

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM CONTRACT
CONTRACT SIGNATURE PAGE

Contract Name	New Technology Implementation Grant Program
Contract Number	
PERFORMING PARTY Name	
PERFORMING PARTY I.D. Number	
Total Contract Amount Not To Exceed	

Contract Effective Date	Request for Reimbursement Deadline	Contract Expiration Date
The Effective Date of this Contract is the date of last signature	April 30, 2025	August 31, 2030

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and the named PERFORMING PARTY enter this Contract for the purpose of providing grants for new technology implementation projects as authorized by Texas Health and Safety Code Chapter 391.

The Parties agree: (a) to be effective, the Contract must be signed by an Authorized Official of TCEQ and the PERFORMING PARTY; (b) the PERFORMING PARTY will conduct the Grant Activities and Administrative Requirements required by the Contract; and (c) TCEQ will reimburse authorized allowable costs in accordance with the Texas Grant Management Standards and the Contract.

Authorized Official	Texas Commission on Environmental Quality (TCEQ)	«LegalName» (PERFORMING PARTY)
Printed Name:		
Title:		
By (Authorized Signature):		
Date of Signature:		

Este es el contrato de subvención entre usted y la Comisión de Calidad Ambiental de Texas (TCEQ por sus siglas en inglés). Al firmar este documento, usted está aceptando los términos y condiciones legalmente vinculantes. Comuníquese al 800-919-TERP (8377) para obtener ayuda con la interpretación de este contrato.

**GENERAL CONDITIONS
for
NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM (NTIG)**

ARTICLE 1. DEFINITIONS

Unless defined herein, terms in this Contract and Contract Documents have the meanings provided in the Texas Grant Management Standards (TxGMS) TxGMS is available at:
https://comptroller.texas.gov/purchasing/grant_management/.

The following terms have the meanings indicated.

- 1.1 Administrative Requirements - activities which track contract progress and management, including financial management, reporting, and retention of records. These are distinguished from Grant Activities requirements, which pertain to the specific Grant Activities approved by TCEQ.
- 1.2 Application - the Application for a NTIG grant submitted by the PERFORMING PARTY including any amendments or supplemental conditions added to the Application. An Application may include one or more Supplemental Forms, which pertain to the individual activities to be conducted under the grant. The Application is used to develop the Scope of Work of this Contract. In case of conflict between the Application and Scope of Work, the Scope of Work will take precedence.
- 1.3 Approved Grant Budget - the total amount of costs approved by TCEQ for the Grant Activities.
- 1.4 Authorized Official - the individual authorized to sign legal documents on behalf of TCEQ and the PERFORMING PARTY, as designated in writing in the Contract.
- 1.5 Grant Activity/Activities - activities the PERFORMING PARTY has agreed to perform under this Contract that are detailed in the Scope of Work.
- 1.6 Grant - means this Contract between TCEQ and the PERFORMING PARTY, consisting of the documents listed in Article 6, Contract Documents. The term "Grant" shall be used interchangeably with "Agreement," "Contract," or "grant."
- 1.7 Grant Equipment - the items described as eligible in the Approved Grant Budget for which part of the cost of purchase, lease, or utilization is reimbursed by TCEQ under the Contract. The term also includes replacements for Grant Equipment, which is lost, stolen, or irreparably damaged. The term "Grant Equipment" shall be used interchangeably with "equipment."
- 1.8 Implementation Period - the period during which Grant Equipment is purchased and placed into service. The Implementation Period will end upon the later of either the payment of the final Request for Reimbursement and release of claims or TCEQ's written approval of the final implementation report.
- 1.9 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 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.
- 1.10 Intellectual Property Rights - patents, 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.
- 1.11 Notice to Proceed - a written notice given by TCEQ to the PERFORMING PARTY that the PERFORMING PARTY may commence with the Grant Activities.
- 1.12 Operation Period - the period following the completion of the Implementation Period. The Operation Period is the five-year period during which the grantee must ensure the operation and maintenance of the Grant Equipment.
- 1.13 PERFORMING PARTY - the grant recipient indicated on the signature page of this Contract, also referred to in this Contract as the "grantee".

- 1.14 Project Representative - the individual to whom all communications, contracts and related documents, and written correspondence to either party will be addressed and delivered, as designated in writing in the Contract.
- 1.15 Request for Reimbursement Deadline - the date specified in the Contract when all Grant Equipment must be received, all costs for Grant Equipment must be paid in full with either cash-on-hand or financing, and all requests for reimbursement must be received by TCEQ from the PERFORMING PARTY.
- 1.16 Scope of Work - the Contract document detailing the requirements of the Grant Activities.
- 1.17 State - means the State of Texas.
- 1.18 Termination - means a permanent end and cessation of the Contract because (1) all requirements of this Contract are completed within the sole discretion of TCEQ; (2) the PERFORMING PARTY has requested termination and repaid funds as allowed by the Contract; (3) the Contract is ended by action of TCEQ for cause or for convenience; or (4) the Request for Reimbursement Deadline has passed without completion and submission of purchases eligible for reimbursement and TCEQ, in its sole discretion, has terminated the Contract.
- 1.19 When any period of time is referred to in the Contract 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 State of Texas or federal holiday, such day will be omitted from the computation.
- 1.20 A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

ARTICLE 2. GOVERNING STANDARDS AND AUTHORITY

- 2.1 This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law provisions.
- 2.2 This Contract is entered into by TCEQ through its authority under Texas Water Code, Section 5.124 (Authority to Award Grants).
- 2.3 This Contract is subject to: (1) Texas Health and Safety Code Chapter 391; (2) the Uniform Grant and Contract Management Act, Texas Government Code Section 783.001 et seq., and the Texas Grant Management Standards (TxGMS); (3) Texas Government Code Chapter 2261; (4) TCEQ rules and policies; and (5) other applicable Federal and State rules and statutes.

ARTICLE 3. PURPOSE

The purpose of this Contract is to provide a grant to financially assist the PERFORMING PARTY in implementing the Grant Activities described in the Scope of Work.

ARTICLE 4. NOTICE TO PROCEED

- 4.1 The PERFORMING PARTY may begin the Grant Activities, at its own risk, prior to receiving a Notice to Proceed. TCEQ will issue a Notice to Proceed upon its review and approval of all required documentation as specified in the Scope of Work.
- 4.2 After TCEQ issues a Notice to Proceed, eligible costs may be submitted for reimbursement. Any cost incurred prior to the date of issuance of the Request for Grant Applications (RFGA) will not be considered as eligible for reimbursement.
- 4.3 Regardless of the issuance of the Notice to Proceed, the reimbursement of the costs of the Grant Activities is subject to all other requirements of this Contract. This Contract does not create an entitlement to receive state funds and all payments are solely within the discretion of TCEQ.

ARTICLE 5. CONTRACT PERIOD

- 5.1 This Contract will commence on the Contract Effective Date as identified on the Signature Page.
- 5.2 The Contract Period shall be the period of time from the Effective Date through the Expiration Date listed on the Signature Page of this Contract unless the Contract is otherwise terminated or extended in accordance with its terms.

ARTICLE 6. CONTRACT DOCUMENTS

- 6.1 The Contract Documents which comprise the entire Contract between TCEQ and the PERFORMING PARTY are provided in order of precedence in the event of conflicts:
- 6.1.1 Contract Signature Page
 - 6.1.2 Scope of Work
 - 6.1.3 Special Conditions
 - 6.1.4 Approved Grant Budget
 - 6.1.5 Insurance Section
 - 6.1.6 General Conditions
 - 6.1.7 RFGA, and any addenda, incorporated herein by reference
 - 6.1.8 The PERFORMING PARTY's original Application, and any supplemental documentation submitted by the PERFORMING PARTY in support of the Application or grant award, incorporated herein by reference.
 - 6.1.9 The following which may be delivered or issued after the Effective Date of the Contract and are not attached: Notices to Proceed, Written Amendments, Minor Changes, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.
 - 6.1.10 The New Technology Implementation Grants: Guidelines for Grants, incorporated herein by reference.
- 6.2 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 7. ELIGIBLE ACTIVITIES

- 7.1 The activities eligible for reimbursement are those contained in the Scope of Work and Approved Grant Budget.
- 7.2 The information and data the PERFORMING PARTY submitted in the Application may have been revised after submittal to TCEQ, to ensure that the information in the Application is accurate. By signing this Contract, the PERFORMING PARTY acknowledges that it has reviewed the Scope of Work and agrees to all representations contained within the Scope of Work.
- 7.3 The PERFORMING PARTY understands that TCEQ's approval of the Application does not constitute final verification of the Grant Equipment for cost reimbursement purposes.
- 7.4 The PERFORMING PARTY agrees to continuously own or lease and operate the Grant Equipment for the Contract Period.

ARTICLE 8. FUNDS

- 8.1 This Contract shall not be construed as creating a debt on behalf of TCEQ in violation of Article III, Section 49a of the Texas Constitution. All claims, suits, or obligations arising under or related to this Contract are subject to the availability of grant funds which are actually received and deposited into the Texas Emissions Reduction Plan Fund for the purposes of this Contract.
- 8.2 Amount Limits on Funds. The Contract Amount Not to Exceed on the Contract Signature Page is the maximum amount TCEQ will reimburse the PERFORMING PARTY for the costs of the eligible Grant Activities. Eligibility for reimbursement is subject to a fully executed Contract and eligible costs as determined by TCEQ. There is no guaranteed minimum amount of reimbursement.
- 8.3 Request for Reimbursement Deadline. If the request for reimbursement has not been received by TCEQ by the Request for Reimbursement Deadline, this Contract may be terminated by TCEQ at its sole discretion.
- 8.4 Section 391.204, Texas Health and Safety Code, requires the PERFORMING PARTY to bear at least 50 percent of the costs of implementing a project funded under this Contract. To ensure this limit is not exceeded, the TCEQ may adjust reimbursement amounts as necessary.

ARTICLE 9. ELIGIBILITY FOR COST REIMBURSEMENT

- 9.1 TCEQ will reimburse the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all contractual requirements. Costs are considered eligible for reimbursement when TCEQ, in its sole discretion, determines that the costs are reasonable, necessary, actual, and allowable

for implementing the Grant Activities listed in the Scope of Work. Costs must be included in the Approved Grant Budget to be eligible for reimbursement.

- 9.2 Amounts of costs stated in the Approved Grant Budget are maximum amounts of reimbursement. By stating the amounts, TCEQ does not A) guarantee payment of those amounts or B) waive the requirements for reimbursement which must subsequently and continually be satisfied by the PERFORMING PARTY.
- 9.3 The amount of costs for which reimbursement may be requested is the lesser of A) the costs stated in the Approved Grant Budget or B) the actual eligible costs.
- 9.4 The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. A Request for Reimbursement, TCEQ's payment of reimbursement, or any other action, will not establish an entitlement in the PERFORMING PARTY to payment from TCEQ.
- 9.5 By paying a Request for Reimbursement, TCEQ does not waive any requirements for the reimbursement of costs. TCEQ may at any time before or after reimbursement, in its sole discretion, request additional evidence concerning costs. TCEQ may audit the records of the PERFORMING PARTY and may also audit the PERFORMING PARTY's performance as to the Grant Activities and the Administrative Requirements. The PERFORMING PARTY shall return grant funding reimbursed for expenses that are later determined to be unallowable under the terms of this Contract.

Procurement

- 9.6 The PERFORMING PARTY must ensure that its procurement practices will be based on sound business decisions and arms' length bargaining. Purchases must be made without any actual or apparent personal or organizational conflicts of interest as described in TxGMS. If the PERFORMING PARTY is a local government, it must comply with Chapter 176 of the Texas Local Government Code. The PERFORMING PARTY agrees that TCEQ has sole discretion to determine whether a conflict of interest exists, and that a conflict of interest may be considered a material breach of this Contract.
- 9.7 The PERFORMING PARTY's procurement practices must allow for and encourage fair and open competition for vendors and subcontractors providing goods and services under this Contract. For any expenses (goods or services) which are not procured using price competition, and which exceed the Texas Acquisition Threshold or federal Simplified Acquisition Threshold (currently \$250,000), the PERFORMING PARTY must perform a price or cost analysis (for example, independent estimates) to determine the reasonableness of the price and maintain documentation of such analysis. All documentation regarding procurement and price or cost analysis must be provided to TCEQ upon request.
- 9.8 The PERFORMING PARTY is encouraged to provide opportunities for Historically Underutilized Businesses (HUBs) to participate in any procurement and subcontracting under this Contract.

Reasonable Costs

- 9.9 Reasonableness of costs depends upon a variety of considerations and circumstances, including:
 - 9.9.1 whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the PERFORMING PARTY's business or the contract performance;
 - 9.9.2 generally accepted sound business practices, arm's length bargaining, and federal and state laws and regulations;
 - 9.9.3 the PERFORMING PARTY's responsibilities to TCEQ, other customers, the owners of the business, employees, and the public at large; and
 - 9.9.4 any significant deviations from the PERFORMING PARTY's established practices.

Necessary Costs

- 9.10 Necessary costs include costs which are directly attributable to the implementation of the Grant Activities, and which are included in the Approved Grant Budget.
- 9.11 Unless expressly authorized by TCEQ, necessary costs do not include:
 - 9.11.1 the cost of money, in particular, or the interest charges on a purchase money loan or on a deferred payment purchase agreement.

Actual Costs

- 9.12 The criteria for actual costs include:

- 9.12.1 the direct costs paid for implementing the Grant Activities, or
 - 9.12.2 the invoice cost charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities including taxes and government fees, delivery and shipping fees, factory and/or extended warranties, mechanic and safety inspections, cooperative fees, and dealer processing fees not related to financing.
- 9.13 Unless expressly authorized by TCEQ, actual costs do not include:
- 9.13.1 amounts deducted from the invoice cost of the purchase of Grant Equipment whether as discounts, rebates, refunds, or otherwise;
 - 9.13.2 amounts which the PERFORMING PARTY owes or agrees to pay a vendor or contractor for any purpose other than the implementation of Grant Activities;
 - 9.13.3 amounts in the charges which a vendor/contractor intends to return to the PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts, or any other items of value; and
 - 9.13.4 amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are or will be received by the PERFORMING PARTY.
- 9.14 The PERFORMING PARTY and its subcontractors must document and maintain evidence of expenses.

Allowable Costs

- 9.15 In order to be allowable, costs must be included in the Approved Grant Budget and must satisfy the requirements of this Contract, the TxGMS, state agency rules, and all applicable state and federal laws.

Indirect Costs

- 9.16 Indirect Costs are not reimbursable under the terms of this Contract.

Unallowable Costs

- 9.17 *Consulting (Application Assistance) Fees.* Any fees charged by a consultant for preparation of the Application, either directly or as an addition to the cost basis of the grant-funded equipment, are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this Contract. All purchase decisions must be based on sound business practices and arm's length bargaining. It is generally considered acceptable for an applicant to accept assistance from a vendor or an agent of a vendor in preparing the Application, as long as any decision by the applicant to purchase the grant-funded equipment from that vendor is made independently and meets the other reasonableness provisions in the Contract.
- 9.18 The PERFORMING PARTY will indicate any financial incentives received on the Request for Reimbursement Form. This includes tax credits or deductions, other grants, or any other public financial assistance. The combination of this grant and other financial incentives may not exceed the incremental cost to the applicant of the Grant Equipment. During the reimbursement process, TCEQ may reduce the amount of costs eligible for reimbursement by the value of any additional financial incentive received by the PERFORMING PARTY without a Written Amendment or Minor Change to this Contract.

Preapproval of Costs

- 9.19 TCEQ may request additional details regarding costs of Grant Equipment listed in the Approved Grant Budget and may require the PERFORMING PARTY obtain preapproval of specific costs from TCEQ prior to incurring those costs.
- 9.20 If requested by TCEQ, the PERFORMING PARTY must provide TCEQ with copies of purchase agreements or subcontracts for expenses to be reimbursed under this Contract for approval, prior to the PERFORMING PARTY entering into a final purchase agreement and/or subcontract.

Additional Criteria for Reimbursement

- 9.21 TCEQ may at any time, in its sole discretion, establish additional criteria and requirements for reimbursement of costs as serves the best interests of the State.

Debts Owed to the State

- 9.22 If the PERFORMING PARTY owes any amount(s) to the State of Texas, TCEQ may elect not to authorize, and the Texas Comptroller may not pay a reimbursement until the debt is satisfied.

Outstanding Invoice to TCEQ

9.23 If the PERFORMING PARTY has an outstanding invoice from TCEQ, TCEQ may elect not to authorize reimbursement until the invoice is resolved.

ARTICLE 10. REQUEST FOR REIMBURSEMENT

10.1 Except as provided for under Article 10.4 below, to receive grant funds, all Grant Equipment costs must have been paid in full by the PERFORMING PARTY with either cash-on-hand or financing, and all Grant Equipment must have been received prior to the Request for Reimbursement Deadline.

10.2 All Request for Reimbursement forms must contain sufficient identification of and information concerning the total costs paid or obligated under a financing agreement. TCEQ must be able to determine the eligibility of a particular cost during the initial review and any later audits. Supporting documentation materials must be attached to the Request for Reimbursement forms where indicated to clearly show that the cost was paid.

10.3 The PERFORMING PARTY shall submit a completed TCEQ Request for Reimbursement form. The forms shall be emailed to TERP-Fiscal@tceq.texas.gov or mailed to:

Texas Commission on Environmental Quality
Air Grants Division
MC-204, ATTN: Reimbursement
P.O. Box 13087
Austin, TX 78711-3087

10.4 If the PERFORMING PARTY has paid eligible expenses that are equal to or greater than the grant amount with cash-on hand, the reimbursement may be paid directly to the PERFORMING PARTY. In the event the PERFORMING PARTY finances the Grant Equipment, TCEQ will not pay the PERFORMING PARTY directly unless the PERFORMING PARTY has paid an amount equal to or greater than the grant amount. TCEQ will assign payment directly to the financing company. Supporting documentation must be submitted to establish that the goods or services were received, and that the payment amount is owed to the financing company indicated by the PERFORMING PARTY.

10.4.1 If an assignment is requested, the PERFORMING PARTY must complete the Assignment Request and Acceptance section on the Request for Reimbursement.

Retained Funds

10.5 TCEQ may retain up to 10% of the total reimbursement funds pending the successful completion of the Implementation Period of the Grant Activities. The total of Retained Funds withheld will be released based upon the submission of the Request for Reimbursement of Retained Funds form that will be provided to the Grantee for their signature once the final implementation report has been submitted and approved. TCEQ may, at its discretion, release the final reimbursement funds prior to the completion of the Implementation Period, subject to a determination that the project will be completed.

10.6 The final Request for Reimbursement Form, indicated by selecting the final request box on the form, shall be submitted to TCEQ by the Request for Reimbursement Deadline. Unless otherwise approved in writing by TCEQ, all work on the Grant Equipment must be completed, with the Grant Equipment fully operational, before final reimbursement will be made.

10.6.1 If project delays are experienced, the PERFORMING PARTY may submit a written extension request to TCEQ via email to TERP_Revise@tceq.texas.gov. Unless otherwise approved by TCEQ, an extension request must be submitted no later than 60 days prior to the Request for Reimbursement Deadline. TCEQ's decision to grant or deny an extension request will be provided in writing to the PERFORMING PARTY and will depend on the availability of grant funds.

10.7 The final Request for Reimbursement shall include a signed and executed Release of Claims, releasing all claims for payment of any funds due and payable by TCEQ, upon TCEQ's payment of the final Request for Reimbursement.

10.8 If the Request for Reimbursement does not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and paid in full, TCEQ may reject the

request, until the deficiencies have been corrected. Satisfactory accomplishment of a task is within the judgment of TCEQ; however, such judgment must be reasonable.

- 10.9 The reimbursement of funds is contingent upon the PERFORMING PARTY's satisfactory adherence to the terms of this Contract.

Required Forms

- 10.10 In order to seek reimbursement, the PERFORMING PARTY, must submit fully completed and legible:
- 10.10.1 Request for Reimbursement Form;
 - 10.10.2 Supplemental Request for Reimbursement Form(s) for those budget categories with expenses;
 - 10.10.3 Release of Claims (only with the final Request for Reimbursement); and
 - 10.10.4 documentation of payment for all costs for which reimbursement is requested.

Required Documentation

- 10.11 Documentation for a reimbursable cost shall:
- 10.11.1 be legible;
 - 10.11.2 identify the specific piece of equipment received or the services provided;
 - 10.11.3 clearly identify the vendor or subcontractor who provided the equipment or services;
 - 10.11.4 confirm the reimbursable amount listed on the form; and
 - 10.11.5 provide proof of payment for all costs for which reimbursement if requested.
- 10.12 The documentation shall consist of an itemized and dated invoice that shows the amount billed to the PERFORMING PARTY, any "past due" amount from previous invoices, and explanation of services provided. The PERFORMING PARTY must provide any other documentation requested by TCEQ.
- 10.13 Canceled checks and bank confirmation of electronic funds transfers represent the preferred types of documentation for purposes of this section; however, at TCEQ's discretion, the PERFORMING PARTY may substitute/attach other records or documents that provide sufficient evidence of payment.
- 10.14 TCEQ may reject requests for reimbursement that fail to demonstrate that costs are eligible for reimbursement, or which fail to conform to the requirements of the Contract.
- 10.15 In determining the amount of the final payment, TCEQ may withhold from reimbursement the amount of any over payment and any reasonable amount until TCEQ is satisfied that all conditions and requirements are completed and accepted.
- 10.16 All requests for reimbursement must be signed by an Authorized Official of the PERFORMING PARTY.

ARTICLE 11. PERFORMING PARTY'S RESPONSIBILITIES TO TCEQ

- 11.1 All Grant Activities for which reimbursement is requested must be completed as described in the Scope of Work and Approved Grant Budget.
- 11.2 The PERFORMING PARTY hereby ratifies and attests to all representations and certifications in the Application and agrees to give prompt written notice to TCEQ within three (3) business days if there is any material change in these representations or certifications.

Professional Quality

- 11.3 The PERFORMING PARTY is solely responsible for the professional quality, technical accuracy, timely completion, and the coordination of all Grant Activities under this Contract.

Supervision and Superintendence

- 11.4 The PERFORMING PARTY is solely responsible for the supervision, inspection, and direction of the Grant Activities in a competent and efficient manner, utilizing such skills and expertise as may be necessary to perform the Grant Activities in accordance with the Contract. The PERFORMING PARTY shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Grant Activities. The PERFORMING PARTY shall be responsible for ensuring that the implementation of the Grant Activities complies with the terms and conditions of this Contract, including requiring that applicable terms and conditions of this Contract be incorporated into subcontracts.

Materials & Equipment

- 11.5 Unless otherwise specified in the Contract, the PERFORMING PARTY assumes 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 implementation and completion of the Grant Activities.

The PERFORMING PARTY's Responsibility for Purchases

- 11.6 Any purchase made by the PERFORMING PARTY, especially any purchase not proposed/scheduled for reimbursement by TCEQ, is made at its own risk.
- 11.7 All Grant Equipment will be of good quality and as described in the Scope of Work. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier.
- 11.8 The PERFORMING PARTY agrees to maintain the Grant Equipment as necessary to keep the Grant Equipment in good condition and functioning at optimum performance during the Operation Period.
- 11.9 Failure to maintain the Grant Equipment constitutes a material breach of this Contract.

Required Insurance

11.10 Unless otherwise expressly agreed by TCEQ, the PERFORMING PARTY must obtain and maintain a commercial policy of property insurance which is sufficient to replace Grant Equipment if it is lost, stolen, or irreparably damaged. This insurance policy must be maintained during the Contract Period.

11.10.1 Unless otherwise expressly agreed by TCEQ, the PERFORMING PARTY must obtain and maintain a commercial policy of property insurance which is sufficient to repair or replace equipment necessary for the completion or operation of the Grant Activities and which is listed as a matching cost under the Equipment Category of the Project Budget Summary. This insurance policy must be maintained during the Contract Period.

- 11.11 The PERFORMING PARTY must obtain and maintain policies of worker's compensation, employer's liability insurance, commercial automobile liability insurance, commercial general liability insurance, and property insurance at levels set out in the Insurance Section of this Contract. These insurance policies must be maintained throughout the Contract.
- 11.12 The PERFORMING PARTY must provide proof of the required insurance coverages prior to receiving the Notice to Proceed. If requested by TCEQ, the PERFORMING PARTY shall provide additional proof of insurance coverage, including declaration pages and copies of policies.
- 11.13 Failure to provide proof of required insurance or failure to maintain required insurance during the Contract Period is considered a material breach of the Contract.
- 11.14 Any insurance proceeds received by or on behalf of the PERFORMING PARTY under an insurance policy due to the damage or destruction of Grant Equipment must be utilized to acquire equivalent or better Grant Equipment or be paid to TCEQ. Failure to do so shall constitute a material breach of this Contract.
- 11.15 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment during the Contract Period, the PERFORMING PARTY will repair and restore the Grant Equipment to the level of optimum performance.
- 11.16 Upon the occurrence of loss, theft, or irreparable damage of the Grant Equipment during the Contract Period, the PERFORMING PARTY will replace the lost, stolen, or damaged Grant Equipment with similar equipment which achieves the same optimum performance or better. The PERFORMING PARTY must replace the Grant Equipment no later than 60 consecutive days from the occurrence of loss, theft, or damage, unless TCEQ expressly agrees to a longer period. Replacement Grant Equipment is subject to all the requirements applicable to Grant Equipment contained in this Contract.
- 11.17 The PERFORMING PARTY shall fully comply with all requirements of any agreements with third parties that have a security interest or similar interest in the Grant Equipment. Repossession, seizure, or any other event where the PERFORMING PARTY loses possession of the Grant Equipment is considered a material breach of this Contract and requires the return of grant funds.
- 11.18 Governmental entities may use an established self-insurance program to satisfy any insurance requirements.
- 11.19 TCEQ reserves the right to require additional insurance coverage during the term of this Contract.

Assignment

- 11.20 TCEQ must remain in contractual privity with the entity owning and operating the Grant Equipment in order to enforce the Contract's Grant Activities and Administrative Requirements until the termination of this Contract. Any act by the PERFORMING PARTY that impairs TCEQ's ability to enforce this Contract, including sale of the Grant Equipment, transfer of the Grant Equipment, loss of the Grant Equipment, sale of the PERFORMING PARTY's business interests, or liquidation of the PERFORMING PARTY's assets (including the Grant Equipment), constitutes a material breach of this Contract and requires the return of grant funds.
- 11.21 TCEQ may allow the assignment of this Contract. The PERFORMING PARTY and proposed assignee will be required to execute a TCEQ-drafted assignment agreement stating the assignee's obligation to accept this Contract and to continue to use the Grant Equipment subject to the terms of this Contract.
- 11.22 If TCEQ does not allow assignment of the Contract, or if the proposed assignee refuses to enter into an assignment agreement, TCEQ will deem the PERFORMING PARTY in breach of the Contract and may utilize any remedy under Article 13, including the return of grant funding.
- 11.23 No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by PERFORMING PARTY will be binding on TCEQ without its written consent, except as restricted by law.

Access to Records and Grant Equipment

- 11.24 State Auditor's Office. The PERFORMING PARTY understands that the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. The PERFORMING PARTY further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The PERFORMING PARTY will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING PARTY and the requirement to cooperate with the audit or investigation is included in any subcontract it awards under this Contract.
- 11.25 The PERFORMING PARTY shall cooperate with and allow access to all Grant Equipment as described in this Contract by TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. Failure to respond to or cooperate with any authorized review, inspection, or audit of the Grant Activities constitutes a material breach of this Contract.

Maintenance of Records

- 11.26 The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the Grant Activities and requirements of the Contract, including any Contract Amendments. The PERFORMING PARTY will document and maintain mileage and location records for the Grant Equipment. All financial records will be maintained in accordance with generally accepted accounting principles and this Contract. The PERFORMING PARTY's record retention system shall provide for the identification, accumulation, and segregation of allowable and unallowable costs among projects. 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, and a copy of any cost information or analysis submitted to TCEQ. The PERFORMING PARTY shall allow access to all the material including bank statements and records to TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.
- 11.27 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity under this Contract and for four (4) years after the termination of this Contract. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the four-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 four-year period, whichever is later. The PERFORMING PARTY must maintain these records in a way that ensures business continuity if the primary records are destroyed such as establishing a back-up copy of such records.

PERFORMING PARTY's Representative

- 11.28 The PERFORMING PARTY will identify in writing a Project Representative as the person authorized to receive and respond to inquiries and requests from TCEQ, to manage the Grant Activities being performed, and to act on behalf of the PERFORMING PARTY.
- 11.29 The PERFORMING PARTY agrees to make arrangements necessary to ensure that its authorized Project Representative, or someone to whom that person has delegated his or her authority, is available during regular business hours for consultation with TCEQ. Written notice of any such delegation, or change in delegation, will be provided to TCEQ.
- 11.30 Any notice issued pursuant to this Contract shall be addressed to the respective party's Authorized Project Representative or delegated authority. Such notices shall be written and emailed, hand-delivered, or sent by first-class mail. Any notice or other written communication shall be considered delivered upon date of receipt.

Personnel

- 11.31 The PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Contract.

Safety and Protection

- 11.32 Where applicable, the PERFORMING PARTY shall be responsible for requiring employees, contractors, and subcontractors to maintain and supervise all necessary safety precautions and programs in connection with the Grant Activities. The PERFORMING PARTY shall take all necessary precautions to protect the health and safety of the public during performance of the Grant Activities.

Permits

- 11.33 Unless otherwise provided in the Contract, the PERFORMING PARTY shall obtain and pay for all applicable permits and licenses required for this performance of this Contract. Failure to comply with a permit issued by TCEQ or other state agency may result in a determination, within the sole discretion of TCEQ, that the best interests of the state are served by withholding reimbursement or by the application of other remedies under this Contract.

Laws and Regulations

- 11.34 The PERFORMING PARTY shall give all notices and comply in all material respects with all laws and regulations applicable to furnishing and performance of the Grant Activities. Except where otherwise expressly required by applicable laws and regulations, TCEQ shall not be responsible for monitoring the PERFORMING PARTY's compliance with any laws or regulations.

Data and Publicity

- 11.35 All data and other information developed under this Contract may be subject to public disclosure pursuant to the Texas Public Information Act, Texas Government Code Chapter 552. Except to the extent that it is exempted from public access by the Texas Public Information Act, the PERFORMING PARTY agrees to disclose all information and reports resulting under this Contract in a format that is accessible by the public at no additional charge to the State.

11.35.1 If the PERFORMING PARTY is claiming that data and information submitted to the TCEQ contains confidential or proprietary information, that information **MUST** be clearly marked **"Confidential/Proprietary: inform applicant & seek AG opinion before releasing"** on every page and must be submitted separately from all other material. If the TCEQ receives a request for that information, the PERFORMING PARTY will be notified by the TCEQ of the request. The PERFORMING PARTY may submit arguments to the Texas Office of the Attorney General if it believes the information should not be released. The TCEQ will not submit arguments on behalf of the PERFORMING PARTY and will not release information unless ordered to do so by the Attorney General. Information contained in this Contract and vouchers, communications, and other information sent between TCEQ and Contractor related to the performance of this Contract or work performed on behalf of TCEQ is considered public information under § 552.1101(b) of the Texas Government Code regardless of whether Contractor identifies it as being confidential.

- 11.36 Upon termination of this Contract, if requested by TCEQ, all copies of data and information developed under this Contract, including databases for which the costs of preparation are reimbursed under this Contract, shall be furnished at no charge to TCEQ, and shall become the property of TCEQ.
- 11.37 The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities. The PERFORMING PARTY will acknowledge the financial support of TCEQ whenever a Grant Activity reimbursed, in whole or part, is publicized or reported in news media or publications. Reports and other documents, including news releases or public announcements, prepared as a part of this Contract, or referencing the Grant Activities under this Contract, shall carry the following or similar notation on the front cover or title page:

This project is funded in part by the State of Texas through a New Technology Implementation Grant Program Grant from the Texas Commission on Environmental Quality.

Lobbying Activities

- 11.38 The PERFORMING PARTY shall not use funds provided under this Contract to support lobbying or political activity either directly or indirectly in accordance with Sections 403.1067 and 556.0055 of the Texas Government Code.

Accessibility

- 11.39 All electronic content and documents created as deliverables under this Contract must meet the accessibility standards prescribed in 1 Texas Administrative Code Sections 206.50 and 213, for state agency web pages, web content, software, and hardware, unless TCEQ agrees that exceptions or exemptions apply.

Conflict of Interest

- 11.40 The PERFORMING PARTY represents and warrants that performance under this Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Further, PERFORMING PARTY represents and warrants that in the administration of the grant, it will comply with all conflict-of-interest prohibitions and disclosure requirements required by applicable law, rules, and policies. If the PERFORMING PARTY is a local government officer of a local governmental entity, Chapter 176 of the Texas Local Government Code applies. If circumstances change during the course of this Contract, PERFORMING PARTY shall promptly notify TCEQ.

Open Meetings

- 11.41 If the PERFORMING PARTY is a governmental entity, PERFORMING PARTY represents and warrants its compliance with Chapter 551 of the Texas Government Code which requires all regular, special, or called meetings of a governmental body to be open to the public, except as otherwise provided by law.

Identifying Mark

- 11.42 Upon request by TCEQ, the PERFORMING PARTY shall install, or allow TCEQ or its contractor to install, a prominently placed identifying mark on the Grant Equipment, identifying it as TERP-funded equipment, and containing such other information as TCEQ shall specify. The PERFORMING PARTY may remove the mark upon the expiration of the Contract.

ARTICLE 12. PROGRESS REPORT; LONG-TERM MONITORING AND REPORTING

- 12.1 During the Implementation Period, the PERFORMING PARTY shall submit biannual progress reports describing the Grant Activities completed. Completed progress reports are due to TCEQ within ten (10) days following June 30 and December 31.
- 12.2 A final Implementation Period report shall be submitted to TCEQ after implementation of all Grant Activities has been completed in accordance with the Scope of Work.
- 12.3 As a condition of receiving grant funds, the PERFORMING PARTY agrees to operate the Grant Equipment for the Operation Period, as detailed in the Scope of Work.
- 12.4 As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed annual operation reports to TCEQ, on forms provided by TCEQ, for the Operation Period. The PERFORMING PARTY will submit the required reports annually as specified by TCEQ.

- 12.5 The PERFORMING PARTY's timely submission of complete and accurate Progress Reports is material to performance under this Contract. Failure to submit the required reports or submission of reports containing false or inaccurate information shall constitute a material breach of this Contract and shall require the return of the grant funds.

ARTICLE 13. TERMINATION

- 13.1 Termination of this Contract under any circumstances shall not constitute a waiver of any rights or remedies that TCEQ may exercise under this Contract or otherwise as provided by law.
- 13.2 This Contract may be terminated in whole or in part by TCEQ for its convenience. Circumstances when this may occur include the depletion of the Texas Emissions Reduction Plan Fund, which results in the unavailability of funds to complete this project. To the extent feasible, at the sole discretion of TCEQ, TCEQ will provide a minimum of ten (10) days written notice of intent to terminate.
- 13.2.1 The PERFORMING PARTY may not incur new obligations after receiving notice of termination and must cancel as many outstanding obligations as possible. TCEQ evaluates each obligation to determine its eligibility for inclusion in project costs. TCEQ allows full credit to the PERFORMING PARTY for the state share of the non-cancelable obligations properly incurred by the grantee prior to termination, subject to the availability of funds.
- 13.3 This Contract may be terminated in whole or in part by TCEQ for cause, including a material failure to comply with the requirements of the Contract. Unless advance notice of intent to terminate will place funds of the state at increased risk, TCEQ will provide written notice to the PERFORMING PARTY's Project Representative of its intent to terminate. The PERFORMING PARTY shall have twenty (20) calendar days from the date such notice is sent to cure performance deficiencies.
- 13.3.1 If the PERFORMING PARTY's acts or omissions cause or create an increase of pollutants to an unacceptable level or an increase of health and safety risks, such acts or emissions shall constitute a material failure to comply with the requirements of the Contract.
- 13.3.2 In the event the PERFORMING PARTY sells, transfers, destroys or otherwise loses title, ownership, possession, or control of Grant Equipment during the Contract Period, without prior approval from TCEQ, the Contract may be terminated, and TCEQ will be entitled to a return of the grant funds reimbursed to the PERFORMING PARTY for the purchase of the Grant Equipment.
- 13.4 This Contract may be terminated in whole or part by TCEQ if any delay or failure of performance of the Grant Activities by either the PERFORMING PARTY or TCEQ is caused by a force majeure event, as determined by TCEQ in its sole discretion.
- 13.5 If, after termination for cause by TCEQ, it is determined that the PERFORMING PARTY had not materially failed to comply with the Contract, the termination shall be deemed to have been for the convenience of TCEQ.
- 13.6 In accordance with this Contract, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under this Contract. Therefore, the PERFORMING PARTY waives any claim for damages arising from or resulting from TCEQ's termination of this Contract for any reason.
- 13.7 If, during the Contract Period, the PERFORMING PARTY does not complete the Grant Activities, the Contract may be terminated, and TCEQ will be entitled to a return of the grant funds.
- 13.7.1 If after TCEQ's payment of final reimbursement upon the completion of the Implementation Period of the Grant Activities, the PERFORMING PARTY ceases performing the Grant Activities or Administrative Requirements, the PERFORMING PARTY is in breach of the Contract and must return the grant funds already received. TCEQ may reduce the amount of grant funds to be returned by the percentage of the Operation Period of the Grant Activities actually completed in terms of days from the beginning of the Operation Period through the date the Grant Activities ceased, as calculated by TCEQ.
- 13.8 Stop Grant Activities. TCEQ may stop the Grant Activities if, in the reasonable opinion of TCEQ, the PERFORMING PARTY fails to perform the Grant Activities in such a way which conforms to the Contract. TCEQ may order the PERFORMING PARTY to stop the Grant Activities, or any portion thereof, until the cause for such order has been eliminated; however, this right of TCEQ to stop the Grant

Activities shall not give rise to any duty on the part of TCEQ to exercise this right for the benefit of the PERFORMING PARTY or any surety or other party.

- 13.9 The PERFORMING PARTY shall carry on the Grant Activities and adhere to the progress schedule at all times, including any disputes or disagreements with TCEQ. No Grant Activities shall be delayed or postponed pending resolution of any disputes or disagreements, except as TCEQ and the PERFORMING PARTY may otherwise agree in writing. If, through no act or fault of the PERFORMING PARTY, the Grant Activities are suspended for a period of more than ninety (90) days by TCEQ or under an order of court or other public authority, then the PERFORMING PARTY's sole and exclusive remedy is to extend the Grant Activities timeline.
- 13.10 TCEQ May Suspend Grant Activities. At any time and without cause, TCEQ may suspend the Grant Activities or any portion thereof by notice in writing to the PERFORMING PARTY which will fix the date on which Grant Activities will be resumed. The PERFORMING PARTY shall resume the Grant Activities on the date so fixed. The PERFORMING PARTY shall be allowed an extension of the Grant Activities timeline directly attributable to any such suspension, but only to the extent that the PERFORMING PARTY requests such extensions in writing within fifteen (15) days of TCEQ's notice.
- 13.11 The PERFORMING PARTY acknowledges that certain requirements of this Contract, including maintenance of records, shall survive an event of termination.

ARTICLE 14. REMEDIES AVAILABLE TO TCEQ

- 14.1 In accordance with Chapter 2261 of the Texas Government Code, the following Schedule of Remedies applies in the event of the PERFORMING PARTY's breach of the requirements of this Contract; including the substandard performance of Grant Activities or other failure, material or otherwise, to conform to the requirements of the Contract or applicable law:
- 14.1.1 Issue notice of substandard performance or other non-conforming act or omission;
 - 14.1.2 Reject substandard performance and request corrections without charge to TCEQ;
 - 14.1.3 Request and receive return of any over payments or inappropriate payments;
 - 14.1.4 Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;
 - 14.1.5 Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;
 - 14.1.6 Reject reimbursement request and withhold all or partial payments;
 - 14.1.7 Terminate the Contract without further obligation for payment; or
 - 14.1.8 Demand restitution and recover payments for nonconforming performance, including the return of all unexpended funds, repayment of improperly expended funds, and/or all grant funds paid by TCEQ. TCEQ may reduce the amount of grant funds required to be returned by a percentage reflecting the proportion of the total Grant Activities which were properly conducted prior to the breach, as determined by TCEQ.

Cumulative Remedies

- 14.2 TCEQ may avail itself of any remedy or sanction provided in this Contract or in law to recover any losses arising from or caused by the PERFORMING PARTY's substandard performance or any material non-conformity with the Contract or the law. The remedies and sanctions available to either party in this Contract shall not limit the remedies available to the parties under law.
- 14.3 The dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the Contract.

ARTICLE 15. INDEMNIFICATION

- 15.1 TO THE EXTENT PERMITTED BY LAW, PERFORMING PARTY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TCEQ, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE PERFORMING PARTY OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY THE PERFORMING PARTY WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND THE PERFORMING PARTY MAY NOT AGREE TO ANY

SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. THE PERFORMING PARTY AND TCEQ AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 15.2 This paragraph is not intended and shall not be construed to require the PERFORMING PARTY to indemnify or hold harmless the State or TCEQ for any claims or liabilities resulting from the negligent acts or omissions of TCEQ or its employees.

ARTICLE 16. TITLE TO AND MANAGEMENT OF PROPERTY AND EQUIPMENT

- 16.1 Subject to the obligations and conditions set forth in this Contract, title to real property and equipment (together hereafter referred to in this Article as “property”) acquired under this Contract by the PERFORMING PARTY or a sub-grant recipient will vest upon acquisition or construction in the PERFORMING PARTY or the sub-grant recipient respectively.
- 16.2 Subject to the provisions of this Contract and as otherwise provided by state statutes, property acquired or replaced under this Contract, or a sub-grant 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 state funds.
- 16.3 The PERFORMING PARTY and sub-grant recipients may develop and use their own property management systems, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY or the sub-grant recipient is not in place or is not used properly, the *State Property Accounting Process User's Guide* issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the PERFORMING PARTY and sub-grant recipients must meet the requirements set forth in this Section.
- 16.3.1 Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, and the cost of the property, percentage of state 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.
- 16.3.2 A physical inventory of all equipment acquired or replaced under this Contract shall be conducted no less frequently than once every two years during the Contract Period and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY and the sub-grant recipients shall include adequate safeguards for replacement value and to prevent loss, damage, or theft of the acquired property. Any loss, damage, or theft shall be investigated. The PERFORMING PARTY and the sub-grant recipients shall 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 property is sold.

ARTICLE 17. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

- 17.1 The Contract Documents may be amended to provide for additions, deletions, and revisions in one or more of the following ways: a formal Written Amendment or a Minor Change. All requests for changes to the Contract must be submitted in writing to TCEQ. TCEQ will not amend the Contract if such changes would reduce the total project score.
- 17.2 Written Amendment. A Written Amendment allows for material changes to the Contract such as changes to the total Contract Amount, changes to the Request for Reimbursement Deadline or Contract Expiration Date, or other changes that affect the material obligations of the PERFORMING PARTY in this Contract. All Written Amendments must be in writing and signed by both parties.
- 17.3 Minor Change. TCEQ has authority, without a Written Amendment, to correct any typographical errors, make changes to the Project Representative, make written Contract interpretations, and make minor non-material changes to the requirements in the Scope of Work. Minor changes must be made in writing, including via email, and provided to the PERFORMING PARTY's Project Representative. The PERFORMING PARTY must provide TCEQ with a written objection to any Minor Change no later than five (5) business days from the effective date of the Minor Change.

ARTICLE 18. STANDARDS FOR THE PERFORMING PARTY'S PERFORMANCE

- 18.1 In accordance with Texas Government Code Chapter 2261, TCEQ is required to monitor the PERFORMING PARTY's performance under this Contract. The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Contract.
- 18.1.1 Quality and Accuracy. Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Contract.
 - 18.1.2 Timeliness. Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.
 - 18.1.3 Reports and Administrative & Financial Operations. Standard: The PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Contract, including, but not limited to, record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.
 - 18.1.4 Communication. Standard: The PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any Contract-related concerns communicated by TCEQ. The PERFORMING PARTY must ensure that its subcontractors also comply with this standard.
 - 18.1.5 Other. Standard: Other factors unique to the type of project, as determined by TCEQ.
- 18.2 TCEQ will monitor the PERFORMING PARTY's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.
- 18.2.1 Exceeds Expectations. The PERFORMING PARTY fully complied with all the standards on a consistent basis.
 - 18.2.2 Satisfactory Performance. The PERFORMING PARTY's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.
 - 18.2.3 Marginal Performance. The PERFORMING PARTY's performance was acceptable, although a significant number of deficiencies had to be corrected before the Contract requirements could be considered met.
 - 18.2.4 Unsatisfactory Performance. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.
- 18.3 TCEQ may prepare a written evaluation of the performance of the PERFORMING PARTY upon completion of the terms of the Contract, or more frequently, as deemed necessary by TCEQ. A copy of the evaluation may be provided to the PERFORMING PARTY and a copy retained in TCEQ's contract files. The content of the evaluation shall be wholly within the discretion of TCEQ. The PERFORMING PARTY may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against TCEQ for the evaluation.

ARTICLE 19. MISCELLANEOUS

- 19.1 In order for this Contract to be effective, all authorized principals of an unincorporated business organization or association must sign the Contract. An agent signing for a corporation must be authorized to sign by the corporation.
- 19.2 Unless authorized in writing by TCEQ in accordance with this Contract, no waiver of any obligation of the PERFORMING PARTY shall bind TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.
- 19.3 The PERFORMING PARTY is not a "vendor" of goods and services within the meaning of Texas Government Code Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this Contract.
- 19.4 By stating at any place in this Contract that any particular noncompliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.
- 19.5 The PERFORMING PARTY's timely performance is essential to this Contract.
- 19.6 Child Support. Under Section 231.006 of the Texas Family Code, a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state-funded grant or loan. By executing this Contract, the PERFORMING PARTY certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated, and payment may be withheld if this certification is inaccurate.

- 19.7 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion and acceptance of the Grant Activities, and termination or completion of the Contract until such time as enforcement of such representations, indemnifications, warranties, and guarantees is barred by the applicable statute of limitations.
- 19.8 Subject to the provisions of the *Assignment* subsection under Article 11, General Conditions, TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party's successors, assigns and representatives in respect to all covenants, agreements and obligations contained in the Contract.
- 19.9 The parties hereby agree that this Contract does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. No TCEQ personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of TCEQ, goods or services which are not required under the Contract or any conforming amendment.
- 19.10 The PERFORMING PARTY acknowledges and agrees that this Contract has been executed, and will be administered in Travis County, Texas. The PERFORMING PARTY also acknowledges and agrees that any permissible cause of action involving this Contract will arise solely in Travis County, Texas. This provision does not waive TCEQ's sovereign immunity.
- 19.11 Any provision of the Contract 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 the PERFORMING PARTY, who agree that the Contract will 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.
- 19.12 Notice of Claim. Should TCEQ or the 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 may be 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.
- 19.13 Abortion Funding Limitation - PERFORMING PARTY represents and warrants that payments made by TCEQ to PERFORMING PARTY and PERFORMING PARTY's receipt of state funds under the Contract are not prohibited by Texas Government Code Chapter 2273, *Prohibited Transactions*.
- 19.14 If the PERFORMING PARTY is a local entity, it certifies that it has not received a final judgment determination finding it intentionally adopted or enforced a policy that prohibited or discouraged the enforcement of a public camping ban in an action brought by the Attorney General under Local Government Code Section 364.003. If PERFORMING PARTY is currently being sued under the provisions of Local Government Code Section 364.003 or is sued under this section at any point during the duration of this grant, PERFORMING PARTY must immediately disclose the lawsuit and its current posture to TCEQ.
- 19.15 If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to TCEQ Bankruptcy Program. The PERFORMING PARTY shall place TCEQ on distribution list for bankruptcy court documents. The PERFORMING PARTY's notice to the bankruptcy program must include the appropriate contract number(s).
- 19.16 The PERFORMING PARTY represents and warrants that it will comply with Section 321.022 of the Texas Government Code which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

ARTICLE 20. INTELLECTUAL PROPERTY

- 20.1 No intent to create intellectual property. The TCEQ does not intend to fund Grant Activities that require the creation of intellectual property. Accordingly, Sections 20.2 through 20.4 should not apply to the Grant Activities. If the PERFORMING PARTY at any time determines that any portion of the Grant Activities funded by the TCEQ will require creation of intellectual property, including new works incorporating preexisting intellectual property, the PERFORMING PARTY must immediately notify the TCEQ and will not undertake such activity unless the TCEQ provides written authority to proceed.

- 20.2 Disclosure of Intellectual Property Produced during the Grant Activities. The PERFORMING PARTY shall promptly notify the TCEQ of all Intellectual Property which the PERFORMING PARTY or the PERFORMING PARTY's employees, subcontractors, or subcontractor's employees may produce, either solely or jointly with others, during the course and directly arising from the Grant Activities. In addition, the PERFORMING PARTY shall promptly notify the TCEQ of all Intellectual Property to which the PERFORMING PARTY may acquire rights in connection with the Grant Activities. Any notification under this paragraph shall contain sufficient technical detail to convey a clear understanding of the Intellectual Property, and shall identify any publications, sale, public use, or impending publication. Promptly upon request, the PERFORMING PARTY shall supply such additional information as the TCEQ may request.
- 20.3 Grant of License. With respect to such Intellectual Property as is developed by the PERFORMING PARTY or the PERFORMING PARTY's employees, subcontractors, or subcontractor's employees, either solely or jointly with others, during the course of performing portions of and directly arising from the Grant Activities for which reimbursement is requested from the TCEQ; the PERFORMING PARTY hereby grants to the TCEQ (1) a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, or otherwise use such Intellectual Property and associated use documentation, and (2) a nonexclusive, perpetual, irrevocable, enterprise-wide license to authorize others to reproduce, publish, or otherwise use such Intellectual Property for the TCEQ'S purposes. For such Intellectual Property that is developed in the course of the Grant Activities and not subject to this license requirement, the PERFORMING PARTY shall ensure that the development expenses are clearly documented on financial reports submitted to the TCEQ and that requests for reimbursement do not include these expenses.
- 20.4 Modifications. Derivative Works. The 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. The TCEQ and the PERFORMING PARTY shall jointly own all Intellectual Property Rights to such modifications. The PERFORMING PARTY shall not be responsible for or liable for any modifications by the TCEQ or the TCEQ's employees or independent contractors of Intellectual Property licensed to the TCEQ by the PERFORMING PARTY.
- 20.5 The PERFORMING PARTY shall comply with all laws and regulations relating to Intellectual Property. The PERFORMING PARTY represents and warrants to the TCEQ that the PERFORMING PARTY will not infringe any Intellectual Property Right of any third party. The PERFORMING PARTY further represents and warrants to the TCEQ that in the course of performing the Grant Activities it will not use or possess any Intellectual Property owned by a third party without paying any required royalty or patent fees. The 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 the PERFORMING PARTY. Except as permitted in the Contract, the PERFORMING PARTY shall not create or permit the creation of any lien, encumbrance, or security interest in the Grant Technology or any part thereof, or any product licensed or provided hereunder to the TCEQ for which title has not yet passed to the TCEQ, without the prior written consent of the TCEQ. The PERFORMING PARTY represents and warrants to the TCEQ that neither it nor any other company or individual performing the Grant Activities is under any obligation to assign or give to any third party any Intellectual Property rights granted or assigned to the TCEQ, or reserved by the TCEQ, pursuant to the Contract.
- 20.6 The PERFORMING PARTY shall include provisions adequate to effectuate the purposes of Section 20.5 in all subcontracts and sub-grants under this Contract in the course of which Intellectual Property may be produced or acquired.

— End of General Conditions —

AUTHORIZED REPRESENTATIVES

TCEQ Project Representative

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

Mailing Address:

Ms. Jody Ibarguen
Texas Commission on Environmental Quality
Air Grants Division, MC-204
PO Box 13087
Austin, TX 78711-3087

Physical Address:

Ms. Jody Ibarguen
Texas Commission on Environmental Quality
Air Grants Division, MC-204
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

Telephone No.: (800) 919-TERP (8377)

Facsimile No.: (512) 239-6161

PERFORMING PARTY's *Authorized Official*

The individual authorized to sign legal documents on behalf of the PERFORMING PARTY.

Address:

Representative's Name
PERFORMING PARTY's Name
Address
(City) (State) (Zip Code)

Telephone No.: ()

PERFORMING PARTY's *Project Representative*

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

Address:

Representative's Name
PERFORMING PARTY's Name
Address
(City) (State) (Zip Code)

Telephone No.: ()

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

— End of Authorized Representatives—

SPECIAL CONDITIONS
for
NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM

ARTICLE 1. SPECIAL CONDITIONS

The PERFORMING PARTY agrees to these Special Conditions.

{This Article is not applicable to this project. The Article number is retained for numbering continuity.}

— End of Special Conditions —

SCOPE OF WORK

ARTICLE 1. OBJECTIVES

Project Overview:

[insert Scope of Work]

— End of Scope of Work —

SCHEDULE OF DELIVERABLES

[insert schedule of deliverables]

— End of Schedule of Deliverables —

APPROVED GRANT BUDGET

ARTICLE 1. BUDGET

1.1 Authorized budgeted expenditures under this Contract are as follows:

[insert budget]

— End of Approved Grant Budget —

INSURANCE

ARTICLE 1. INSURANCE

1.1 **COVERAGES REQUIRED.** The PERFORMING PARTY shall purchase and maintain sufficient insurance as appropriate for the Work being performed and furnished, and for protection from any and all claims that may arise out of or result from PERFORMING PARTY's performance and furnishing of the Grant Activities and PERFORMING PARTY's other obligations under the Contract Documents. The PERFORMINGB PARTY's insurance shall meet or exceed the requirements set forth in this section or elsewhere in the Contract Documents.

1.1.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to secure the payment of compensation to injured employees as defined in the Texas Worker's Compensation Act.

1.1.2 **Commercial Automobile Liability Insurance:** Coverage in the following minimum amounts for owned, hired, and non-owned vehicles for claims of automobile bodily injury and property damage which may arise in the performance of the Contract:

- \$500,000.00 per person;

\$500,000.00 per occurrence for bodily injury; and

- \$1,000,000.00 per occurrence for property damage; or
- \$1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.

1.1.3 **Commercial General Liability Insurance:** Coverage for claims of personal injury and bodily injury, including accidental death, and property damage which may arise from the performance of the Contract. The types of coverage required are: Blanket, Broad Form Property Damage, Premises and Operations Hazards, Products and Completed Operations Hazards, Independent Contractor's, and Contractual Liability in the minimum amounts of:

- \$1,000,000.00 per occurrence for bodily injury; and
- \$1,000,000.00 per occurrence for property damage; or
- \$2,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.

1.1.4 **Property Insurance.** The PERFORMING PARTY must maintain sufficient Property Insurance for the repair or replacement of any Grant Equipment in an amount no less than the Contract Amount.

1.2 **MINIMUM INSURER RATING.** The PERFORMING PARTY shall use insurers licensed, eligible or registered under Texas law with a rating of A- or better in a financial size category of IV or higher according to A.M. Best Company.

1.3 **NOTICES OF CHANGE.** The PERFORMING PARTY's insurance policies must require the insurer or the insurer's authorized agent to notify TCEQ of any cancellation, or material change, other than for non-payment, at least 30 days in advance. The PERFORMING PARTY's insurance policy must require the insurer or the insurer's authorized agent to notify TCEQ of any cancellation or material change due to non-payment at least 10 days in advance. These notices of changes must reference TCEQ contract number and be made in writing by certified mail to TCEQ Project Representative at the address shown in the Contract Documents.

1.4 **INSURANCE CERTIFICATE.** The PERFORMING PARTY shall provide TCEQ with evidence of the insurance coverage required under this Contract. The evidence of the coverage shall be a certificate of insurance on a form approved by the Texas Department of Insurance or an Acord® form. The PERFORMING PARTY will submit the certificate to TCEQ as a condition precedent to the issuance of a Notice to Proceed. Certificates must bear the contract number of this Contract. If the PERFORMING PARTY changes insurers, the PERFORMING PARTY shall give TCEQ a new certificate of insurance within 10 days. The certificate of insurance shall set out any deductible or self-insured retention amounts for each coverage required.

1.5 **REQUIRED ADDITIONAL PROVISIONS.** All policies of insurance shall include the following provisions:

- 1.5.1 TCEQ and its officers and employees are named additional insureds to *Commercial General Liability Insurance, Excess Liability Insurance (Umbrella)*, and Excess Liability Insurance (other than Umbrella);
 - 1.5.2 Waiver of subrogation in favor of TCEQ, its officers and employees for bodily injury (including death), property damage, or any other loss arising from this Contract; except for Professional Liability Insurance; and
 - 1.5.3 The PERFORMING PARTY's insurance is primary insurance with respect to TCEQ and its officers and employees.
- 1.6 *Requirements for Subcontractors:* Contractor shall require in writing that all Subcontractors performing Work under this Contract, or anyone directly or indirectly contracted to perform or furnish any of the Work, shall obtain insurance appropriate for the risks associated with the Work performed and in consideration of the items listed above in 1.1 - 1.5.
- 1.6.1 If any Subcontractor or anyone directly or indirectly contracted to perform or furnish any of the Work fails to demonstrate and/or obtain such insurance, or the insurance expires or is no longer available for any reason, the Contractor shall provide the insurance coverage, or shall indemnify, against claims related to the Work, the Subcontractor, or anyone directly or indirectly contracted by any of them to perform or furnish any of the Work.
 - 1.6.2 Workers Compensation insurance will be required for any Subcontractors if the Work will be performed using the services of employees.

-End of Insurance Section-