# Texas Commission on Environmental QualityCooperative Reimbursement Contractfor State Agencies and Intergovernmental Organizations

# CONTRACT SIGNATURE PAGE

Contract Name: Water Data Exchange (WADE)

Contract Number:

Subrecipient:

Subrecipient Identification Number:

**Not to Exceed Amount: $\_\_\_\_\_\_\_\_\_\_**

Effective Date: **[ ]**        **[x]**  Date of last signature

Expiration Date: **[x]**  09/30/2016 **[ ]**  Last day of Fiscal Year in which the Contract was signed

**[ ]**  If checked, this Contract requires matching funds. Match Requirement:

**[ ]** If checked, this Contract is funded with federal funds.

 CFDA Number: 66.608

 Federal Grant Number: OS-83546301

This Contract is entered under: [ ]  Gov’t Code ch. 771 [ ]  Gov’t Code ch. 791 [x]  Water Code § 5.124 and 5.229

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and the named Subrecipient, an agency of the State of \_\_\_\_\_\_\_\_or an intergovernmental organization, enter this agreement (Contract) to cooperatively conduct authorized governmental functions and activities.

The Parties agree as follows: (a) to be effective, the Contract must be signed by an authorized official of the TCEQ and the Subrecipient; (b) this Contract consists of all documents specified in the list of Contract Documents following this page; and (c) as authorized by TCEQ, Subrecipient will conduct Contract Activities as part of its own authorized governmental functions and TCEQ will reimburse Allowable Costs subject to this Contract.

**Texas Commission on**

**Environmental Quality (TCEQ)**

 Authorized Signature

 Printed Name

 Title

 Date

 Procurements & Contracts Representative

 Printed Name

 Date

**(Subrecipient)**

 Authorized Signature

 Printed Name

 Title

 Date

# CONTRACT DOCUMENTS LISTCooperative Reimbursement Contractfor State Agencies and Local Governments

This Contract between TCEQ and Subrecipient consists of the Contract Documents listed on this page and marked by an “X.” Documents on this list include all amendments. In the event of a conflict of terms, the Contract Documents as amended control in the descending order of the list, subject to provisions in the Special Terms and Conditions, if any. All Contract provisions, however, are subject to control by the latest amendment and most specific provision and by the applicable state and federal laws, rules and regulations.

[x]  Contract Signature Page

[x]  Contract Documents List (this page)

[x]  Federal Conditions Special Terms and Conditions

[x]  General Terms and Conditions

[x]  Scope of Work

[x]  Contract Cost Budget

[x]  Attachment A (Financial Status Report) – (To be filled out and returned to the TCEQ Project Manager on a monthly basis)

[x]  Attachment B (Release of Claims) – (To be filled out and returned with the final invoice)

[x]  Attachment C (Personnel Eligibility List) – (To be filled out and returned with the signed contract)

[x]  Attachment D (EPA Grant Work Plan Narrative)

[x]  Attachment E (Certifications) – (To be filled out and returned to the TCEQ Project Manager within 30 days of the execution of the contract)

[x]  Attachment F (Proposals for Grant Activities Cost Budget) – (To be filled out and included with all PGAs)

[x]  Attachment G (Federal Forms) – (Instructions for the different federal forms is included)

[x]  Attachment H (Drug Free Work Place for Grantees) – (To be filled out with signed contract)

[x]  Attachment I (Notices, Project Representatives and Records Location) – (To be filled out and returned with signed contract)

**Federal Conditions**

*Introduction: In this Agreement, you are granted federal funds of the U.S. Environmental Protection Agency (EPA) as a subrecipient through the TCEQ, the Prime Recipient. Under this Agreement you agree to manage your project in compliance with all the Federal Conditions in the Agreement. The EPA requires TCEQ to monitor your compliance with the federal requirements in the Agreement. Please help us to help you comply.*

1. Payment to consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by you or by your contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2012, the limit is $596.00 per day and $74.50 per hour. This rate does not include transportation and subsistence costs for travel performed(you will pay these in accordance with your normal travel reimbursement practices).

The service contracts between you and firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide you with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

2. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, you agree to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended}. You may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/> applications/hotel/ to see if a property is in compliance (FEMA ID is currently not required}, or to find other information about the Act.

3. LOBBYING. The chief executive officer of the your entity shall ensure that no grant funds provided under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States or the TCEQ unless authorized under existing law. You shall abide by its respective OMS Circular (A-21, A-87, or A-122) or its replacement, which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

4. COPYRIGHT, PATENT. In accordance with 40 CFR 31.34 for State, local and Indian Tribal governments or 40 CFR 30.36, EPA has the right to reproduce, publish, use, and authorize others to use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g., software codes) and the work is properly attributed to the you through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by you to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other you to use the copyrighted works or other data.

Under Item 6, you acknowledge that EPA may authorize another grant recipient to use the copyrighted works or other data developed under this award and Agreement grant as a result of:

a. the selection of another grant recipient by EPA to perform a project that will involve the use of the copyrighted works or other data or;

b. termination or expiration of this Agreement.

In addition, EPA may authorize another recipient to use copyrighted works or other data developed with EPA funds provided under this grant Agreement to perform another grant when such use promotes efficient and effective use of Federal grant funds.

5. SUSPENSIONS, DEBARMENT. You shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business with Other Persons," as implemented and supplemented by 2 CFR Part 1532. You are responsible for ensuring that any lower-tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. You are responsible for further requiring the inclusion of a similar term or condition in any subsequent lower-tier covered transactions. You acknowledge that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of the award and this assistance Agreement, or pursuance of legal remedies, including suspension and debarment.

You may access suspension and debarment information at http://www.sam.gov. This system allows you to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

6. You, as a Subrecipient of the EPA assistance award through TCEQ, must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, your organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. You can access the Code of Federal Regulations (CFR) Title 40 Part 36 at <http://www.access.gpo.gov/nara/cfr/> waisidx\_06/40cfr36\_06.html.

7. a. You agree to:

1. Establish all subaward agreements in writing;

2. Maintain primary responsibility for ensuring successful completion of your EPA and TCEQ-approved project (this responsibility cannot be delegated or transferred to your lower-tier subawarded);

3. Ensure that all your subawards comply with the standards in Section 21O(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for you or your subawardees for other purposes;

4. Ensure that all your subawards are made to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;

5 Ensure that all subawards to 501(c)(4) organizations do not involve lobbying activities;

6. Monitor the performance of your subrecipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;

7. Obtain EPA’s consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and

8. Obtain TCEQ approval for any new subaward work that is not outlined in the TCEQ-approved Work Plan.

b. Any questions about your subrecipients’ eligibility or other issues pertaining to your subawards should be addressed to the TCEQ’s Project Manager. Additional information regarding subawards may also be found at http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf. Additionally, guidance for distinguishing between vendor and Subrecipient relationships and ensuring compliance with Section 21O(a)-(d) of OMB Circular A-133 can be found at http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf and http://www.whitehouse.gov/omb/circulars/a133/a133.html.

c. You are responsible for selecting your subrecipients and for conducting subaward competitions in accordance with this Agreement and your state laws.

8. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable costs. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

9. Any financial obligations of the EPA or the TCEQ for your reimbursements are limited by the amount of federal funding awarded to you as of the date as shown on TCEQ-approved budget. If you incur costs in anticipation of receiving additional funds from EPA or TCEQ, you do so at your own risk.

10. Trafficking in Persons.

a. Provisions applicable to your subrecipient if it is a private entity.

1. Your subrecipient that is a private entity and any lower-tier subrecipient that is a private-entity and all their employees are prohibited from:

i. Engaging in severe forms of trafficking in persons during the period of time that your federally-funded subaward agreement is in effect;

ii. Procuring a commercial sex act during the period of time that this federally-funded subaward agreement is in effect; or

iii. Using forced labor in your subrecipient’s performance of activities described in this Agreement or the subaward agreement.

b. Provisions applicable to you as subrecipient as a non-private entity.

1. Either EPA or TCEQ, the principal recipient and subawarding agency, may unilaterally terminate this award and Agreement, without penalty, if your subrecipient or any lower-tier subrecipient is a private entity that:

i. Is determined to have violated an applicable prohibition in paragraph 10.a.1 of this award and Agreement;

ii. Has an employee, who is determined by either an EPA or TCEQ official authorized to terminate this award and Agreement, to have violated a prohibition in paragraph 10.a.1 of this award term through conduct that is either:

A. Associated with performance under this award; or

B. Imputed to you or your subrecipient using the standards and due conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," as implemented by EPA at 2 CFR 1532.

c. Provisions applicable to you and your subrecipients:

1. You and your subrecipients must inform TCEQ and EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph 10.a.1 of this award term and Agreement.

2. The right of EPA and TCEQ to terminate unilaterally that is described in paragraph 10.b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104 (g)) and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of 10.a.1 of the award and Agreement term in any subaward you make to a private entity.

d. Definitions. For the purposes of this award term:

1. "Employee" means either:

i. An individual employed by you or any your subrecipients who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under th1s award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25

ii. Includes:

A. A nonprofit organization, including an nonprofit institution of higher education, hospital, or tribal organization other than the one included in the definition of Indian tribe at 2 CFR 175.25 {b) meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act”, and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

11. In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), you agree to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds $10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was $10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

12. In accordance with OMB Circular A-133, which implements the single Audit Act, you hereby agree to obtain a single audit from an independent auditor if you expend $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a your fiscal year or 30 days after receiving the report from the auditor, you shall submit a copy of the SF-SAC and a Single Audit Report Package.

For fiscal periods 2008 and forward you MUST submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and forward Single Audit Submissions you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/> or contact the TCEQ Project manager. You must also submit an electronic copy to the TCEQ Project Manager.

13. Reporting Executive Compensation.

By law, TCEQ is required to report certain information about your organization including the compensation paid to your executives. Therefore, under this Agreement, you are required to provide that information to TCEQ to enable TCEQ to submit the information to the federal database.

a. Reporting Total Compensation of Your Executives.

1. Applicability and what to report. You must report the names and total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if:

 i. in the preceding fiscal year, you received:

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards}; and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards}; and

ii. The public does not have access to information about the compensation of the executives filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m(a), 78o(d)) or Section 6104 of the Internal Revenue Code of 1986. To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.

b. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which TCEQ received an award and which TCEQ has awarded to you as the eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that TCEQ or you considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from TCEQ of funds provided by EPA; and

ii. Is accountable to TCEQ for the use of the Federal funds provided under this contract.

5. Total compensation means the cash and noncash dollar value earned by the Executive.

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

14. Universal Identifier

a. Requirements.

1. Requirement for a DUNS number. Unless you are exempted from this requirement under 2 CFR 25.110, you as the subrecipient of a Federal award through TCEQ must provide TCEQ with your DUNS number. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedqov.dnb.com/webform).

2. You must also maintain the currency of the information you provided TCEQ concerning your organization and the organization contacts. You must review and update the information at least annually and more frequently if required by changes in your information or another award term.

b. Definitions. For purposes of this award term:

1. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities.

2. Subrecipient means an entity that receives an award of EPA funds as financial assistance through a recipient (TCEQ) and is accountable to TCEQ for the use of federal funds.

15. CIVIL RIGHTS OBLIGATIONS

GENERAL

This term and condition incorporates by reference the signed assurance provided by your authorized representative on: 1) EPA Form 4700-4,"Preaward Compliance Review Report for All Applicants and you Requesting EPA Financial Assistance"; and 2) Standard Form 4248 or Standard Form 424D, as applicable. These assurances and this term and condition obligate you to comply fully with applicable civil rights statutes and implementing EPA regulations.

STATUTORY REQUIREMENTS

In carrying out this agreement, you must comply with:

Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.

Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and

The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), you must also comply with:

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

REGULATORY REQUIREMENTS

As a subrecipient of EPA financial assistance, you agree to comply with all applicable EPA civil rights regulations, including:

For Title IX obligations, 40 C.F.R. Part 5; and

For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.

As noted on the EPA Form 4700-4 signed by the your authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI- LEP, Public Participation and Affirmative Compliance Obligation

As a subrecipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, you agree to use as a guide the Office of Civil Rights (OCR) document entitled “Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. "The guidance can be found at http://frwebqate.access.qpo.qovlcqi-binlqetdoc.cqi?dbname=2004 reqister&docid=fr25jn04-79.pd

If you are administering permitting programs under this agreement, you agree to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf.

In accepting this assistance agreement, you acknowledge you have an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. You must be prepared to demonstrate to TCEQ that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

16. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

You agree to comply with the requirements of EPA's Program for Utilization of Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

a. Pursuant to 40 CFR, Section 33.301, you agree to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that your subrecipients and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

1. Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources

2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government subrecipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce in finding DBEs.

6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

b. MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

1.You agree to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" with each request for reimbursement beginning with the Federal fiscal year reporting period you receive the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a your MBE/WBE accomplishments.

2 Final MBE/WBE reports must be submitted within 60 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

You agree to comply with the contract administration provisions of 40 CFR, Section 33.302.

**Programmatic Conditions**

1. Sufficient Progress

TCEQ may terminate the assistance agreement for your failure to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. TCEQ will measure sufficient progress by examining the performance required under the work plan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

2. Quality Assurance Terms/Conditions

Within 60 days of the award issuance date, the award You must submit a tailored Quality Assurance Reporting Form (QARF) to the TCEQ Project Manager for approval. The form can be obtained at http://www.epa.gov/exchangenetworklgrants/index.html. This tailored QARF must describe the project's relevant QA criteria, how you will ensure adherence with the QA criteria, and how you will confirm and document that the project deliverables meet the QA criteria. Specifically, the tailored QARF shall include the following:

a. The QA criteria (with specific references or guidelines) that relate to each task as described in the project Work Plan;

b. How you will ensure adherence to the identified QA criteria (and specific references and guidelines) throughout the course of the project (e.g., management approaches, task-specific QA training for staff and/or contractors, periodic QA checks and corrective measures as needed, etc.); and

c. How you will confirm and document that the project deliverables for each task in the Work Plan adhere to the identified QA criteria (and specific references, and guidelines). For example, an applicant whose project involves the development of an Exchange Network node should verify that the node meets all of the Network Node Specifications and that it passes the relevant operational tests using the Network Node Test Site. See http://www.exchangenetwork.net for more information.

3. Electronic and Information Technology Accessibility

You are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, your personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider your websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to you, you are encouraged to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. You may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0(see http://www.access-board.gov/sec508/guide/index.htm).

The Exchange Network (EN) Tailored Quality Assurance Reporting Form (QARF) Form fulfills and documents the Quality Assurance terms and conditions for Exchange Network grants.

4. Reporting Requirements

As a subrecipient of the Exchange Network grant award, you must submit monthly progress reports to the TCEQ Project Manager electronically.

These progress reports must be submitted for each month no later than 15 days after the end of the previous month. The first reporting period is from the award issuance date to March 31, 2014, and the first report will be due to the EPA Regional Project Officer on April 30, 2014. Subsequent reports will be due every six months thereafter, until the project is completed, and the reporting periods will be as follows:

1. At a minimum, semi-annual progress reports must include the following:

i. An update on the schedule and status of carrying out the project, including new problems encountered and suggestions to overcome them;

ii. An explanation of expenditures to date, with expenditures linked to project results;

iii. Information on each of the following areas:

A. A comparison of actual accomplishments with the anticipated outputs/outcomes specified in the Work Plan;

B. The reasons why anticipated outputs/outcomes were not met (if applicable); and

C. Other pertinent information, including, when appropriate, analysis and explanation of cost overruns in excess of the Work Plan; or high unit costs. You agree to notify TCEQ of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the assistance agreement Work Plan. You must submit semi-annual reports even when you have not made progress during the reporting period.

 In addition to the progress reports, you must submit a final report to TCEQ within 20 days prior to the expiration or termination of the approved project period. The final report shall document project activities over the entire project period and shall include information on each of the following areas:

1. Comparison of actual accomplishments with the anticipated outputs/outcomes specified in the assistance agreement Work Plan;

2. The reasons why anticipated outputs/outcomes were not met (if applicable); and

3. Other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. You agree to notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the TCEQ Work Plan.

5. Reusing Existing EN Tools and Services

These terms and conditions will facilitate the leveraging of reusable tools and services, reducing building costs and increasing efficiencies for the Exchange Network.

a. You shall reuse existing EN nodes, data flows and EN services registered in the Exchange Network Discovery Services (ENDS), instead of building new ones, for sharing similar data over the Exchange Network. Existing resources may often be reused as they exist or adapted for new use. To research existing resources, you shall review what is registered at https://ends2.epa.gov/admin/default.aspx. (Please contact your node administrator for issues regarding access to this site.)

b. You shall review Reusable Component Services (RCS) and leverage any existing tools, such as Web services, APIs, widgets or reusable code in developing new resources using grant funding. To research existing resources, you shall access RCS at www.epa.gov/rcs. As some records are not publicly viewable, users should users should sign in using the link in the upper right corner of the site. (Please contact the TCEQ Project manager or your Regional EN Coordinator for issues regarding access to RCS.) The RCS User Guide is also available on the site.

6. Registering New Exchange Network Resources

These terms and conditions will enable future developers to leverage and reuse these EN tools in order to save time and money in future endeavors.

a. You shall create a record, containing relevant metadata and descriptions, for all new Exchange Network nodes, data flows and services developed under this grant in ENDS v2.0. Registering information in ENDS is described in detail in the Discovery Users Guide V3 at http://www.exchangenetwork.net/node/DiscoveryUserGuidev3.doc.

b. You shall create a record, containing relevant metadata and descriptions, for all new IT resources in RCS. To create a record, access RCS at www.epa.gov/rcs and select the Sign In link in the upper right corner of the site. Once logged in, select Browse under the Asset Catalog tab, and then click the 'Add Asset' button. If you have questions about registering assets or need assistance, please contact your Regional EN Coordinator.

The following table shows where the different types of resources should be registered:

|  |  |  |
| --- | --- | --- |
| Service or ComponentType | X |  |
| Network Nodes  | X |  |
| Data flows | X |  |
| EN Services (related to data lows) |  |  |
| XML Schema  |  | X |
|  |  |  |
| Software Tools Web services notRelated to data flows, SOAP or REST |  | X |
| Widget Tools  |  | X |
| Programming Code(Routines, Classes, etc.) |  | X |
| Code Libraries  |  | X |
| Others | Please discuss with the TCEQ Project Manager or your Regional EN Coordinator |

23. Project Partner Roles and Responsibilities

Within 20 days of the signing of the Contract, you must submit to the TCEQ Project Manager a Work Plan describing the activities you will conduct and budget in accordance with this Agreement and which includes:

a. The roles and responsibilities of all key personnel;

b. A Work Plan tasks to be carried out by you;

c. How the Grant Funds will be expended;

d. How you will ensure that the work will be carried out in accordance with the TCEQ Work Plan, including tasks and schedule; and

e. Provide input on accomplishments or problems in a timely manner so that input can be incorporated into the TCEQ’s semi-annual progress reports and close-out report to the EPA Regional Project Officer.

f. Register in ENDS Register in RCS

# SPECIAL TERMS AND CONDITIONS

The provisions of these Special Terms and Conditions add to, or in the case of conflicts, supersede and take precedence over the provisions of the General Terms and Conditions and other specified Contract Documents.

**The following provision is added to Article 1 of the General Terms and Conditions titled, Contract Period.**

1.4. A Notice to Proceed is not required to begin the Grant Activities. Grantee is authorized to begin work upon the effective date of the Contract.

**The following provisions are added to Article 3 of the General Terms and Conditions titled, Funds.**

**3.5 Advance Payments**

3.5.1. The TCEQ may provide funds in advance of the Grantee incurring anticipated costs of Grant Activities. In the event Proposals for Grant Activities (PGA) are used during the Contract, each PGA will indicate whether TCEQ will make an advance payment(s) and how much the advance payment(s) will be. Otherwise, Grantee may submit a request for Advance Payments in writing at any time during the Contract. Advance payments to Grantee are solely to be used for reimbursement of Grantee’s allowable costs of performance under the Contract. Grantee must submit advance payment documentation monthly, unless another period for documentation is specified by TCEQ. The documentation will follow the requirements for reimbursement requests (invoices). If grant activities are being funded with advance funds and by reimbursement, a request for reimbursement (invoice) must be on a separate FSR form than the advance payment information and the required documentation must be attached to the applicable FSR. The documentation must show the amount the Grantee has drawn from the advance and the balance remaining in the advance. Advance Payments are conditioned on the approval of the FSR. If the FSR does not demonstrate Grantee has complied with the Contract requirements, the TCEQ may withhold approval or reject the FSR.

3.5.2. TCEQ may include additional requirements or restrictions on the advance payment.

3.5.3. By making advance payments, the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may at any time, before or after any advance payment, request additional evidence concerning costs. The TCEQ may audit the records of the Grantee and may also audit the Grantee's performance as to any Grant Activity and any other Contract requirement. After an advance payment under a PGA is depleted, TCEQ may choose to amend the PGA to allow additional advance payment(s) to Grantee. If no additional advance is authorized, all additional payments will be made on a reimbursement basis, as described in the Contract Documents.

3.5.4. The Grantee has the duty to immediately return advance funds to the advance funds account within 15 days of receipt of a notice that TCEQ has determined that the funds have not been spent in accordance with this Grant Contract. The Grantee will certify in writing that this action has been taken.

**GENERAL TERMS AND CONDITIONS**

1. **Contract** **Period**
	1. **Contract Period.** The Contract beings on the Effective Date and ends on the Expiration Date as provided on the Contract Signature Page. If no Effective Date is provided, the Effective Date of the Contract is the date of last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the Fiscal Year following the year in which the Contract is signed.
	2. **Amendments.** This Contract is not subject to competitive selection requirements and may be amended and renewed by mutual agreement. Except as specifically allowed by the Contract, all changes to the Contract require a written amendment agreed to by both parties.
	3. **Extensions.** TCEQ may by unilateral written amendment extend the Expiration Date for a period of up to 90 days. Unless otherwise indicated in the applicable Contract amendment, an extension does not extend any other deadlines or due dates other than the expiration of the Contract Period.
2. **Funds**
	1. **Availability of Funds.** This Contract and all claims, suits or obligations arising under or related to this Contract are subject to the receipt and availability of funds appropriated by the Texas Legislature for the purposes of this Contract or the respective claim, suit or obligation, as applicable. Grantee will ensure that this article is included in any subcontract it awards.
	2. **Maximum Authorized Reimbursement.** The total amount of funds provided by TCEQ for the Contract will not exceed the amount of the Maximum Authorized Reimbursement as shown on the Contract Signature Page.
	3. **Fiscal Year Restrictions.** In order to be reimbursed under this Contract, costs must be incurred during the Contract Period and within the time limits applicable to the funds from which the Contract is being paid. TCEQ is under no obligation to offer deadline extensions which extend to the maximum availability of the Contract funding source.
	4. **Grants.** If this Contract was entered under the TCEQ’s authority to award grants, TCEQ is providing financial assistance to the recipient to undertake its own project.
	5. **No Debt against the State.** This Contract is contingent on the continuing appropriation of funds. This Contract shall not be construed to create debt against the State of Texas.
3. **Allowable** **Costs**
	1. **Conforming Activities.** TCEQ will reimburse the Grantee for necessary and reasonable Allowable Costs that are incurred and paid by the Grantee in performance of the Grant Activities as authorized in the Budget of Authorized Costs.
	2. **Determining Allowable Costs.** Allowable Costs are restricted to costs that comply with this Contract and with Title 2 CFR and 40 CFR Parts 30 or 31 as appropriate and applicable state and federal rules and law. Additional federal requirements apply if this Contract is funded, in whole or in part, with federal funds.
	3. **Personnel Eligibility List.** Any Grantee requests for reimbursement for costs of employee salary, benefits, travel or related items must be only for those employees on the Personnel Eligibility List (PEL) prior to the related work is performed, benefits are earned and the travel occurs. a copy of the PEL form is attached to this Contract. EPA will not provide reimbursement funds unless the subject employees are named on the PEL.
	4. **Duplication of Effort Prohibited.** In addition to the funds provided to the Grantee under this Grant Contract, the TCEQ, EPA, and other entities may provide funds to the Grantee under separate Grant Contracts. Grantee must monitor all activities to ensure that the grant funds complement one another and do not result in double payments for the same activity.
4. **Reimbursement**
	1. **Reimbursement Requests.** Grantee shall invoice TCEQ to request reimbursement for its Allowable Costs for performing the Grant Activities. Grantee’s invoice shall confirm to all reimbursement requirements specified by TCEQ.
	2. **Submittal of Reimbursement Requests**
		1. The Grantee shall not submit reimbursement requests (FSRs and invoices) any sooner than fifteen (15) days following the submission to the TCEQ of a deliverable in order to allow TCEQ staff a reasonable period to review the deliverable prior to receiving the reimbursement request.
		2. An FSR must be submitted for each month regardless of whether costs were incurred.
		3. The Grantee must submit invoices at the end of each month in which costs are incurred, except that the final invoice shall be submitted as specified below. Invoices shall be e-mailed to the TCEQ Project Manager at irdinv@tecq.texas.gov. Invoices shall be in PDF format and in U. S. dollars and cents. If Proposals for Grant Activities are authorized in the Contract, each Proposal for Grant Activities must be invoiced separately. In order for TCEQ to determine eligibility of costs, the Grantee must submit the following to the TCEQ as part of its complete and legible invoice:
			1. Reimbursement requests using Financial Status Report and Supplemental Financial Status Report Forms 269a in paper copies and in an electronic database format, provided by TCEQ, that detail all costs of conducting the Grant Activities incurred during the invoicing period. For FSRs requesting reimbursement of costs (as opposed to documenting use of advance payment), fill in the spaces regarding Advanced Funds with N/A. TCEQ will perform desk reviews of the FSRs after they are filed. TCEQ may pay an invoice prior to performing the desk review. If TCEQ determines that the FSR contained unallowable costs or insufficient documentation, the Grantee will refund the applicable amounts to TCEQ;
			2. Percentage of budget spent to date, and percentage of budget projected to be spent during the Contract;
			3. Progress report on a TCEQ template. The TCEQ reserves the right to alter the reporting frequency of the progress reports as necessary to track the Grantee’s progress toward accomplishing the tasks of the Contract or a specific PGA. The progress report shall document, in technical detail and by task, the accomplishments, expenditures, and milestones achieved during the reporting period. The Grantee shall include an estimate of the percent completion for each task or project. The report shall also document what problems were identified, if any, and the resolution.
		4. Within sixty (60) days of the end of this Contract, the Grantee must submit its final invoice that includes all of the information set forth above for monthly invoices and the information listed below. Submission shall be in electronic format, on DVD-ROM or CD-ROM. Directory structure for the contents of the CD shall be by Task and Title: e.g., Task 1. Conceptual Model, Task 2. Ambient Monitoring, Task 3. Emissions Inventories. The following also must be submitted with the final invoice:
			1. Copies of all previously un-submitted reports, including financial, performance, and other reports, required by this Contract;
			2. Final Reconciliation of Budget and Expenditures;
			3. PGA Summary Report summarizing the Grantee’s accomplishments with respect to the approved PGAs and containing an outline of PGA tasks and projects that identifies the title of all deliverables completed in the course of the Grant Contract. The Grantee must request the Final PGA Summary Report template from the TCEQ Grant Manager;
			4. A current single audit report.
			5. A detailed explanation of how any advance payments were utilized.
		5. Within ninety (90) days of receipt of the final invoice and information set forth above, the TCEQ will make adjustments to the allowable and eligible costs based on the terms of the Grant Contract Documents. The TCEQ will make reimbursement to the Grantee for allowable reimbursable costs. Closeout of the Grant Contract does not affect:
			1. The TCEQ’s right to disallow costs and recover funds on the basis of a later audit or other review;

The Grantee’s obligation to return any funds due as a result of later refunds, corrections, or other transactions;

* + - 1. Records retention;
			2. Property management requirements;
			3. Audit requirements; and
			4. Any other continuing obligations under the Grant Contract.
			5. At any time during the Grant Contract, upon request of the TCEQ, the Grantee will provide any additional documentation necessary to support the allowability and eligibility of the costs. The TCEQ may reject requests for reimbursement pending receipt of the requested documentation.
			6. The Grantee must immediately refund to the TCEQ any funds that are in excess of allowable costs. In no case may Grantee take longer than thirty (30) days to refund TCEQ. Any funds paid to a Grantee in excess of the amount to which the Grantee is finally determined to be entitled under the terms of the award constitute a debt to the TCEQ.
	1. **Conditional Payments.** Reimbursements are conditioned on the Grant Activities being performed in compliance with the Contract. Grantee shall return payment to TCEQ for either overpayment or activities undertaken that are not compliant with the Grant Activities. This does not limit or waive any other TCEQ remedy.
	2. **No Interest for Delayed Payment.** Because the Grantee is not a vendor of goods and services within the meaning of Texas Government Code Chapter 2251, no interest is applicable in the case of late payments.
	3. **Release of Claims.** As a condition to final payment or settlement, or both, the Grantee shall execute and deliver to the TCEQ a release of all claims against the TCEQ for payment under this Contract using the applicable, attached form.
	4. **Travel Costs.** Travel costs, including per diem, will be reimbursed only in the amount of actual costs, up to the maximum allowed by law for employees of the State of Texas at the time the cost is incurred. Any travel outside the scope of the Grant Activities must be specifically authorized by TCEQ in advance of the travel.
	5. **Supporting Records.** Grantee will submit records and documentation to TCEQ as appropriate for the review and approval of reimbursing costs. At a minimum, Grantee will submit supporting records with its invoices. TCEQ may reject invoices without appropriate supporting documentation. TCEQ has the right to request additional documentation. Grantee will maintain records subject to the terms of this Contract.
1. **Financial** **Records, Access and Audits**
	1. **Audit of Funds.** The Grantee understands that acceptance of funds under this Contract acts as acceptance of the authority of the Texas State Auditor’s Office, or the federal government or any successor to conduct an audit or investigation in connection with those funds. Grantee further agrees to fully cooperate with the Texas State Auditor’s Office or the federal government or a successor in the conduct of the audit or investigation, including providing all records requested. Grantee shall ensure that this clause concerning the audit of funds accepted under this Contract is included in any subcontract it awards.
	2. **Financial Records.** Grantee shall establish and maintain financial records including records of costs of the Grant Activities in accordance with generally accepted accounting practices. Upon request Grantee shall submit records in support of reimbursement requests. Grantee shall allow access during business hours to its financial records by TCEQ and other state agencies for the purpose of inspection and audit. Financial records regarding this Contract shall be retained for a period of three (3) years after date of submission of the final reimbursement request.
	3. **Indirect Rate Approval Letter.** In the event Grantee has requested reimbursement of Indirect Costs, within thirty (30) days of the start of the Grant Contract, the Grantee shall submit to the TCEQ a copy of the letter from the Grantee’s Federal cognizant agency or state coordinating agency approving the Grantee’s current indirect cost rate. The Grantee shall provide any new letter within thirty (30) days of the plan being approved by its cognizant agency or state coordinating agency.
	4. **Central Service Costs.** The Grantee certifies that it will maintain compliance with all UGMS and other requirements regarding central service costs, including having a Cost Allocation Plan, if required, and adjusting the plan. All central service cost allocation plans and related documentation must be maintained for possible audit.
2. **Grantee’s** **Responsibilities**
	1. **Grantee’s Responsibility for the Grant Activities.** Grantee undertakes performance of the Grant Activities as its own project and does not act in any capacity on behalf of the TCEQ nor as a TCEQ agent or employee. Grantee agrees that the Grant Activities is furnished and performed at Grantee’s sole risk as to the means, methods, design, processes, procedures and performance.
	2. **Superintendence of the Work.** Grantee is responsible for supervising all activities. This responsibility includes control of associated hazards to assure the safety of the performance of the Grant Activities, and for the protection of all persons, property, premises and facilities which may be affected by the Grant Activities. No action by TCEQ will transfer this responsibility to TCEQ.
	3. **Independent Contractor.** The parties agree that the Grantee is an independent contractor. Nothing in this Contract shall create an employee-employer relationship between Grantee and TCEQ. Nothing in this Contract shall create a joint venture between TCEQ and the Grantee.
	4. **Grantee’s Responsibilities for Subcontractors.** All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Grant Activities under a direct or indirect contract with Grantee shall be considered to be the acts and omissions of Grantee.
	5. **Flow down of Contract Provisions.** The Grantee shall include in its subcontracts, employment contracts, and employment policies any provision included in this Contract, or shall include a similar provision, to the extent necessary in order for the Grantee to fulfill its obligations under this Contract, regardless of whether or not the provision expressly requires that it be included in such contracts or policies. The Grantee shall require its subcontractors to do the same.

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

**8. Contract Interpretation.**

8.1**. Interpretation of Time.** All days are calendar days, unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday, or a state or federal holiday, it is omitted from the computation.

8.2 **State, Federal Law.** This Contract is governed by, and interpreted under, the laws of the State of Texas, as well as, applicable federal law.

8.3 **Severability.** If any provision of this Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it will be deemed severable (to the extent of such illegality, invalidity or unenforceability) and the remaining part of the provision and the rest of the provisions of this Contract will continue in full force and effect. If possible, the severed provision will be deemed to have been replaced by a valid provision having as near an effect to that intended by the severed provision as will be legal and enforceable.

8.4 **Definitions.** The word “include” and all forms such as “including” mean “including but not limited to” in the Contract Documents and other documents issued in accordance with the Contract, such as Work Orders and Proposals for Grant Activities.

9. **Project Manager Authority**.

9.1 The TCEQ Project Manager has the authority, without a formal amendment, to make written Contract interpretations and to agree in writing to minor, non-material changes to requirements in the following specific Contract documents: the Grant Activities, and the Budget for Actual Cost Reimbursement (Budget) including:

9.1.1. Changes to the schedule in the Grant Activities including an extension of a deliverable due date;

9.1.2. Changes to the individual tasks in the Grant Activities that do not substantially change the obligations of the Parties relative to those tasks; and

9.1.3. Transfers between the authorized amounts of expenditures in the Budget categories which do not exceed 10% of the total Budget.

9.2 To be effective, the Contract changes agreed to by the TCEQ Project Manager must be in writing and must also be agreed to by an authorized Representative of Grantee. A copy of the agreed change must be retained in the appropriate file of both Grantee and TCEQ.

9.3 The TCEQ Project Manager is prohibited from agreeing on behalf of TCEQ to changes to the substantive obligations of Grantee or TCEQ, including the following:

9.3.1. Changes in the total amount of funds in the Budget or the Contract;

9.3.1. Contract Amendments;

9.3.1.1. Changes to the Grant Activities that affect TCEQ obligations in this Contract and in other agreements with the funding source such as EPA, and obligations to another state or federal agency or the Texas Legislature; and

9.3.1.2. Changes that affect the material obligations of Grantee in this Contract.

9.4 It is the responsibility of Grantee to request extensions to the Deliverable Schedule and to request other changes that are within the authority of the TCEQ Contract Manager.

10. **GRANTEE’S RESPONSIBILITIES.**

10.1 **Grantee's Responsibility for the Grant Activities.** Grantee undertakes performance of the Grant Activities as its own project and does not act in any capacity on behalf of TCEQ nor as a TCEQ agent, employee or vendor of goods or services. Grantee agrees that the Grant Activities are furnished and performed at Grantee's sole risk as to the means, methods, design, processes, procedures and performance of the Grant Activities.

10.2 **Independent Contractor.** Nothing in this Contract will create an employee-employer relationship between Grantee and TCEQ. Nothing in this Contract will create a joint venture between TCEQ and Grantee. The Parties agree that Grantee is an independent contractor.

10.3 **Grantee**'**s Responsibility for Subcontractors.** All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Grant Activities under a direct or indirect Contract with Grantee will be considered to be the acts and omissions of Grantee.

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

11. **GRANTEE PERFORMANCE EVALUATION**

Performance evaluations are a part of the TCEQ’s review of Grantee and may be a factor in the selection of future Contracts. TCEQ may provide this information to state agencies and, upon request, to others. Grantee consents to the disclosure of any information or opinion contained in the evaluations.

12. **CONFLICT OF INTEREST**

Grantee will timely notify TCEQ in writing of any actual, apparent, or potential conflict of interest regarding Granteeand any entity or individual that relate to the Grant Activities.. Grantee is required to take all actions necessary to reduce and mitigate the effects and impact of any conflict of interest with the conduct of Grant Activities. Any conflict of interest that cannot be sufficiently reduced or mitigated in the judgment of the TCEQ and that potentially impact the Grant Activities, may result in restrictions on the Contract Activities or on termination of the Contract. Grantee agrees that TCEQ has sole discretion to determine whether a significant conflict exists, and that a conflict of interest is grounds for termination for cause.

13. **INTELLECTUAL PROPERTY**

13.1. Third Party Intellectual Property. Unless specifically waived, Grantee must obtain all Intellectual Property licenses expressly required in the Grant Activities, or incident to the use or possession of the Intellectual Property. Grantee will obtain and furnish documentation on the use of such Intellectual Property, and a perpetual, irrevocable, enterprise-wide license to reproduce, publish, otherwise use, or modify such Intellectual Property and associated user documentation, and to authorize others to reproduce, publish, otherwise use, or modify such Intellectual Property for TCEQ non-commercial purposes, and other purposes of the State of Texas to TCEQ.

13.2. Grant of License. Grantee grants to TCEQ and the U.S. EPA a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, display, modify or otherwise use for any non-commercial TCEQ or EPA purpose any Intellectual Property created under this Contract, and associated user documentation.

14. **TIME DELAYS**

14.1 **Time is of the Essence.** Grantee’s timely performance is a material term of this Contract.

14.2 **Delays.** Where Grantee's performance is delayed without an agreed change in the due date, except by Force Majeure or act of TCEQ, TCEQ may withhold or suspend reimbursement, terminate the Contract, or enforce any of its other rights.

15. **TERMINATION**

15.1 **Termination for Cause.** TCEQ may, upon 10 days written notice and the opportunity to cure, terminate this Contract for cause if Grantee materially fails to comply with the Contract including any one or more of the following acts or omissions: nonconforming Grant Activities, existence of a conflict of interest, or failure to provide evidence of required insurance coverage. Termination for cause does not prejudice TCEQ's other remedies authorized by this Contract or by law.

15.2 **Termination for Convenience.**  TCEQ may, upon 10 days written notice, terminate this Contract for convenience. Termination will not prejudice any other right or remedy of TCEQ or Grantee. Grantee may request reimbursement for conforming Grant Activities and timely, reasonable costs directly attributable to termination. Grantee will not be paid for work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of, or resulting from, the termination.

15.3 If, after termination for cause by TCEQ, it is determined that Grantee had not materially failed to comply with the Contract, the termination will be deemed to have been for the convenience of TCEQ.

16.  **INSURANCE AND INDEMNIFICATION**

16.1 **Insurance**. Unless prohibited by law, Grantee will require its contractors and suppliers to obtain and maintain adequate insurance coverage sufficient to protect Grantee and TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract during the Contract Period. Unless specifically waived by TCEQ, sufficient coverage includes Workers Compensation, Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.

16.2 **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, Grantee WILL REQUIRE ALL CONTRACTORS PERFORMING GRANT ACTIVITIES ON BEHALF OF Grantee TO INDEMNIFY, DEFEND, AND HOLD HARMLESS TCEQ AND Grantee AND THEIR OFFICERS, EMPLOYEES AND REPRESENTATIVES FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF GRANT ACTIVITIES BY THE CONTRACTOR OR ITS CONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM A DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY STANDARDS OR DIRECTIVES. THE DEFENSE OF TCEQ WILL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT TCEQ. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

17.  **DISPUTES, CLAIMS AND REMEDIES**

17.1 **Payment not a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release constitutes a release of Grantee from liability under this Contract.

17.2 **Schedule of Remedies available to TCEQ.** In accordance with Texas Government Code Chapter 2261 the following Schedule of Remedies applies to this Contract. In the event of Grantee’s nonconformance, TCEQ may do any combination of the following:

17.2.1. Issue a notice of nonconforming performance;

17.2.2. Reject nonconforming performance and request corrections without charge to TCEQ;

17.2.3. Reject a reimbursement request or suspend further payments, or both, pending an accepted revision of the nonconformity;

17.2.4. Suspend all or part of the Grant Activities or payments, or both, pending accepted revision of the nonconformity;

17.2.5. Demand restitution and recover previous payments where performance is subsequently determined nonconforming;

17.2.6. Terminate the Contract without further obligation for pending or further payment by TCEQ and receive restitution of previous payments.

17.3 **Opportunity to Cure.** Grantee will have a reasonable opportunity to cure its nonconforming performance, if possible under the circumstances.

**17.4 Cumulative Remedies.** Rights and remedies in this Contract are in addition to, and are not in any way a limitation of, any rights and remedies available under state and federal rules, regulations, and laws and at common law.

**18. SOVEREIGN IMMUNITY**

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

**19. MISCELLANEOUS**

19.1 **Assignment.** No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by Grantee will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge Grantee from any duty or responsibility under this Contract.

19.2 **Venue.** Grantee agrees that this Contract is being performed in Travis County, Texas, because this Contract has been performed, administered, or both, in Travis County, Texas. Grantee agrees that any cause of action involving this Contract arises solely in Travis County, Texas.

19.3. **Publication.** Grantee agrees to notify TCEQ five days prior to the publication or advertisement of information related to this Contract. Grantee agrees not to use the TCEQ logo or a TCEQ graphic as an advertisement or endorsement without written permission signed by the appropriate TCEQ authority.

19.4. **Waiver.** With the exception of an express, written document signed with authority by TCEQ, no act or omission will constitute a waiver or release of Grantee’s obligation to perform conforming Grant Activities. No waiver on one occasion, whether expressed or implied, will be construed as a waiver on any other occasion.

19.5. **Legal Requirements.** TCEQ relies on Grantee to perform all Grant Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.

19.6. **Survival of Obligations.** Except where a different period is specified in this Contract or applicable law, all representations, indemnifications, and warranties made in, required by, or given in accordance with this Contract, as well as, all continuing obligations indicated in this Contract, survive for four years beyond the termination or completion of this Contract, or after the end of a proceeding which was brought under this Contract, or if TCEQ has notified Grantee of an on-going proceeding. A proceeding includes any litigation, legal proceeding, permit application, State Office of Administrative Hearings proceeding, or similar activity listed in a TCEQ notice to Grantee.

19.6. **Headings.** The headings of the sections contained in this Contract are for convenience only and do not control or affect the meaning or construction of any provision of this Contract.

19.7. **Release of Claims.** As a condition to final payment or settlement, or both, Grantee will execute and deliver a Release of Claims form for payment under this Contract to TCEQ.

19.8. **Counterparts.** This Contract may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Contract.

# SCOPE OF WORK

The agreed upon portions of Appendix E, EPA-approved Work Plan, will be implemented in agreed Proposals for Grant Activities and Cost Budgets. See Attachment E- EPA Grant Work Plan Narrative.

1. Introduction

This Grant Activities Section is a general description of Subrecipient’s activities. During the Contract period, Subrecipient will submit details of the proposed activities in one or more written Proposals for Grant Activities (PGAs) that may be agreed to by TCEQ and the Subrecipient by signing a PGA(s). Within30 days of signatures by both parties, or longer if extended by TCEQ, the Subrecipient will provide a written Work Plan for the specified Grant Activities. In no event shall activities including the Work Plan be performed without a written PGA signed by both the Subrecipient and the TCEQ and a Notice to Commence (NTC) signed by TCEQ. The PGA and NTC may be combined.

1. Description of Activities
	1. [General Description of the Grant Activities]
	2. The Subrecipient must obtain written approval from the TCEQ prior to using these funds to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
	3. In order to maintain consistency with the EN Network, the Subrecipient and its sub-Subrecipients and subcontractors must: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Specifications and Standards for Performance
	1. Timeliness: The Subrecipient shall take all available measures to ensure that deliverables are submitted to the TCEQ on or before their due dates. Failure by the Subrecipient to meet deliverable due dates may result in the use of any or all remedies described in the Grant.
	2. Completeness: The Subrecipient shall ensure that all deliverables are complete with regard to the scope and purpose of their associated tasks. Failure by the Subrecipient to deliver complete deliverables may result in the use of any or all remedies described in the Grant.
3. Conference Calls and Meetings

If determined by the TCEQ to be necessary, the Subrecipient will hold conference calls with the TCEQ regarding its grant activities. The TCEQ is responsible for the scheduling and the hosting of each conference call. One week before the scheduled conference call the TCEQ will submit an agenda. The Subrecipient shall have any technical documents, budget documents, and any other related documents for use during the call, as necessary to address the agenda submitted by the TCEQ.

5. Reports

Progress Reports by the Subrecipient partners in this project are critical to success. The EPA ‘s Federal Conditions require that TCEQ flow down those requirements to Subrecipients. The dates for reports are stated in the Federal Conditions of this Agreement.

6. Deliverables

The TCEQ's Contract Manager may grant an extension of a deliverable due date in a PGA without amending the PGA/NTC. The Subrecipient must request an extension of a deliverable due date, via email, no later than 10 working days prior to the deliverable due date. The TCEQ Contract Manager will confirm acceptance or denial of the extension via email within 10 working days.

Draft written deliverables may be submitted in electronic format by electronic mail, ftp, hard drive, or on CD or DVD by mail. Provided that the electronic data file sizes are not excessively large, they shall be delivered to the TCEQ either by e-mail or file transfer protocol (FTP). If the electronic file sizes are excessively large, CD-ROM, DVD-ROM, or external hard drive media shall be used for the submission. For instances where the total size of the electronic data is large enough to require multiple CD-ROM discs, the Subrecipient shall use either DVD-ROM discs or a single external hard drive. If the Subrecipient chooses the latter approach, the TCEQ will return the hard drive after the large electronic data files have been obtained.

The Subrecipient agrees to submit final deliverables as described above for draft deliverables and shall submit final deliverables within ten working days of receiving comments from the TCEQ. If provided by electronic mail, the PGA number, fiscal year, task number, and the Amendment number, if applicable, shall be included in the subject line of the email.

The deliverable report or document shall clearly identify on its cover page in the top right hand corner the PGA number and the specific task or subtask number for which it was created and the Amendment number if applicable. Example follows:

# PROCEDURES FOR PROPOSALS FOR GRANT ACTIVITIES (PGAs)

1. Purpose

TCEQ intends to provide grant funds under this Agreement to reimburse the Subrecipient for agreed Grant Activities. However, there is no guaranteed minimum level of funding for the Grant Agreement. All reimbursed Grant Activities must be agreed upon between TCEQ and Subrecipient according to the procedures specified here. All Grant Activities must be within the Grant Activities described in this Agreement.

1. Proposals for Grant Activities (PGAs)

At any time during the Grant Agreement, the TCEQ and Subrecipient may agree to Grant Activities to be performed by the Subrecipient by signing a PGA-submitted by the Subrecipient. Each PGA shall include:

The Contract Number and title of this Grant Agreement;

* The PCR Number and PGA title;
* A maximum dollar amount for reimbursement of the Grant Activities described in the PGA;
* Instructions to the Subrecipient relating to the preparation of a QAPP;
* Tasks and deliverables for the Grant Activities described in the PGA;
* Start and end dates for the tasks and deliverables;
* Schedule of deliverables for the Grant Activities described in the PGA;
* Cost Budget: The PGA shall include a completed Cost Budget. The PGA shall include sufficient detail about possible travel outside of Texas to enable TCEQ to determine whether anticipated meetings or conferences are necessary and reasonable to the Grant Activities. The Subrecipient shall submit a market price analysis (comparison to other contractor’s prices) for activities included in the Contractual category in the Cost Budget;
* The names of the TCEQ Project Representatives and the names of any other TCEQ staff contacts for the Grant Activities described in the PGA;
* The names of the Subrecipient’s Project Representatives and other Subrecipient contacts for the Grant Activities described in the PGA;
* Key personnel of Subrecipient: the names of individuals who will be performing essential tasks, their roles in performing the Grant Activities, and whether they are employees of Subrecipient, independent contractors, or employees of subcontractors;
* Signature: TCEQ and Subrecipient shall have the PGA signed and dated by a person with the authority to bind TCEQ and Subrecipient to the performance of the PGA; and
* Notice to Commence: The latest signature date of the parties on the PGA will be the date that the Subrecipient may commence performing the Grant Activities included in the PGA, unless a different date is indicated in the PGA. Except as specifically authorized otherwise in the PGA, TCEQ will not fund Grant Activities performed by Subrecipient prior to the commencement date indicated in the PGA. The PGA may include a limited notice to commence authorizing reimbursable expenditures for only a portion of the PGA.

The PGA may also include matters such as:

* additional identifying numbers for the PGA;
* format of copies;
* interim or progress report requirements;
* Subrecipient availability for questions;
* anything to be provided by TCEQ, such as data, models, reports, equipment, or access;
* required models or software to be used by Subrecipient;
* standards to be adhered to by Subrecipient relating to data, GIS, modeling, database projects, or other matters;
* testing procedures or acceptance criteria; and
* special requirements for the Grant Activities in the PGA.
1. QAPP
	1. Subrecipient shall submit a QUA (if applicable) by the date specified in the PGA. The QAPP must meet all requirements specified in the Grant Agreement and in the PGA.
	2. If the Grant Agreement is funded with federal funds, the QAPP must also meet all requirements specified in the federal grant providing the funds.
2. Changes to PGAs
	1. General Process
		1. Amendment Schedule for PGAs. It is the responsibility of the Subrecipient to request PGA amendments to change deliverables, extend deliverable dates, or make other adjustments. TCEQ may also issue a proposed PGA amendment at any time during the term of a PGA.
		2. Within fourteen (14) calendar days of receipt of a proposed PGA amendment from the other party, the receiving party shall submit its changes to the PGA amendment or the signed PGA amendment to the other party’s Representatives. (TCEQ may specify a different deadline than the fourteen (14) day deadline when it provides the PGA amendment to the Subrecipient. The receiving party must respond within seven (7) calendar days after receiving changes. The parties will work to reach an agreement on the amendment and if no agreement can be reached, TCEQ, at its option, may cancel the PGA in writing without further notice.
		3. Any PGA amendment shall be signed by both parties and shall include a revised complete or limited notice to commence with the Grant Activities in the amended PGA. Except as specifically authorized otherwise in the amended PGA, TCEQ will not fund Grant Activities affected by the amendment if they are performed by Subrecipient prior to the effective date of the revised notice to commence.
	2. Required Changes to PGAs due to EPA or Legislative Changes.
3. Cancellation of PGA

Either party may cancel a PGA with ten (10) days written notice. Cancellations may be for cause, for convenience, or for force majeure. No cancellation shall prejudice any other right or remedy of TCEQ in the event of breach. Upon cancellation, Subrecipient may request reimbursement for: conforming Grant Activities, and timely, reasonable expenses directly attributable to cancellation. TCEQ may set off Contract damages, if any, prior to making payment. Subrecipient shall not be paid for: activities not performed, loss of anticipated profits or revenue, consequential damages, or other economic loss arising out of or resulting from the cancellation.

1. TCEQ Reliance on Budget and Due Dates Included in PGA
	1. Reliance on Budget

Subrecipient acknowledges that TCEQ budgets for and encumbers funds only up to the not-to-exceed dollar amount contained in each PGA, and therefore, materially relies on the Subrecipient adhering to the budget included in the PGA. Partially completed Grant Activities may be of little or no benefit to TCEQ. Therefore, in the event Subrecipient is unable to complete Grant Activities within the cost amounts included in the PGA, Subrecipient agrees to use its best efforts to complete such Grant Activities using alternative funding.

* 1. Reliance on Due Dates

Subrecipient acknowledges that TCEQ may depend on the completion of funded Grant Activities in order to prepare work product of its own which may be subject to statutory or other deadlines. In addition, funding for Grant Activities may be limited to Grant Activities performed within a certain time period. Therefore, milestones and deliverable due dates specified within a PGA are of the essence of the agreement. Without prejudice to any other right or remedy TCEQ may have in the event of delay, Subrecipient agrees that it will immediately inform TCEQ if and as soon as it appears that a deliverable due date or PGA completion date may be exceeded.

1. Key Personnel
	1. Subrecipient’s Project Representatives and any individuals named as key personnel in the PGA are key to the performance of Grant Activities. Whenever circumstances permit, Subrecipient shall give at least 14 days’ notice prior to making any substitutions in key personnel; if unable to give 14 days’ notice, Subrecipient shall give as much notice as possible. Subrecipient shall submit information describing changes in key personnel, including the names of substitute individuals, their roles in performing the Grant Activities, and whether they are employees of Subrecipient, independent contractors, or employees of subcontractors.
	2. Subrecipient shall not make any substitutions in key personnel prior to TCEQ’s written approval of the substitute key personnel, unless failure to proceed with the substitution immediately will jeopardize the successful performance of the Grant Activities.
	3. Substitutes shall meet any minimum qualifications specified in the PGA for the Grant Activities they will be performing, and where reasonably possible shall have qualifications comparable to or better than the qualifications of the individuals they are replacing.
	4. In performing Grant Activities under a PGA, Subrecipient shall not use or shall cease using the services of any person (including organizations) against whom the TCEQ has a reasonable objection. TCEQ must present all such objections in writing.

# Contract Cost Budget

# Cooperative Reimbursement Contractfor State Agencies and Local Governments

1. **Budget**. Authorized budgeted expenditures for work performed are as follows:

| **Budget Category** | **Cost for Work to be Performed** |
| --- | --- |
| Salary / Wages | $ |
| Fringe Benefits | $ |
| Travel | $ |
| Supplies | $ |
| Equipment | $ |
| Contractual | $ |
| Construction | $ |
| Other | $ |
| Indirect Costs | $ |
| **Total** | **$** |

1. **Indirect Cost Reimbursable Rate**. The reimbursable rate for this Contract is      % of (check one):

**[ ]  salary and fringe benefits**

**[ ]  modified total direct costs**

**[ ]  other direct costs base**

**If other direct cost base, identify:**

**This rate is less than or equal to (check one):**

**[ ]  approved predetermined rate**

**[ ]  experienced-based predetermined rate**

**[ ]  default rate**

1. **Other**. If Budget Category “Other” is greater than $25,000 or more than 10% of budget total, identify the main constituents:

1. **Budget Categories**. The Budget Categories above have the definitions, requirements and limitations stated in UGMS. Construction costs are not reimbursable without prior, specific written authorization from TCEQ.
2. **Budget Control**. Actual costs to be reimbursed for each line item above must not exceed ten percent (10%) over the budgeted amount for that line item. Total costs to be reimbursed must be at or less than the total specified. All invoices must be submitted in a format that clearly shows how this requirement is being met. At a minimum, invoices must show expenses for the invoice period, year-to-date expenses, projected totals for the year (or applicable contract period), percent of budget spent to date, and percentage of budget projected to be spent.
3. **Invoice Submittal**. Unless otherwise stipulated in the Contract, invoices must be submitted to the individual named in TCEQ Project Representatives and Records Location at monthly intervals. Final invoices shall be submitted within two (2) calendar months after completing the Scope of Work activities. TCEQ may extend this deadline by unilateral contract agreement.
4. **Grant Chargeback Invoices**. In the case of an invoice for grant activities being paid during the second fiscal year for which the funds were appropriated, ALL INVOICES MUST BE SUBMITTED IN SUFFICIENT TIME FOR TCEQ REVIEW, NECESSARY CORRECTIONS, TCEQ APPROVAL, AND SUBSEQUENT PRESENTATION TO THE COMPTROLLER BEFORE THE END OF THE FISCAL YEAR.
5. **Travel**. In order to be reimbursable, travel costs must be specifically authorized in advance of the travel. Travel costs, including per diem, will be reimbursed only in the amount of actual costs, up to the maximum allowed by law for employees of the State of Texas at the time the cost is incurred.
6. **Supporting Records**. Performing Party shall submit records and documentation to TCEQ as appropriate for the review and approval of reimbursing costs. TCEQ may reject invoices without appropriate supporting documentation. TCEQ has the right to request additional documentation. Performing Party shall maintain records subject to the terms of this Contract.
7. **Indirect Costs**. Performing Party’s indirect costs will be reimbursed at the reimbursable rate shown above (if no reimbursable rate is shown above, indirect costs are not reimbursable under this Contract). The reimbursable rate must be less than or equal to the rate authorized under UGMS. To the extent that the reimbursable rate is lower than Performing Party’s actual indirect costs, Performing Party is contributing its unreimbursed indirect costs to the successful performance of this Contract, and waives any right it may have to reimbursement of those costs (if this Contract requires matching funds, Performing Party may claim its unreimbursed indirect costs as part or all of its match).
8. **Indirect Rates Authorized under UGMS. The following rates are authorized under UGMS:**

**Approved Predetermined Rate. An approved predetermined rate is an indirect cost rate agreed to within the preceding 24 months in a signed indirect rate negotiation agreement with the applicable federal cognizant agency, state single audit coordinating agency, major state funding agency, or another state agency designated by the Governor. An approved predetermined rate shall be expressed as a percentage of the direct cost base specified in the signed indirect rate negotiation agreement.**

 **Experience-Based Predetermined Rate**. An experienced-based predetermined rate is an indirect cost rate agreed to between TCEQ and Performing Party, where there is no approved predetermined rate and there is sufficient cost experience and other pertinent facts to enable the parties to reach an informed judgment (a) as to the probable level of indirect costs in the Performing Party’s programs during the term of the Contract, covered by the negotiated rate, and (b) that the amount allowable under that rate would not exceed actual indirect costs. An experience-based predetermined rate shall be expressed as a percentage of either (a) salary or wages, or (b) modified total direct costs. Modified total direct costs are total direct costs less “extraordinary or distorting expenditures,” usually capital expenditures, subawards, contracts, assistance payments (e.g., to beneficiaries), and provider payments. The direct cost base selected should result in the fair distribution of indirect costs among all state and federal grants and contracts affected, as well as other Performing Party activities that share in the indirect costs.

**Default Rate.** A default rate is an indirect of ten percent (10%) of direct salary and wages, to be used where (a) there is no approved or experienced-based predetermined rate, and (b) the Performing Party represents that its actual indirect costs equal or exceed ten percent (10%) of salary and fringe.

1. **Adjustment of Indirect Rates.** A reimbursable rate is intended to be final. Performing Party acknowledges that TCEQ’s budget is limited and funds may not be available to reimburse any increase in indirect costs. Performing Party waives any right it may have to upward adjustment of its indirect rate, and agrees to contribute any such increase to the successful performance of this Contract (if matching funds are required, Performing Party may claim such costs as all or part of its match). TCEQ waives any right it may have to a downward adjustment of Performing Party’s indirect rate, unless the reimbursable rate is greater than the Performing Party’s actual indirect costs. If the latter case, if reasonably feasible, a compensating adjustment shall be carried forward to this Contract or a future contract. If not feasible, where permitted by law TCEQ and Performing Party may identify additional services to be performed by Performing Party as a compensating adjustment, or Performing Party shall reimburse TCEQ the excess indirect costs paid.

**Attachment A**

**Financial Status Report**

**(To be filled out and returned to the TCEQ Project Manager on a monthly basis.)**

**Attachment B**

**Release of Claims**

**(To be filled out and returned with final invoice.)**

**Attachment C**

**Personnel Eligibility List**

**(To be filled out and returned with signed contract.)**

**Attachment D**

**EPA Grant Work Plan Narrative**

**Attachment E**

**Certifications**

**(To be filled out and returned to the TCEQ Project Manager within 30 days of contract execution.)**

**Attachment F**

**Cost Budget for Proposals for Grant Activities (PGA)**

**(To be filled out and included with each PGA)**

# Proposal for Grant Activities (PGA) Cost Budget

# Cooperative Reimbursement Contractfor State Agencies and Local Governments

1. **Budget**. Authorized budgeted expenditures for work performed are as follows:

| **Budget Category** | **Cost for Work to be Performed** |
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| Salary / Wages | $ |
| Fringe Benefits | $ |
| Travel | $ |
| Supplies | $ |
| Equipment | $ |
| Contractual | $ |
| Construction | $ |
| Other | $ |
| Indirect Costs | $ |
| **Total** | **$** |

1. **Indirect Cost Reimbursable Rate**. The reimbursable rate for this Contract is      % of (check one):

**[ ]  salary and fringe benefits**

**[ ]  modified total direct costs**

**[ ]  other direct costs base**

**If other direct cost base, identify:**

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1. **Other**. If Budget Category “Other” is greater than $25,000 or more than 10% of budget total, identify the main constituents:

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7. **Indirect Costs**. Performing Party’s indirect costs will be reimbursed at the reimbursable rate shown above (if no reimbursable rate is shown above, indirect costs are not reimbursable under this Contract). The reimbursable rate must be less than or equal to the rate authorized under UGMS. To the extent that the reimbursable rate is lower than Performing Party’s actual indirect costs, Performing Party is contributing its unreimbursed indirect costs to the successful performance of this Contract, and waives any right it may have to reimbursement of those costs (if this Contract requires matching funds, Performing Party may claim its unreimbursed indirect costs as part or all of its match).
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**Attachment G**

**Federal Forms**

**(Instructions for each form is included)**

**Attachment H**

**Drug Free Work Place for Grantees**

**(To be filled out and returned with the signed contract)**

**Attachment I**

**Notices, Project Representatives,**

**And Records Location**

**(To be filled out and returned with signed contract.)**