct. This payment complies with the General Appropriations Act.									
19. DIVISION SIGN APPROVAL HERE					19. Phone (Area code and number)		19. Date		
BATCH NO	BATCH TYPE 4	DATE ENTERED	ENTERED BY	DATE RELEASED	RELEASED BY:				

TCEQ INVOICE

Form B-3

Agency No. 582	Agency Name Texas Commission on Environmental Quality	TCEQ Contract No. 582-10-86410
		Date
1. Payee Identification No.	2. Service Dates:	
3. Pay To: (Payee Name /Address) City of El Paso Environmental Services 7969 San Paulo Drive El Paso, TX 79907	4. Prepared By:	
	5. FINAL BILLING: (Please circle one) YES NO	6. This Invoice Amount: \$

7. DELIVERABLES	8. QUANTITY	9. UNIT PRICE	10. AMOUNT	11. CUMULATIVE QUANTITY	12. CUMULATIVE AMOUNT
Total Amount of Services Rendered Less 33% Match Total Reimbursement			\$ \$ \$ \$		
Total					

* APPROVAL SIGNATURE REQUIRED FOR FINAL BILLING ONLY:
I approve this release of the claims for payment of any funds due and payable by the TCEQ pursuant to the terms of the Contract in Attachment B, Article 2a., entitled "Final Payment Request."

13. PAYEE SIGN APPROVAL HERE:	14. Printed Name	15. Date:
-------------------------------	------------------	-----------

BATCH NO./TYPE / 4	DATE ENTERED	ENTERED BY	RELEASED BY	DATE RELEASED	INVOICE NUMBER	RTI NUMBER	D O C U M E N T
ISSUE DATE/DATE MAILED /	WARRANT NUMBER				TRANSMITTAL NUMBER		

Financial Status Report

1.	STATE AGENCY ORGANIZATION UNIT TO WHICH REPORT IS SUBMITTED:		
2.	GRANT/CONTRACT TITLE:		
3.	PAYEE IDENTIFICATION NUMBER:	4. RECIPIENT ORGANIZATION (NAME AND COMPLETE ADDRESS, INCLUDING ZIP CODE) :	
5.	TCEQ CONTRACT NUMBER:		
6.	FINAL REPORT: YES NO		
7.	ACCOUNTING CASH BASIS:	ACCRUAL	

8.	TOTAL PROJECT/GRANT PERIOD:	9.	PERIOD COVERED BY THIS REPORT:		
10.	BUDGET CATEGORIES:	Approved Budget	Project Cost This Report	Cumulative Project Cost	Balance **
	a. Personnel/Salary		*		
	b. Fringe Benefits				
	c. Travel		*		
	d. Supplies		*		
	e. Equipment		*		
	f. Contractual		*		
	g. Construction		*		
	h. Other		*		
	i. Total Direct Costs (Sum a - h)				
	j. Indirect Costs				
	k. Total Costs (Sum of i & j)				
	l. Recipient Cost Share (33%)				
	m. Total Reimbursable Costs (k-l)				

*List (Itemize) on the appropriate supplemental form all component expenses comprising total for each of these categories. Please attach receipts, as required, in accordance with Attachment B of your contract.

**Negative balances in any of the budget categories should be explained in a brief accompanying narrative.

11. CERTIFICATION I certify to the best of my knowledge and belief that this report is correct and complete and that all Outlays and Unliquidated Obligations are for the purposes set forth in the award document.

Signature of Authorized Certifying Official _____

Typed or Printed Name and Title _____

Telephone (Area code, number and ext.) _____ Date Submitted _____

ITEMIZATION OF EQUIPMENT AND CONTRACTUAL COSTS

EQUIPMENT PURCHASES (during this report period)

NUMBER PURCHASED	ITEM DESCRIPTION (Should match description provided for approval)	UNIT COST	TOTAL COST	TASKS
TOTAL EQUIPMENT EXPENDITURES (must agree with line 10e on Form 269a)			\$	

CONTRACTUAL EXPENDITURES (during this report period)

SUBCONTRACTOR (NAME)	FOR	COST (THIS PERIOD)	TASKS
TOTAL CONTRACTUAL EXPENDITURES (must agree with line 10f on Form 269a)		\$	

* LEGIBLE PURCHASE ORDER AND/OR INVOICES MUST BE ATTACHED TO THIS FORM FOR EACH LISTED ITEM OR EXPENDITURE.

ITEMIZATION OF SUPPLY AND OTHER COSTS

SUPPLIES PURCHASED (during this report period)

NUMBER PURCHASED	ITEM DESCRIPTION (Should match description provided for approval)	UNIT COST	TOTAL COST	TASKS
TOTAL SUPPLY EXPENDITURES (must agree with line 10d on Form 269a)			\$	

OTHER EXPENDITURES (during this report period)

NUMBER PURCHASED	DESCRIPTION	UNIT COST	TOTAL COST	TASKS
TOTAL OTHER EXPENDITURES (must agree with line 10h on Form 269a)			\$	

*LEGIBLE RECEIPTS OR OTHER SUBSTANTIATING DOCUMENTATION MAY BE ATTACHED FOR EXPENDITURES THAT EQUAL OR EXCEED \$500.

ITEMIZATION OF PERSONNEL/SALARY AND TRAVEL COSTS

PERSONNEL/SALARY EXPENDITURES (during this report period)

EMPLOYEE NAME	TITLE/POSITION	SALARY (THIS PERIOD)	TASKS
TOTAL PERSONNEL/SALARY EXPENDITURES (must agree with line 10a on Form 269a)		\$	

TRAVEL EXPENDITURES (during this report period)

DESCRIPTION	REASON	COST (THIS PERIOD)	TASKS
TOTAL TRAVEL EXPENDITURES (must agree with line 10c on Form 269a)		\$	

* SUBSTANTIATING DOCUMENTATION (time sheets, travel receipts, etc.) MAY BE REQUIRED TO BE ATTACHED TO THIS FORM

Financial Status Report Preparation Instructions

1. The PERFORMING PARTY, in order to obtain reimbursement for those expenditures authorized under this Contract, shall submit a completed, legible TCEQ Financial Status Report (TCEQ Form 269a) and any required TCEQ Supplemental 269a forms. Unless directed otherwise in the Contract, the PERFORMING PARTY shall submit such payment request documents by not later than twenty-one (21) days after the close of each State fiscal year quarter. The reporting periods shall also correspond to the State of Texas fiscal year quarters (September-November; December-February, March-May; June-August). Each Financial Status Report shall indicate, for each budget sub-category the PERFORMING PARTY'S Project expenditures for the period in question, the cumulative expenditures with respect to each budget sub-category, and the balance remaining in each budget sub-category following reimbursement of the amount being requested. A quarterly Financial Status Report is required even if no expenses were incurred during the report period.
2. All requests for reimbursement of expenditures that fall within either the "Equipment" or "Contractual" categories of the Contracts Cost Budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-1 and identified with respect to the major tasks or objectives, set forth in the Scope of Work, that such expenditures support or satisfy. In addition, the PERFORMING PARTY shall attach, for each reimbursable cost listed on Supplemental Form 269a-1, legible documentation that (1) serves to further identify the specific piece of equipment received or the services provided, (2) clearly identifies the vendor or Subcontractor who provided the equipment or services, and (3) that confirms the reimbursable amount listed on the form. In the case of equipment purchases, the attached documentation shall be either a purchase order marked "received/paid" or a vendor-submitted invoice similarly marked. In the case of Subcontractor provided services, the documentation shall consist of a dated invoice that shows the amount billed to the PERFORMING PARTY and any "past due" amount from previous invoices.
3. All requests under this Contract for the reimbursement of expenditures that fall within the "Construction" category of the Contracts Cost Budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-2 and identified with respect to the major tasks or objectives, set forth in the Scope of Work that such expenditures support or satisfy. In addition, the PERFORMING PARTY shall attach, for each reimbursable cost listed on Supplemental Form 269a-2, legible documentation that (1) serves to further identify the specific cost, (2) clearly identifies the vendor or Subcontractor who provided the construction related materials or services, and (3) that confirms the reimbursable amount listed on the form. The attached documentation shall be either a purchase order marked "received/paid" or an invoice similarly marked. In the case of Subcontractor provided construction services, the documentation shall consist of a dated invoice that shows the amount billed to the PERFORMING PARTY and any "past due" amount from previous invoices.
4. All requests for the reimbursement of expenditures that fall within either the "Supply" or "Other" categories of the Contracts Cost Budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-3 and identified with respect to the major tasks or objectives, set forth in the Scope of Work, that such expenditures support or satisfy. In addition, for any single-listed item or service costing more than \$500, the PERFORMING PARTY shall attach, for each reimbursable cost listed on Supplemental Form 269a-3, legible documentation that (1) serves to further identify the specific items or services, (2) clearly identifies the vendor or Subcontractor who provided the items or services, and (3) that confirms the reimbursable amount listed on the form. Although issued purchase orders and/or invoices marked "received/paid" represent the preferred types of documentation for purposes of this section, the PERFORMING PARTY may substitute/attach other records or documents that provide the same type of information. The PERFORMING PARTY shall not intentionally break up single orders of identical or similar items, materials or Supplies simply for the purpose of avoiding the above requirement to provide confirming documentation when submitting reimbursement requests to the TCEQ.
5. All requests for reimbursement of expenditures that fall within either the "Personnel/Salary" or "Travel" categories of the Contracts Cost Budget shall be itemized by the PERFORMING PARTY on Supplemental Form 269a-4 and identified with respect to the major tasks or objectives, set forth in the Scope of Work, that such expenditures support or satisfy. Although no supporting documentation is required to be attached to Supplemental Form 269a-4 with respect to reported "Personnel/Salary" expenditures in order to receive reimbursement, the PERFORMING PARTY is expected to maintain signed time sheets that can serve to verify the total, overall hours of staff time being directly billed to this Contract. With respect to employee travel, all costs listed on Form 269a-4 must be supported by attached documentation that identifies the name of the traveler's, and that substantiates the reported reimbursable costs. Documentation, for the purpose of substantiating travel-related costs, includes the following: (1) legible copies of the PERFORMING PARTY-approved travel vouchers, signed by the employees who traveled, and (2) for any travel-related expenses under this contract borne directly by the PERFORMING PARTY (and thus for which reimbursement by the PERFORMING PARTY to the traveler was not required) separate receipts showing, at a minimum, the traveler's name, the travel location, and the travel date(s).
6. When a single expenditure supports or satisfies more than one task or objective, the PERFORMING PARTY need not breakdown that particular expenditure by specific contract task or objective but may simply identify, in relative cost order, the various tasks or objectives supported.

FEDERAL CONDITIONSARTICLE 1. FEDERAL REQUIREMENTS

This Contract is funded in part with federal grant money. The following conditions apply to this Contract in addition to all other contract terms. All applicable requirements of TCEQ's federal grants and 40 CFR Parts 30 through 35 are incorporated herein by reference (TCEQ will provide copies of applicable federal grants or regulations upon request). The term "PERFORMING PARTY" as used in these *Federal Conditions* means either PERFORMING PARTY or CONTRACTOR, as applicable.

ARTICLE 2. FEDERAL INTELLECTUAL PROPERTY REQUIREMENTS

A nonexclusive, perpetual, irrevocable license to use, copy, publish, and modify any intellectual property to which rights are granted or assigned to TCEQ in this Contract are hereby also granted to, assigned to, or reserved by the Federal Government. To the extent consistent with the rights of third parties, the Federal Government shall also have the right to sell any intellectual property right it reserves or acquires through this Contract.

ARTICLE 3. ACKNOWLEDGMENT OF FINANCIAL SUPPORT

The PERFORMING PARTY shall acknowledge the financial support of the TCEQ and the U.S. EPA whenever work funded, in whole or part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, 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 AND
U.S. ENVIRONMENTAL PROTECTION AGENCY

The preparation of this report was financed through grants from the U.S. Environmental Protection Agency through the Texas Commission on Environmental Quality.

If the funding source is a U.S. agency other than U.S. EPA, the name of the appropriate federal agency should be substituted.

ARTICLE 4. COST AND PRICE OF THIS CONTRACT

If this Contract was not competitively procured or if payment is based on reimbursement of actual costs, then PERFORMING PARTY shall submit cost information sufficient for a cost analysis as required by 40 CFR §31.36. This information must be submitted on forms provided by the TCEQ.

ARTICLE 5. ACCOUNTING SYSTEMS AND PROPERTY MANAGEMENT SYSTEMS

1. 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 §31.20. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable Project costs among Projects.

2. PERFORMING PARTY shall have a property management system that complies with the standard of and requirements in 40 CFR §§ 31.32 through 31.33.

ARTICLE 6. RECORD DOCUMENTS, DATA, RECORDS, ACCESS, AND AUDIT

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 Contract.

ARTICLE 7. DEBARMENT

On or prior to the Effective Date of this Contract, PERFORMING PARTY must submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters. PERFORMING PARTY must also submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters / Lower Tier for each Subcontractor it employs to conduct the Work. These certifications must be submitted on forms provided by the TCEQ.

ARTICLE 8. DISADVANTAGED BUSINESS ENTERPRISES; MINORITY BUSINESS ENTERPRISES / WOMEN'S BUSINESS ENTERPRISES (DBE's)

1. In order to qualify and participate as an MBE or WBE prime or Subcontractor for EPA recipients under EPA's DBE Program, an entity must be properly certified as required by 40 C.F.R. 33 Subpart B. DBE's must be certified by the following entities: EPA; the U.S. Small Business Administration, under its 8(a) Business Development Program or its Small Disadvantaged Business Program; the U.S. Department of Transportation, under its regulations for Participation by DBE's in DOT Programs; an Indian Tribal Government, State Government, Local Government, or independent private organization in accordance with EPA's 8% or 10% statute as applicable. State of Texas certified Historically Underutilized Businesses (HUB's) are certified DBE's.

2. If the *General Conditions* of this Contract contain a requirement that PERFORMING PARTY submit information regarding its subcontracts with HUBs as defined by Texas law, then PERFORMING PARTY shall comply with the Hub requirements as

well as the DBE requirements imposed on TCEQ in the federal grant or grants funding this Contract, and submit information regarding its subcontracts with Certified DBE's and Hub's on forms provided by the TCEQ.

3. PERFORMING PARTY agrees that qualified DBE's shall have the maximum practicable opportunity to participate in the performance of the Work required under this Contract through possible subcontracts to carry out portions of the Work and by way of goods and/or services procurement contracts that directly support the required Work.

4. PERFORMING PARTY will submit a completed HUB PROGRESS ASSESSMENT REPORT with each reimbursement request submitted. At a minimum this report shall include the name of the 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.

5. The PERFORMING PARTY shall conduct the following actions in connection with solicitations for Subcontractors and for suppliers (vendors) of contract-required goods and/or services:

5.1. Place qualified DBE's on solicitation lists for Subcontractors and vendors;

5.2. Assure that at least three (3) DBE's are solicited whenever they are potential sources for Subcontractor-performed work or vendor-provided goods and/or services;

5.3. Each solicitation shall include a copy of the specifications, adequate information about the plans, Scope of Service, and requirements of the work to be subcontracted or the goods and/or services to be procured, and shall provide sufficient time to allow all interested parties the opportunity to participate effectively;

5.4. Records of solicitations for Subcontractor and/or vendor services, including the responses received from potential DBE's Subcontractors and vendors, shall be maintained and reported to TCEQ;

5.5. Submit explanatory information in cases where bids were not solicited prior to obtaining the services of Subcontractors or vendors, or where a DBE's was low bidder but the subcontract or procurement contract was awarded to a non DBE;

5.6. Divide total Subcontractor or vendor requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such business enterprises; if sufficient subcontracting or goods and/or service provider opportunities are not available, PERFORMING PARTY shall submit explanatory information to TCEQ;

5.7. Establish delivery schedules, where requirements permit, which encourage participation by DBE's;

5.8. Utilize the Texas Comptroller of Public Accounts (CPA) Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Directory (<<http://www.cpa.state.tx.us>>) and the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce (<<http://www.doc.gov>>) when searching for DBE's.

6. The PERFORMING PARTY must pay its Subcontractors for satisfactory performance no more than 30 days from the Performing Party's receipt of payment from TCEQ.

7. Before terminating a DBE for convenience, the PERFORMING PARTY must notify TCEQ in writing.

8. If a DBE Subcontractor fails to complete work, for any reason, and the PERFORMING PARTY plans to procure a replacement Subcontractor, the PERFORMING PARTY must undertake the actions listed in 5.1 - 5.8 of this Article.

9. The PERFORMING PARTY shall provide the attached DBE Subcontractor Participation Form, EPA Form 6100-2, to all its DBE Subcontractors with instructions that each DBE may complete the form and submit it directly to the appropriate EPA DBE Coordinator, Deborah Bradford, EPA Region 6, Small and Disadvantaged Business Coordinator. EPA Form 6100-2 gives a DBE Subcontractor the opportunity to describe the work the DBE Subcontractor received from the prime contractor, how much the DBE Subcontractor was paid and any other concerns the DBE Subcontractor might have, for example reasons why the DBE Subcontractor believes it was terminated by the PERFORMING PARTY.

10. The PERFORMING PARTY must have its DBE Subcontractors complete EPA Form 6100-3, DBE Program Subcontractor Performance Form. The Performing Party must include all completed forms as part of the Performing Party's proposal* package.

11. The PERFORMING PARTY must complete and submit EPA Form 6100-4, DBE Program Subcontractor Utilization Form, as part of its proposal* package.

ARTICLE 9. PROHIBITION USE OF FEDERAL FUNDS FOR LOBBYING AND LITIGATION

Contractor agrees that none of the funds paid under this Contract will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. When Contractor applies for final payment, Contractor will certify on a written form provided by the TCEQ that Contractor has complied with this provision.

* Proposal in this context refers to a response to a solicitation for goods or services being paid for, at least in part, with EPA grant funds submitted to TCEQ, a TCEQ grantee, or lower tier recipient. Proposal in this context does not refer to an EPA grant application package TCEQ submits to EPA, nor to a grant application submitted to TCEQ, a TCEQ grantee, or lower tier

recipient requesting financial assistance that is at least partially funded with an EPA grant. After TCEQ, a TCEQ grantee, or lower tier recipient receives the grant and attempts to procure goods and services with the grant funds, the responses submitted to such solicitations must include EPA Forms 6100-3 and 6100-4.

EPA
United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The Prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this Offer been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/Offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this Offer or Termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

LOWER TIER

EPA Project Control Number

EPA
United States Environmental Protection Agency
Washington, DC 20460

Certification Regarding
Debarment, Suspension, and Other Responsibility Matters

The Prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this Offer been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/Offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this Offer or Termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

EPA Form 5700-49 (11-88)

Certification for Contracts, Grants, Loan, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, Subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to the civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ORGANIZATION NAME AWARD NUMBER

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE DATE

Please check appropriate box below:

- Disclosure Form attached
- Disclosure Form Forthcoming
- Disclosure Form Not Applicable

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 USC 1352

<p>1. Type of Federal Action: <input type="checkbox"/>]</p> <p>a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: <input type="checkbox"/>]</p> <p>a. bid/offer/application b. initial award c. post-award</p>	<p>3. Report Type: <input type="checkbox"/>]</p> <p>a. initial filing b. material change</p> <p>For Material change only: year _____ Quarter _____ date of last report _____</p>
<p>4. Name and Address of Report Entity <input type="checkbox"/>] prime <input type="checkbox"/>] subawardee</p> <p>tier _____, if known: Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, enter name and address of Prime:</p> <p>Congressional District, if known</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount if known: \$ _____</p>	
<p>10. a. Name and address of Lobbying Entity (if individual, last name, first name, MI): (attach Continuation Sheet(s))</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): SF--LLL-A if necessary)</p>	
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/>] actual <input type="checkbox"/>] planned</p> <hr/> <p>12. Amount of payment (check all that apply):</p> <p><input type="checkbox"/>] a. cash <input type="checkbox"/>] b. in-kind; specify nature</p> <p>_____</p> <p>value</p> <p>_____</p>	<p>13. Type of Payment (check all that apply):</p> <p><input type="checkbox"/>] a. retainer <input type="checkbox"/>] b. one-time fee <input type="checkbox"/>] c. commission <input type="checkbox"/>] d. contingent fee <input type="checkbox"/>] e. deferred <input type="checkbox"/>] f. other, specify:</p> <p>_____</p>	
<p>14. Brief description of services performed or to be performed and date(s) of service, including officer(s), employee(s), or Member(s) contacted for Payment indicated in Item 11:</p> <p>(attach Continuation sheet(s) SF-LLL-A if necessary)</p>		
<p>15. Continuation sheet(s) SF-LLL-A attached: <input type="checkbox"/>] Yes <input type="checkbox"/>] No</p>		

16. Information requested through this form is authorized by Title 31 U.S.C. , Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Print Name

Title

Telephone No.

Date

Standard Form-LL

DISCLOSURE OF LOBBYING
CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction

Standard Form - LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to Subcontracts, Subgrants, and contract awards under grants..
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal Agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Offer (RFP) number, invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/Offer control number assigned by the Federal agency) Include prefixes, e.g., RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10.
 - (a) Enter the full name, address, city, state and zip code for the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
 - (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 29503.

The purpose of this form is to provide a simple form for the display of cost and price data. 40 CFR 33.290 requires the recipient to perform cost or price analysis for every procurement action, including subagreement modifications. This form is not required by EPA, but may be used at the recipient's option. If the recipient currently uses a cost and price analysis form which accomplishes the same objectives as this form, the recipient may use its own form.

INSTRUCTIONS

If this form is used, CAREFULLY READ AND FOLLOW ALL INSTRUCTIONS. Many items are not self-explanatory. Attach additional sheets if necessary.

Use only the applicable portion of this form:

Part I is applicable to all subagreements.

Part II is applicable to all subagreements requiring a cost analysis pursuant to EPA procurement regulations.

Part III is applicable to all subagreements where review is based on price comparison (i.e., price analysis).

Part IV certification will be executed as required by the instructions for each block.

PART I - GENERAL

Item 1 - Enter the name of the recipient as shown on the assistance agreement.

Item 2 - Enter the assistance identification number shown on the assistance agreement (or assigned to the project, if no assistance agreement has yet been executed).

Item 3 - Enter the name of the contractor or Subcontractor with whom the subagreement is proposed to be executed.

Item 4 - Enter the date of the contractor's or Subcontractor's Offer to the recipient.

Item 5 - Enter the full mailing address of the contractor or Subcontractor.

Item 6 - Give a brief description of the work to be performed under the proposed subagreement.

Part II - COST SUMMARY

This portion of the form is to be completed by the contractor (or his/her Subcontractor) with whom a subagreement is a formally advertised, competitively bid, fixed price subagreement.

Nothing in the following discussion should be interpreted as recommending the inclusion as direct costs any items normally treated as overhead costs in the firm's accounting or estimating system. 40 CFR Part 30 identifies general cost principles applicable to subagreements under EPA assistance. Pursuant to that Part, all subagreements awarded to profit-making organizations are subject to cost principles of 48 CFR 31.2. Architect engineer and construction contracts are also subject to 48 CFR 31.105.

Item 7 - Direct Labor

Direct labor costs normally include salaries at a regular time rate. Overtime premiums should be identified separately on an attachment. Incurrence of unanticipated overtime costs requires the approval of the recipient at the time of incurrence. If significant overtime is known to be needed at the time of completion of the cost review form, the reasons therefore, labor categories, rates and hours should be identified on the attachment. Also included is the cost of partners' or principals' time when they are directly engaged in services to be rendered under the subagreement. In case the full time of any employee is not to be devoted to work to be performed under the subagreement, only the cost of actual time to be applied should be included. The compensation of a partner or principal shall be included as direct cost only for the time that she/he is expected to be engaged directly in the performance of work under the subagreement and only if it is the firm's normal practice to charge such time directly to all jobs. The rate of compensation of a partner or principal shall be commensurate with the cost of employing another qualified person to do such work, but the salary portion shall not exceed the actual salary rate of the individual concerned. Distribution of profits shall not be included in the rate of compensation.

Enter in block 7 the categories of professional or technical personnel necessary to perform each major element of work under the subagreement scope of services. Estimate hours worked for each category and extend them by the wage rates to be paid during the actual performance of the work. Current rates, adjusted for projected increases, if any should be useful for the actual categories of labor contemplated. All projected increases should be supported by recent experience or established personnel policy. Enter in the far right column the total estimated direct labor cost.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- a. The method of estimating proposed hours worked.
- b. The computation techniques used in arriving at proposed labor rates.
- c. The specific documents, books or other records used as factual source material to develop proposed hours worked and labor rates.
- d. Detailed rate computations which were used in computing the information submitted on the form.

If in block 14a, the contractor has checked "No," a brief narrative description of the methods used in arriving at items a through d above shall be included on an attached sheet.

Item 8- Indirect Costs

Indirect cost may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. Neither is the use of any particular allocation base mandatory. However, it is mandatory that the method used results in an equitable allocation of indirect costs objectives which they support.

Normally, the firm's accounting system and estimating practices will determine the method used to allocate overhead costs. The firm's established practices, if in accord with generally accepted accounting principles and PROVIDED THEY PRODUCE EQUITABLE RESULTS IN THE CIRCUMSTANCES, will generally be accepted. Proposed overhead rates should represent the firm's best estimate of the rates to be experienced during the subagreement period. They should be based upon recent experience and be adjusted for known factors which will influence experienced trends.

Common overhead groupings are overhead on direct labor and general and administrative expenses. The first groupings usually include employment taxes, fringe benefits, holidays, vacation idle time, bonuses, applicable and direct labor, etc. The second generally includes the remaining costs, which, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs. It is expected, however, that Offer groupings will correspond with the firm's normal method for accumulating indirect costs. (Under some accounting systems, the first grouping would be included instead under item 7.) No special categorization is required, provided the results are realistic and equitable.

Direct salaries are the normal distribution base for overhead cost but in some circumstances other bases produce more equitable results. As in the case of overhead cost groupings, the method to be used will depend upon the firm's normal practices and the equity of the results produced in the circumstances.

In the case of multibranch firms, joint ventures, or affiliates, it is expected that overhead costs applicable to specific location(s) where work is to be based on cost data from the most recent fiscal periods updated to reflect changes in volume of business or operations.

Enter in block 8 the indirect cost pools normally used by the firm for allocation of indirect costs. Enter indirect cost rate for each pool and extend each one by the rate base to which it applies to arrive at the estimated indirect costs to be incurred during the actual performance of the work. If the indirect labor total from block 7 is not used as the rate base for any of the indirect cost pools, the rate base used must be explained on an attached sheet.

A brief narrative statement outlining the firm's policies and practices for accumulating indirect costs. Enter the indirect cost rate costs and the method used to compute the proposed rate or rates shall accompany the form. Include comment on the firm's policies regarding the pricing and costing of principals' time. The normal accounting treatment of principals' salaries, the annual amounts, and the hourly charge rate, if used, should be discussed.

Enter in the far right column the total estimated indirect costs.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- a. Detailed cost data showing overhead accounts, allocation bases, and rate computations for the preceding fiscal period. If more than six months of the current fiscal period have elapsed, cost data for this period should be included as one of the three period(s).
- b. Company budgets, budgetary cost data and overhead rates computations for future period(s).

Item 9 - Other Direct Costs

The following items are illustrative of costs normally included in this category of costs:

- a. *Travel cost, including transportation, lodging, subsistence, and incidental expenses incurred by personnel or consultants while in travel status in connection with the performance of services required by the contract. The cost principles generally require the use of less than first class air accommodations and also limit the cost of private aircraft.*
- b. *Equipment, Materials, and Supplies*

(1) *Long distance telephone calls, telegraph and cable expenses to be incurred in connection with the performance*
Contract Number 582-12-10010

of services required in connection the subagreement.

(2) *Reproduction costs, including blueprints, black and white prints, ozalid prints, photographs, photostats, negatives; and express charges.*

(3) *Commercial printing, binding, artwork, and models.*

(4) *Special equipment.*

c. *Subcontractors*

d. *Other Direct costs, if any, not included above.*

Enter in blocks 9a-d all other direct costs proposed. Travel costs entered must be supported by an attachment which identifies the number of staff trips proposed and the estimated cost per staff trip for both local and long distance transportation. The number of days and the rate per day must be provided to support the per diem shown. Each Subcontract and consultant agreement must be identified separately in block 9c.

Enter in the far right column on line 9e the total of all other direct costs (9a-d).

Supporting data to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

a. *basis for other direct costs proposed.*

b. *factual sources of costs, rates, etc., used in computing proposed amount of each cost element.*

Item 10 - Total Estimated Cost

Enter the total of all direct labor, indirect costs and other direct costs from items 7, 8, and 9.

Item 11 - Profit

A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit will be estimated as a dollar amount after considering:

a. *degree of risk.*

b. *nature of the work to be performed.*

c. *extent of firm's investment.*

d. *Subcontracting of work, and*

e. *Other criteria.*

The federal Acquisitions Regulation cost principles applicable to subagreements with profit-making organizations (40 CFR 31.2 and 31.105) disallow certain types of costs which are sometimes incurred by firms in the normal conduct of their business. Examples of costs which are not allowable under these costs principles include, but are not limited to, entertainment, interest on borrowed capital, and bad debts. Because the Government considers "profit" to be the excess of price over allowable costs, such computation can indicate a higher profit estimate than the firm's experienced profit as it customarily computes it.

The contractor may separately disclose to the recipient its customary computation.

Enter the dollar amount of profit in block 11.

Item 12 - Total Price

Enter the total of items 10 and 11.

Part III - PRICE SUMMARY

This portion of the form is for use by a recipient when pricecomparison, i.e. price analysis, is used for subagreement review. It may also be used by a contractor when price comparison is used as a basis for award of a Subcontract.

Item 13 - Competitor's Catalog Listings, In-House Estimates, Price Quotes

Enter sources of all competitive bids or quotes received, or catalogs used and their prices, or in-house estimates made, if appropriate, for comparison. Attach additional sheets if necessary, particularly for purchases of several different items.

Enter in the far right column the proposed price for the subagreement.

Part IV - Certifications

Item 14 - Contractor - FOR USE BY CONTRACTOR OR SUBCONTRACTOR ONLY.

Complete this block only if Part II has been completed.

Enter the specific cost principles with which the costs summary of Part II conforms. Cost principles applicable to subagreements with various types or organizations are identified in 40 CFR Part 30.4010. Cost principles applicable to subagreements with profit-making organizations are those at 48 CFR 31.2 and, for architect-engineer or construction

contracts, 48 CFR 31.105.

c. (1) Describe the Offer, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., RFP No. _____).

(2) Enter the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the subagreement is not limited by the personal knowledge of the contractor's negotiator if the time of agreement, showing that the negotiated price is not based on complete, current, and accurate data.

(3) Enter the date of signature. This date should be as close as practicable to the date when the price negotiations were concluded and the subagreement price was agreed to (not to exceed 30 days).

Item 15 - Recipient Reviewer - FOR USE BY RECIPIENT ONLY.

If required by applicable assistance regulations, the recipient must submit the signed form for EPA review prior to executive of the subagreement.

Item 16 - EPA Reviewer - FOR USE BY EPA ONLY.



EPA

COST OR PRICE SUMMARY
(see accompanying instructions before completing this form)

Form approved
OMB No. 2030-0011
Approval expires 10-31-8

PART I - GENERAL

- 1. RECIPIENT
- 2. ASSISTANCE IDENTIFICATION NO.
- 3. NAME CONTRACTOR OR SUBCONTRACTOR
- 4. DATE OF PROPOSAL
- 5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (Include ZIP Code)
- 6. TYPE OF SERVICE TO BE FURNISHED

TELEPHONE NUMBER(Include Area Code)

PART II - COST SUMMARY

7. DIRECT LABOR (specify labor categories)	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
		\$	\$	
DIRECT LABOR TOTAL:				\$
8. INDIRECT COSTS (Specify indirect cost pool)	RATE	x BASE =	ESTIMATED COST	
		\$	\$	
INDIRECT COSTS TOTAL:				\$
9. OTHER DIRECT COSTS				
a. TRAVEL			ESTIMATED COST	
(1) TRANSPORTATION			\$	
(2) PER DIEM			\$	
TRAVEL SUBTOTAL:			\$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)		QTY	COST	ESTIMATED COST
			\$	\$
EQUIPMENT SUBTOTAL:				
c. SUBCONTRACTS			ESTIMATED COST	

\$

SUBCONTRACTS SUBTOTAL:			\$
d. OTHER (Specify categories)			ESTIMATED COST
			\$
OTHER SUBTOTAL:			\$
e. OTHER DIRECT COSTS TOTAL:			\$
10. TOTAL ESTIMATED COST			\$
11. PROFIT			\$
12. TOTAL PRICE			\$

PART III - PRICE SUMMARY

13. COMPETITOR'S CATALOG LISTINGS, IN-HOUSE ESTIMATES, PRIOR QUOTES (Indicate basis for price comparison)	MARKET PRICE(S)	PROPOSED PRICE
		\$

PART IV - CERTIFICATIONS

14 CONTRACTOR OR

14a. HAS A FEDERAL AGENCY OR FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL ASSISTANCE AGREEMENT OR CONTRACT WITHIN THE PAST 12 MONTHS?

YES NO (If "Yes" give name, address, and telephone number of reviewing office)

YES NO (If "Yes" give name, address, and telephone number of reviewing office)

14b. This summary conforms with the following cost principles

14c. This proposal is submitted for use in connection with and in response to:

This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current, and accurate as of:

(2) DATE

I further certify that a financial management capability exists to fully accurately account for the financial transactions under this project. I further certify that I understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above cost and pricing data have been determined, as a result of audit, not to have been complete, current, and accurate as of the date above.

3) TITLE OF
PROPOSER

SIGNATURE OF REVIEWER

DATE OF EXECUTION

15. RECIPIENT
REVIEWER

--

I certify that I have reviewed the cost/price summary set forth herein and the proposed cost/price appear acceptable for subagreement award.

TITLE OF
PROPOSER

SIGNATURE OF REVIEWER

DATE OF EXECUTION

16. EPA
REVIEWER

--

TITLE OF
PROPOSER

SIGNATURE OF REVIEWER

DATE OF EXECUTION

--	--

Environmental
 Protection Agency

**Disadvantaged Business Enterprise Program
 DBE Subcontractor Participation Form**

NAME OF SUBCONTRACTOR	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

Subcontractor Signature _____ Title/Date _____

Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)



TCEQ Form B-10
OMB Control No: 2090-
0030 Approved: 05/01/2008
Approval Expires: 01/31/2011

Disadvantaged Business Enterprise Program DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR ¹		PROJECT NAME	
ADDRESS		BID/PROPOSAL NO.	
TELEPHONE NO.		E-MAIL ADDRESS	
PRIME CONTRACTOR NAME			
CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR	
Currently certified as an MBE or WBE under EPA's DBE Program? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Signature of Prime Contractor _____ Date _____ Print Name _____ Title _____			
Signature of Subcontractor _____ Date _____			
Print Name _____ Title _____			

¹Subcontractor is defined a company, firm, joint venture, or individual who enters into an agreement With a contractor to provide services pursuant to an EPA award of financial assistance.



Environmental Protection Agency Environmental Protection Agency

TCEQ Form B-11
 OMB Control No: 2090-0030
 Approved: 05/01/2008
 Approval Expires: 01/31/2011

Disadvantaged Business

**Enterprise Program
 DBE Subcontractor Performance Form**

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors¹ will be used on this project:			
COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATE D DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?
<p>I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).</p>			
Signature of Prime Contractor		Date	
Print Name		Title	

¹Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-4 (DBE Subcontractor Utilization Form)