**Texas Commission on Environmental Quality
Federally-Funded Subaward Grant Agreement**

AGREEMENT SIGNATURE PAGE

Subaward Grant Agreement Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TCEQ Agreement Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subrecipient: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subrecipient Identification Number:

**Subaward Maximum Authorized Amount: $\_\_\_\_\_\_\_\_\_**

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

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

[x] If marked, this Agreement is funded with federal funds.

CFDA Number: 66.608 Federal Grant Award Number: OS-83546301

This Agreement is entered under:[ ]  Gov’t Code ch. 771 [ ]  Gov’t Code ch. 791\

 [x]  Water Code § 5.124 and 5.229

The Parties agree as follows: The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, is the primary recipient of the above-described federal grant award (federal award). TCEQ hereby agrees to subaward a portion of the federal award to the above-named Subrecipient, an interstate governmental organization, subject to the terms and conditions of this agreement (Agreement) to provide financial assistance to the Subrecipient to conduct the Grant Activities described herein as part of its authorized governmental functions and activities. This Agreement consists of all documents specified in the list of Agreement Documents following this page.

**Texas Commission on**

**Environmental Quality (TCEQ) (Subrecipient)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature Authorized Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date

AGREEMENT DOCUMENTS LIST

This Agreement between TCEQ and You consists of the Agreement Documents listed on this page and marked by an “X.” Documents on this list include all amendments.

[x]  Agreement Signature Page

[x]  Agreement Documents List (this page)

[x]  Terms and Conditions (Programmatic, Administrative, Financial, General)

[x]  TCEQ - Approved Grant Activities Budget (incorporated upon approval)

[x]  TCEQ – Approved Grant Activities Description (GAD) (incorporated upon approval)

[x]  Personnel Eligibility List (PEL)

[x]  DUNS Number Form

[x]  EPA – Approved Grant Narrative Work Plan

***TERMS AND CONDITIONS***

Introduction**:** *In order to promote readability, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is referenced in this Agreement as “You.”*

In this Grant Agreement (also referred to as Contract), You are granted federal funds of the U.S. Environmental Protection Agency (EPA) as a subrecipient through the Texas Commission on Environmental Quality (TCEQ), the prime recipient. The grant is subject to this Agreement’s Terms and Conditions most of which are requirements of the EPA and the US Office of Management and Budget (OMB). TCEQ has entered into a similar grant agreement with EPA, which requires TCEQ to monitor the grant activities as well as Your related financial and administrative activities.

**The TCEQ, as prime recipient and You, agree as follows:**

## PROGRAMMATIC CONDITIONS

## Sufficient Progress.

TCEQ may terminate this 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.

## Electronic and Information Technology Accessibility.

* 1. 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")**.
	2. 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.
	3. 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 may 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>). TCEQ will provide additional information and assist in determining whether this requirement is applicable to you.

## Quarterly Progress Report.

* 1. You must submit Quarterly progress reports to the TCEQ Project Manager electronically. Quarterly Report Periods are groups of three months as follows: January through March, April through June, July through September, and October through December. These progress reports must be submitted for each quarterly period no later than 15 days after the end of the quarterly period. The first reporting period begins on the date of the latest signature on this Agreement and ends on the last day of the quarterly period in which it started. TCEQ may waive the report requirement for any period covering less than one month. Subsequent reports will be due every quarter thereafter, until the project is completed.
	2. Quarterly Progress Reports must include, at a minimum, the following:
		+ 1. An update on the schedule and status of carrying out the project, including new problems encountered and suggestions to overcome them;
			2. An explanation of expenditures to date, with expenditures linked to project results;
			3. Information on each of the following areas:
				1. A comparison of actual accomplishments with the anticipated outputs/outcomes specified in the TCEQ-Approved Grant Activities Description (GAD), also known as the Agreed GAD;
				2. The reasons why anticipated outputs/outcomes were not met (if applicable); and
				3. Other pertinent information, including, when appropriate, analysis and an explanation of cost overruns in excess of the approved Budget; or high unit costs. You agree to notify TCEQ of problems, delays, or adverse conditions which materially impair your ability to meet the outputs/outcomes specified in the assistance agreement Work Plan. You must submit quarterly reports even when You have not made progress during the reporting period.
	3. The Final Progress Report. You must submit a final report to the TCEQ within 15 business days after 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 Agreed GAD;
			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 TCEQ of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the Agreed GAD.
	4. Additionally, You agree to submit summary information for each month by email describing the progress of Your project to the TCEQ Project Manager.

## Reusing Existing Exchange Network (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 (EN).

* 1. You must 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 EN. 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.](https://ends2.epa.gov/admin/default.aspx) (Please contact Your node administrator for issues regarding access to this site.)
	2. You must 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 <http://www.epa.gov/rcs>. As some records are not publicly viewable, users should sign in using the link in the upper right corner of the site. (Please contact the TCEQ Project Manager or Your EPA Regional EN Coordinator for issues regarding access to RCS.) The RCS User Guide is also available on the site.

## Registering New Exchange Network (EN) 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.

* 1. You must create a record, containing relevant metadata and descriptions, for all new EN 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: <http://www.exchangenetwork.net/node/DiscoveryUserGuidev3.doc>.
	2. You must create a record, containing relevant metadata and descriptions, for all new IT resources in RCS. To create a record, access RCS at [http://www.epa.gov/rcs](http://www.epa.gov/rcs%20) and select the Sign In link in the upper right corner of the site. Once logged in, select Browse under the Asset Catalog tab, then click the 'Add Asset' button. If You have questions about registering assets or need assistance, please contact the TCEQ Project Manager or Your EPA Regional EN Coordinator.

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

|  |  |  |
| --- | --- | --- |
| Service or Component Type | Register in ENDS | Register in RCS |
| Network Nodes | X |  |
| Data flows | X |  |
| EN Services (related to data flows) | X |  |
| 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 EPA Regional EN Coordinator |

## Project Partner Roles and Responsibilities.

Within 20 days of the signing of the Agreement, You must submit to the TCEQ Project Manager a Grant Activities Description (GAD) describing the activities You will conduct, deliverables you create and the budget of required expenditures in accordance with this Agreement and which includes:

* 1. The roles and responsibilities of all key personnel;
	2. The tasks to be carried out by You;
	3. A budget showing how the grant funds will be expended;
	4. How You will ensure that the work will be carried out in accordance with the outlined Grant Activities Description, including tasks and schedule; and the EPA-approved Work Plan.

## ADMINISTRATIVE CONDITIONS

## Managing Your Project.

You agree to manage Your project, program and entity in compliance with the provisions of this Agreement. The EPA requires TCEQ to monitor Your compliance with the requirements in the EPA Award, this Agreement and the federal grant regulations. You agree to provide the required reports and documentation. You further agree to provide, upon request, all supporting documentation for reports and reimbursement requests.

##  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.

## Lobbying.

You agree that Your chief executive officer must 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 all applicable lobbying statutes and rules, including Your respective OMB Circulars now at 2 CFR (formerly described as 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. Your entity is required to provide a certification regarding this subject.

##  Change in Regulations.

The parties anticipate that during the term of this Agreement EPA will implement new OMB and EPA grant regulations to replace those currently located at 2 CFR and 40 CFR Parts 30 and 31 respectively. Therefore, on or before the date of EPA’s implementation of the new replacement grant regulations, You and TCEQ agree to comply with the new relevant regulations. TCEQ will provide assistance and information in the determination of the applicability to You of this requirement.

##  Copyright, Patent.

In accordance with 40 CFR 31.34 for State governments or 40 CFR 30.36 for other grant recipients, You agree 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.

* 1. 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 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 other grant recipients to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grant recipients to use the copyrighted works or other data.
	2. Regarding item (6) in the paragraph immediately above, You acknowledge that EPA may authorize another grant recipient to use the copyrighted works or other data developed under this award and Grant Agreement as a result of:
		+ 1. 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;
			2. termination or expiration of this Grant Agreement.
	3. 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.

##  Suspensions, Debarment.

You agree You must 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.

* 1. 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.
	2. You are responsible for further requiring the inclusion of a similar term or condition in any subsequent lower-tier covered transactions.
	3. 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.
	4. 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."

## Drug-Free Workplace.

You agree to 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.

* 1. 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.
	2. 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>.

## Your Subaward Agreements.

Relating to Your Subawards, You agree to:

* 1. Establish all of Your lower-tier 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 subawardees);
	3. Ensure that all Your subawards comply with the standards at OMB Single Audit requirements regarding subaward and vendor determinations 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 Your subawards to a foreign or international organization, or Your subawards to be performed in a foreign country; and
	8. Obtain TCEQ approval for Your subawardee’s work that is not outlined in the TCEQ-approved Grant Activities Description
		+ 1. 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](http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf%20%20)  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](http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf%20) and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

* + - 1. You are responsible for selecting Your subrecipients and for conducting subaward competitions in accordance with this Agreement and Your state laws.

## Trafficking in Persons.

* 1. Provisions applicable to Your private-entity subrecipients and their employees: Your subrecipients that are private entities and their employees are prohibited from:
		+ 1. Engaging in severe forms of trafficking in persons during the period of time that Your federally-funded subaward agreement is in effect;
			2. Procuring a commercial sex act during the period of time that this federally-funded subaward agreement is in effect; or
			3. Using forced labor in Your subrecipient’s performance of activities described in this Agreement or the subaward agreement.
	2. Provisions applicable to You as a non-private entity: Either the EPA or the TCEQ, may unilaterally terminate this subaward and Agreement, without penalty, if any of Your subrecipients are a private entity that:
		+ 1. Is determined to have violated an applicable prohibition in paragraph a)(1) of this provision;
			2. 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 a)(1) of this provision through conduct that is either:
				1. Associated with performance under this award; or
				2. Imputed to You or one of Your subrecipients 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.
	3. Provisions applicable to You and all 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 subparagraph a)(1) of this provision and Agreement.
			2. The right that EPA and TCEQ have to terminate the EPA Award and this Agreement unilaterally as described in paragraph a)(1) of this provision is either:
				1. An implementation of section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104 (g)) and
				2. In addition to all other remedies for noncompliance that are available to EPA and TCEQ under the Award and this Agreement.
			3. You must include the requirements of a)(1) of this provision in any subawards You make to a private entity.
	4. Definitions. For the purposes of this provision:
		+ 1. "Employee" means either:
				1. An individual employed by You or Your subrecipient who is engaged in the performance of the project or program under this Agreement; or
				2. Another person engaged in the performance of the project or program under this Agreement who is 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":
				1. 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
				2. Includes:

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).

A for-profit organization.

* + - 1. “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).

## Recycled Materials.

* 1. 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.
	2. 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.

##  Single Audit Act.

* 1. 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 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.
	2. If You are required to obtain a single audit under this provision, You must use the Federal Audit Clearinghouse's Internet Data Entry System to submit a copy of the SF-SAC and a Single Audit Report Package. 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.

## Reporting Executive Compensation.

* 1. By law, TCEQ is required to report certain information about Your organization including the compensation paid to Your executives when applicable. Therefore, under this Agreement and if applicable, You agree to provide that information to TCEQ to enable TCEQ to submit the information to the federal database.
	2. 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:
				1. in the preceding fiscal year, You received:

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

$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

(iii) 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>.

* 1. Definitions. For purposes of this provision:
		+ 1. “Entity” means all of the following, as defined in 2 CFR part 25:
				1. A Governmental organization, which is a State, local government, or Indian tribe;
				2. A foreign public entity;
				3. A domestic or foreign nonprofit organization;
				4. A domestic or foreign for-profit organization;
				5. 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”:
				1. 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.
				2. 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").
				3. A subaward may be provided through any legal agreement, including an agreement that TCEQ or You considers an Agreement.
			4. “Subrecipient” means an entity that:
				1. Receives a subaward from TCEQ of funds provided by EPA; and
				2. Is accountable to TCEQ for the use of the Federal funds provided under this Agreement.
			5. “Total compensation” means the cash and noncash dollar value earned by the Executive.
				1. Salary and bonus.
				2. 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.
				3. 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.
				4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
				5. Above-market earnings on deferred compensation which is not tax-qualified.
				6. 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.

## Universal Identifier.

* 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, agree you to 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 also agree to maintain the currency of the information You provided TCEQ concerning Your organization and Your 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.
	3. Definitions. For purposes of this provision:
		+ 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.

## Civil Rights Obligations.

* 1. 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 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.
	2. Statutory Requirements. In carrying out this Agreement, You agree to comply with the following as applicable:
		+ 1. 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.
			2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
			3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
			4. If this agreement is funded with financial assistance under the Clean Water Act (CWA), You must also comply with:
				1. 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.
	3. Regulatory Requirements. As a subrecipient of EPA financial assistance, You agree to comply with all applicable EPA civil rights regulations, including:
		+ 1. For Title IX obligations, 40 C.F.R. Part 5; and
			2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
			3. As noted on the EPA Form 4700-4 that must be signed by 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.
			4. Title VI- LEP, Public Participation and Affirmative Compliance Obligation
				1. 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.
				2. 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.pdf.
			5. 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>.
	4. **In accepting this Agreement, TCEQ agrees to assist You in** demonstrating implementation of any applicable requirements for effective Title VI compliance programs. TCEQ will assist You to ensure that where the requirements are applicable, Your actions do not involve discriminatory treatment and do not have discriminatory effects.

## Utilization of Small, Minority and Women’s Business Enterprises.

* 1. 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.
	2. SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C. 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 Agreements 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 Agreements 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 subcontractors, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.
	3. 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 Your MBE/WBE accomplishments. TCEQ will assist You in compliance with this requirement if it is determined to be applicable.
			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: <http://www.epa.gov/osbp/dbe_reporting.htm>
			3. You agree to comply with the administration provisions of 40 CFR, Section 33.302.
	4. **In accepting this Agreement, TCEQ agrees to assist You in** demonstrating implementation of any applicable requirements for effective 40 CFR, Part 33 compliance programs. TCEQ will assist You to ensure that where the requirements are applicable, Your actions do not involve discriminatory treatment and do not have discriminatory effects.

## FINANCIAL CONDITIONS

## Allowable Costs.

* 1. Conforming Activities. TCEQ will reimburse You for necessary and reasonable Allowable Costs that are incurred and paid by You in performance of the Grant Activities as authorized in the TCEQ - Approved Grant Activities Budget.
	2. Determining Allowable Costs. Allowable Costs are restricted to costs that comply with this Agreement 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 Agreement is funded, in whole or in part, with federal funds.

## Personnel Eligibility List (PEL).

Your 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 being performed, benefits being earned and any travel. A copy of the PEL form will be submitted to TCEQ prior to incurring costs for personnel. EPA will not provide reimbursement funds unless the subject employees are named on the PEL.

## Duplication of Effort Prohibited.

In addition to the funds provided to You under this Grant Agreement, the TCEQ, EPA, and other entities may provide funds to You under separate Grant Agreements. You must monitor all activities to ensure that the grant funds complement one another and do not result in double payments for the same activity.

## Reimbursement Requests.

You shall invoice TCEQ to request reimbursement for its Allowable Costs for performing the Grant Activities. You must invoice for cost reimbursements on the Financial Status Report (FSR), which shall conform to all reimbursement requirements specified by TCEQ.

## Submittal of Reimbursement Requests.

You 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.

## Quarterly Reimbursement Requests.

* 1. You must submit reimbursement requests (invoices) to TCEQ within fifteen (15) days of the end of each quarter unless otherwise agreed to, except that the final reimbursement request shall be submitted as specified below. Invoices shall be sent to the TCEQ Project Manager. Invoices shall be in PDF format and in U.S. dollars and cents. If multiple Grant Activities Descriptions (GAD) are authorized in the Agreement, each GAD must be invoiced separately.
	2. In order for TCEQ to determine eligibility of costs, You must submit the following to the TCEQ as part of its complete and legible Reimbursement Request (Invoice):
		+ 1. Reimbursement requests shall be made using the FSR, which 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 subsequent to the pre-review payment that the FSR contained unallowable costs or insufficient documentation, You, upon notice, will provide such documentation as requested and/or refund the applicable amounts to TCEQ;
			2. Percentage of budget spent to date, and percentage of budget projected to be spent during the Agreement;
			3. At a minimum, reimbursement requests must show expenses for the invoice period, year-to-date expenses, projected totals for the year (or applicable Agreement period), percent of budget spent to date, and percentage of budget projected to be spent.
			4. FSR and Reimbursement Requests Submittal. Unless otherwise stipulated in the Agreement, Requests for Reimbursement invoices must be submitted at Quarterly intervals to the TCEQ Project Manager.
			5. Project Progress Report (PPR) on a TCEQ template. The TCEQ reserves the right to alter the reporting frequency of the Progress Reports as necessary to track Your progress toward accomplishing the tasks of the Agreement or a specific PGA. The PPR shall document, in technical detail and by task, the accomplishments, expenditures, and milestones achieved during the reporting period. You shall include an estimate of the percent completion for each task or part of the project. The PPR shall also document what problems were identified, if any, and the resolution.
			6. Final Invoice. Within sixty (60) days of the end of this Agreement, You must submit Your final invoice that includes all of the information set forth above for Quarterly invoices and the information listed below. Submission shall be in electronic format, exhibiting the following structure: 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 Agreement;
				2. Final Reconciliation of Budget and Expenditures;
				3. Grant Activities Description Summary Report summarizing Your accomplishments with respect to the approved GAD and containing an outline of GAD tasks and projects that identifies the title of all deliverables completed in the course of the Grant Agreement. You must request the Final Summary Report template from the TCEQ Grant Manager;
				4. A current single audit report, if such a report is required under paragraph17 above.
				5. A detailed explanation of how any advance payments were utilized.

## TCEQ Review of Final Reimbursement Request.

* 1. 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 Agreement Documents. The TCEQ will make reimbursement to You for allowable reimbursable costs.
	2. Closeout of the Grant Agreement does not affect:
		+ 1. The TCEQ’s right to disallow costs and recover funds on the basis of a later audit or other review;
			2. Your obligation to return any funds due as a result of later refunds, corrections, or other transactions;
			3. Records retention;
			4. Property management requirements;
			5. Audit requirements; and
			6. Any other continuing obligations under the Grant Agreement.

## Response to TCEQ Requests for Documentation.

At any time during the Grant Agreement, upon request of the TCEQ, You 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.

## Response to Request for refund of Unallowable Costs.

You must immediately refund to the TCEQ any funds that are in excess of allowable costs. In no case may You take longer than thirty (30) days to refund TCEQ. Any funds paid to You in excess of the amount to which You are finally determined to be entitled to under the terms of the award constitute a debt to the TCEQ and EPA.

## Conditional Payments.

Reimbursements are conditioned on the Grant Activities being performed in compliance with this Agreement. You also shall return payment to TCEQ for either overpayment or activities undertaken that are not compliant with the TCEQ-approved Grant Activities Description. This does not limit or waive any other TCEQ remedy.

## No Interest for Delayed Payment.

Because You are not a vendor of goods and services no interest is applicable in the case of late payments.

## Release of Claims.

As a condition to final payment or settlement, or both, You shall execute and deliver to the TCEQ a release of all claims against the TCEQ for payment under this Agreement.

## 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 your state at the time the cost is incurred. Any travel outside the scope of the Grant Activities Description must be specifically authorized by TCEQ in advance of the travel.

## Supporting Records.

You will submit records and documentation to TCEQ as appropriate for the review and approval of reimbursing costs. At a minimum, You will submit supporting records with the invoices. TCEQ may reject invoices without appropriate supporting documentation. TCEQ has the right to request additional documentation. You will maintain records subject to the terms of this Agreement.

## Advance Payments.

The TCEQ may determine that efficiencies can be obtained by providing funds in advance of Your incurring anticipated costs of Grant Activities. You may submit a request for Advance Payments in writing at any time during the Agreement.

* 1. Advance payments to You are solely to be used for reimbursement of Your allowable, allocable, necessary and reasonable costs of performance under the Agreement. You must submit Quarterly reports for all expenditures of grant funds on the Financial Status Report (FSR) form, unless another period for documentation is specified by TCEQ.
	2. 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 You have 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 You have complied with the Agreement requirements, the TCEQ may withhold approval or reject the FSR.
	3. TCEQ may include additional requirements or restrictions on the advance payment.
	4. 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 Your records and may also audit the Your performance as to any Grant Activity and any other Agreement requirement. After an advance payment is depleted, TCEQ may choose to amend Your related GAD to allow additional advance payment(s) to You. If no additional advance is authorized, all additional payments will be made on a reimbursement basis, as described in the Agreement Documents.
	5. You have the duty to immediately return advanced funds to the advance funds account within fifteen (15) days of receipt of a notice that TCEQ has determined that the funds have not been spent in accordance with this Grant Agreement. You will certify in writing that this action has been completed.

## Financial Records: Audit, Access and Maintenance

* 1. Audit of Financial Records. You understand that acceptance of funds under this Agreement acts as acceptance of the authority of the EPA, the U.S. Office of Management and Budget (OMB), Texas State Auditor’s Office, or any successor to conduct an audit or investigation in connection with those funds. You further agree to fully cooperate with the government agents or successors in the conduct of the audit or investigation, including providing all records requested. You shall ensure that this clause concerning the audit of funds accepted under this Agreement is included in any subcontracts and subawards.
	2. Maintenance of Financial Records. You shall establish and maintain financial records including records of costs of the Grant Activities in accordance with generally accepted accounting practices. Upon request You shall submit records in support of reimbursement requests. You shall allow access during business hours to financial records by TCEQ and the agencies listed in this provision a) for the purpose of inspection and audit. Financial records regarding this Agreement shall be retained for a period of three (3) years after date of submission of the final reimbursement request.

## Central Service Costs.

You certify that You will maintain compliance with all Chapter 2 CFR 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.

## Budget Control.

* 1. Actual costs to be reimbursed for each line item in the Agreement must not exceed ten percent (10%) over the original budgeted amount for that line item without a prior written authorization.
	2. Prior written authorization is also required to move funds exceeding 10% of the total budget from one budget category to another.
	3. Total costs to be reimbursed must be at or less than the total specified by the Maximum Authorized Reimbursement as shown on the Agreement Signature Page. No costs exceeding this amount will be reimbursed.
	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 Reimbursement Requests MUST BE SUBMITTED IN SUFFICIENT TIME FOR TCEQ REVIEW, NECESSARY CORRECTIONS, APPROVAL, AND SUBSEQUENT PRESENTATION TO THE TEXAS COMPTROLLER BEFORE THE END OF THE FISCAL YEAR.
	5. Supporting Records. You shall submit records and documentation to TCEQ as appropriate for the review and approval of reimbursable costs. TCEQ may reject Reimbursement Request invoices without appropriate supporting documentation. TCEQ has the right to request additional documentation at any time. You shall maintain records subject to the terms of this Agreement.

## Payment to Consultants.

* 1. 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).
	2. The service agreements 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 Agreement provide You with responsibility for the selection, direction, and control of the individuals who will be providing services under the Agreement at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

## Management Fees or Similar Charges.

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.

## Funding Limited to Funding.

Any financial obligations of the EPA or the TCEQ for Your reimbursements are limited by the availability of the amount of federal funding awarded to You by TCEQ 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.

## GENERAL TERMS AND CONDITIONS

## Agreement Period.

The Agreement begins on the Effective Date and ends on the Expiration Date as provided on the Agreement Signature Page. If no Effective Date is provided, the Effective Date of the Agreement is the date of last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the calendar year following the one in which the Agreement is signed.

## Amendments.

This Agreement is not subject to competitive selection requirements and may be amended and renewed by mutual agreement. Except as specifically allowed by the Agreement, changes to the Agreement require a written amendment agreed to by both parties.

## Agreement Extensions.

TCEQ may by unilateral written amendment extend the Expiration Date for a period of up to 90 days. All other extensions and renewals must be made by written Amendments. Unless otherwise indicated in the applicable Agreement amendment, an extension does not extend any other deadlines or due dates other than the expiration of the Agreement Period.

## Notice to Proceed.

You may begin activities as soon as the TCEQ Project Manager provides written approval of the Grant Activities Description and provides You with a Notice to Proceed.

## Funds.

Availability of Funds. This Agreement and all claims, suits or obligations arising under or related to this Agreement are subject to the receipt and availability of funds appropriated by the Texas Legislature and the United States Congress for the purposes of this Agreement or the respective claim, suit or obligation, as applicable. You will ensure that this article is included in any related subcontracts and subawards.

## Maximum Authorized Reimbursement.

 The total amount of funds provided by TCEQ for the Agreement will not exceed the amount of the Maximum Authorized Reimbursement as shown on the Agreement Signature Page.

## Fiscal Year Restrictions.

 In order to be reimbursed under this Agreement, costs must be incurred during the Agreement Period and within the time limits applicable to the funds from which the Agreement is being paid. TCEQ is under no obligation to offer deadline extensions which extend to the maximum availability of the Agreement funding source.

## Grants.

If this Agreement was entered under the TCEQ’s authority to award grants, TCEQ is providing financial assistance to You to undertake Your own project.

## No Debt Created Against the State.

This Agreement is contingent on the continuing state and federal appropriation of funds. This Agreement shall not be construed to create debt against the State of Texas, or the United States.

## Your Responsibilities for the Grant Activities.

You undertake the performance of the Grant Activities as Your own project and do not act in any capacity on behalf of the TCEQ nor as a TCEQ agent or employee. You agree that the Grant Activities are furnished and performed at Your sole risk as to the means, methods, design, processes, procedures and performance.

## Superintendence of the Work.

* 1. You are 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.
	2. Your Responsibilities for Contractors. All acts and omissions of contractors, suppliers and other persons and organizations performing or furnishing any of the Grant Activities under a direct or indirect contract with You shall be considered to be the acts and omissions of You.

## Independent Contractor.

The parties agree that You act independently of the TCEQ. Nothing in this Agreement shall create an employee-employer relationship between You and TCEQ. Nothing in this Agreement shall create a joint venture nor a principal-agency relationship between TCEQ and You.

## Flow down of Agreement Provisions.

You shall include in Your relevant subcontracts, employment contracts, and employment policies any provision included in this Agreement, or shall include a similar provision, to the extent necessary in order for You to fulfill its obligations under this Agreement, regardless of whether or not the provision expressly requires that it be included in such Agreements or policies. You shall require Your contractors to do the same.

## No Third Party Beneficiary.

TCEQ does not assume any duty to exercise any of its rights and powers under the Agreement for the benefit of third parties. Nothing in this Agreement shall create a Contractual provisions relationship between TCEQ and any of Your contractors, suppliers or other persons or organizations with a Contractual provisions relationship with You.

## Your Performance Evaluation.

Performance evaluations are a part of the TCEQ’s review of You. TCEQ may provide this information to other governmental entities and, upon request, to others. You consent to the disclosure of any information or opinion contained in the evaluations.

## Agreement Interpretation.

* 1. Interpretation of Time. All days are calendar days, unless stated otherwise. Months and years are the actual months and years involved and if no actual months years are indicated, a month is a period of 30 days and a year is a period of 12 30-day months.
	2. State, Federal Law. This Agreement is governed by, and interpreted under applicable law of the State of Texas, as well as, applicable federal law.

## Severability.

If any provision of this Agreement 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 Agreement 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.

## Definitions.

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

## Project Manager Authority.

* 1. The TCEQ Project Manager has the authority, without a formal amendment, to make written Agreement interpretations and to agree in writing to minor, non-material changes to requirements in the following specific Agreement documents: the Grant Activities, and the Budget for Actual Cost Reimbursement (Budget) including:
		+ 1. Changes to the schedule in the Grant Activities including an extension of a deliverable due date;
			2. Changes to the individual tasks in the Grant Activities that do not substantially change the obligations of the Parties relative to those tasks;
			3. Transfers between the authorized amounts of expenditures in the Budget categories which do not exceed 10% of the total Budget.
	2. To be effective, the Agreement changes agreed to by the TCEQ Project Manager must be in writing and must also be agreed to by Your authorized Representative. A copy of the agreed change must be retained in the appropriate files of both You and TCEQ.
	3. The TCEQ Project Manager is prohibited from agreeing on behalf of TCEQ to changes to Your substantive obligations of You or those of the TCEQ, including the following:
		+ 1. Changes in the total amount of funds in the Budget or the Agreement;
			2. Agreement Amendments;
			3. Changes to the Grant Activities that affect TCEQ obligations in this Agreement and in other agreements with the funding source such as EPA, and obligations to another state or federal agency or the Texas Legislature; and
			4. Changes that affect Your material obligations in this Agreement.
	4. It is Your responsibility to request extensions to the Deliverable Schedule and to request other changes that are within the authority of the TCEQ Project Manager.

## Conflict of Interest.

* 1. You will timely notify TCEQ in writing of any actual, apparent, or potential conflict of interest regarding You and any entity or individual that relate to the Grant Activities.
	2. You are 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.
	3. 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 Grant Activities or on termination of the Agreement.
	4. You agree that TCEQ has sole discretion to determine whether a significant conflict exists, and that a significant conflict of interest is grounds for termination for cause.

## Intellectual Property.

* 1. Third Party Intellectual Property. Unless specifically waived, You must obtain all Intellectual Property licenses expressly required in the Grant Activities, or incident to the use or possession of the Intellectual Property. You 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.
	2. Grant of License. You grant 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 Agreement, and associated user documentation.

## Time Delays.

* 1. Time is of the Essence. Your timely performance is a material term of this Agreement.
	2. Delays. Where Your 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 Agreement, or enforce any of its other rights.

## Termination.

* 1. Termination for Cause. TCEQ may, upon 10 days written notice and the opportunity to cure, terminate this Agreement for cause if You materially fail to comply with the Agreement 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 Agreement or by law.
	2. Termination for Convenience. TCEQ may, upon 10 days written notice, terminate this Agreement for convenience. Termination will not prejudice any other right or remedy of TCEQ or You. You may request reimbursement for conforming Grant Activities and timely, reasonable costs directly attributable to termination. You 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.
	3. If, after termination for cause by TCEQ, it is determined that You have not materially failed to comply with the Agreement, the termination will be deemed to have been for the convenience of TCEQ.

## Insurance.

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

## Indemnification.

TO THE EXTENT AUTHORIZED BY LAW, YOU WILL REQUIRE ALL CONTRACTORS PERFORMING GRANT ACTIVITIES ON BEHALF OF YOU TO INDEMNIFY, DEFEND, AND HOLD HARMLESS EPA, TCEQ AND YOU AND THEIR/YOUR 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 AGREEMENT 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 AGREEMENT.

## Payment not a Release.

Neither payment by TCEQ nor any other act or omission other than an explicit written release constitutes a release of You from liability under this Agreement.

## Schedule of Remedies.

A schedule of remedies is available to TCEQ. In accordance with Texas Government Code Chapter 2261 the following Schedule of Remedies applies to this Agreement. In the event of Your nonconformance, TCEQ may do any combination of the following:

* 1. Issue a notice of nonconforming performance;
	2. Reject nonconforming performance and request corrections without charge to TCEQ;
	3. Reject a reimbursement request or suspend further payments, or both, pending an accepted revision of the nonconformity;
	4. Suspend all or part of the Grant Activities or payments, or both, pending accepted revision of the nonconformity;
	5. Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
	6. Terminate the Agreement without further obligation for pending or further payment by TCEQ and receive restitution of previous payments.
	7. Opportunity to Cure. You will have a reasonable opportunity to cure its nonconforming performance, if possible under the circumstances.
	8. Cumulative Remedies. Rights and remedies in this Agreement 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.

## Sovereign Immunity.

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

## Miscellaneous.

* 1. Assignment. No delegation of the obligations, rights, or interests in the Agreement, and no assignment of payments by You will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge You from any duty or responsibility under this Agreement.
	2. Venue. You agree that this Agreement is being performed in Travis County, Texas, because this Agreement has been performed, administered, or both, in Travis County, Texas. You agree that any cause of action involving this Agreement arises solely in Travis County, Texas.
	3. Publication. You agree to notify TCEQ five days prior to the publication or advertisement of information related to this Agreement. You agree not to use the TCEQ logo or a TCEQ graphic as an advertisement or endorsement without written permission signed by the appropriate TCEQ authority.
	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 Your 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.
	5. Legal Requirements. TCEQ relies on You to perform all Grant Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.
	6. Survival of Obligations. Except where a different period is specified in this Agreement or applicable law, all representations, indemnifications, and warranties made in, required by, or given in accordance with this Agreement, as well as, all continuing obligations indicated in this Agreement, survive for four years beyond the termination or completion of this Agreement, or after the end of a proceeding which was brought under this Agreement, or if TCEQ has notified You 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 You.
	7. Headings. The headings of the sections contained in this Agreement are for convenience only and do not control or affect the meaning or construction of any provision of this Agreement.
	8. Release of Claims. As a condition to final payment or settlement, or both, You will execute and deliver a Release of Claims form for payment under this Agreement to TCEQ.
	9. Counterparts. This Agreement may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Agreement.
	10. Conflict of Terms. In the event of a conflict of terms, the Agreement Documents as amended control in the descending order of the following list. All Agreement provisions, however, are subject to primary control by the latest amendment of the most specific provision and by the applicable laws, rules and regulations.

Agreement Signature Page

Agreement Documents List

Agreement Terms and Conditions (Programmatic, Administrative, Financial, General)

EPA-Approved Grant Narrative Work Plan

TCEQ - Approved Grant Activities Budget (incorporated upon approval)

TCEQ – Approved Grant Activities Description (incorporated upon approval)

## Scope of Grant Activities.

You will perform Grant Activities in compliance with this Agreement, the EPA Award and the EPA-approved Application Work Plan Narrative. The agreed upon portions of the EPA-approved Work Plan, will be implemented in accordance with Your TCEQ-approved Grant Activities Description and the Grant Activities Budget as approved by TCEQ. See Attachment for the Application Work Plan Narrative.

Texas Commission on Environmental Quality

# GRANT ACTIVITIES BUDGET

Grant Number: \_\_\_\_\_\_\_\_\_

TCEQ will distribute EPA funds to reimburse allowable actual costs of Your Grant Activities. TCEQ will also conduct oversight of Your financial, administrative and programmatic activities related to this Agreement.

**Grant Activities Budget.** The authorized budgeted expenditures for Grant Activities performed are as follows:

| Budget Category | Cost for Grant Activities |
| --- | --- |
| Salary / Wages | $  |
| Fringe Benefits | $ |
| Travel | $  |
| Supplies | $ |
| Equipment | $  |
| Contractual  | $  |
| Construction | $ |
| Other | $ |
| Indirect Costs | $ |
| Total | $  |

* 1. Other. If Budget Category “Other” is greater than $25,000 or more than 10% of budget total, identify the main constituents.
	2. Budget Categories. The Budget Categories above have the definitions, requirements and limitations stated in Chapter 2 CFR. No Construction costs are reimbursable.

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# PERSONNEL ELIGIBILITY LIST (PEL)

Grant Number: \_\_\_\_\_\_\_\_\_\_

[Sample Text:

Name: Sara Larsen
Institution: Western States Water Council
Position: Water Data Exchange Program Manager – Master of Science, Civil Engineering with Water Resources emphasis, 2-year GIS Certification in Applied Geographic Information Science, Bachelor of Science in Geography. 14 years of experience developing IT/GIS applications and models surrounding water resource management. Coordinated the WaDE program thus far through initial concept and schema development by guiding workgroups and synthesizing workgroup products. Development of databases, functions, and web services code for WaDE infrastructure components. Organized and co-wrote Exchange Network grant application for FY2013.

Name: Tony Willardson
Institution: Western States Water Council
Position: Executive Director – Masters of Public Administration, Brigham Young University – 35 years of experience with the WSWC. May assist with WaDE representation at meetings, which would include travel costs, promotional efforts for the WaDE program, grant review, contract review, webinar attendance, as needed.

Name: Nathan Bracken
Institution: Western States Water Council
Position: Assistant Director and General Counsel – JD of Law, University of Utah – 6 years’ experience with WSWC, extensive legal experience at private law firms in family law. May assist with WaDE representation at meetings, which would include travel costs, promotional efforts for the WaDE program, grant review, contract review, reporting assistance, webinar attendance, as needed.

Name: Cheryl Redding
Institution: Western States Water Council
Position: Office Manager. Will assist with coordination of legal contracts and reporting with TCEQ legal and support staff.]

Texas Commission on Environmental Quality

# DUNS NUMBER FORM

Grant Number: \_\_\_\_\_\_\_\_\_\_

Entity Name: \_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_

DUNS NUMBER: \_\_\_\_\_\_\_\_\_\_\_\_