

# Texas Commission on Environmental Quality

## PETROLEUM STORAGE TANK SITE ACTIVITIES

Contract #582-9-xxxxx

### AMENDMENT NUMBER 1

The Texas Commission on Environmental Quality (TCEQ) and xxxxxxxxxxxx (CONTRACTOR), collectively referred to as the “Parties”, hereby agree to amend the terms of Contract Number 582-9-xxxxx as set forth below. This Contract Amendment is pursuant to the authority set forth in ARTICLE 4, Paragraph 4.1. *Amending Contract Documents*, in the General Conditions of the Contract.

The purpose of this Contract Amendment is to:

1. Implement revisions to the **POINTS OF CLARIFICATION** and **PAY ITEMS** sections, in the **SPECIFICATIONS**, for clarification and understanding (items 1.a – 1.j below).
2. Implement addition of Special Conditions to allow funding pursuant to the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) to be utilized under this Contract (item 2.a below).

**1.a** Effective by this Contract Amendment, **SPECIFICATIONS, POINTS OF CLARIFICATION**, paragraph 14 is added for clarification, and now reads:

14. It is prohibited to conduct surveys utilizing the services of Registered Professional Land Surveyors under this contract.

**1.b** Effective by this Contract Amendment, **SPECIFICATIONS, PAY ITEMS**, paragraph 2 is amended for clarification regarding exclusion of vehicle operator(s), and now reads:

2. **LIGHT VEHICLE MILEAGE RATE:** [PER MILE] This pay item includes fuel, lubricating oils and all other costs of operating a light vehicle. This pay item is used for the actual mileage a light vehicle is driven for Work Order project-related excursions. The allowable rate for light vehicle mileage shall be the rate established by the State Comptroller that is in effect at the time the original work is signed by the Agency. This rate will apply to the original work order and any subsequent amendments to the original work order. NOTE: "Light Vehicles" include automobiles, pickup trucks, SUVs, and other vehicles used routinely by field personnel. Vehicle operator is excluded and labor hours for travel time will be paid under another pay item.

**1.c** Effective by this Contract Amendment, **SPECIFICATIONS, PAY ITEMS**, paragraph 4 is amended for clarification regarding exclusion of vehicle operator(s), and now reads:

4. **HEAVY VEHICLE MILEAGE RATE:** [PER MILE] This pay item includes all costs to mobilize, maintain and operate the vehicle (i.e., fuel, lubricating oils and all other costs). This pay item excludes mileage for dump trucks and vacuum trucks which are invoiced under the Heavy Vehicle Rates pay item(s). Vehicle operator is excluded and labor hours for travel time will be paid under another pay item. This pay item will be adjusted a maximum of one (1) time per Fiscal Year in accordance with paragraph 13 in POINTS OF CLARIFICATION.

**1.d** Effective by this Contract Amendment, **SPECIFICATIONS, PAY ITEMS**, paragraph 8 is amended for clarification regarding inclusion of vehicle operator(s), and now reads:

8. **DIRECT PUSH RIG MILEAGE RATE:** [PER MILE] This pay item includes all costs to maintain and operate the vehicle (e.g., fuel, lubricating oils and all other costs). Vehicle operator(s) are included in this pay item. This pay item will be adjusted a maximum of one (1) time per Fiscal Year in accordance with paragraph 13 in POINTS OF CLARIFICATION.

1.e Effective by this Contract Amendment, **SPECIFICATIONS, PAY ITEMS**, paragraph 11 is amended for clarification regarding inclusion of vehicle operator(s), and now reads:

11. **DRILL RIG MILEAGE RATE**: [PER MILE] This pay item includes all costs to maintain and operate the vehicle (e.g., fuel, lubricating oils and all other costs). Vehicle operator(s) are included in this pay item. This pay item will be adjusted a maximum of one (1) time per Fiscal Year in accordance with paragraph 13 in POINTS OF CLARIFICATION.

1.f Effective by this Contract Amendment, **SPECIFICATIONS, PAY ITEMS**, paragraph 29 is amended for clarification regarding use of **FIELD MEASURE** and/or **field measure** to replace the word **SURVEY** and/or **survey**, and now reads:

29. **FIELD MEASURE TOPS OF MONITORING WELLS**: [PER WELL] This pay item shall include all costs for materials, equipment and labor to field measure the top of casing elevations for new or previously installed monitoring wells to a precision of 0.01 feet relative to a common datum or benchmark within 1000 feet. Include the data in the appropriate tables, maps, and cross-sections in any subsequent site report. This field measurement can be performed by field technicians familiar with surveying techniques.

1.g Effective by this Contract Amendment, **SPECIFICATIONS, PAY ITEMS**, paragraph 41 is amended for clarification of requirements regarding permits, inclusion of sample collection(s), and laboratory analysis, and now reads:

41. **MOBILE DUAL-PHASE EXTRACTION (MDPE)**: This pay item covers all materials, equipment, supplemental fuel/gas/energy, necessary permits, and labor costs to conduct a MDPE event and to create and submit the MDPE report upon completion. The MDPE equipment should be designed for the extraction of vapor and liquid simultaneously and capable of hooking up four wells simultaneously. Connecting and disconnecting the MDPE system to all wells is included. Real-time data acquisition is required for continuous monitoring through the duration of the event. The MDPE event shall be for the time period required by the TCEQ PM based on hydrogeology of the site (e.g., 8-hour, 24-hour, 48-hour, 72-hour, etc.). Brief interruptions for fueling, maintenance, gauging the depth to water/PSH, and adjusting the stinger tube position or pump intake elevation is allowed. Groundwater extraction or pumping will be conducted during the MDPE event to depress the groundwater table and expose the smear zone to vapor extraction. **NOTE: This pay item includes mobilization and demobilization costs. Mileage and waste management will be handled through other pay items. Pay item COLLECTION OF VAPOR/AMBIENT AIR SAMPLE is included in this pay item.** The MDPE field work should include the following activities at a minimum: gauge the NAPL thickness in all wells which will be hooked up to the MDPE system immediately prior to the MDPE event, extract vapor and liquid simultaneously or extract vapor and pump liquid simultaneously, collect vapor and water influent and effluent samples, adjust stinger tube or pump intake during the MDPE event, record all readings (ambient air pressure and temperature, vacuum, airflow rate, amount of liquid extracted or pumped, vapor treatment temperature, operating clock meter), and gauge NAPL thickness immediately after the MDPE event. Vapor sample should be collected at the location air flow rate is measured, reported, and vapor recovery rate is calculated. Sample analysis is handled through pay items for laboratory analysis.

1.h Effective by this Contract Amendment, **SPECIFICATIONS, PAY ITEMS**, paragraph 48 is amended for clarification of requirements regarding use of drums being included in this pay item, and now reads:

48. **DISPOSAL OF OTHER SOLID WASTES**: This pay item includes the costs of all materials, equipment, and labor for loading and unloading solid wastes, project management time for coordination, oversight, and scheduling, completion of waste affidavits and/or manifest, onsite coordination, and all landfill costs and fees, with the exception of hazardous waste disposal, for the disposal of solid wastes in the appropriate landfill by waste classification. Hazardous waste

disposal facility fees will be directly reimbursed under the pay item for Other Reimbursables; all other cost for hazardous waste disposal are included in Pay Item 48.j. Mileage to the site for loading equipment, hauling of the soils, and mileage and travel time (field technician rate) for the on-site personnel will be paid under separate pay items. Note: The CONTRACTOR on-site representative shall oversee waste loading and sign the waste manifest on behalf of the CONTRACTOR as generator. At the direction of the TCEQ Project Manager, disposal in a landfill shall be accomplished after laboratory analyses (billed under a separate pay item). Prior to disposal, the CONTRACTOR Project Manager shall provide justification of landfill section and comparison of disposal versus treatment/reuse options to the TCEQ. If landfill disposal is selected, the CONTRACTOR shall indicate which landfill is appropriate. The delivery ticket with the actual volume of material shall be used to document the quantity of wastes disposed. Classification and coding of industrial hazardous wastes shall be in accordance with 30 TAC Sections 335.501-335.515 (Subchapter R) and documentation and reporting requirements shall conform to TCEQ's "Guidelines for the Classification and Coding of Industrial Wastes and Hazardous Wastes" (RG-22). For this specification the term "barrel" is synonymous with the term "drum" and is defined to have a nominal volume of 55 gallons. All drums used for transport of contaminated waste shall conform to the Department of Transportation container requirements; and use of these drums is included in this pay item.

1.i Effective by this Contract Amendment, **SPECIFICATIONS, PAY ITEMS**, paragraph 59 is added to specify an additional PAY ITEM, and now reads:

**59. DISPOSAL OF OTHER WASTE MATERIAL (Type IV): *NOTE – This pay item may not be used in conjunction with a Work Order funded by LUST, LUST STIMULUS(ARRA) or PSTR funds. This pay item may not be used for disposal of any material covered by another pay item under this contract. This pay item may not be used for disposal of any material considered to be Hazardous Waste.* This pay item cost will be negotiated on a site-by-site basis as \$ per ton (\$/ton), \$ per cubic yard (\$/yd<sup>3</sup>), or \$ per site (\$/site) [as a full, firm fixed price for removal and disposal of all material from a site], as designated by TCEQ.**

- a) This pay item includes the costs of all materials, equipment, permits, mileage, and labor for loading and unloading waste material, project management time for coordination, oversight, and scheduling, completion of waste affidavits and/or manifest, onsite coordination, and all landfill costs and fees for the disposal of solid wastes in the appropriate landfill by waste classification.
- b) Prior to disposal, the CONTRACTOR Project Manager shall provide justification of landfill section and comparison of disposal versus reuse options to the TCEQ.
- c) If landfill disposal is selected, the CONTRACTOR shall indicate which landfill facility is appropriate.
- d) The delivery ticket(s) with the actual quantity of material indicated shall be used to document the quantity of wastes disposed.
- e) Disposal of waste material under this pay item must be to a MSW-Type IV facility in compliance with Chapter 330 (MSW) Rules.
  - i. **MSW facility - Type IV:** A Type IV landfill unit may only accept brush, construction, or demolition waste, and/or rubbish. A Type IV landfill unit may not accept putrescible wastes, conditionally exempt small-quantity generator waste, or household wastes.
    - 1) **Brush:** Cuttings or trimmings from trees, shrubs, or lawns and similar materials.
    - 2) **Construction or demolition waste:** Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber,

and plastics.

- 3) **Rubbish:** Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

1.j Effective by this Contract Amendment, **SCHEDULE OF PAY ITEM PRICES**, Pay Item 59 is amended, and now reads:

Pay Item Number	Pay Item Description	Units	Proposed Price	Type	Use Rate (2.5 Years)
59	DISPOSAL OF OTHER WASTE MATERIAL (Type IV):	TBD	TBN	FIXED PRICE	n/a

2.a Effective by this Contract Amendment, additional requirements to allow funding pursuant to the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) to be utilized under this Contract are incorporated into the Contract by reference and titled as:

**Texas Commission on Environmental Quality**  
**PETROLEUM STORAGE TANK SITE ACTIVITIES**  
**ATTACHMENT A TO CONTRACT AMENDMENT #1**  
**SPECIAL CONDITIONS**

**FOR WORK ORDERS FUNDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**  
**(Recovery Act or ARRA)**  
**In the Federal Leaking Underground Storage Tank (LUST) Program**

All Terms and Conditions and other requirements of this Contract not addressed in this Contract Amendment No. 1 shall remain unchanged and shall apply to all services specified herein just as if those services had been included in the original Agreement.

**Texas Commission on Environmental Quality**

xxxxxxxxxxxxx (CONTRACTOR)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

Brent Wade  
\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

Director, Remediation Division  
\_\_\_\_\_  
(Title)

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(Title)

\_\_\_\_\_  
(Date Signed)

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(Date Signed)

# Texas Commission on Environmental Quality

## PETROLEUM STORAGE TANK SITE ACTIVITIES

### ATTACHMENT A TO CONTRACT AMENDMENT #1

#### SPECIAL CONDITIONS

FOR WORK ORDERS FUNDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(Recovery Act or ARRA)

In the Federal Leaking Underground Storage Tank (LUST) Program

1. **TCEQ LIABILITY:** TCEQ is not liable to the Contractor for payment of any Work performed in violation of these Special Conditions under a Work Order issued by TCEQ which is funded by the Leaking Underground Storage Tank Stimulus Grant (TCEQ Fund 6555/STIM).
2. **NO UNNECESSARY DELAYS:** The Contractor shall avoid unnecessary delays and complete Work Orders within the TCEQ approved Work Order Budget.
3. **IDENTIFICATION OF RECOVERY ACT FUNDING (ARRA LOGO):** This project receives funding under the American Recovery and Reinvestment Act of 2009 (ARRA) and the Contractor, and any subcontractor must display the ARRA Logo in a manner that informs the public that the project is an ARRA investment.
  - a) The ARRA logo may be obtained from the EPA grants office.
  - b) If the EPA logo is displayed along with the ARRA logo and logos of other participating entities, the EPA logo must not be displayed in a manner that implies that EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the TCEQ received financial assistance from EPA for the project.
  - c) Contractor agrees to require their subcontractors to include in their contract a requirement to specifically identify Recovery Act funding similar to the requirements for the Contractor.
4. **SECTION 1512 REPORTING AND REGISTRATION REQUIREMENTS:** To implement requirements of Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, the following provisions apply to this Contract:
  - a) This Contract requires the Contractor to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
  - b) The Contractor shall report the information described in section 1512(c) using the reporting instructions, data elements form(s) provided by TCEQ described in the Special Condition titled Recovery Act Report.
5. **RECOVERY ACT REPORT:** Contractors conducting authorized work funded by the Leaking Underground Storage Tank Stimulus Grant (TCEQ Fund 6555/STIM) must submit a complete Recovery Act Report to TCEQ monthly by the 5th day of the month following the reporting period, and continue following that reporting pattern so long as issued Work Orders are active which are so funded.
  - a) Failure to timely submit a complete Recovery Act Report is a material breach of the Contract and constitutes cause for TCEQ to terminate the Contract without prior notice.
  - b) Contractor shall report only on the jobs and funding attributable in whole or in part to a Work Order identified as funded by TCEQ fund #6555/STIM.

- c) The Recovery Act Report must be submitted in an electronic format supplied by the TCEQ.
- d) The Recovery Act Report shall contain the following information and any additional information required by the TCEQ:
  - i. Contract Number
  - ii. Contractor Name
  - iii. Contract type
  - iv. Total hours worked during reporting period covered by Recovery Act Report
    - a) Report the total number of hours worked during the reporting period by all employees filling a new job created and filling an existing job retained including full time, part time and temporary positions.
      - 1) A job created is a new position created and filled or an existing unfilled position that is filled as a result of Recovery Act funding.
      - 2) A job retained is an existing position that would not have been continued to be filled were it not for Recovery Act funding.
      - 3) A job cannot be counted as both created and retained.
  - v. Confirmation regarding Buy American Act: The CONTRACTOR shall include in the Recovery Act Report a confirmation as follows:
    - a) Did the Contractor perform work during the reporting period which is subject to the Buy American Act according to this Contract? (yes or no) See the Special Condition relating to the Buy American Act.
  - vi. Confirmation regarding Davis Bacon Act: The CONTRACTOR shall include in the Recovery Act Report a confirmation as follows:
    - a) Did the Contractor perform work during the reporting period which is subject to the wage requirements of the Davis Bacon Act according to this Contract? (yes or no) See the Special Condition relating to the Davis-Bacon Act.
- e) Contractor shall submit each Recovery Act Report, containing the required information and any additional information required by the TCEQ, per this Special Condition, via email to: [6555STIM@tceq.state.tx.us](mailto:6555STIM@tceq.state.tx.us).

6. **No Intent to Include Work Subject to the Buy American Act:** TCEQ anticipates that Work Orders, funded by TCEQ fund #6555/STIM, will not include work described in paragraph b. of this section which is work subject to the Buy American Act relating to the purchase of iron, steel and manufactured goods for use in public works. Therefore, if Contractor finds at any time after receiving the Work Order that it includes work which is described below, the Contractor will inform TCEQ immediately and will not perform the described work unless TCEQ provides a written authorization to proceed.
- a. Contractor will confirm, in the monthly Recovery Act Report, that the work performed in the previous calendar month did or did not include the work described in paragraph b..
  - b. For the purposes of this Contract, the following is work subject to the Buy American Act:
    - i. Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination; or
    - ii. Construction related activities associated with site restoration, including paving or concrete replacement.

7. **No Intent to Include Work Subject to the Davis Bacon Act:** TCEQ anticipates that Work Orders, funded by TCEQ fund #6555/STIM, will not include work described in paragraph b. of this section which is work subject to the Davis Bacon Act relating to the payment of prevailing wages. Therefore, if Contractor finds at any time after receiving the Work Order that it includes the work described in paragraph b, the Contractor will inform TCEQ immediately and will not perform the described work unless TCEQ provides a written authorization to proceed.
- a. Contractor will confirm, in the monthly Recovery Act Report, that the work performed in the previous calendar month did or did not include the work described in paragraph b..
  - b. For the purposes of this Contract, the following work is subject to the Davis-Bacon Act:
    - i. Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination; or
    - ii. Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or
    - iii. Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.
8. **Providing a D-U-N-S Number:** Contractor will provide a D-U-N-S number to the TCEQ PST State Lead Program Coordinator within six months of this amendment. Dun & Bradstreet (D&B) provides a D-U-N-S number, a unique 9-digit identification number, for each physical location of a business organization. D-U-N-S Number assignment is free for all businesses required to register with the U.S. Federal government for contracts or grants. The D-U-N-S number is used by the [www.FederalReporting.gov](http://www.FederalReporting.gov) to identify business organizations. Further detailed information on D&B is available at this URL: <http://fedgov.dnb.com/webform>.
9. **INSPECTOR GENERAL REVIEWS:** In addition to the access to records provisions of 2 CFR 215.53 or 40 CFR 31.42, and in accordance with the provisions of section 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), Contractor agrees to allow any appropriate representative of the Office of Inspector General to (1) examine any records of the Contractor, that pertain to, and involve transactions relating to, the procurement contract, subcontracts, and (2) interview any officer or employee of the Contractor, subcontractor at any tier, regarding such transactions.
- a) The Contractor is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of TCEQ and Federal funds may result in criminal, civil or administrative fines and/or penalties.
  - b) Contractor should be aware that the findings of any review, along with any audits, conducted by an inspector general of a Federal department or executive Agency and concerning funds awarded under ARRA shall be posted on the inspector general's website and linked to [www.recovery.gov](http://www.recovery.gov), except that information that is protected from disclosure under sections 552 and 552a of title 5, United States Code may be redacted from the posted version.
10. **OTHER RECORDS REQUIREMENTS:** This information is needed to allow the TCEQ to properly monitor Contractor expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.
- a) **PAYROLLS AND BASIC RECORDS:** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her

correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof.

- b) **REQUIRED RECORDS ACCESS:** The Contractor and the subcontractor shall make the records required under this Contract available for inspection, copying, or transcription by authorized representatives of the TCEQ, EPA, the Department of Labor, or the Inspector General and shall permit such representatives to interview employees during working hours on the job.
11. **FALSE CLAIM:** The Contractor, and its subcontractors, must promptly refer to EPA's Inspector General any credible evidence that a principal, employee, agent, or subcontractor's principal, employee or agent at any tier or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract or subcontracts using funds from this Contract.
  12. **CIVIL RIGHTS COMPLIANCE:** Contractors and subcontractors receiving Recovery Act funds must comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and a variety of program-specific statutes with nondiscrimination requirements.
    - a) Other civil rights laws may impose additional requirements on the Contractor and subcontractors. These laws include, but are not limited to, Title VII of the Civil Rights Act of 1964 (prohibiting race, color, national origin, religion, and sex discrimination in employment), the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses, and non-profit agencies), and the Fair Housing Act (prohibiting race, color, national origin, age, family status, and disability discrimination in housing), as well as any other applicable civil rights laws. For questions about these civil rights obligations, please call the EPA's Office of Civil Rights at 202-564-7272 or contact us via e-mail: <http://www.epa.gov/civilrights/comments.htm>.
  13. **EQUAL EMPLOYMENT OPPORTUNITY:** The utilization of all employees of the Contractor and all subcontractors including apprentices, trainees and journeymen under shall be in conformity with the equal employment opportunity requirements of, Executive Order 11246, as amended, and 29 CFR part 30.
  14. **LOBBYING AND LITIGATION - ALL CONTRACTORS:** The chief executive officer of the Contractor shall ensure that no funds paid under this Contract are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
  15. **SUSPENSION AND DEBARMENT:** Contractor will ensure that any lower tier covered transaction includes a term or condition requiring that any lower tier subcontractor is not suspended or debarred from receiving federal funds under this Contract.
    - a) Contractor will further require the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor acknowledges that failing to disclose the information as required by this Contract and this clause may result in pursuance of legal remedies for breach of contract, including suspension and debarment by the federal and state governments.
    - b) Contractor may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."
  16. **TRAFFICKING VICTIM PROTECTION ACT OF 2000:** To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this Contract:
    - a) The TCEQ may unilaterally terminate this Contract , without penalty, if the Contractor or a subcontractor that is a private entity: (1) is determined to have violated an applicable prohibition

in the Prohibition Statement below; or (2) has an employee who is determined by the TCEQ to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this Contract; or (b) imputed to the subcontractor using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, 'OMB Guidelines to Agencies on Government-wide Debarment and Suspension'. You must inform TCEQ immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

- b) TCEQ's right to terminate unilaterally that is described in paragraph a) of this Contract term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this Contract.
- c) Contractor must include the requirements of the Prohibition Statement below in any subcontract you make to a private entity.
  - i. Prohibition Statement.- You as the Contractor, your employees, subcontractors under this award, and subcontractors' employees may not engage in severe forms of trafficking in persons during the period of time that the Contract is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of this Contract or subcontract under this Contract.

17. **PROTECTION OF WHISTLEBLOWERS:** In accordance with section 1553 of the American Recovery and Reinvestment Act of 2009 (ARRA), Contractor agrees that employees of a non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement Agency, a person with supervisory authority over the employee, a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of (1) gross mismanagement of an agency contract or grant relating to grant funds; (2) a gross waste of covered funds; (3) a substantial and specific danger to public health or safety related to implementation or use of grant funds; (4) an abuse of authority related to implementation or use of covered funds; or (5) a violation of law, rule, or regulation related to a grant awarded or issued relating to covered funds.
18. **BUY AMERICAN REQUIREMENTS:** If a Work Order indicates the work includes work subject to the Buy American requirements (Section 1605 of the ARRA), the Buy American provisions will apply to the Contractor. See Special Condition relating to Recovery Act Report for a description of the work that is subject to the Buy American Section 1605 of the ARRA.
19. **WAGE RATE REQUIREMENTS:** Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009 Preamble. If a Work Order indicates the work includes work of a type which is subject to Section 1606 of the ARRA, and the Davis-Bacon Act relating to prevailing wages, the terms of that requirement attached to the Contract will apply to the Contractor. See Special Condition relating to Recovery Act Report for a description of the work that is subject to the Davis Bacon Act.
20. **PAYMENT TO CONSULTANTS:** EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by Contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2009, the limit is \$587.20 per day and \$73.40 per hour. This rate does not include transportation and subsistence costs for travel performed (the Contractor will pay these in accordance with their normal travel reimbursement practices).

- a) Subcontracts with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the Contractor with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation.

21. **INELIGIBLE SUBCONTRACTOR:** No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

a) **GENERAL COMPLIANCE, 40 CFR, Part 33:** The Contractor agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises (MBE/WBE) in procurement under assistance agreements, contained in 40 CFR, Part 33.

b) **FAIR SHARE OBJECTIVES, Current Fair Share Objective/Goal:** The dollar amount of this assistance agreement is \$250,000, or more; or the total dollar amount of all of the Contractor's non-TAG assistance agreements from EPA in the current fiscal year is \$250,000, or more. The **Texas Commission on Environmental Quality** has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

- i. **MBE:** CONSTRUCTION 35%; SUPPLIES 26%; SERVICES 30%; EQUIPMENT 18%
- ii. **WBE:** CONSTRUCTION 7%; SUPPLIES 33%; SERVICES 33%; EQUIPMENT 17%

c) **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C Pursuant to 40 CFR, Section 33.301:** The Contractor agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-Contractors, loan Contractors, and prime contractors also comply. Records documenting compliance with the, six good faith efforts shall be retained:

- i. Require DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; For Indian Tribal, State and Local and Government Contractors, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- ii. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal *closing* date.
- iii. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government Contractors, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- iv. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- v. Use the services and assistance of the SBA and the Minority Business Development

Agency of the Department of Commerce.

vi. If the Contractor awards subcontracts, the Contractor is required to take the steps in paragraphs (a) through (d) of this section.

d) **MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503:** The Contractor agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the Contractor receives the award, and continuing until the project is completed.

i. Only procurements with certified MBE/WBEs are counted toward a Contractor's MBE/WBE accomplishments.

ii. The reports must be submitted annually for the period ending September 30th for:

- 1) 40 CFR Part 30 Contractors (Non-profits and Institutions of Higher Education); and
- 2) 40 UFR Part 35 Subpart A and Subpart B Contractors.

iii. The reports are due within 30 days of the end of the annual reporting period (October 30th). Reports should be sent to MBE/WBE Regional Coordinator.

- 1) Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends.
- 2) EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at [www.epa.gov/osbp](http://www.epa.gov/osbp) .

24. **JOB POSTING:** In accordance with Executive Order RP-70 of the office of the Governor of Texas, the Contractor is encouraged to post all ARRA-funded job openings on the website, <http://www.twc.state.tx.us/jobs/job.html> and distinguish ARRA-funded positions from positions funded through other sources of revenue.

25. **COMPLIANCE.** Contractor will comply with all requirements applicable to the use of funds provided by the federal government under the American Recovery and Reinvestment Act of 2009, including those listed in Executive Order RP-70, located on the website, <http://governor.state.tx.us/news/executive-order/13293/>