Texas Commission on Environmental Quality
Grant Agreement for
NEW TECHNOLOGY IMPLEMENTATION GRANT PROGRAM

CONTRACT SIGNATURE PAGE

Contract Name	NEW TECHNOLOGY IMPLEMENTATION GRANT					
Contract No.						
PERFORMING PARTY Name						
PERFORMING PARTY I.D. No.						
	Total Contract Amount	TCEQ State Contribution	In-kind ok (y/n)	PERFORMING PARTY Contribution	In-kind ok (y/n)	
		$0.00		$0.00		

Effective Date	Expiration Date
The Effective Date of this Contract is the date on which the Contract is signed by the last of the parties to sign.	August 31, 2022

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas and the named PERFORMING PARTY enter this agreement (Contract) for the purpose of providing financial assistance for the conduct of new technology implementation activities to benefit the environment as authorized by Texas Health and Safety Code Chapter 391 as created by HB 1796, 81st Legislature. The Parties agree: PERFORMING PARTY will conduct the Grant Activities required by the Contract; the TCEQ will reimburse authorized Allowable Costs in accordance with the Texas Uniform Grant Management Standards and the Contract.

	Texas Commission on Environmental Quality (TCEQ)	**(PERFORMING PARTY)**
By (Authorized Signature)		
Printed name:		
Title:		
Date of Signature:		

Contact Names, Addresses

	Texas Commission on Environmental Quality (TCEQ)		**(PERFORMING PARTY)**	
Grant Manager Name	Joe Walton			
Contact Numbers	512	239-4143		
Contact and Address for Notices	TCEQ P.O. Box 13087 (MC-204) Austin, Texas 78711-3087			

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GENERAL CONDITIONS
NEW TECHNOLOGY IMPLEMENTATION GRANTS

ARTICLE 1. DEFINITIONS

Unless defined herein, terms in this Contract and Contract Documents will have the meanings provided in the Texas Uniform Grant Management Standards (UGMS). The following terms have the meanings indicated.

1.1 *Administrative Requirements* - means those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from Grant Activities requirements, which concern matters that pertain to the specific Grant Activities approved by the TCEQ.

1.2 *Approved Grant Budget* - the total amount of costs approved by the TCEQ for the Grant Activities.

1.3 *Contract Amount* - the maximum amount of funds which may be reimbursed by the TCEQ to the PERFORMING PARTY for completion of the Grant Activities in accordance with the Contract Documents.

1.4 *Contract Documents* - the Contract Documents are composed of those documents identified in Article 12. The terms "Contract", "Grant", and "Agreement" include all the Contract Documents.

1.5 *Contract Period* - the period of time from the Effective Date of the Agreement through the completion of the Reporting Period, unless the Contract is otherwise terminated in accordance with its terms.

1.6 *Effective Date of the Agreement* - the date indicated in the Contract on which the Contract becomes effective; but if no such date is indicated it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.

1.7 *Grant Activity/Activities* - activities the PERFORMING PARTY has agreed to perform under this Contract. These activities may also be referred to as the Scope of Work.

1.8 *Grant Equipment* - the equipment, property, vehicles, processes, and technology and the related goods and services in a Grant Activity for which part of the cost of purchase, lease, or utilization is reimbursed by the TCEQ under the Contract, or which is necessary for utilization of grant funded equipment. The term includes replacements for Grant Equipment that is lost, stolen, or irreparably damaged.

1.9 *Implementation Period* - the period during which Grant Equipment is purchased and placed into service. The Implementation Period will end upon payment of final reimbursement and the PERFORMING PARTY's release of claims.

1.10 *Intellectual Property* - (1) any and all inventions, discoveries, improvements, or creations for which copyright, trade secret, patent, or other proprietary rights may be acquired, (2) any photographs, graphic designs, plans, drawings, specifications, computer programs, computer files, documentation, technical reports, operating manuals, or other materials, and (3) any other work fixed in any tangible medium of expression which can be perceived, reproduced, or otherwise communicated for which copyright, trade secret, patent, or other proprietary rights may be acquired.

1.11 *Intellectual Property Rights* - patents, trademarks, trade secret rights, confidential information rights, or any other proprietary rights to which a person may be entitled or may actually possess. Intellectual Property Rights include all rights of ownership and original authorship throughout the world.

1.12 *Minor Change* - a written document which provides for minor changes in the work in accordance with these General Conditions, but which does not involve a change in the Grant Amount, the Grant Activities, or the term of the Grant.

1.13 *Notice to Proceed* - a written notice given by the TCEQ to the PERFORMING PARTY that the PERFORMING PARTY may commence with the Grant Activities.

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1.14 *Optimum Performance* - the level of performance at which Grant Equipment functions in order to achieve the anticipated emissions reductions.

1.15 *PERFORMING PARTY* – the grant recipient indicated on the signature page of this Contract, also referred to in this Contract as the "grantee".

1.16 *Period of Funds Availability* – time period under the Contract by the end of which the costs for Grant Equipment must be incurred and paid.

1.17 *Project Representative* - the Project Representative of the TCEQ and the PERFORMING PARTY, as designated in writing elsewhere in the Contract.

1.18 *Reporting Period* - the period established by the TCEQ and designated in the Scope of Work, which is used to determine the emissions reductions and cost effectiveness of the activity. The start date will normally be set as the date on which the Implementation Period is completed.

1.19 *State* - means the State of Texas.

1.20 *Termination* - means a permanent end and cessation of the Contract either because: the Period of Funds Availability has expired; all requirements of this Contract are completed within the sole discretion of the TCEQ; the PERFORMING PARTY has requested termination and repaid funds as allowed by Section 19.3 or 19.4; or the Contract is ended by action of the TCEQ for cause or for convenience. The *Date of Termination* is the date of expiration of theperiod of funds availability, or the date of completion of all requirements of this Contract, or the effective date of action by the TCEQ ending the Contract for cause or for convenience.

1.21 *TCEQ* - Texas Commission on Environmental Quality.

1.22 *UGMS* - Texas Uniform Grant Management Standards as adopted June 2004, available at: http://comptroller.texas.gov/procurement/catrad/ugms.pdf

1.23 *Written Amendment* - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an addition, deletion or revision of the Grant Activities, modification or revision of the Contract general or special conditions, or an adjustment in the Grant Amount or the term of the Grant, issued on or after the Effective Date of the Contract.

ARTICLE 2. GOVERNING STANDARDS

2.1 This Contract is subject to: (1) Chapter 391, Texas Health and Safety Code; (2) the Texas Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Texas Uniform Grant Management Standards (UGMS); (3) *New Technology Implementation Grants: Guidelines for Grants;* (4) Appropriations Act of the 84th Texas Legislature pertaining to appropriation of funds to the TCEQ for grants, etc. and grants by state agencies; (5) Chapter 2261 Texas Government Code (pertaining to cost reimbursement contracts); (6) Texas Water Code, Sections 5.124, 5.229; (7) Texas Government Code Section 556.0055 (pertaining to lobbying); and (8) TCEQ rules and policies (pertaining to TCEQ contracts and grants); and other applicable Federal and State rules and statutes.

2.2 *Local Governments*. If the PERFORMING PARTY is a Local Government, this Contract is also subject to: (1) Chapter 391 Local Government Code and implementation rules and guidelines of the Governor's Office of Budget and Planning (pertaining to costs for entities defined as Councils of Government, etc.).

2.3 *UGMS Applicable by Agreement*. The PERFORMING PARTY agrees the requirements of the UGMS apply to the PERFORMING PARTY and matters relating to this Contract, including the criteria for Allowable Costs. Additional federal requirements may apply when the TCEQ utilizes federal funds for reimbursement.

2.3.1 The PERFORMING PARTY will ensure that the clause entitled "UGMS Applicable by Agreement," concerning the application of UGMS requirements, is included in any subcontract for any category of subrecipient awarded under this Contract.

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ARTICLE 3. GRANT ACTIVITIES; LEGAL REQUIREMENTS

3.1 Subject to the provisions of this Article, the PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and Approved Grant Application.

3.2 The PERFORMING PARTY must maintain sufficient property insurance for the repair or replacement of any Grant Equipment for the Reporting Period as required by the Contract Documents, unless otherwise expressly agreed by the TCEQ. Failure to do so shall constitute a material breach of this Contract.

3.3 Any insurance proceeds received by or on behalf of the PERFORMING PARTY under an insurance policy due to the damage or destruction of Grant Equipment must be utilized to acquire equivalent or better Grant Equipment or be paid to the TCEQ. Failure to do so shall constitute a material breach of this Contract.

3.4 In order for this Contract to be effective, all authorized principals of an unincorporated business organization or association must sign the Contract. An agent signing for a corporation must be authorized to sign by the corporation.

ARTICLE 4. PURPOSE

The purpose of this Contract is to provide a grant to financially assist the PERFORMING PARTY in implementing the Grant Activities, in accordance with Chapter 391, Texas Health and Safety Code.

ARTICLE 5. FUNDS

5.1 *Amount Limits on Funds***.** The TCEQ will reimburse the PERFORMING PARTY for the costs of the conforming Grant Activities. The maximum TCEQ reimbursement amount is shown on the Signature Page. Eligibility for reimbursement is subject to issuance by the TCEQ of a Notice to Proceed with the Grant Activities. The Contract does not guarantee a minimum amount of reimbursement.

5.2 Section 391. 204, Texas Health and Safety Code, requires the PERFORMING PARTY to bear at least 50 percent of the costs of implementing a project funded under this chapter. To ensure this limit is not exceeded, the TCEQ may adjust reimbursement amounts as necessary.

5.3 *Time Limits on* Funds (***Period of Funds Availability***)**.** Costs to be reimbursed under this Contract must be incurred and paid, by May 31, 2018.

5.4 Reimbursement is limited to costs determined by the TCEQ in its sole discretion as eligible costs.

5.5 The maximum TCEQ reimbursement amount is not a guarantee of payment. The actual amount of reimbursement may be less than the maximum and will be determined by the TCEQ.

ARTICLE 6. CONTRACT PERIOD

6.1 This Contract will commence on the Effective Date of the Agreement.

6.2 The Contract Period shall be the period of time from the Effective Date through the completion of the Reporting Period, unless the Contract is otherwise terminated in accordance with its terms.

6.3 Due to the time limitations on availability of the grant funds, the TCEQ's obligation to reimburse the PERFORMING PARTY's allowable costs incurred and paid under this Contract shall expire forty-five (45) days after the Period of Funds Availability. If no reimbursement has been requested or paid as of this date, the Contract will terminate without further obligations to either party.

6.4 *Extension Period.* The parties may agree in a written amendment to extend the Contract dates as necessary (Agreed Extension Period).

6.5 The PERFORMING PARTY agrees that certain performance obligations extend through completion of the Reporting Period.

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ARTICLE 7. NOTICE TO PROCEED

7.1 The TCEQ's funding for the Grant Activities may currently be unavailable or uncertain and the amount of funding may be unknown. Efficient use of public funds may be achieved by entering into contracts with potential grantees in which reimbursements are contingent on availability of funds and a subsequent selection by the TCEQ. If funding for reimbursement grants becomes available, the TCEQ, in its sole discretion, will select which of the contingent contracts will receive reimbursement and will issue a Notice to Proceed for any selected project.

7.2 The PERFORMING PARTY may begin the Grant Activities, at its own risk, prior to receiving a Notice to Proceed. However, regardless of the availability of funding, if this Contract is not selected and a Notice to Proceed is not issued, the TCEQ will not provide reimbursement for the cost of the Grant Activities. Either party may terminate this Contract prior to issuance of a Notice to Proceed, with no further obligation under this Contract. If this Contract is selected, the TCEQ will issue to the PERFORMING PARTY a Notice to Proceed, after which all other obligations and provisions of this Contract shall apply.

7.3 Any cost incurred prior to the issuance of a Notice to Proceed will not be considered as eligible for reimbursement. However, TCEQ reserves the right, in its sole discretion, to fund certain costs incurred prior to the Notice to Proceed or even prior to signature of a grant agreement if those costs have been clearly identified in the grant application and doing so will further the objectives of the NTIG program. The TCEQ provides no assurances that a project will be awarded a grant, and the TCEQ has no liability for expenses incurred by an applicant prior to the execution of a grant contract, unless and until those activities and expenses are selected for a grant and included under a grant contract, and Notice to Proceed is issued.

7.4 Regardless of selection of this Contract and the issuance of the Notice to Proceed, the reimbursement of the costs of the Grant Activities is subject to all other requirements of this Contract. ***This Contract does not create an entitlement to receive state funds and all payments are solely within the discretion of the TCEQ.***

ARTICLE 8. STATUS OF THE PERFORMING PARTY

8.1 The PERFORMING PARTY is not a “vendor” of goods and services within the meaning of Texas Government Code, Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this Contract.

ARTICLE 9. ELIGIBLE ACTIVITIES

9.1 The activities eligible for reimbursement are those contained in the Scope of Work, and Approved Grant Budget.

ARTICLE 10. FUNDING, LEGAL AUTHORITY, AND LIABILITY

10.1 This Contract and all claims, suits or obligations arising under or related to this Contract are subject to and limited to those funds which are both: 1) appropriated by the Texas Legislature for the purposes of this Contract and 2) actually received and deposited into an account of the treasury dedicated to the TCEQ for the purposes of this Contract.

10.2 Any state funds provided are appropriated to the TCEQ under the Appropriations Act (House Bill 1) of the 84th Texas Legislature and expenditure is authorized by Chapters 386 and 391, Texas Health and Safety Code.

10.3 This Contract is entered into by and between the TCEQ and the PERFORMING PARTY pursuant to authority contained in the Texas Water Code, Chapter 5, Subchapter D, Section 5.124 (Authority to Award Grants) and Texas Water Code, Section 5.229, pertaining to the TCEQ's general authority to enter contracts.

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10.4 Available funding is wholly contingent upon appropriations by the Texas Legislature and the amount of fees actually received in the Texas Emissions Reduction Plan Fund and available for funding this grant. Therefore, this Contract may be terminated in whole or in part by the TCEQ for circumstances which may occur including without limitation to the Texas Legislature's withdrawal of the appropriation for this project or the depletion of the Texas Emissions Reduction Plan Fund, which results in the unavailability of funds to complete this project. To the extent feasible, in the sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.

ARTICLE 11. REPRESENTATIONS

The PERFORMING PARTY hereby ratifies and attests to all representations in the grant application and deliverables it has provided to the TCEQ during the proposal process and agrees to give prompt written notice to the TCEQ if there is any material change in these certifications or deliverables.

ARTICLE 12. CONTRACT DOCUMENTS

12.1 The Contract Documents which comprise the entire Contract between the TCEQ and the PERFORMING PARTY, whether or not they are physically attached, are (in order of precedence in the event of conflicts):

12.1.1 The Contract Signature Page.

12.1.2 The Grant Activities (Scope of Work).

12.1.3 The New Technology Implementation Grant (NTIG) Special Conditions (all).

12.1.4 The Approved Grant Budget.

12.1.5 The Insurance Section.

12.1.6 The General Conditions for New Technology Implementation Grants.

12.1.7 The TCEQ Request for Grant Applications, incorporated herein by reference.

12.1.8 The PERFORMING PARTY's Original NTIG Grant Application, incorporated herein by reference.

12.1.9 The following which may be delivered or issued after the Effective Date of the Contract and are not attached hereto: all written Notices to Proceed, Amendments, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

12.1.10 The New Technology Implementation Grants: Guidelines for Grants, incorporated herein by reference.

12.2 A listed document includes all amendments to the document. The terms "Contract", "Grant", and "Agreement" include all the Contract Documents.

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

ARTICLE 13. ELIGIBILITY FOR COST REIMBURSEMENT

13.1 The TCEQ will reimburse the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all requirements of this Contract. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are the reasonable, necessary, actual, and allowable costs of implementing the Grant Activities approved by the TCEQ. Costs must be included in the Approved Grant Budget to be eligible for reimbursement. Determinations of eligibility for reimbursement are solely within the discretion of the TCEQ.

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Procurement

13.2 The requirements of the Texas Uniform Grants Management Standards (UGMS), Part III. State Uniform Administrative Requirements for Grants, Subpart C, Post-Award Requirements ___.36 Procurement, will apply within the discretion of the TCEQ.

Reasonable Costs

13.3 To be reimbursable, a cost must be reasonable. Criteria for determining reasonableness of costs include the following:

13.3.1 Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the PERFORMING PARTY's business or the performance of the Grant Activities;

13.3.2 Generally accepted sound business practices, competitive procurement, arm's length bargaining, and Federal and State laws and regulations;

13.3.3 The PERFORMING PARTY's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and

13.3.4 Any significant deviations from accepted industry-established practices.

13.4 In general, for the cost of the PERFORMING PARTY's goods and services to be reasonable, they must be procured through a competitive process in which bids, quotes, or proposals are solicited from an adequate number of qualified suppliers. Where competition is not feasible, UGMS ___.36 permits non-competitive procurement. For non-competitively procured items, the reasonableness of the PERFORMING PARTY's costs must be established through a price analysis, which the PERFORMING PARTY shall submit to the TCEQ upon request. A price analysis analyzes a vendor's price in comparison to other market prices for similar goods and services. A price analysis should compare at least three vendors' prices. For non-competitively procured items, the PERFORMING PARTY must perform a cost analysis analyzing the vendor's costs to produce the goods and services, which the PERFORMING PARTY shall submit to the TCEQ upon request.

Necessary Costs

13.5 Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and must be included in the Approved Grant Application and the Approved Grant Budget.

13.6 Unless expressly authorized by the TCEQ, necessary costs do not include:

13.6.1 the cost of money;

13.6.2 the interest charges on a purchase money loan, or on a deferred payment purchase agreement; or

13.6.3 the cost of converting from a lease to a purchase at the end of the lease period.

Actual Costs

13.7 The criteria for actual costs include:

13.7.1 the direct costs paid for implementing the Grant Activities; or

13.7.2 the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.

13.8 Unless expressly authorized by the TCEQ, actual costs do not include:

13.8.1 amounts deducted from the true price of the purchase or lease of Grant Equipment whether as discounts, rebates, refunds or otherwise;

13.8.2 amounts which the PERFORMING PARTY owes or agrees to pay the vendor or contractor for any purpose other than the implementation of Grant Activities;

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13.8.3 amounts in the charges which the vendor/contractor intends to return to the PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value; and

13.8.4 amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are received by the PERFORMING PARTY.

13.9 The PERFORMING PARTY's and its subcontractors' documentation of expenses is required under the General Conditions.

Allowable Costs

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

13.11 If travel costs are authorized in the Approved Grant Budget, reimbursement of travel costs may not exceed the amounts explained in this section.

13.11.1 Reimbursement for lodging and meals within the State of Texas is to be equal to the rates allowed for state employees under the State of Texas Travel Allowance Guide.

13.11.2 Reimbursement for lodging and meals when traveling outside of the State of Texas is to be equal to the rates allowed for state employees under the State of Texas Travel Allowance Guide and may not exceed the maximum established in the federal General Services Administration travel regulations.

13.11.3 Mileage reimbursement rates are also established in the State of Texas Travel Allowance Guide.

13.11.4 Expenses for lodging and meals are limited to only actual expenses and must be supported by receipts to be reimbursable.

Indirect Costs

13.12 Indirect costs are not reimbursable under the terms of this Contract unless included in the Approved Grant Budget and approved in advance by the TCEQ as a specific budget line item.

Preapproval of Costs

13.13 If the specific details of costs to be incurred under the "Travel," "Equipment," "Contractual," "Construction," or "Other" costs categories are not already explained in the Approved Grant budget, then prior to incurring those costs, the PERFORMING PARTY must submit revised forms to show those details and receive authorization from the TCEQ for those expenses.

13.14 Upon the TCEQ's request, prior to signing a subcontract to be funded under this Contract, the PERFORMING PARTY must submit the subcontract to the TCEQ for review and must receive approval from the TCEQ before entering into the subcontract.

Additional Evidence

13.15 The TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs.

Additional Criteria for Reimbursement

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

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Costs in Approved Grant Budget are Maximum Amounts, Not a Guarantee

13.17 Amounts of costs stated in the Approved Grant Budget are maximum amounts of reimbursement. By stating the amounts, the TCEQ does not 1) guarantee payment of those amounts or 2) waive the requirements for reimbursement which must subsequently and continually be satisfied by the PERFORMING PARTY. The amount of costs for which reimbursement may be requested is the lesser of: 1) the costs stated in the Approved Grant Budget or 2) the actual eligible costs.

No Entitlement to Funds

13.18 The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. Neither a request for reimbursement nor the TCEQ's payment of reimbursement nor any other action will establish an entitlement in the PERFORMING PARTY to payment from the TCEQ.

13.19 By paying a request for reimbursement, the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may at any time before or after reimbursement, in its sole discretion, request additional evidence concerning costs. The TCEQ may audit the records of the PERFORMING PARTY and may also audit the PERFORMING PARTY's performance as to the Grant Activities, and the Administrative Requirements.

Offsets for debts owed to the State

13.20 The TCEQ may offset against reimbursement payments, any amounts owed by the PERFORMING PARTY or its principals to the TCEQ or the State of Texas or for child support.

Tax Credits and Other Incentives

13.21 The PERFORMING PARTY shall notify the TCEQ, in its request for reimbursement, of any financial incentive received by the PERFORMING PARTY which was not disclosed in the grant application, if that incentive will offset the cost of the proposed project, including tax credits or deductions, or other grants, or any other public financial assistance, provided such grant or other public financial assistance is paid to the PERFORMING PARTY for the effort identified in the Scope of Work under this Contract. The TCEQ, in reimbursing the PERFORMING PARTY, may reduce the amount of authorized incremental costs eligible for reimbursement, by the value of any additional financial incentive received by the PERFORMING PARTY, without an Amendment to this Contract.

ARTICLE 14. THE PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ – GRANT ACTIVITIES

14.1 All Grant Activities for which reimbursement is requested must be completed as set forth in the Scope of Work, including any supplemental conditions attached thereto.

Professional Quality

14.2 The PERFORMING PARTY shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all Grant Activities under this Contract.

Supervision and Superintendence

14.3 The PERFORMING PARTY is responsible for the supervision, inspection, and direction of the Grant Activities in a competent and efficient manner, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Grant Activities in accordance with the Contract Documents. The PERFORMING PARTY shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Grant Activities. The PERFORMING

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PARTY shall be responsible for seeing that the completed implementation of the Grant Activities complies accurately with the Contract Documents.

Concerning Subcontractors, Suppliers, and Others

14.4 The PERFORMING PARTY shall be responsible for ensuring that all work under this Contract, whether by PERFORMING PARTY, subcontractors, or others, is performed in accordance with the terms and conditions of this Contract, including requiring that applicable terms and conditions of this Contract be incorporated into subcontracts.

Materials and Equipment

14.5 Unless otherwise specified in the Contract Documents, the PERFORMING PARTY will assume full responsibility for all materials, equipment, labor, transportation, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the implementation and completion of the Grant Activities.

14.6 The PERFORMING PARTY's Responsibility for Purchases. Any purchase made by the PERFORMING PARTY, especially any purchase not proposed/scheduled for reimbursement by the TCEQ, is made at its own risk.

14.7 Unless otherwise expressly agreed by the TCEQ, all Grant Equipment will be of good quality and as provided in the Contract Documents. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier, except as otherwise provided in the Contract Documents.

14.8 The PERFORMING PARTY agrees to maintain the Grant Equipment as necessary to keep the Grant Equipment in good condition and functioning at Optimum Performance during the Reporting Period.

Proof of Insurance

14.9 During the Implementation Period, the PERFORMING PARTY shall supply proof that it is insured for project completion/replacement and liability. Project completion/replacement insurance shall be sufficient to cover lost equipment and time/effort in case of a disaster. Liability insurance shall cover both the PERFORMING PARTY and provide additional insured status to the State of Texas as set out in the Insurance Section of this Contract. The TCEQ may request proof of insurance upon award or anytime during the Implementation Period. Governmental entities may use an established self-insurance program to satisfy this requirement. If requested by the TCEQ, the PERFORMING PARTY shall provide additional proof of insurance coverage, including declaration pages and copies of policies. The TCEQ may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. The TCEQ may also waive this requirement, at its discretion, for certain types of entities. Previously submitted certificates of insurance coverage may be amended to reflect newly extended coverage. A failure to comply with this requirement is considered a material breach of the Contract.

14.9.1 In addition to the requirements of the Insurance Section, the PERFORMING PARTY shall require its contractors and suppliers to obtain and maintain insurance during the Implementation Period with adequate insurance coverage (see Insurance Section for minimum limits) sufficient to protect the PERFORMING PARTY and the TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract, whether caused by the PERFORMING PARTY or by the contractor(s) or by anyone directly or indirectly employed by either. Unless specifically waived by the TCEQ, sufficient coverage shall include but are not limited to Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.

14.9.2 The PERFORMING PARTY shall be responsible for ensuring that all required insurance has been issued and continues in force throughout the Implementation Period of this grant.

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14.9.3 The TCEQ reserves the right to require additional insurance coverage during the term of this Contract.

14.10 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment during the Reporting Period, the PERFORMING PARTY will cause the Grant Equipment to be repaired and restored to the level of Optimum Performance.

14.11 Upon the occurrence of loss, theft, or irreparable damage of Grant Equipment during the Reporting Period, the PERFORMING PARTY will cause the lost, stolen, or damaged Grant Equipment to be replaced with similar equipment which achieves the same Optimum Performance or better. The PERFORMING PARTY will cause the replacement Grant Equipment to be in operation no later than 60 consecutive days from the occurrence of loss, theft, or damage, unless the TCEQ expressly agrees to a longer period. Replacement Grant Equipment is subject to all the requirements applicable to Grant Equipment contained in this Contract.

14.12 The PERFORMING PARTY shall make every effort to meet the terms of the approved project plan and time line and must submit a written plan to the TCEQ describing any revisions to the plan and time line.

ARTICLE 15. THE PERFORMING PARTY'S RESPONSIBILITIES – ADMINISTRATIVE REQUIREMENTS

Maintenance of Records and Access

15.1 The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably amendments thereto. All financial records will be maintained in accordance with generally accepted accounting principles, the UGMS, and this Contract. The PERFORMING PARTY shall also maintain the financial information and data used in the preparation or support of any request for reimbursement (direct and indirect), price or profit analysis for this Contract, and a copy of any cost information or analysis submitted to the TCEQ. The PERFORMING PARTY shall allow access to all the material including bank statements and records by the TCEQ, the State of Texas pertinent to performance of the Grant Activities and requirements of the Contract, including the Contract or, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.

15.2 *State Auditor's Office.* The PERFORMING PARTY understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. The PERFORMING PARTY further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The PERFORMING PARTY will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING PARTY and the requirement to cooperate is included in any subcontract it awards under this Contract. The PERFORMING PARTY will include in all subcontracts for work under this Contract a requirement that subcontractors will provide access to all relevant financial records including bank statements.

15.2.1 Section 391.302, Texas Health and Safety Code requires that the Office of the Comptroller conduct an annual review of each recipient of a new technology implementation grant to ensure that the recipient's use of the grant funding complies with state law and the terms of the award. The PERFORMING PARTY agrees to cooperate fully with the Office of the Comptroller or its successor in this review. The PERFORMING PARTY will ensure that this clause concerning the authority to review funds received indirectly by subcontractors through the PERFORMING PARTY and the requirement to cooperate is included in any subcontract it awards under this Contract. The PERFORMING PARTY will include in all subcontracts for work under this Contract a requirement that subcontractors will provide access to all relevant financial records including bank statements.

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15.3 The PERFORMING PARTY agrees to the disclosure of reports resulting from access to records under this Contract.

15.4 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity under this Contract and for three (3) years after fulfillment of all contractual obligations. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the three-year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. The PERFORMING PARTY must maintain a second back-up copy of such records which are maintained off-site (in a different physical location than the primary back-up) in a secure location.

Accounting Systems

15.5 The PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies in all material respects with applicable State law, regulations, and policies relating to accounting standards or principles. The PERFORMING PARTY must account for costs in a manner consistent with such standards or principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

Personnel

15.6 The PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Contract Documents. The PERFORMING PARTY must at all times maintain good discipline and order on the location of Grant Activities.

Permits

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

Laws and Regulations

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

Data and Publicity

15.9 The PERFORMING PARTY agrees to notify the TCEQ prior to releasing any information to the news media regarding the Grant Activities.

15.10 The PERFORMING PARTY will acknowledge the financial support of the TCEQ whenever a Grant Activity reimbursed, in whole or part, is publicized or reported in news media or publications. Reports and other documents, including news releases or public announcements, completed as a part of this Contract, or reference the Grant Activities under this Contract, shall carry the following or similar notation on the front cover or title page:

The preparation of this report is based on work funded in part by the State of Texas

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15.10.1 The PERFORMING PARTY must display the TCEQ logo on any signage posted at the worksite during the Implementation Period of the Grant Activities in a manner that informs the public that the project is part of the New Technology Implementation Grant Program. The TCEQ logo may be obtained from the TCEQ. The TCEQ logo must not be displayed in a manner that implies that TCEQ itself is conducting the project. Instead, the TCEQ logo must be accompanied with a statement indicating that the PERFORMING PARTY received financial assistance from the TCEQ for the project.

15.11 **Public Information**. The Texas Public Information Act, Tex. Gov't. Code ch. 552 (PIA), applies to all data and information delivered to the TCEQ in the course of performance of the Grant Activities. The TCEQ assumes no obligation to make legal arguments in support of any claims pertaining to confidentiality, patents, trade secrets, or copyright.

15.11.1 If the PERFORMING PARTY is claiming that data and information submitted to the TCEQ contains confidential or proprietary information, that information MUST be clearly marked **"Confidential/Proprietary: inform applicant & seek AG opinion before releasing"** on <u>every</u> page and must be submitted separately from all other material. Any information that is so marked, if requested under the PIA, will be sent by the TCEQ to the Texas Attorney General (AG) for a decision on whether it may be withheld. Note that the AG may determine that the information is not confidential and therefore must be released. The TCEQ will inform the PERFORMING PARTY of the request for the AG's decision but will make no arguments in support of the request. It is the responsibility of the PERFORMING PARTY to explain the basis for its claim that the information is confidential.

<u>Safety and Protection</u>

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

15.13 The PERFORMING PARTY shall not perform the Grant Activities in a manner that would create a dangerous condition or otherwise endanger the health and safety of the public.

15.14 In performing the Grant Activities hereunder, the PERFORMING PARTY undertakes performance for its own benefit and not as agent for the TCEQ.

<u>Lobbying Activities</u>

15.15 As set forth in these Contract Documents, and in accordance with the UGMS and State law, the PERFORMING PARTY shall not use funds provided under this Contract to support lobbying or political activity either directly or indirectly.

<u>Informational Website</u>

15.16 The PERFORMING PARTY shall maintain a publicly accessible informational website providing project information and education as detailed in the Scope of Work.

ARTICLE 16. TCEQ'S RESPONSIBILITIES

16.1 The TCEQ will not supervise, direct or have control or authority over, nor be responsible for, the PERFORMING PARTY's means, methods, techniques, sequences, or procedures relating to the implementation project or the Safety precautions and programs incident thereto, or for any failure of the PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the work. The TCEQ will not be responsible for the PERFORMING PARTY's failure to perform or furnish the work in accordance with the Contract.

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16.2 Unless authorized in writing by the TCEQ in accordance with this Contract, no waiver of any obligation of the PERFORMING PARTY shall bind the TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

ARTICLE 17. REQUEST FOR REIMBURSEMENT

17.1 In order to receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form, to be made available to the PERFORMING PARTY by the TCEQ. Requests for reimbursement shall be submitted no later than 20 days after the end of the billing period in which expenses were paid. Each request shall be accompanied by a properly completed Request for Reimbursement form for each activity for which reimbursement is requested. The request and forms shall be mailed or delivered to:

Implementation Grants Section (NTIG), MC-204
Air Quality Division
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, TX 78711-3087
1-800-919-TERP (8377)

17.2 *Retained Funds*. The TCEQ may retain up to 25% of the total reimbursement funds pending the successful completion of the Implementation Period of the Grant Activities. Release of these funds may be requested in the final Request for Reimbursement. The TCEQ may, at its discretion, release the final reimbursement funds prior to the completion of the Implementation Period, subject to a determination that the project will be completed.

17.3 The Request for Reimbursement shall be completed on forms provided by the TCEQ. The report, including all required supplemental forms, shall list, for each activity, the total expenses obligated under a lease or financing agreement, the total activity expenses incurred to date, the baseline cost, and the incremental costs incurred to date. The report shall also list and explain any additional financial incentive received by the PERFORMING PARTY that directly offsets the activity costs reported by the PERFORMING PARTY, including tax credits or deductions, other grants, or any other public financial assistance.

17.4 To be eligible for reimbursement under this Contract, a cost must have been incurred and paid by the PERFORMING PARTY prior to claiming reimbursement from the TCEQ. A cost may not be considered incurred until the Grant Equipment and/or goods and services included under the cost have been received and accepted by the PERFORMING PARTY. The cost must have been paid by the PERFORMING PARTY prior to claiming reimbursement.

17.5 If financial incentives, including tax credits or deductions, other grants, or any other public financial assistance, are received by the PERFORMING PARTY and used to pay or offset costs subject to reimbursement as identified in Form 2 of the reimbursement forms; the reimbursement available under this Contract will be reduced accordingly.

17.6 A final Request for Reimbursement form, indicating in the appropriate box that it is the final request, shall be submitted to the TCEQ by no later than forty-five (45) days after the date listed in Article 5.3 of this Contract.

17.7 All Request for Reimbursement forms shall contain sufficient identification of and information concerning the costs incurred or obligated under a lease or financing agreement and paid so as to enable the TCEQ to ascertain the eligibility of a particular cost and to enable subsequent audit thereof. Supporting documentation materials, as directed by the TCEQ in the instructions accompanying the forms, shall be attached to the report forms to clearly show that the cost was incurred and, except where the payment is assigned to another entity, paid.

17.8 If the requests for reimbursement do not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and incurred and paid costs, the TCEQ

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

17.9 The TCEQ is not obligated to make payment until the request for reimbursement is approved by the TCEQ. Further, the TCEQ reserves the right to suspend or withhold all or part of a payment or all payments as authorized by the Contract.

17.10 All requests for reimbursement under this Contract shall be submitted in accordance with the requirements set forth in this Contract. Such submittals shall contain sufficient detail for audit thereof.

17.11 The TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs.

17.12 The reimbursement of funds is contingent upon the PERFORMING PARTY's satisfactory adherence to the terms of this Contract. Failure to adhere to the terms of this Contract, in particular those requirements concerning progress and financial reporting or the documentation of reported expenditures, shall be grounds for the TCEQ to: suspend payments pending the PERFORMING PARTY's satisfactory completion, revision, or correction of services or reports; or for termination of this Contract in accordance with the General Conditions and for such other remedies as are allowed by law.

17.13 ***Required Forms:*** The PERFORMING PARTY, and any subcontractor or subrecipient, in order to obtain reimbursement for those expenditures authorized under this Contract, shall submit, pursuant to the Grant Activities, fully completed and legible:

17.14.1 Progress Report;
17.14.2 Reimbursement Forms;
17.14.3 Supplemental Request for Reimbursement Form(s) for those budget categories with expenses; and
17.14.4 Release of Claims (the PERFORMING PARTY only, and only with final reimbursement request).

<u>Reimbursement Forms</u>

17.15 *Request for Reimbursement (Form 1):* Each filed TCEQ Request for Reimbursement shall contain sufficient identification of, and information concerning, the costs incurred so as to enable the TCEQ to ascertain the eligibility of a particular expenditure and to enable subsequent audit thereof. The individual expenses shall be identified with respect to the major tasks or objectives set forth in the Grant Activities that such expenditures support or satisfy. When a single expenditure supports or satisfies more than one task or objective, the PERFORMING PARTY or subcontractor need not break down that particular expenditure by specific contract task or objective, but may simply identify, in relative cost order, the various tasks or objectives supported.

17.16 *Historically Underutilized Business (HUB):* The PERFORMING PARTY will use its best efforts to provide opportunities for HUBs to participate in subcontracting under this Contract. The PERFORMING PARTY must notify the TCEQ of the steps it has taken to provide opportunities for HUBs to participate, and the extent to which HUBs are being utilized as subcontractors under this Contract.

17.17 *Required Documentation*: When the PERFORMING PARTY is required to attach source documentation for a reimbursable cost that documentation shall:

17.17.1 be legible;

17.17.2 identify the specific piece of equipment received or the services provided;

17.17.3 clearly identify the vendor or subcontractor who provided the equipment or services (the PERFORMING PARTY shall require all subcontractors to use the Request for Reimbursement forms to file for reimbursement of services and equipment); and

17.17.4 confirm the reimbursable amount listed on the form.

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The documentation shall consist of a dated invoice that shows the amount billed to the PERFORMING PARTY, any "past due" amount from previous invoices, and explanation of services provided. The PERFORMING PARTY or subcontractor must provide any other documentation requested by the TCEQ. Although canceled checks represent the preferred types of documentation for purposes of this section, the PERFORMING PARTY or subcontractor may substitute/attach other records or documents that provide the same type of information, such as issued purchase orders and/or invoices marked "received/paid", or other evidence of payment. The PERFORMING PARTY or subcontractor shall not intentionally break up single orders of identical or similar items, materials, or supplies simply for the purpose of avoiding the above requirement to provide confirming documentation when submitting reimbursement requests to the TCEQ.

17.19 *Vendor or Subgrantee Services Not Procured Using Price Competition*: Information detailing the expenses incurred, as outlined in the NTIG Reimbursement Forms shall be submitted along with an explanation of the services provided. For any expenses (goods or services) which are not procured using price competition, the PERFORMING PARTY must perform a price or cost analysis to determine the reasonableness of the price and maintain documentation of such analysis which shall be produced to the TCEQ upon request.

17.20 All requests for reimbursement of expenditures that fall within either the ***Personnel/Salary*** or ***Fringe*** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the NTIG Reimbursement Forms.

17.20.1 *Personnel/Salary*: No supporting documentation is required to be attached to the NTIG Reimbursement Forms with respect to reported "Personnel/Salary" expenditures in order to receive reimbursement. The PERFORMING PARTY or subcontractor is expected to maintain signed time sheets that can serve to verify the total, overall hours of staff time being directly billed to this Contract.

17.20.2 *Fringe*: No supporting documentation is required to be attached to the NTIG Reimbursement Forms with respect to reported "Fringe" expenditures in order to receive reimbursement. The PERFORMING PARTY or subcontractor is expected to maintain signed time sheets that can serve to verify the fringe rate and the total, overall hours of staff time being directly billed to this Contract.

17.21 Travel*:* With respect to employee travel, all costs listed in the NTIG Reimbursement Forms must be documented with information that identifies the name of the traveler(s), dates of travel, purpose/location of travel, costs for meals, transportation, and lodging to substantiate the reported reimbursable costs. Documentation which must be maintained by the PERFORMING PARTY or subcontractor and made available during an on-site audit/monitoring visit, or upon request, for the purpose of substantiating travel-related costs, includes the following: (1) legible copies of the PERFORMING PARTY- or subcontractor-approved travel vouchers, or other equivalent documentation, signed by the employees who traveled; and (2) any travel-related expenses under this Contract borne directly by the PERFORMING PARTY or subcontractor (and for which reimbursement by the PERFORMING PARTY to the traveler was not required). Provide separate receipts showing, at a minimum, the traveler's name, the travel location, and the travel date(s). Travel by volunteers will not be reimbursed.

17.22 All requests for reimbursement of expenditures that fall within the ***Equipment*** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor on the NTIG Reimbursement Forms. In addition, the PERFORMING PARTY or subcontractor shall attach, for each reimbursable cost listed in the NTIG Reimbursement Forms, documentation as specified in the *Required Documentation* paragraph in this section. An updated equipment inventory shall be attached to reimbursement requests with equipment purchases.

17.23 All requests for reimbursement of expenditures that fall within the ***Contractual and Construction*** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the NTIG Reimbursement Forms. In addition, the PERFORMING PARTY or subcontractor shall attach, for each reimbursable cost listed in the NTIG Reimbursement Forms, documentation as specified in the *Required Documentation* paragraph in this section.

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17.24 All requests for the reimbursement of expenditures that fall within the ***Supplies*** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the NTIG Reimbursement Forms. In addition, for any single-listed item or service costing more than $500, the PERFORMING PARTY or subcontractor shall attach, for each reimbursable cost listed in the NTIG Reimbursement Forms, documentation as specified in the *Required Documentation* paragraph of this section.

17.25 All requests for the reimbursement of expenditures that fall within the ***Other*** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the NTIG Reimbursement Forms. In addition, for any single-listed item or service costing more than $500, the PERFORMING PARTY or subcontractor shall attach, for each reimbursable cost listed in the NTIG Reimbursement Forms, documentation as specified in the *Required Documentation* paragraph of this section.

17.26 All requests for reimbursement of expenditures that fall within the ***Indirect*** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the NTIG Reimbursement Forms. In addition, the PERFORMING PARTY or subcontractor shall attach, for each reimbursable cost listed in the NTIG Reimbursement Forms, documentation as specified in the *Required Documentation* paragraph in this section.

17.27 The TCEQ may reject requests for reimbursement that fail to demonstrate that costs are eligible for reimbursement or which fail to conform to the requirements of the Contract.

17.28 In determining the amount of the final payment, the TCEQ may withhold from reimbursement the amount of any over payment and any reasonable amount until the TCEQ is satisfied that all conditions and requirements are completed and accepted.

17.29 All requests for reimbursement must be signed by an authorized representative of the PERFORMING PARTY.

17.30 Documentation of Project Expenses. The PERFORMING PARTY shall maintain accurate and detailed documentation to evidence the payment of expenses. The PERFORMING PARTY shall provide such documentation upon request and for any audit purposes. This documentation shall be maintained for at least three (3) years after the end of this Contract.

17.31 Project funding may not be moved from one budget category to another without written approval by the TCEQ.

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ARTICLE 18. PROGRESS REPORT; LONG TERM MONITORING AND REPORTING

18.1 During the Implementation Period, the PERFORMING PARTY shall submit to the TCEQ within ten (10) days following the end of each calendar quarter (March 31, June 30, September 30, December 31) a properly completed Progress Report describing the Grant Activities completed during the previous quarter.

18.2 A final Progress Report, indicating in the appropriate box that it is the final report, shall be submitted to the TCEQ after implementation of all Grant Activities has been completed in accordance with the Scope of Work.

18.3 As a condition of receiving grant funds, the PERFORMING PARTY agrees to monitor the operation of Grant Equipment and report to the TCEQ for the time period specified in the Scope of Work (Reporting Period).

18.4 As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed monitoring reports to the TCEQ, on forms provided by the TCEQ, for the Reporting Period. The PERFORMING PARTY will submit the required reports on the date specified by the TCEQ in the reporting instructions.

18.5 The PERFORMING PARTY's timely submission of accurate monitoring reports is material to performance under this Contract. Failure to submit the required monitoring reports or submission of monitoring reports containing false or inaccurate information shall constitute a material breach of this Contract.

ARTICLE 19. TERMINATION

19.1 For purposes of availability of funding and completion of the TCEQ's obligations to reimburse the PERFORMING PARTY for authorized expenses; this Contract will terminate upon the earlier of expiration of the Contract Period, or upon full performance of all requirements contained herein, unless termination occurs by action taken by the TCEQ under this Article.

19.2 The PERFORMING PARTY acknowledges that certain requirements of this Contract shall survive an event of termination.

19.3 If the PERFORMING PARTY chooses to not complete the Grant Activities and withdraws from the obligations under this Contract, the PERFORMING PARTY may terminate this Contract for any reason by providing ten (10) days' written notice to the TCEQ and returning any reimbursements already received.

19.4 If after payment of final reimbursement and completion of the Implementation Period of the Grant Activities, the PERFORMING PARTY decides to cease performing the Grant Activities, the PERFORMING PARTY may request that the TCEQ terminate the Contract. This termination shall be contingent upon the PERFORMING PARTY returning a prorated portion of grant funds already received. The amount of prorated reduction, if any, shall be calculated by the TCEQ as the percentage of the Reporting Period of the Grant Activities actually completed in terms of days from the beginning of the Operation Phase of the Scope of Work through the date that such request is made or the date which Grant Activities actually ceased, whichever is earlier.

19.5 This Contract may be terminated in whole or in part by the TCEQ for cause, which may include without limitation a material failure to comply with the requirements of the Contract Documents. Unless advance notice of intent to terminate will place funds of the state at increased risk, the TCEQ will provide a minimum of ten (10) days' written notice (delivered by certified mail, return receipt requested) of intent to terminate and a reasonable opportunity for the PERFORMING PARTY to correct such noncompliance prior to termination.

19.6 If the PERFORMING PARTY's acts or omissions cause or create an increase of pollutants to an unacceptable level or an increase of health and safety risks, such acts or emissions shall constitute a material failure to comply with the requirements of the Contract Documents.

19.7 In the event the PERFORMING PARTY sells, transfers, destroys, or otherwise loses title, ownership, possession, or control of Grant Equipment during the Contract Period, without prior approval from the TCEQ, the PERFORMING PARTY shall, upon request by the TCEQ, promptly return the full amount of funds reimbursed to the PERFORMING PARTY for the purchase of the Grant Equipment.

19.8 This Agreement may be terminated in whole or part by the TCEQ if any delay or failure of performance of the Grant Activities by either PERFORMING PARTY or the TCEQ is caused by a force majeure event. Neither PERFORMING PARTY nor TCEQ shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided that the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Force majeure does not include ordinary delays that are common to the industry or location. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

19.9 This Contract may be terminated in whole or in part by the TCEQ for its convenience. Circumstances in which this may occur include without limitation the Texas Legislature's withdrawal of the appropriation for this project or the depletion of the Texas Emissions Reduction Plan Fund, which results in the unavailability of funds to complete this project. To the extent feasible, in the

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sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.

19.10 The PERFORMING PARTY may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. The TCEQ evaluates each obligation to determine its eligibility for inclusion in project costs. The TCEQ allows full credit to the recipient for the state share of the non-cancelable obligations properly incurred by the grantee prior to termination, subject to the availability of funds appropriated for such obligations.

19.11 If after termination for the PERFORMING PARTY's material failure to comply with the requirements of the Contract Documents, it is determined that the PERFORMING PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the TCEQ.

19.12 In accordance with this Contract, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under this Contract. Therefore, the PERFORMING PARTY waives any claim for damages arising from or resulting from the TCEQ'S termination of this Contract for any reason.

19.13 *Stop Grant Activities*. The TCEQ may stop the Grant Activities if, in the reasonable opinion of the TCEQ, the PERFORMING PARTY fails to perform the Grant Activities in such a way which conforms to the Contract Documents. The TCEQ may order the PERFORMING PARTY to stop the Grant Activities, or any portion thereof, until the cause for such order has been eliminated; however, this right of the TCEQ to stop the Grant Activities shall not give rise to any duty on the part of the TCEQ to exercise this right for the benefit of the PERFORMING PARTY or any surety or other party.

19.14 The PERFORMING PARTY shall carry on the Grant Activities and adhere to the progress schedule at all times, including any disputes or disagreements with the TCEQ. No Grant Activities shall be delayed or postponed pending resolution of any disputes or disagreements, except as the TCEQ and the PERFORMING PARTY may otherwise agree in writing. If, through no act or fault of the PERFORMING PARTY, the Grant Activities are suspended for a period of more than ninety days by the TCEQ or under an order of court or other public authority, then the PERFORMING PARTY's sole and exclusive remedy is to extend the Grant Activities time line.

19.15 The TCEQ May Suspend Grant Activities. At any time and without cause, the TCEQ may suspend the Grant Activities or any portion thereof by notice in writing to the PERFORMING PARTY which will fix the date on which Grant Activities will be resumed. The PERFORMING PARTY shall resume the Grant Activities on the date so fixed. The PERFORMING PARTY shall be allowed an extension of the Grant Activities time line directly attributable to any such suspension, but only to the extent that the PERFORMING PARTY requests such extensions in writing within fifteen (15) days of the TCEQ'S notice.

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ARTICLE 20. INDEMNIFICATION

To the extent permitted by law, the PERFORMING PARTY agrees to indemnify and hold harmless the State of Texas and the TCEQ, including its employees and officers, against and from any and all liability, loss, or damage arising out of actions of the PERFORMING PARTY, its subcontractors, agents, officers, and directors, principals, and employees in the performance of this Contract.

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

ARTICLE 21. TITLE TO AND MANAGEMENT OF PROPERTY AND EQUIPMENT

21.1 Subject to the obligations and conditions set forth in this Contract, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under this Contract by the PERFORMING PARTY or a subgrant recipient will vest upon acquisition or construction in the PERFORMING PARTY or the subgrant recipient respectively.

21.2 Subject to the provisions of this Contract and as otherwise provided by state statutes, property acquired or replaced under this Contract or a subgrant contract shall be used for the duration of its normally expected useful life to support the purposes of this Contract whether or not the original projects or programs continue to be supported by state funds.

21.3 The PERFORMING PARTY and subgrant recipients may develop and use their own property management systems, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY or the subgrant recipient is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the PERFORMING PARTY and subgrant recipients must meet the requirements set forth in this Section.

21.3.1 Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, and the cost of the property, percentage of state participation in the cost of the property, the location, use, and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

21.3.2 A physical inventory of all equipment acquired or replaced under this Contract shall be conducted no less frequently than once every two years during the Project Life and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY and the subgrant recipients shall include adequate safeguards for replacement value and to prevent loss, damage, or theft of the acquired property. Any loss, damage, or theft shall be investigated. The PERFORMING PARTY and the subgrant recipients shall develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such property is sold.

21.3.3 Certain types of equipment are classified as “controlled assets” and are subject to annual revision. In accordance with the UGMS, the PERFORMING PARTY and subgrant recipients should contact the Texas Comptroller of Public Accounts’ property accounting staff or review the Comptroller’s state Property Accounting User Manual available on the Internet, for the most current listing.

21.4 The PERFORMING PARTY or the subgrant recipient, respectively, may for the purpose of replacing property acquired under this Contract, either trade in or sell the property and use the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property.

21.5 Items of property with a current per-unit fair market value of less than $5,000 may be retained, sold, or otherwise disposed of by the PERFORMING PARTY with no further obligation to the TCEQ. Methods used to determine per-unit fair market value must be documented, kept on file, and made available to the TCEQ upon request.

21.6 Real property must be maintained on an Inventory and is subject to the requirements of UGMS, Part III, Subpart C, _.31. Subject to the obligations and conditions set forth in this Contract, title to real property acquired under this Contract by the PERFORMING PARTY will vest upon acquisition or construction in the PERFORMING PARTY respectively.

ARTICLE 22. RELEASE OF CLAIMS

The final Request for Reimbursement or the Request for Retained Funds shall include a signed and executed Release of Claims, releasing all claims for payment of any funds due and payable by the TCEQ, upon the TCEQ’s payment of the final request for reimbursement.

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ARTICLE 23. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

The Contract Documents may be amended to provide for additions, deletions, and revisions in one or more of the following ways: a formal Written Amendment or a Minor Change. All requests for changes to the Contract must be submitted in writing to the TCEQ. All Contract amendments must be in writing and signed by both parties.

ARTICLE 24. REMEDIES AVAILABLE TO THE TCEQ

24.1 In accordance with Chapter 2261 Texas Government Code, the following Schedule of Remedies applies to this Contract in the event of the substandard performance of Grant Activities or other material failure to conform to the requirements of the Contract or applicable law:

24.1.1 Reject substandard performance and request corrections without charge to the TCEQ;

24.1.2 Issue notice of substandard performance or other non-conforming act or omission;

24.1.3 Request and receive return of any over payments or inappropriate payments;

24.1.4 Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;

24.1.5 Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;

24.1.6 Reject reimbursement request and withhold all or partial payments. Funds may be retained by the TCEQ for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law; and/or

24.1.7 Terminate the Contract, demand and receive: return of all equipment purchased with contract funds, return of all unexpended funds, and repayment of improperly expended funds.

Cumulative Remedies

24.2 The TCEQ may avail itself of any remedy or sanction provided in this Contract or in law to recover any losses arising from or caused by the PERFORMING PARTY's substandard performance or any material non-conformity with the Contract or the law. The remedies and sanctions available to either party in this Contract shall not limit the remedies available to the parties under law.

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ARTICLE 25. STANDARDS FOR THE PERFORMING PARTY'S PERFORMANCE

25.1 In accordance with Chapter 2261, Texas Government Code, the TCEQ is required to monitor the PERFORMING PARTY's performance under this Contract. The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Contract.

25.1.1 Quality and Accuracy. Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Contract.

25.1.2 Timeliness. Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.

25.1.3 *Reports and Administrative & Financial Operations***.** Standard: The PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Contract, including, but not limited to, record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.

25.1.4 *Communication*. Standard: The PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ; and including the PERFORMING PARTY's demonstrated relationship with subcontractors.

25.1.5 *Other.* Standard: Other factors unique to the type of project, as determined by the TCEQ.

25.2 The TCEQ will monitor the PERFORMING PARTY's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.

25.2.1 *Exceeds Expectations*. The PERFORMING PARTY fully complied with all the standards on a consistent basis.

25.2.2 *Satisfactory Performance*. The PERFORMING PARTY's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.

25.2.3 *Marginal Performance*. The PERFORMING PARTY's performance was acceptable, although a significant number of deficiencies had to be corrected before the Contract requirements could be considered met.

25.2.4 *Unsatisfactory Performance*. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

Contractor Evaluation

25.3 The TCEQ will prepare a written evaluation of the performance of the PERFORMING PARTY upon completion of the terms of the Contract, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation will be provided to the PERFORMING PARTY and a copy retained in the TCEQ's contract files. The content of the evaluation shall be wholly within the discretion of the TCEQ. The PERFORMING PARTY may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against the TCEQ for the evaluation.

ARTICLE 26. MISCELLANEOUS

Computation of Times

26.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a State of Texas or federal holiday, such day will be omitted from the computation.

26.2 A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

Notice of Claim

26.3 Should the TCEQ or the PERFORMING PARTY suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party may be legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose or sovereign immunity.

Survival of Obligations

26.4 All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Grant Activities and termination or completion of the Contract.

26.5 Notwithstanding any provisions relating to assignment in the Uniform Commercial Code, no delegation by a party hereto of any duties or obligations nor assignment by a party hereto of any

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rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to an extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This Contract is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of the TCEQ and any attempted transfer without such consent is void.

26.6 The parties hereby agree that this Contract does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. No TCEQ personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of the TCEQ, goods or services which are not required under the Contract Documents or any conforming amendment. The parties further agree that all claims, suits, or obligations arising under or related to this Contract are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

26.7 The PERFORMING PARTY acknowledges and agrees that because this Contract has been executed, and will be administered in Travis County, Texas, the PERFORMING PARTY acknowledges and agrees that any permissible cause of action involving this Contract will arise solely in Travis County. If a legal action related to this claim is permissible and there are two (2) or more counties of proper venue under the rules of mandatory, general, or permissive venue, and one such county is Travis County, the PERFORMING PARTY hereby agrees to venue in Travis County. This provision does not waive the TCEQ'S sovereign immunity.

26.8 Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the TCEQ and the PERFORMING PARTY, who agree that Contract Documents are reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

26.9 If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify the TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to the TCEQ Bankruptcy Program. The PERFORMING PARTY's notice to the bankruptcy program must include the appropriate contract number(s).

26.10 Any notice issued pursuant to this Contract shall be addressed to the respective party's Authorized Project Representative, or at such other address as they have theretofore specified by written notice. Such notices shall be sent by certified mail, return receipt requested, or shall be delivered in hand and a receipt provided. Any notice or other written communication shall be considered delivered upon date of receipt.

26.11 The laws of the State of Texas shall apply to this Contract.

26.12 The parties to this Contract expressly agree that time is of the essence of this Contract.

26.13 The terms include, included, including, includes, when used in this Contract shall mean "includes but not limited to".

26.14 By stating at any place in this Contract that any particular noncompliance is a material breach, the TCEQ does not limit the acts or omissions which may constitute a material breach.

ARTICLE 27. INTELLECTUAL PROPERTY

27.1 *No intent to create intellectual property***.** The TCEQ does not intend to fund Grant Activities that require the creation of intellectual property. Accordingly, Sections 27.2 through 27.4 should not apply to the Grant Activities. If the PERFORMING PARTY at any time determines that any portion of the Grant Activities funded by the TCEQ will require creation of intellectual property, including new works incorporating preexisting intellectual property, the PERFORMING PARTY must immediately notify the TCEQ and will not undertake such activity unless the TCEQ provides written authority to proceed.

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27.2 *Disclosure of Intellectual Property Produced during the Grant Activities*. The PERFORMING PARTY shall promptly notify the TCEQ of all Intellectual Property which the PERFORMING PARTY or the PERFORMING PARTY's employees, subcontractors, or subcontractor's employees may produce, either solely or jointly with others, during the course and directly arising from the Grant Activities. In addition, the PERFORMING PARTY shall promptly notify the TCEQ of all Intellectual Property to which the PERFORMING PARTY may acquire rights in connection with the Grant Activities. Any notification under this paragraph shall contain sufficient technical detail to convey a clear understanding of the Intellectual Property, and shall identify any publication, sale, public use, or impending publication. Promptly upon request, the PERFORMING PARTY shall supply such additional information as the TCEQ may request.

27.3 *Grant of License*. With respect to such Intellectual Property as is developed by the PERFORMING PARTY or the PERFORMING PARTY's employees, subcontractors, or subcontractor's employees, either solely or jointly with others, during the course of performing portions of and directly arising from the Grant Activities for which reimbursement is requested from the TCEQ; the PERFORMING PARTY hereby grants to the TCEQ (1) a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, or otherwise use such Intellectual Property and associated use documentation, and (2) a nonexclusive, perpetual, irrevocable, enterprise-wide license to authorize others to reproduce, publish, or otherwise use such Intellectual Property for the TCEQ'S purposes. For such intellectual property that is developed in the course of the Grant Activities and not subject to this license requirement, the PERFORMING PARTY shall ensure that the development expenses are clearly documented on financial reports submitted to the TCEQ and that requests for reimbursement do not include these expenses.

27.4 *Modification; Derivative Works*. The TCEQ shall have the right, in its own discretion, to independently modify any Intellectual Property to which license is granted herein for The TCEQ's own purposes and use, through the services of its own employees or independent contractors. The TCEQ and the PERFORMING PARTY shall jointly own all Intellectual Property Rights to such modifications. The PERFORMING PARTY shall not be responsible for or liable for any modifications by the TCEQ or the TCEQ's employees or independent contractors of Intellectual Property licensed to the TCEQ by the PERFORMING PARTY.

27.5 The PERFORMING PARTY shall comply with all Laws and Regulations relating to Intellectual Property. The PERFORMING PARTY represents and warrants to the TCEQ that the PERFORMING PARTY will not infringe any Intellectual Property Right of any third party. The PERFORMING PARTY further represents and warrants to the TCEQ that in the course of performing the Grant Activities it will not use or possess any Intellectual Property owned by a third party without paying any required royalty or patent fees. The PERFORMING PARTY warrants that it has full title in and ownership of the Intellectual Property and any enhancements, updates or other modifications, or that it has full power and authority to grant all licenses granted herein, and that such license use by the TCEQ will in no way constitute an infringement or other violation of any Intellectual Property right of any third party. The PERFORMING PARTY warrants that it shall have, throughout any applicable license term hereunder, free and clear title to, or the right to possess, use, sell, transfer, assign, license, or sublicense, products that are licensed or provided hereunder to the TCEQ by the PERFORMING PARTY. Except as permitted in the Contract, the PERFORMING PARTY shall not create or permit the creation of any lien, encumbrance, or security interest in the Grant Technology or any part thereof, or any product licensed or provided hereunder to the TCEQ for which title has not yet passed to the TCEQ, without the prior written consent of the TCEQ. The PERFORMING PARTY represents and warrants to the TCEQ that neither it nor any other company or individual performing the Grant Activities is under any obligation to assign or give to any third party any Intellectual Property rights granted or assigned to the TCEQ, or reserved by the TCEQ, pursuant to the Contract.

27.6 The PERFORMING PARTY shall include provisions adequate to effectuate the purposes of Section 27.5 in all subcontracts and subgrants under this Contract in the course of which Intellectual Property may be produced or acquired.

— End of General Conditions —

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AUTHORIZED REPRESENTATIVES/LOCATION OF RECORDS

TCEQ Project Representative

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

Mailing Address:
Mr. Joe Walton
Implementation Grants Section (NTIG), MC-204
Air Quality Division
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, TX 78711-3087
1-800-919-TERP (8377)

Physical Address:
Mr. Joe Walton
Implementation Grants Section (NTIG)
Air Quality Division
Texas Commission on Environmental Quality (TCEQ)
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

Telephone No.: (512) 239-4143

Facsimile No.: (512) 239-4410

PERFORMING PARTY's Representative

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

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

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

Telephone No.: ( )

Facsimile No.: ( )

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

Designated Location for Records Access and Review

4. The PERFORMING PARTY designates the physical location identified in the Approved Application for record access and review pursuant to any applicable provision of this Contract.

- End of Project Representatives -

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NEW TECHNOLOGY IMPLEMENTATION GRANTS SPECIAL CONDITIONS
(These NTIG Conditions apply to this New Technology Implementation Grant)

The Performing Party agrees to adhere to these Special Conditions.

{Special terms may be developed in response to the specific needs of a particular grant project.}

— End of New Technology Implementation Grants Special Conditions —

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SCOPE OF WORK

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— End of Scope of Work —

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APPROVED GRANT BUDGET

ARTICLE 1. BUDGET

1.1 Authorized budgeted expenditures under this Contract are as follows:

All proposed budget revisions require prior written approval by the TCEQ in accordance with Article 23 of the General Conditions of the Contract.

{Attach Budget pages 1-9 (numbered 1.1.1 through 1.1.9)}

— End of Approved Grant Budget —

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INSURANCE SECTION

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INSURANCE SECTION

1. **COVERAGES REQUIRED.** Contractor shall obtain and maintain throughout the Contract term the insurance coverages listed below:

   1.1 **Worker's Compensation and Employer's Liability Insurance**: Coverage for Worker's Compensation which complies with Texas statutory requirements as to amounts, coverages and terms. Elective exemptions or coverages through an employee leasing arrangement will not satisfy this requirement.

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

   - $500,000.00 per person;
   - $500,000.00 per occurrence for bodily injury; and
   - $1,000,000.00 per occurrence for property damage; or
   - $1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.

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

   - $500,000.00 per occurrence for bodily injury; and
   - $1,000,000.00 per occurrence for property damage; or
   - $1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.

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

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

4. **INSURANCE CERTIFICATE.** Contractor shall provide TCEQ with evidence of the insurance coverage required under this Contract. The evidence of the coverage shall be a certificate of insurance on a form approved by the Texas Department of Insurance or an Acord® form. Contractor will submit the certificate to the TCEQ Contract Manager no later than ten days after award of the Contract, or as directed by the Special Terms and Conditions. Certificates must bear the contract number of this Contract. If Contractor changes insurers, Contractor shall give TCEQ a new certificate of insurance within ten days. The certificate of insurance shall set out any deductible or self-insured retention amounts for each coverage required.

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

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5.1 TCEQ and its officers and employees are named additional insureds to all policies of insurance required under this Contract, expect to the Worker's Compensation and Employer's Liability Insurance and the Professional Liability Insurance;

5.2 Waiver of subrogation in favor of TCEQ, its officers and employees for bodily injury (including death), property damage or any other loss arising from this Contract; and

5.3 The Contractor's insurance is primary insurance with respect to the TCEQ and its officers and employees.

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