

**Texas Commission on Environmental Quality
Grant Agreement for
NEW TECHNOLOGY RESEARCH AND DEVELOPMENT**

**CONTRACT SIGNATURE PAGE NON-PROFITS; GOVERNMENT ENTITIES; AND
UNIVERSITIES]**

Contract Name		NEW TECHNOLOGY RESEARCH AND DEVELOPMENT GRANT					
Contract No.							
PERFORMING PARTY Name							
PERFORMING PARTY I.D. No.							
FY	Total Annual Amount	TCEQ Fed. Funds	TCEQ State Contribution	In-kind ok (y/n)	PERFORMING PARTY Contribution	In-kind ok (y/n)	Total Contract Amount
10	\$0.00	\$0.00	\$0.00				
11	\$	\$0.00	\$				
Total		\$0.00	\$0.00		See Budget		\$0.00

Effective Date

Expiration Date

Contract Period (Effective Date to 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.	
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The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas and the named PERFORMING PARTY, a governmental body, agency, or political subdivision of: the United States (US), the State of Texas, another State of the US, or a local government enter this grant contract (Agreement) for the cooperative conduct of authorized governmental functions and activities. The Parties agree: to be effective, the Agreement must be signed by an authorized official of TCEQ and the PERFORMING PARTY; as authorized by TCEQ, PERFORMING PARTY will conduct Grant Activities and TCEQ will reimburse Allowable Costs subject to the Uniform Grant Management Standards (UGMS) or the applicable Office of Management and Budget (OMB) Circulars (A-21 or A-122) and this Grant; the PERFORMING PARTY is not a vendor of goods and services under Texas Government Code Chapter 2251, therefore, no interest is applicable; and the Grant may be terminated by either party for its own convenience with 30 days written notice.

Parties to the Contract:	Texas Commission on Environmental Quality (TCEQ)	(PERFORMING PARTY)
By (Authorized Signature)		
Printed name:	Zak Covar	
Title:	Deputy Executive Director	
Date of Signature:		

Contact Names, Addresses

	Texas Commission on Environmental Quality (TCEQ)	(PERFORMING PARTY)
Grant Manager Name	Joseph 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
for
NEW TECHNOLOGY RESEARCH AND DEVELOPMENT GRANTS**

ARTICLE 1. DEFINITIONS

Unless defined herein, terms in this Contract and Contract Documents will have the meanings provided in the OMB Circulars A-21 (Cost Principles for Educational Institutions), A-87 (Cost Principles for State, Local, and Indian Tribal Governments), A-122 (Cost Principles for Non-Profit Organizations), A-102 (Grants and Cooperative Agreements with State and Local Governments), A-110 (Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations), and A-133 (Audits of States, Local Governments, and Non-Profit Organizations). 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 TCEQ.

1.2. *Approved Application* - the application for a new technology research and development grant submitted by the PERFORMING PARTY and approved by the TCEQ, including any amendments or supplemental conditions added to the application in order for it to be approved.

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

1.4. *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.

1.5. *Contract Documents* - the Contract Documents are composed of those documents identified in Article 12.

1.6. *Contract Period* - the number of days or dates stated in the Contract to complete the Grant Activities so that final payment is appropriate.

1.7. *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.

1.8. *EPA* - The U.S. Environmental Protection Agency.

1.9. *Final Completion* - the Grant Activities are completed in the judgment of TCEQ.

1.10. *Grant Activity/Activities* - Activities the PERFORMING PARTY has agreed to perform under this Contract including new technology projects leading to TERP-eligible projects, other new technology projects included in the Contract Documents. These activities may also be referred to as "scope of work."

1.11. *Grant Equipment* - the equipment, property, vehicles, with a per unit cost of \$5,000 or greater for which the cost of purchase, lease, or utilization is reimbursed by the TCEQ under the Contract. The term includes replacements for the Grant Equipment which are lost, stolen, or irreparably damaged.

1.12. *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 for which copyright, trade secret, patent or other proprietary rights may be acquired, 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.

1.13. *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.

1.14. *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.

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

1.16. *Person* - An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity. This may include a corporation headquartered outside of the state of Texas.

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

1.18. *State* - means the State of Texas.

1.19. *Termination* - means a permanent end and cessation of the Contract either because the Contract Period has expired or because all requirements of this Contract are completed within the sole discretion of the TCEQ or finally because the Contract is ended by action of the TCEQ for cause or for convenience in accordance with Article 19 of this Grant Agreement. The *Date of Termination* is the date of expiration of the Contract Period, or the date of completion all requirements of this Contract, or the effective date of action by the TCEQ ending the Contract for cause or for convenience.

1.20. *TCEQ* - the Texas Commission on Environmental Quality.

1.21. *UGMS* - Uniform Grant Management Standards.

1.22. *Written Amendment* - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an addition, deletion or revision in the Grant Activities, 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 387, Texas Health and Safety Code; (2) the applicable OMB Circulars or the Uniform Grant Management Standards (UGMS), as set forth in this Article below; (3) *New Technology Research and Development Grants: Guidelines for Grants*; (4) Appropriations Act of the 81st Texas Legislature pertaining to appropriation of funds to 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); (8) TCEQ *Allowable Expenditure Guidelines* (pertaining to allowable costs for cost reimbursement contracts and grants); and (9) TCEQ rules, including 30 TAC Chapter 14, and policies (pertaining to TCEQ contracts and grants); and other applicable Federal and State rules and statutes.

2.2. **UGMS Applicable by Agreement for State and Local Governments.** FOR STATE AND LOCAL GOVERNMENTS (excluding Institutions of Higher Education subject to OMB Circular A-21(relocated to 2 CFR Part 220)); PERFORMING PARTY agrees the requirements of the Uniform Grant Management Standards (UGMS) apply to the PERFORMING PARTY and matters relating to this Contract, including the criteria for Allowable Costs.

2.2.1. 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.).

2.2.2. If the PERFORMING PARTY is a State Agency, this Contract is also subject to provisions of the OMB Circular A-102.

2.3. **OMB Circulars Applicable by Agreement.** FOR EDUCATIONAL INSTITUTIONS(Institutions of Higher Education): PERFORMING PARTY agrees the requirements of the OMB Circulars A-21, A-110 and A-133 apply to the PERFORMING PARTY and matters relating to this Contract, including the criteria for Allowable Costs. FOR NON-PROFIT ORGANIZATIONS (as defined in OMB Circular A-122): PERFORMING PARTY agrees the requirements of the OMB Circulars A-122, A-110 and A-133 apply to the PERFORMING PARTY and matters relating to this Contract, including the criteria for Allowable Costs. Additional federal requirements may apply when TCEQ utilizes federal funds for reimbursement.

2.4. The PERFORMING PARTY will ensure that the application of UGMS requirements is included in any subcontract for any category of subrecipient awarded under this Contract, provided such subrecipient is not a public institution of higher education or non-profit organization, in which case, PERFORMING PARTY will ensure that the application of the applicable OMB Circulars is included in the subcontract.

ARTICLE 3. GRANT ACTIVITIES

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 TCEQ may accept partial performance, at its discretion, and reimburse the PERFORMING PARTY for only those Grant Activities that are completed.

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 387, Texas Health and Safety Code.

ARTICLE 5. FUNDS

5.1. **Amount Limits on Funds.** TCEQ will reimburse PERFORMING PARTY for the costs of the conforming Grant Activities. The maximum reimbursement for each fiscal year is shown on the Signature Page. The amounts shown there for any Fiscal Year are subject to issuance by TCEQ of a Notice to Proceed with the Grant Activities for that Fiscal Year. If an amount is not shown on the Signature Page for any Fiscal Year (including any Automatic Renewal Period or any Agreed Renewal Period), then the maximum amount for a Fiscal Year is the amount specified in the applicable authorization to proceed with the Grant Activities for that Fiscal Year. The Contract does not guarantee a minimum amount of reimbursement.

5.2. **Time Limits on Funds.** The funds under this Contract must be expended in accordance with Fiscal Year amounts on the Contract Signature Page.

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

5.4. The maximum amount of reimbursement 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. **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Signature Page of this Contract (Contract Period). If a date is not provided, the Effective Date is September 1 of the Fiscal Year in which Grant Activities begin and the Expiration Date is August 31 of the same Fiscal Year. A Fiscal Year is the period from September 1 of one calendar year to August 31 of the following calendar year. An Appropriation Biennium is the period of two Fiscal Years for which the Texas Legislature had adopted an Appropriation Act.

6.2. **Renewal Period.** The parties may agree in a written amendment to renew the contract as necessary (Agreed Renewal Period).

6.3. **Extension Period.** Without renewing the Contract, the Contract may be extended by written notice of TCEQ beyond expiration of a Contract Period or a Renewal Period for up to one hundred eighty (180) days (Extension Period) during which the parties may renew. Renewals and extensions do not extend any other deadlines or due dates other than the expiration of the Contract Period. Any reference to a period of the Contract includes the Extension Period.

6.4. **Contract Conditions Continue.** Unless otherwise agreed to by the parties, the Contract Documents effective at the end of the Contract Period, or any other period during which the Contract is effective, continue without change through any subsequent effective period of the Contract.

ARTICLE 7. NOTICE TO PROCEED

7.1. The PERFORMING PARTY understands, and agrees to, the provisions of this Article.

7.1.1. ***The TCEQ's funding for the reimbursement grant described in this Contract 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 agreements will receive reimbursement and will issue a Notice to Proceed for any selected project.

7.1.2. 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.

7.1.3. 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 application and doing so will further the objectives of the NTRD 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.

7.1.4. 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 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 approved Grant Application, Grant Activities, 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 TCEQ under the Appropriations Act (Senate Bill 1) of the 81st Texas Legislature and expenditure is authorized by Chapter 387, 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.

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, the TCEQ will provide a minimum of thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate in accordance with Article 19 of this Grant Agreement.

ARTICLE 11. REPRESENTATIONS

The PERFORMING PARTY hereby ratifies and attests to all representations in the Approved 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 TCEQ and 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 Research & Development (NTRD) Special Conditions (all).
- 12.1.4. The TCEQ-Approved Grant Budget.
- 12.1.5. The Insurance Section.
- 12.1.6. The General Conditions for New Technology Research & Development Grants.
- 12.1.7. The TCEQ Request for Grant Applications, attached herein as Exhibit 1.
- 12.1.8. The TCEQ-Approved Grant Application, Part A including Cover Information, Applicant Information, the PERFORMING PARTY'S signed Approved Application Certifications and Assurances, and Designation of Grant Officials and Access to Records Location, attached herein as Exhibit 2.
- 12.1.9. The PERFORMING PARTY'S Commercialization Plan, attached herein as Exhibit 3.
- 12.1.10. 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.
- 12.1.11. The *New Technology Research & Development Grants: Guidelines for Grants*, attached herein as Exhibit 4.

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

12.3. The information and data provided in the original application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Approved Application (a Contract Document) and hereby ratifies, adopts, and agrees to all such alterations.

12.4. 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 in the Approved Application. Costs must be included in the Approved Application or any amendment to this agreement which has been accepted by both parties to be eligible for reimbursement. Determinations of eligibility for reimbursement are solely within the discretion of the TCEQ, provided, however, the PERFORMING PARTY maintains the right thereafter to establish the allowability of any such item of cost which will be determined by the adherence of the PERFORMING PARTY to the requirements of the Scope of Work and the terms and conditions of this Grant Agreement.

Procurement

13.2. FOR EDUCATIONAL INSTITUTIONS and NON-PROFIT ORGANIZATIONS: the requirements of the OMB Circular A-110 will apply to this Grant Agreement. FOR STATE AND LOCAL GOVERNMENTS: the requirements of UGMS and OMB Circular A-102 will apply to this Grant Agreement.

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;

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, the applicable OMB Circular (A-102 or A-110) or UGMS (if applicable) addressing requirements for non-competitive procurement (this Grant) are applicable. For non-competitively procured items, PERFORMING PARTY will comply with the applicable OMB Circular (A-102 or A-110) and UGMS (if applicable).

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 unless modified by amendment to this Agreement which has been approved by both parties.

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;
- 13.8.3. amounts in the charges which the vendor/contractor intends to return to PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value;
- 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, applicable OMB Circular (A-21 or A-122), or UGMS (if applicable), the TCEQ *Allowable Expenditure Guidelines*, state agency rules, and all applicable state and federal laws.

13.11. If travel costs are authorized in the Approved Application, 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. The decision to allow reimbursement of any indirect charges rests with TCEQ. Reimbursement of any indirect costs will be authorized only if TCEQ determines that allowing indirect costs (in whole or in part) will significantly enhance the project's benefit to the state in terms of the schedule for or effectiveness of commercialization, or similar factors directly related to the statutory objectives of the program.

13.12.1. If reimbursement of any indirect costs is authorized by TCEQ, the PERFORMING PARTY shall comply with the UGMS or the applicable OMB Circular; PERFORMING PARTY'S Facilities and Administrative Cost Rate Agreement as negotiated with their cognizant federal agency; all applicable cost principles from 30 TAC 14.10; and the TCEQ Allowable Cost Principles. The following requirements apply:

13.12.1.1. The PERFORMING PARTY shall maintain all records related to indirect rate for inspection or audit by the TCEQ and will submit records to TCEQ within 30 days of request.

13.12.1.2. The reimbursable indirect rate will be no more than 15%. If the PERFORMING PARTY'S actual indirect rate is less, the reimbursable indirect rate shall be reduced to the actual indirect rate, as defined in section 13.12.2.2.

13.12.2. The audited rate is determined by the following process:

13.12.2.1. Initially, the PERFORMING PARTY will utilize as a provisional rate either:

13.12.2.1.1. the indirect rate approved by the PERFORMING PARTY'S federal cognizant agency or state coordinating agency within the past 24 months, or

13.12.2.1.2. If the PERFORMING PARTY does not have an assigned federal cognizant agency or a designated state coordinating agency or if no rate is approved by the designated oversight agency within the past 24 months, the TCEQ and the PERFORMING PARTY may negotiate a provisional indirect rate in accordance with Article 13.12.1 above. A final audited rate determined under a previous contract between the parties for similar activities may be used as the provisional rate in this Contract.

13.12.2.2. A final indirect rate will be established based on the actual allowable costs, as provided in the applicable OMB Circular, for the period as established by an audit (audit

period) conducted by the PERFORMING PARTY'S assigned federal cognizant agency and submitted to the PERFORMING PARTY. The cost of the indirect rate audit is accounted for within the indirect rate, not as a direct cost. If the indirect rate audit is not provided to TCEQ within 180 days of the close of the PERFORMING PARTY'S Fiscal Year, the default indirect rate set out below will apply.

13.12.2.3. In the event, prior to the termination date of this Contract, an audited indirect rate which is different from the initial provisional indirect rate set forth in this Article is accepted by TCEQ, the TCEQ and the PERFORMING PARTY may negotiate a new Reimbursement Budget and incorporate the final indirect rate into the Contract by way of an amendment.

13.12.2.4. The provisional rate will be included in the authorized Reimbursement Budget and shall remain in effect subject to determination of a final indirect rate which is based on an audit of the contract period, performed by PERFORMING PARTY'S assigned federal cognizant agency, which specifically examines and reports the indirect rate for the PERFORMING PARTY'S accounting period(s) covered under this Contract.

13.12.2.5. The PERFORMING PARTY agrees to reimburse the TCEQ any overpayments received as a result of this provisional rate being higher than the approved final audited indirect rate for the period under consideration. Nothing in this section, or the results of any indirect cost audit or final indirect rate approval, shall cause the TCEQ to owe the PERFORMING PARTY more than the Maximum Reimbursement Amount or result in a reduction in the Grant Activities to be performed under the Contract.

13.12.3. **Default Indirect Cost Rate.** Unless a provisional rate is submitted and is accepted by TCEQ, the reimbursement rate for indirect costs is 10% of Total direct costs as defined in 13.12.4 below. No audit of this rate will be required by the TCEQ.

13.12.4. The reimbursable indirect rate will be no more than 15%. If PERFORMING PARTY'S actual indirect rate is less than 15%, the reimbursable indirect rate shall be reduced to the actual indirect rate. For purposes of this award, the indirect rate is expressed as a percentage of Total direct costs, where Total direct costs do not include subcontracting costs.

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 Application, including any Supplemental Activity Application Forms, 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. 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, reasonably request additional evidence concerning costs.

Additional Criteria for Reimbursement

13.16. With prior written notice to the PERFORMING PARTY, the TCEQ may at any time, in the best interests of the state, establish reasonable additional criteria and requirements for reimbursement of costs. Such additional criteria shall be consistent with the requirements of the UGMS or the applicable OMB Circulars and the terms and conditions of this Agreement.

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, 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 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, reasonably 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.

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 included in the Approved 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 Agreement. 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. 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 Approved Application, including any supplemental conditions agreed to in writing by the parties.

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 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 & 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. 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 Project Life.

Proof of Insurance

14.9. The PERFORMING PARTY shall supply proof that it is insured for project completion/replacement and liability. Unless prohibited by law, project completion/replacement insurance shall be sufficient to cover lost equipment and time/effort in case of a disaster. Unless prohibited by law, Liability insurance shall cover both the PERFORMING PARTY and indemnify the State of Texas against any liability in amounts (minimum limits) set out in the Insurance Section of this Contract. The TCEQ may request proof of insurance upon award or anytime during the grant period. Governmental entities may use an established self-insurance program to satisfy this requirement. For New Technology Projects, this insurance must be maintained for the Contract Period. 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. By stating at any place in this Contract that any particular noncompliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.

14.9.1. Unless prohibited by law, the PERFORMING PARTY shall require its subcontractors to obtain and maintain insurance during the Contract Term 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 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. Directors and Officers. Unless prohibited by law, PERFORMING PARTY will purchase and maintain insurance or equivalent insurance coverage or other financial assurance sufficient to protect the interests of the state in the event of an actionable act or omission by a director or officer of the Performing Party.

14.9.3. The PERFORMING PARTY shall be responsible for ensuring that all required insurance has been issued and continues in force throughout the entire term of this grant. The PERFORMING PARTY shall maintain evidence of compliance with insurance requirements of its subcontractors including completed TCEQ insurance certificates, if applicable. The PERFORMING PARTY agrees to provide TCEQ with additional documentation of compliance, upon request, including declarations pages and copies of insurance policies.

14.9.4. TCEQ reserves the right to require additional insurance coverage during the term of this Contract provided such request is reasonable and consistent with the laws of the State of Texas.

14.9.5. Property Replacement Coverage. Unless otherwise expressly agreed by the TCEQ, the PERFORMING PARTY must obtain and maintain a policy of insurance as defined in Article 14.9 for the term of the Contract which is sufficient to provide for replacement of Grant Equipment which is lost, stolen, or irreparably damaged. Governmental entities may use an established self-insurance program to satisfy this requirement. 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. By stating at any place in this Contract that any particular noncompliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.

14.9.5.1. The PERFORMING PARTY must maintain the property insurance defined in Article 14.9 for the repair or replacement of any Grant Equipment for the term of the Contract as required by the Contract Documents, unless otherwise expressly agreed by the TCEQ.

14.9.5.2. Any insurance proceeds received by or on behalf of the PERFORMING PARTY under an insurance policy due to the damage or destruction of any Grant Equipment must be utilized to acquire equivalent or better Grant Equipment or be paid to the TCEQ.

14.10. Upon the occurrence of a repairable malfunction of or damage to Grant Equipment, 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 Project Life, 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 such period of time is delayed through no fault of PERFORMING PARTY. Replacement Grant Equipment is subject to all the requirements of the 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 TCEQ describing any revisions to the plan and time line.

ARTICLE 15. 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 pertinent to performance of the Grant Activities and requirements of the Contract, including the Contract or amendments thereto. All financial records will be maintained in accordance with generally accepted accounting principles, the applicable OMB Circulars, 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, in accordance with Texas Government Code Chapter 321, to all the material including bank statements and records by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.

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.

15.3. 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 the ending date of the Contract. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the 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. 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. PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Contract Documents. PERFORMING PARTY must at all times maintain good discipline and order on the location of Grant Activities.

Intellectual Property Requirements

15.7.1. Royalties and Patent Fees. PERFORMING PARTY shall pay all license fees and royalties and assume all costs incident to the use or possession of the Grant Technology (the term "Grant Technology" is limited to only that technology which is developed with the use of funding from this Contract) or the incorporation in the Grant Technology of any Intellectual Property.

15.7.2. Pre-Existing Intellectual Property Rights. TCEQ acknowledges and agrees that the PERFORMING PARTY owns all intellectual property rights in and to the patents, copyrights, trademarks, and other rights for the inventions, materials, and technologies developed by PERFORMING PARTY prior to commencement of PERFORMING PARTY'S work hereunder. TCEQ also acknowledges and agrees that PERFORMING PARTY owns the Intellectual Property disclosed as part of PERFORMING PARTY'S proposal to TCEQ. As such, TCEQ claims no title or interest in such Pre-Existing Materials, except as otherwise granted in Section 15.7.4 below.

15.7.3. Disclosure of Intellectual Property Produced during the Grant Activities. PERFORMING PARTY shall promptly notify TCEQ of all Intellectual Property, which PERFORMING PARTY or PERFORMING PARTY'S employees, subcontractors, or subcontractor's employees may *produce*, either solely or jointly with others, during the course of the Grant Activities. In addition, PERFORMING PARTY shall promptly notify TCEQ of all Intellectual Property to which PERFORMING PARTY may acquire rights in connection with the Grant Technology. 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, PERFORMING PARTY shall supply such additional information as TCEQ may request.

15.7.4. Grant of License. With respect to such Intellectual Property as is (1) incorporated in the Grant Technology (other than Intellectual Property for which TCEQ already possesses equal or greater Intellectual Property Rights by virtue of this Contract or otherwise), (2) developed by PERFORMING PARTY or PERFORMING PARTY'S employees, subcontractors, or subcontractor's employees during the course of performing the Grant Activities, or (3) specifically identified in the Special Conditions as Intellectual Property to which Intellectual Property Rights are granted pursuant to this paragraph, PERFORMING PARTY hereby grants to 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 TCEQ'S non-commercial purposes.

15.7.5. Modification; Derivative Works. TCEQ shall have the right, in its own discretion, to independently modify any Intellectual Property to which license is granted herein for TCEQ'S own purposes and use, through the services of its own employees or independent contractors. TCEQ shall own all Intellectual Property Rights to such modifications. PERFORMING PARTY shall not be responsible for or liable for any modifications by TCEQ or TCEQ'S employees or independent contractors of Intellectual Property licensed to TCEQ by PERFORMING PARTY. PERFORMING PARTY shall not incorporate any such modifications into its Intellectual Property for distribution to third parties unless it first obtains a license from TCEQ.

15.7.6. PERFORMING PARTY shall comply with all Laws and Regulations relating to Intellectual Property. PERFORMING PARTY represents to TCEQ that PERFORMING PARTY will not infringe any Intellectual Property Right of any third party. PERFORMING PARTY further represents to 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. PERFORMING PARTY represents 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 represents 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 PERFORMING PARTY. Except as permitted in the Contract, 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 TCEQ for which title has not yet passed to TCEQ, without the prior written consent of TCEQ. PERFORMING PARTY represents to 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 TCEQ, or reserved by TCEQ, pursuant to the Contract.

15.7.7. PERFORMING PARTY expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements under section 2157.005 of the Government Code, relating to accessibility by persons with visual impairments. Accordingly, the PERFORMING PARTY represents to TCEQ that the technology provided to the TCEQ for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

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

Permits

15.8. 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

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

Data and Publicity

15.10. The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities. Neither party shall make reference to the other in a press release or any other written statement in connection with this Contract, if it is intended for use in the public media, without the prior written approval of the other party. Upon prior written notice, PERFORMING PARTY shall have the right to acknowledge the support of TCEQ for the Grant Activities under this Contract in scientific or academic publications or other scientific or academic communications without prior approval. TCEQ shall have the right to release information that PERFORMING PARTY has received grant funds from TCEQ under this Agreement. Nothing herein shall be construed as prohibiting PERFORMING PARTY or TCEQ from reporting on this study to a governmental agency or otherwise identifying the study as required by law.

15.11. 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
through a Grant from the Texas Commission on Environmental Quality***

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

Safety and Protection

15.13. 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.

15.14. Technology produced under this contract will not present a dangerous condition or otherwise endanger the health and safety of the public.

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

Lobbying Activities

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

ARTICLE 16. TCEQ'S RESPONSIBILITIES

16.1. The TCEQ will not supervise, direct or have control or authority over, nor be responsible for, 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 PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the work. Except for failures which are directly caused by the willful or deliberate actions of TCEQ, TCEQ will not be responsible for PERFORMING PARTY'S failure to perform or furnish the work in accordance with the Contract.

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, to be made available to the PERFORMING PARTY by the TCEQ. Requests for reimbursement shall be submitted no later than thirty (30) days after the end of the billing period in which expenses were paid. Each request shall be accompanied by a properly completed Financial Status Report ("FSR", also referred to as "TCEQ Form 269a") for each activity for which reimbursement is requested. PERFORMING PARTY may attach supplemental documents, including invoices used by PERFORMING PARTY; however, such documents MUST be attached to the properly completed FSR. The request and forms shall be mailed or delivered to:

**Texas Commission on Environmental Quality
Air Quality Implementation Division, MC-204
Implementation Grants Section
PO Box 13087
Austin, TX 78711-3087**

17.2. The Financial Status Reports submitted with a 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.

17.3. 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 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.

17.4. A properly completed Texas Application for Payee Identification Number and Notice of Assignment must be completed and submitted with, or prior to submission of, the first request for reimbursement form.

17.5. If financial incentives are received by the PERFORMING PARTY that directly offset the activity costs being reported, including tax credits or deductions, other grants, or any other public financial assistance, reimbursement under this Contract is limited to only the remaining unreimbursed eligible costs.

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 termination date of this Contract or upon notification of approval by TCEQ of the final Progress Report.

17.7. All request for reimbursement forms and accompanying Financial Status Report 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 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 and based solely upon the requirements under the Grant Activities and terms and conditions of this Agreement.

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 Documents.

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. To be eligible for reimbursement under this Contract, a cost must have been incurred and paid during the time period of the contract. The TCEQ may refuse to reimburse, or revoke payment for, expenditures for which the PERFORMING PARTY submits a voucher and/or Financial Status Report more than ninety (90) days after the termination date of this Contract.

17.13.1. The PERFORMING PARTY must receive final written approval by TCEQ of deliverables and reports delivered in accordance with the requirements of the Grant Activities prior to the termination date of this Contract.

17.14. **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, a fully completed and legible:

17.14.1. Progress Report;

17.14.2. Financial Status Report (TCEQ 269a Form);

17.14.3. Supplemental TCEQ 269a (A-D) forms for those budget categories with expenses; and

17.14.4. Release of Claims (PERFORMING PARTY only and only with final reimbursement request).

17.15. **Financial Status Report (TCEQ 269a) Form:** Each filed TCEQ Financial Status Report shall indicate, for each budget category the PERFORMING PARTY'S or subcontractor's project expenditures for the period in question, the cumulative expenditures with respect to each budget category, and the balance remaining in each budget category following reimbursement of the amount being requested. A Financial Status Report is required even if no expenses were incurred during a reporting period, or quarter.

17.16. **Supplemental TCEQ 269a(A-D) Forms:** The forms 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.

17.17. **Historically Underutilized Business (HUB):** The PERFORMING PARTY will use its best efforts to provide opportunities for HUBs to participate in subcontracting under this Contract. PERFORMING PARTY must notify 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.

17.18. The PERFORMING PARTY must submit requests for reimbursement in accordance with the conditions in the Contract Documents.

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

17.19.1. be legible;

- 17.19.2. identify the specific piece of equipment received or the services provided;
- 17.19.3. clearly identify the vendor or subcontractor who provided the equipment or services (the PERFORMING PARTY shall require all subcontractors to use the Financial Status Report forms and Request for Reimbursement forms to file for reimbursement of services and equipment); and
- 17.19.4. confirm the reimbursable amount listed on the form.

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 TCEQ. Although issued purchase orders and/or invoices marked "received/paid" 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 a canceled check, 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.

17.20. *Vendor or Subgrantee Services Not Procured Using Price Competition:* Information detailing the expenses incurred, as outlined in the 269a and 269a (A-D) 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, 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 TCEQ upon request.

17.21. All requests for reimbursement of expenditures that fall within either the **Personnel/Salary** or **Travel** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor on Supplemental Form 269a-A.

17.21.1. **Personnel/Salary:** No supporting documentation is required to be attached to Supplemental Form 269a-A with respect to reported "Personnel/Salary" expenditures in order to receive reimbursement. The PERFORMING PARTY or subcontractor is expected to maintain time sheets or personnel payment records that can serve to verify the total, overall hours of staff time being directly billed to this Contract.

17.21.2. **Travel:** With respect to employee travel, all costs listed on Form 269a-A 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 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 either the **Equipment** or **Contractual** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor on Supplemental Form 269a-B. In addition, the PERFORMING PARTY or subcontractor shall attach, for each reimbursable cost listed on Supplemental Form 269a-B, 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 the reimbursement of expenditures that fall within either the **Supply** or **Other** categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor on Supplemental Form 269a-D. 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 on Supplemental Form 269a-D, documentation as specified in the *Required Documentation* paragraph of this section.

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

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

17.26. The final payment request must be signed by an authorized representative of the PERFORMING PARTY.

17.27. Documentation of Matching Funds Expenses. The PERFORMING PARTY shall maintain accurate and detailed documentation to evidence the payment of expenses that are paid with matching funds. 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.

ARTICLE 18. PROGRESS REPORT

18.1. During the Contract Period, the PERFORMING PARTY shall submit to the TCEQ within fifteen (15) days following the end of each calendar month a properly completed Progress Report describing the Grant Activities completed during the previous month.

18.2. A final Progress Report, indicating in the appropriate box that it is the final report, shall be submitted to the TCEQ after all Grant Activities are completed, and by no later than thirty (30) days following the termination date of this Contract.

ARTICLE 19. TERMINATION

19.1. Unless termination occurs by action taken by the TCEQ under this Article, this Contract will terminate upon the earlier of the expiration of the contract period or upon full performance of all requirements contained herein.

19.2. This Contract may be terminated in whole or in part by the TCEQ for cause by the PERFORMING PARTY, 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 thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and a reasonable opportunity for the PERFORMING PARTY to correct and cure any default of such noncompliance prior to termination.

19.3. This Contract may be terminated in whole or part upon seven (7) days written notice 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, as determined by the TCEQ in its sole discretion. PERFORMING PARTY may terminate this Contract upon seven (7) days notice if circumstances beyond its control preclude continuation of the Grant Activities.

19.4. 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 sole discretion of the TCEQ, the TCEQ will provide a minimum of thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

19.5. 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.

19.6. If TCEQ terminates this Contract for convenience or because of *force majeure*, PERFORMING PARTY shall be paid for goods and services provided and costs incurred and non-cancelable commitments entered into prior to termination. In accordance with this Contract, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under this Contract. THIS IS NOT AN ENTITLEMENT.

19.7. If, during the Contract Period, 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 by providing ten (10) days written notice to the TCEQ.

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

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

19.10. TCEQ May Suspend Grant Activities. At any time and without cause, TCEQ may suspend the Grant Activities or any portion thereof by notice in writing to PERFORMING PARTY which will fix the date on which Grant Activities will be resumed. PERFORMING PARTY shall resume the Grant Activities on the date so fixed. 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 PERFORMING PARTY requests such extensions in writing within fifteen (15) days of TCEQ'S notice.

ARTICLE 20. INDEMNIFICATION

FOR NON-PROFIT ORGANIZATIONS ONLY: 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.

FOR GOVERNMENTAL ENTITIES: Neither party waives any sovereign immunity to which it is entitled by law.

ARTICLE 21. TITLE TO AND MANAGEMENT OF PROPERTY AND EQUIPMENT

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.

21.1. 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.

21.2. 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.

21.2.1. 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.

21.2.2. 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.

21.2.3. Certain types of equipment are classified as "controlled assets" and are subject to annual revision. 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. Firearms shall be maintained on the PERFORMING PARTY'S or subgrant recipient's inventory system irrespective of cost, and the following equipment with costs of more than \$500 shall be maintained on the inventory system: (1) stereo systems, (2) still and video cameras, (3) facsimile machines, (4) VCRs and VCR/TV combinations and (5) cellular and portable telephones.

21.3. 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.

21.4. The PERFORMING PARTY agrees that if a determination is made that any property acquired with funds provided under this Contract with a current per-unit fair market value of \$5,000 or more is no longer needed for the originally authorized purpose, the TCEQ has the right to require disposition of the property by the PERFORMING PARTY or a subgrant recipient in accordance with the provisions of this Article.

21.5. When, during the useful life of property acquired with grant funds under this Contract by the PERFORMING PARTY and with a current per-unit fair market value of \$5,000 or more, the property is no longer needed for the originally authorized purpose, the PERFORMING PARTY agrees to request disposition instructions from the TCEQ. Disposition instructions shall solicit, at a minimum, information on the source and amount of funds used in acquiring the property, the date acquired, the fair market value and how the value was determined (e.g., by appraisal, bids, etc.), and the proposed use of the proceeds. In cases where the PERFORMING PARTY fails to take appropriate disposition actions, the TCEQ may direct the PERFORMING PARTY to take excess and disposition actions. The disposition instructions may provide for one of the alternatives as set forth in this Section.

21.5.1. Retain title, sell, or otherwise dispose of with no obligation to compensate the TCEQ.

21.5.2. Retain or Sell the property, with compensation to the TCEQ in accordance with applicable State of Texas law. If Performing Party elects to retain the property, the amount due will be computed by applying the percentage of state-funded participation in the cost of the original purchase to the fair market value of the property. If Performing Party elects to sell the property, the amount due will be calculated by applying the TCEQ'S percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and

fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When the PERFORMING PARTY is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

21.5.3. Transfer title to the TCEQ or to a third party designated/approved by the TCEQ. If the PERFORMING PARTY participated financially in the original purchase of the property, the PERFORMING PARTY may be authorized payment from the receiving party of an amount calculated by applying the percentage of the participation in the original purchase of the property to the current fair market value of the property.

21.6. 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.

21.7. Real property must be maintained on an Inventory and is subject to applicable OMB Circulars. 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 and Financial Status Report shall include a signed and executed Release of Claims, releasing all claims for payment of any funds due and payable by the TCEQ, upon TCEQ's payment of the final request for reimbursement.

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 and mutually agreed to by both parties. 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 ("substandard performance" is defined as not in conformance with the terms of this Agreement.):

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; and/or

24.1.6. In accordance with Article 19, 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. TCEQ may avail itself of any remedy or sanction provided in this contract or in law to recover any losses rising 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.

24.3. In the event the PERFORMING PARTY fails to perform specific Grant Activities, at the discretion of the TCEQ, the PERFORMING PARTY will return such specific funds not in conformance with the work scope of the specific Grant Activities paid under the terms of this Contract to the TCEQ.

ARTICLE 25. STANDARDS FOR 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 (an institution of higher education) the PERFORMING PARTY'S performance during the Contract.

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

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

25.1.3. Reports and Administrative & Financial Operations. Standard: 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: 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 and agreed to by both parties.

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. PERFORMING PARTY fully complied with the Grant Activities or scope of work on a consistent basis.

25.2.2. Satisfactory Performance. PERFORMING PARTY'S performance complied with the Grant Activities or scope of work, with only typical errors, delays, or other problems that needed to be corrected.

25.2.3. Marginal Performance. PERFORMING PARTY'S performance with the Grant Activities or scope of work 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. PERFORMING PARTY'S performance with the Grant Activities or scope of work 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.

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 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 and indemnifications 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. 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 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 TCEQ and 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 TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to 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 law of the State of Texas shall apply to this Contract.

- End of General Conditions -

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. Joseph Walton MC-206
Texas Commission on Environmental Quality
Air Quality Planning & Implementation Division
P.O. Box 13087
Austin, TX 78711-3087

Telephone No.: (512) 239-4143

Facsimile No.: (512) 239-4410

Physical Address:

Mr. Joseph Walton MC-206
Texas Commission on Environmental Quality
Air Quality Planning & Implementation Division
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

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)

Telephone No.:

Facsimile No.:

Physical Address:

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

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 -

NEW TECHNOLOGY RESEARCH & DEVELOPMENT CONDITIONS
(These NTRD Conditions apply to all New Technology Research and Development Grants)

The Performing Party agrees to adhere to these Special Conditions.

ARTICLE 1. DEFINITIONS

1.1. *Affected County* - See list of affected counties in TX Health and Safety Code, Chapter 386.001(2).

1.2. *After-Market Part/Equipment* - A piece/part that is physically added to a vehicle or equipment after the original manufacture.

1.3. *Commercialization Plan* - Plan for bringing the proposed technology to the open market for public use in the State of Texas.

1.4. *Eligible Activities* - The activities which are eligible for funding under the New Technology Research and Development Program under Health & Safety Code ch. 387.

1.5. *Emission Factors* - The amount of emissions that are associated with a particular engine family, vehicle or equipment type.

1.6. *Emissions Inventory* - The inventory used in the modeling supporting photochemical modeling for an affected area.

1.7. *Grant Equipment* - the equipment, real property, with a per-unit cost of \$5,000 or greater for which the cost of purchase, lease, or utilization is reimbursed by the TCEQ under the Contract. The term includes replacements for the Grant Equipment which is lost, stolen, or irreparably damaged.

1.8. *Motor vehicle* - A self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Texas Transportation Code, Chapter 502.

1.9. *Non-road equipment* - A piece of equipment, excluding a motor vehicle or on-road heavy-duty vehicle, that is powered by a non-road engine, including: non-road and non-recreational equipment and vehicles; construction equipment; industrial equipment; mining equipment; locomotives; marine vessels; and other high-emitting engine categories.

1.10. *Non-road engine* - An internal combustion engine that is in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition, or a piece of equipment that is intended to be propelled while performing its function, or a piece of equipment designed to be capable of being carried or moved from one location or another. In general an engine that will stay at a single site for at least a full year will be considered a stationary engine, rather than a non-road engine. The TCEQ will make the final determination of the type of engine.

1.11. *On-road heavy-duty vehicle* - An on-road motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.

1.12. *Optimum Performance* -the level of performance at which Grant Equipment functions in order to achieve the anticipated results.

1.13. *Person* - An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

1.14. *Project Life* - the period established by the TCEQ, based on the longest-running Grant Activities under this Contract, which is also the Contract Period.

1.15. *Qualifying fuel* - Any liquid or gaseous fuel or additive that is ultimately dispensed into a motor vehicle, on-road heavy-duty vehicle, non-road equipment, or a stationary engine that provides reductions of nitrogen oxides emissions, as determined by the TCEQ, beyond reductions required by state or federal law, rule, regulation, memorandum of agreement, or other binding document.

1.16. *Repower* - replacement of an existing diesel engine with a different engine, according to the criteria of the *Guidelines for the Emissions Reduction Incentive Grants*.

1.17. *Retrofit* - To equip an engine and/or fuel system with new emissions-reducing parts or technology after the manufacture of the original engine and/or fuel system.

1.18. *Stationary Engine* - An internal combustion engine used either in a fixed application or in a portable (transportable) application in which the engine will stay at a single site for at least a full year (12 consecutive months). The TCEQ will make the final determination of the type of engine.

1.19. *Testing Protocol* - A written document detailing how, when and where testing of new technologies will be conducted. Potential applicants should review EPA's criteria for testing new technologies.

1.20. *Verification* - EPA or California Air Resources Board (CARB) verify the emission reductions from new technologies.

ARTICLE 2. GRANT EQUIPMENT USAGE

As a condition of receiving grant funds, the PERFORMING PARTY agrees to fully implement the Grant Activities and utilize the Grant Equipment during the entire Project Life according to the standards set forth in this Agreement and as required under the Grant Guidelines.

ARTICLE 3. PRIOR APPROVAL OF SUBCONTRACTS

Prior to entering into any subcontracts not listed in Part E., Section 7, Detailed Contractual Expenses of the Approved Application, the PERFORMING PARTY shall submit the following documents to TCEQ for approval: the subcontractor's scope of work, budget and letter of commitment from each subcontractor listed. The PERFORMING PARTY shall not execute a subcontract until receiving TCEQ's prior written approval.

ARTICLE 4. PROJECT STATUS REPORT

The PERFORMING PARTY shall provide the TCEQ copies of any interim status reports as indicated in the requirements found in this Contract.

ARTICLE 5. FINAL PROJECT REPORT

5.1 The completion of the project and fulfillment of the provisions of this Contract shall be contingent upon acceptance by the TCEQ of the Final Project Report as required in this Contract. The PERFORMING PARTY agrees to address any of TCEQ'S comments and questions regarding the project activities and results contained in the Report, prior to the TCEQ'S acceptance and approval of the Final Project Report.

ARTICLE 6. ELIGIBLE ACTIVITIES

6.1 Activities that may be eligible under this program are outlined below. Vehicles and equipment used primarily for competition or recreational purposes are not eligible for funding under any of the project categories. The TCEQ may more narrowly define or limit the types of eligible activities for a particular funding period.

6.2. Activities eligible for funding will be projects for the development; verification and/or certification; demonstration; and/or deployment of:

6.2.1. Retrofit and add-on technologies to reduce emissions from the existing stock of vehicles targeted by the Texas Emissions Reduction Plan, for example:

a) **On-Road Heavy-Duty Vehicles (8,500 lb or more) such as:**

- 1) 18 wheel vehicles
- 2) Dump trucks
- 3) Buses
- 4) Garbage trucks
- 5) Delivery equipment

b) **Non-Road Equipment Such As:**

- 1) Agricultural
- 2) Lawn and garden
- 3) Construction
- 4) Ground support equipment at ports

c) **Marine Vessels**

d) **Locomotives**

e) **Stationary Engines**

6.2.2. Advanced technologies for new engines and vehicles that produce very-low or zero emissions of oxides of nitrogen, including stationary and mobile fuel cells;

- 6.2.3. Advanced technologies for reducing NO_x and other emissions for stationary sources;
- 6.2.4. Field validation of innovative technologies that reduce emissions of NO_x and other emissions and require demonstration of viability for full commercial acceptance; and
- 6.2.5. The TCEQ may consider technology projects that would allow qualifying fuels to be produced from energy resources in Texas, with preference given to projects involving otherwise unusable energy resources in this state and producing qualifying fuels at prices lower than otherwise available, and low enough to make projects to be funded under the program economically attractive to local businesses in the area for which the project is proposed.

ARTICLE 7. ADDITIONAL REQUIREMENTS

7.1. An activity is not eligible if it is required by state or federal law, rule, regulation, memorandum of agreement, or other binding document.

7.2. Information on testing protocols must be included that demonstrates development with consideration of a broad range of interests (the original equipment manufacturer, the developer of the new technology, testing facilities, potential manufacturers or installers of the new equipment, etc.) and about how the test will be conducted, developed, and approved (e.g., by EPA or CARB).

7.3. Testing done without a protocol previously approved in writing by TCEQ is not eligible for reimbursement.

7.4. The PERFORMING PARTY must complete the testing protocols in accordance with the dates provided in the Scope of Work in the Approved Application.

7.5. The PERFORMING PARTY must identify and address in detail prior to commercialization any aspects of its technology which may affect the original equipment manufacturer warranty.

7.6. The TCEQ may, at its discretion, require testing to demonstrate a technology's emissions reduction potential prior to authorizing further activity under this grant. Such testing is eligible for reimbursement.

7.6.1. Testing must be performed in accordance with Approved Protocols provided in the Scope of Work in the Approved Application.

Marketable Emissions Credit

7.7. The restrictions on marketable emissions credits specified in Section 1.6(b) of the Request for Applications apply only to equipment which was actually funded through a grant under this program. Any equipment using technology which was developed using funds from this grant program, in whole or in part, may be used to generate marketable credits so long as the particular piece of equipment was not funded under this program. If the particular piece of equipment was funded under this grant program, then any marketable credit generated by the use of that piece of equipment must be transferred to the State. However, TCEQ may permit an owner or operator to retain such a credit if TCEQ determines that allowing the owner or operator to retain the credit serves a public purpose and is in the best interest of the State.

7.7.1. An activity involving a new emission reduction measure that would otherwise generate marketable credits under state or federal emission reduction credit averaging, banking, or trading program is not eligible for funding under this program unless:

7.7.1.1. the reductions are permanently retired, and

7.7.1.2. the activity includes the transfer of the reductions that would otherwise be marketable to the state implementation plan or the owner or operator as provided under the Texas Health and Safety Code, Chapter 386.

7.8. Any cost incurred prior to the issuance of a Notice to Proceed will not be considered as eligible for funding. 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 application and doing so will further the objectives of the NTRD 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.

7.9. The PERFORMING PARTY must provide detailed information on any risks or increase of pollutants and/or increase of health and safety risks created by the technology being proposed and further provide a detailed plan for addressing the conditions.

7.10. In the event that PERFORMING PARTY causes or creates an increase of pollutants to an unacceptable level and/or increase of health and safety risks, TCEQ shall have the right to terminate this Contract.

- End of New Technology Research & Development Conditions -

NTRD SPECIAL CONDITIONS FOR TERP-ELIGIBLE PROJECTS

(These Special Conditions apply to all NTRD Grant Agreements for TERP-Eligible Projects)

ARTICLE 1. COMMERCIALIZATION OF NEW TECHNOLOGY PROJECTS

1.1. PERFORMING PARTY must provide reasonable evidence that the project has a substantial commercialization plan which identifies how PERFORMING PARTY intends to offer the technology for commercial sale within Texas as soon as practicable after the date that funding is requested.

1.2. The TCEQ will not require the repayment of grant money except in the case of non-compliance with grant requirements. It is a grant requirement that a PERFORMING PARTY proceed in good faith with all steps towards commercialization outlined in its Approved Application, and all other reasonable steps necessary to ensure successful commercialization of its project.

1.3. PERFORMING PARTY shall submit monthly commercialization progress reports to monitor a project's progress against its commercialization plan. These reports shall be in a format acceptable to TCEQ, and (if acceptable to TCEQ), may be combined with other progress reports required under this Agreement.

1.4. TCEQ may audit a PERFORMING PARTY'S progress at any time during the grant.

1.5. If TCEQ determines that a PERFORMING PARTY is not making sufficient progress towards the goal of commercialization, then TCEQ shall notify PERFORMING PARTY of its concerns. TCEQ may require a revised commercialization plan to demonstrate how commercialization will be achieved given the current circumstances of the project. The revised commercialization plan is due within 14 days unless TCEQ authorizes a longer period in its notice.

1.6. If, after reviewing the revised commercialization plan, TCEQ determines in its reasonable judgment that commercialization is no longer likely, or the PERFORMING PARTY so advises the TCEQ, then TCEQ shall notify PERFORMING PARTY in writing that commercialization is no longer considered likely. Within fourteen days of receipt of such notice, PERFORMING PARTY shall submit a detailed written response to TCEQ. This response must include at least one the following explanations:

1.6.1. Why the project failure should not be attributed to the PERFORMING PARTY'S failure to follow its commercialization plan and to take all other reasonable steps necessary to ensure successful commercialization,

1.6.2. Why the PERFORMING PARTY had good cause not to follow its commercialization plan,

1.6.3. Why the PERFORMING PARTY disputes TCEQ'S determination that commercialization is no longer likely.

1.7. After reviewing the PERFORMING PARTY'S response, TCEQ may take one or more of the following steps:

1.7.1. Excuse repayment of all or part of the grant funds.

1.7.2. Require repayment of all or part of the grant funds from the PERFORMING PARTY, if TCEQ determines in its reasonable judgment that the failure to commercialize was due to PERFORMING PARTY'S failure, without good cause, to proceed in good faith toward commercialization;

1.7.3. Extend the period for commercialization. All requirements for commercialization will apply during the extended period just as they applied during the initial period; or,

1.7.4. Terminate the agreement in whole or in part.

1.8. TCEQ will **not** consider a technology to be commercially available for sale within Texas **until, at a minimum**, the date the technology has been verified or certified by the U.S. Environmental Protection Agency or the California Air Resources Board.

ARTICLE 2. ADDITIONAL REQUIREMENTS FOR TERP-ELIGIBLE PROJECTS

2.1. Activities under this Contract consist of projects for technology which, when commercially available, may be used in projects which are eligible for funding under Tex. Health & Safety Code, Chapter 386, the Texas Emissions Reduction Program (TERP).

2.2. These projects should be commercially available in the state of Texas as soon as practicable after the date that funding is requested, to reduce NOx emissions from heavy duty on-road vehicles and off-road equipment.

ARTICLE 3. DISPOSITION OF HAZARDOUS WASTES

The PERFORMING PARTY shall be solely responsible for the storage, transportation, and disposition of all hazardous substances and hazardous or nonhazardous wastes, and acknowledges that TCEQ is neither the legal generator of any such substances or wastes nor will TCEQ be identified by the PERFORMING PARTY in any waste manifests as a legal generator of any such substances or wastes.

— End of NTRD Special Conditions for TERP-Eligible Projects —

NTRD SPECIAL CONDITIONS FOR OTHER NEW TECHNOLOGIES PROJECTS

(These Special Conditions apply to all NTRD Grant Agreements for Other New Technologies Projects)
(i.e., Non-TERP Eligible Projects)

ARTICLE 1. REQUIREMENTS FOR OTHER NEW TECHNOLOGIES PROJECTS (NOT TERP-ELIGIBLE)

1.1. Activities under this Contract consist of projects for other new technologies which will ultimately have commercial uses which will result in reduced air pollution emissions but which will not be eligible for funding under TERP.

1.2. These are projects which will be commercially viable in Texas as soon as practicable after the date that funding is requested, to reduce air pollutants: Field validation of innovative technologies that reduce emissions of NO_x and other emissions and require demonstration of viability for full commercial acceptance; advanced technologies that reduce emissions from other significant energy sources; or projects that allow qualifying fuels to be produced from energy resources in the State.

Commercialization of New Technology Projects

1.3. PERFORMING PARTY must provide reasonable evidence that the project has a substantial commercialization plan which identifies how PERFORMING PARTY intends to offer the technology for commercial sale within Texas as soon as practicable after the date that funding is requested.

1.4. The TCEQ will not require the repayment of grant money except in the case of non-compliance with grant requirements. It is a grant requirement that a PERFORMING PARTY proceed in good faith with all steps towards commercialization outlined in its Approved Application, and all other reasonable steps necessary to ensure successful commercialization of its project.

1.5. PERFORMING PARTY shall submit monthly commercialization progress reports to monitor a project's progress against its commercialization plan. These reports shall be in a format acceptable to TCEQ, and (if acceptable to TCEQ), may be combined with other progress reports required under this Agreement.

1.6. TCEQ may audit a PERFORMING PARTY'S progress at any time during the grant.

1.7. If TCEQ determines that a PERFORMING PARTY is not making sufficient progress towards the goal of commercialization, then TCEQ shall notify PERFORMING PARTY of its concerns. TCEQ may require a revised commercialization plan to demonstrate how commercialization will be achieved given the current circumstances of the project. The revised commercialization plan is due within 14 days unless TCEQ authorizes a longer period in its notice.

1.8. If, after reviewing the revised commercialization plan, TCEQ determines in its reasonable judgment that commercialization is no longer likely, or the PERFORMING PARTY so advises the TCEQ, then TCEQ shall notify PERFORMING PARTY in writing that commercialization is no longer considered likely. Within fourteen days of receipt of such notice, PERFORMING PARTY shall submit a detailed written response to TCEQ. This response must include at least one the following explanations:

1.8.1. Why the project failure should not be attributed to the PERFORMING PARTY'S failure to follow its commercialization plan and to take all other reasonable steps necessary to ensure successful commercialization,

1.8.2. Why the PERFORMING PARTY had good cause not to follow its commercialization plan),

1.8.3. Why the PERFORMING PARTY disputes TCEQ'S determination that commercialization is no longer likely.

1.9. After reviewing the PERFORMING PARTY'S response, TCEQ may take one or more of the following steps:

1.9.1. Excuse repayment of all or part of the grant funds.

1.9.2. Require repayment of all or part of the grant funds from the PERFORMING PARTY, if TCEQ determines in its reasonable judgment that the failure to commercialize was due to PERFORMING PARTY'S failure, without good cause, to proceed in good faith toward commercialization;

1.9.3. Extend the period for commercialization. All requirements for commercialization will apply during the extended period just as they applied during the initial period; or,

1.9.4. Terminate the agreement in whole or in part.

1.10. The TCEQ will consider whether a technology has been verified or certified by the U.S. Environmental Protection Agency or the California Air Resources Board in determining whether it is commercially available in Texas.

ARTICLE 2. DISPOSITION OF HAZARDOUS WASTES

The PERFORMING PARTY shall be solely responsible for the storage, transportation, and disposition of all hazardous substances and hazardous or nonhazardous wastes, and acknowledges that TCEQ is neither the legal generator of any such substances or wastes nor will TCEQ be identified by the PERFORMING PARTY in any waste manifests as a legal generator of any such substances or wastes.

**— End of NTRD Special Conditions for Other New Technologies Projects
(i.e., Non-TERP Eligible Projects) —**

GRANT ACTIVITIES (SCOPE OF WORK)

GRANT ACTIVITIES

Article 1. Objectives

— End of Grant Activities —

APPROVED GRANT BUDGET

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 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 —

INSURANCE SECTION

Part 1. INSURANCE REQUIREMENTS

The Contractor shall obtain and maintain during the contract term the insurance coverage of the types and in the minimum amount specified below from insurers licensed under the laws of the State of Texas. All insurance policies shall be covered by an insurer with a minimum rating of an “A, IV” based on the A.M. Best Rating Guide. Additional requirements concerning insurance are contained in the Special Terms and Conditions. Cancellation, material change or change in insurance agency or carrier other than for non-payment, shall not be made until thirty (30) days after the authorized agent or the insurer notifies TCEQ in writing by certified mail at the address shown on the bottom the TCEQ Certificate of Insurance. Any change in insurers will necessitate providing the TCEQ a new Certificate of Insurance. Cancellation or material change due to non-payment shall not be made until ten (10) days after the authorized agent or the insurer notifies the Contractor and TCEQ in writing by certified mail at the address shown on the bottom of the TCEQ Certificate of Insurance. Such notice must reference the Solicitation Number for this Contract. The TCEQ Certificate of Insurance must be used. However, an insurance accord form will be accepted that contains all the information requested in the TCEQ Certificate of Insurance.

X	<p>Worker’s Compensation and Employer’s Liability Insurance.</p> <p>Coverage in the following minimum amounts for all personnel furnishing work:</p> <ul style="list-style-type: none"> • bodily injury - by accident, \$100,000.00 per accident; • by disease, \$100,000.00 per employee; and • a per policy aggregate of \$500,000.00 <p>Elective exemptions or coverage through an employee leasing arrangement will not satisfy this requirement.</p>
X	<p>Commercial Automobile Liability Insurance.</p> <p>Coverage 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. The minimum amounts of coverage shall be:</p> <ul style="list-style-type: none"> • \$500,000.00 per person; and • \$500,000.00 per occurrence for bodily injury; • \$1,000,000.00 per occurrence for property damage; • \$1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.
X	<p>Commercial General Liability Insurance.</p> <p>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 as follows:</p> <ul style="list-style-type: none"> • \$500,000.00 per occurrence for bodily injury; • \$1,000,000.00 per occurrence for property damage; • \$1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.
X	<p>Required Additional Policy Provisions. All policies of insurance shall include the following required provisions:</p>

	<p>1) TCEQ will be notified, in writing, of the cancellation or modification of a policy at least thirty (30) days prior to the effective date of the cancellation or modification; 2) where available, TCEQ, and its officers, and employees are named as additional insureds to the Commercial Automobile Liability Insurance and the Commercial General Liability Insurance; 3) waiver of subrogation against the TCEQ, its officers and employees, for bodily injury (including death), property damage or any other loss; the waiver shall be on a form approved by TCEQ; and 4) the Contractor's insurance is primary insurance with respect to the TCEQ, its officers and employees.</p>
	<p>Commercial General Liability additional coverage for Explosion, Collapse and Underground hazards.</p> <p>Contractor must obtain and maintain this coverage which must all be in the same amounts as those for Commercial General Liability listed above.</p>
	<p>Umbrella Liability Insurance. The Contractor and subcontractor must obtain and maintain umbrella liability insurance to provide additional coverage for all liability policies required for this project and endorsed on the TCEQ Certificate of Insurance in an amount not less than \$5,000,000.00 in the aggregate.</p>
	<p>Excess Liability Insurance. The Contractor and subcontractor, must provide excess liability coverage for claims of bodily injury and property damage in excess of the coverage provided by Comprehensive General Liability Insurance and Automobile Liability Insurance in an amount not less than \$1,000,000.00 in the aggregate.</p>
	<p>Professional Liability Insurance.</p> <p>The contractor shall provide such coverage for financial loss resulting from errors, omissions and failure to properly coordinate the plans and specifications of the Work or Contract documents. Professional Liability Insurance shall contain a minimum net coverage of:</p> <ul style="list-style-type: none"> • \$1,000,000.00 plus deductible exclusion, or; • 100% of the total professional gross fees under the contract, whichever is greater. <p>The contractor shall require any subcontractor, which the TCEQ deems necessary, to provide Professional Liability Insurance sufficient for the protection, on the same basis as above, of the portion of the work the subcontractor performs. The compilation of the total insurance coverage required under this paragraph shall remain the responsibility of the contractor.</p>
	<p>Environmental Impairment or Contractors Pollution Liability Insurance. The Contractor and subcontractor, where applicable, shall provide coverage for claims of environmental impairment and pollution caused by the Contractor's or subcontractor's negligence in the execution of work under the Contract. The amount shall be not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.</p>
	<p>Other: Additional specific types of insurance policies will be listed in the Special Terms and Conditions of the contract.</p>

Part 2. ADDITIONAL INSURANCE REQUIREMENTS

Only Requirements marked with an "X" apply to this Contract. Any additional insurance that may be required would be found within the Special Terms and Conditions Section of this Solicitation. In the event of a conflict, the instructions found in the Special Terms and Conditions supersede those listed herein.

When to Submit the Certificate of Insurance	
	Submit in the Solicitation. Contractor must submit the TCEQ Certificate of Insurance in the Solicitation.
X	Submit when awarded a Contract. The Contractor must submit the TCEQ Certificate of Insurance upon the award of a Contract, no later than 10 days afterwards, unless other guidelines are specified within the Special Terms and Conditions.



**CERTIFICATE OF INSURANCE FOR
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)
CONTRACT No. 582-10-99539**

Producer: Authorized Agent: <u>Agent's Physical Address:</u> Mailing Address: City: _____ State: ____ Zip: Agent's Phone #:	This certificate neither affirmatively or negatively amends, extends, or alters the coverage afforded by the policies below: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:80%;">CO COMPANIES AFFORDING COVERAGERATE</td> <td style="width:20%; text-align: center;">A.M - Bes t Rat ing</td> </tr> <tr><td>A</td><td></td></tr> <tr><td>B</td><td></td></tr> <tr><td>C</td><td></td></tr> <tr><td>D</td><td></td></tr> <tr><td>E</td><td></td></tr> <tr><td>F</td><td></td></tr> <tr><td>G</td><td></td></tr> </table>	CO COMPANIES AFFORDING COVERAGERATE	A.M - Bes t Rat ing	A		B		C		D		E		F		G	
CO COMPANIES AFFORDING COVERAGERATE	A.M - Bes t Rat ing																
A																	
B																	
C																	
D																	
E																	
F																	
G																	
Insured: Contractor: (Must be same as in TCEQ Contract) <u>Contractor's Physical Address:</u> <u>Mailing Address:</u> City: _____ State: ____ Zip: Contractor's Phone #:																	

COVERAGES

CO.	Type of Insurance	Policy Number	Policy Eff Date (MM/DD/YY)	Policy Exp Date (MM/DD/YY)	Limits
	GENERAL LIABILITY				GENERAL AGGREGATE \$
	Commercial General Liability				PRODUCT-COMP/OP AGG \$
	CLAIMS MADE				PERSONAL &ADV INJURY \$
	OCCUR				EACH OCCURRENCE \$
	OWNER'S AND CONTRACTOR'S PROT				FIRE DAMAGE (ANY ONE FIRE) \$
					MED EXP (ANYONE PERSON) \$
	AUTOMOBILE LIABILITY				
	ANY AUTO				COMBINED SINGLE LIMIT \$
	ALL OWNED AUTOS				
	SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	HIRED AUTOS				
	NON-OWNED AUTOS				BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE \$

EXCESS LIABILITY						
	UMBRELLA FORM				EACH OCCURRENCE	\$
	OTHER THAN UMBRELLA FORM				AGGREGATE	\$
WORKERS' COMPENSATION & EMPLOYERS LIABILITY THE PROPRIETOR / PARTNERS/ EXECUTIVE OFFICER ARE					<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/>	
	INCLUDED				EACH ACCIDENT	\$
	EXCLUDED				DISEASE -POLICY LIMIT	\$
					DISEASE - EACH EMPLOYEE	\$
	Professional Liability /E&O					\$
	Pollution Liability					\$
	Other					\$

Description of Special Items:

TCEQ is an additional insured where required under the contract. Cancellation or material change, other than for non-payment, shall **not** be made until thirty (30) days after the authorized agent or the insurer notifies in writing by certified mail the CONTRACTOR and TCEQ at the address shown below. Cancellation or material change due to non-payment shall not be made until ten (10) days after the authorized agent or the insurer notifies in writing by certified mail the CONTRACTOR and TCEQ at the address shown below. Such notice **must** reference the Solicitation Number for this Contract.

I certify to the TCEQ that the policy(ies) listed above comply with the CONTRACTOR'S requirements in the contract with TCEQ and the policy(ies) have been issued to the CONTRACTOR named above for the policy period indicated.

Original Signature of Authorized Agent (Stamped, typed, printed are unacceptable)

Date

Printed Name of Authorized Agent

All correspondence related to insurance should be mailed to:

Texas Commission on Environmental Quality
MC (Mail Code) 182
P.O. Box 13087
Austin, TX 78711-3087

A copy of this Certificate should also be mailed to the TCEQ Contract Manager named in the contract.

EXHIBIT 1:
TCEQ REQUEST FOR GRANT APPLICATIONS

EXHIBIT 2:
APPROVED GRANT APPLICATION: PART A

EXHIBIT 3:
COMMERCIALIZATION PLAN
(FROM APPROVED GRANT APPLICATION: PART B)

EXHIBIT 4:

**NEW TECHNOLOGY RESEARCH & DEVELOPMENT
GRANTS:**

GUIDELINES FOR GRANTS