

TERP-ARRA Rebate Grant Agreement
FEDERAL CONDITIONS

ARTICLE 1. FEDERAL REQUIREMENTS

1.1. This Agreement is funded in part with American Recovery and Reinvestment Act of 2009 (ARRA) funds. The following conditions apply to this Agreement in addition to all other Agreement terms. In the event of a conflict, these Federal Conditions prevail. To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

ARTICLE 2. FEDERAL INTELLECTUAL PROPERTY REQUIREMENTS

2.1. A nonexclusive, perpetual, irrevocable license to use, copy, publish, and modify any intellectual property to which rights are granted or assigned to TCEQ in this Agreement are hereby also granted to, assigned to, or reserved by the Federal Government. To the extent consistent with the rights of third parties, the Federal Government shall also have the right to sell any intellectual property right it reserves or acquires through this Agreement. The PERFORMING PARTY shall include provisions adequate to effectuate the purposes of this paragraph in all subcontracts under this Agreement in the course of which Intellectual Property may be produced or acquired.

ARTICLE 3. ACKNOWLEDGMENT OF FINANCIAL SUPPORT; PUBLICATIONS

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

This Document was prepared under a grant from the United States Department of Education through the Texas Higher Education Coordinating Board and the Texas Commission on Environmental Quality using, at least in part, American Recovery and Reinvestment Act Funds. Point of view or opinions expressed in the document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Education, the Texas Higher Education Coordinating Board, or the Texas Commission on Environmental Quality.

ARTICLE 4. RECORD DOCUMENTS, DATA, RECORDS, ACCESS, AND AUDIT

4.1. The PERFORMING PARTY shall maintain fiscal records and supporting documentation for all expenditures of funds pursuant to OMB Circular A-87, and this Agreement. The PERFORMING PARTY shall retain these records and any supporting documentation for five (5) years from the completion of this project.

4.2. The PERFORMING PARTY shall give the United States Department of Education, the Inspector General, the General Accounting Office, the Auditor of the State of Texas, the Texas Higher Education Coordinating Board, TCEQ, or any of their authorized representatives access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by the PERFORMING PARTY pertaining to this Agreement including records concerning the past use of federal funds. Such rights access shall continue as long as the records are retained by the PERFORMING PARTY. The PERFORMING PARTY agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552, Texas Government Code.

4.3. In accordance with OMB Circular A-133, the recipient shall obtain a single audit if it expends \$500,000 or more a year in federal awards.

ARTICLE 5. LOBBYING AND LITIGATION

5.1. The PERFORMING PARTY agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying.

5.2. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

5.3. The PERFORMING PARTY shall submit to the TCEQ the Certification and Disclosure forms that are attached to the grant application.

5.4. The PERFORMING PARTY shall not use federal grant funds for litigation against the United States or for lobbying or other political activities.

5.5. The PERFORMING PARTY shall give TCEQ immediate notice in writing of:

5.5.1. any action, including any proceeding before an administrative agency, filed against the PERFORMING PARTY arising out of the performance of any subcontract under this Agreement; and

5.5.2. any claim against the PERFORMING PARTY, the cost and expense of which the PERFORMING PARTY may be entitled to be reimbursed by ARRA grant programs.

5.6. Except as otherwise directed by TCEQ, the PERFORMING PARTY shall furnish immediately to TCEQ copies of all documentation received by the PERFORMING PARTY with respect to such action or claim.

ARTICLE 6. DRUG-FREE WORKPLACE CERTIFICATION

6.1. The recipient of this assistance Agreement must make an ongoing effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 34 CFR 84.200 - 84.230. Additionally, in accordance with these regulations the recipient organization must identify all known workplaces under its federal awards and keep this information on file during the performance of the award.

6.2. Those recipients who are individuals must comply with the drug free provisions set forth in Title 34 CFR 84.300.

6.3. The consequences for violating these conditions are detailed under Title 34 CFR 84.510. Recipients can access the Code of Federal Regulations (CFR) Title 34 Part 84 at http://www.access.gpo.gov/nara/cfr/waisidx_09/34cfr84_09.html.

ARTICLE 7. RECYCLED MATERIALS

7.1. In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) 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. 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.

ARTICLE 8. TRAFFICKING VICTIM PROTECTION ACT OF 2000

8.1. To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, the following provisions apply to this award:

8.2. TCEQ may unilaterally terminate this award, without penalty, if a PERFORMING PARTY that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below, or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this Agreement; or (b) imputed to the PERFORMING PARTY using the standards and due process for imputing the 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 (Nonprocurement)," as implemented by our agency at 2 CFR Part 1532. The PERFORMING PARTY must inform TCEQ immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

8.3. TCEQ's right to terminate unilaterally that is described in previous section 8.2: (1) implements section 106(g) of the TVPA, as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to TCEQ under this award.

8.3.1. Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

ARTICLE 9. INSPECTOR GENERAL REVIEWS

9.1. In accordance with the provisions of Section 1515 of the ARRA, recipient agrees to allow any appropriate representative of the U.S. Department of Education Office of Inspector General to (1) examine any records of the PERFORMING PARTY, any of its subcontractors, and (2) interview any officer or employee of the PERFORMING PARTY or subcontractor regarding such transactions.

9.2. The PERFORMING PARTY is advised that providing false, fictitious, or misleading information with respect to the receipt and disbursement of ARRA funds may result in criminal and civil or administrative fines and/or penalties. Recipient should be aware that the findings of any review along with any audits conducted by an inspector general of a Federal department or executive Agency and concerning funds awarded under ARRA shall be posted on the inspector general's website and linked to www.recovery.gov, except that information that is protected from disclosure under sections 552 and 552a of Title 5, United States Code, may be redacted from the posted version.

ARTICLE 10. PROTECTION OF WHISTLEBLOWERS

10.1. In accordance with Section 1553 of the ARRA, PERFORMING PARTY agrees that employees of non-Federal employers receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State, or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.

ARTICLE 11. FALSE CLAIM

11.1. The PERFORMING PARTY and its subcontractors must promptly refer to the U.S. Department of Education Office of Inspector General any credible evidence that a principal, employee, agent, contractor, subcontractor, loan recipient, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this grant or subcontracts awarded by the PERFORMING PARTY.

ARTICLE 12. LIMIT ON FUNDS

12.1. PERFORMING PARTY shall not use funds for particular activities for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

ARTICLE 13. BUY AMERICAN ACT

13.1. No Intent to Include Work Subject to the Buy American Provision. Section 1605 of ARRA requires that none of the funds appropriated or otherwise made available under the Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. TCEQ anticipates that grants awarded under TERP will not include work described in Section 1605 of ARRA. If PERFORMING PARTY finds at any time after grant award that the project will include construction, alteration, maintenance, or repair of a public building or public work, the Contractor will inform TCEQ immediately and will not perform the described work unless TCEQ provides a written authorization to proceed.

ARTICLE 14. DAVIS BACON ACT

14.1. No Intent to Include Work Subject to the Davis Bacon Act. TCEQ anticipates that grants awarded under TERP will not include work subject to the Davis Bacon Act relating to the payment of prevailing wages. If PERFORMING PARTY finds at any time after receiving the grant award that the project includes work subject to the Act, the Contractor will inform TCEQ immediately and will not perform the described work unless TCEQ provides a written authorization to proceed.

ARTICLE 15. ENVIRONMENTAL LAW AND AUTHORITIES

15.1. The PERFORMING PARTY shall assume the environmental responsibilities for projects, if any, and in doing so shall comply with the provisions of the National Environmental Policy Act of 1969, as amended, and the Council on Environmental Quality regulations contained in 40 C.F.R. parts 1500 through 1508.

ARTICLE 16. OMB GUIDANCE

16.1. This award is subject to all applicable provisions of implementing guidance for the ARRA issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009, and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

16.2. The recipient is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of ARRA grant funds may result in criminal, civil or administrative fines and/or penalties.

ARTICLE 17. NON DISCRIMINATION

17.1. Recipients and subrecipients of Recovery Act funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.

17.2. Other civil rights laws may impose additional requirements on recipients and subrecipients. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws.

ARTICLE 18. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF ARRA

18.1. Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of Title 40, United States Code. The PERFORMING PARTY is not authorized to conduct work that is subject to this provision.

-End of Federal Conditions-