

Allowable Costs

- 5.9. In order to be allowable, costs must be included in the Approved Grant Budget, and must satisfy the requirements of: this Contract, the UGMS, state agency rules, and all applicable state and federal laws.
- 5.10. If travel costs are authorized in the Approved Grant Budget, reimbursement of travel costs may not exceed the amounts explained in this section.
 - 5.10.1. 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.
 - 5.10.2. 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.
 - 5.10.3. Mileage reimbursement rates are also established in the State of Texas Travel Allowance Guide.
 - 5.10.4. Expenses for lodging and meals are limited to only actual expenses and must be supported by receipts to be reimbursable.

Indirect Costs

- 5.11. Indirect costs are not reimbursable under the terms of this Contract.

Preapproval of Costs

- 5.12. If the specific details of costs to be incurred under the “Travel,” “Equipment,” “Contractual,” or “Other” costs categories are not already explained in the Approved Grant Budget or Approved Grant Application, 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.
- 5.13. Upon TCEQ request, prior to signing a subcontract to be funded under this Contract, the Performing Party must submit the subcontract to the TCEQ for review and must receive approval from the TCEQ before entering into the subcontract.

Additional Evidence

- 5.14. The TCEQ may at any time before or after receiving invoices, as necessary in its sole discretion, request additional evidence concerning costs.

Additional Criteria for Reimbursement

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

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

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

No Entitlement to Funds

- 5.17. The Performing Party has a continuing obligation to satisfy the requirements for reimbursement. Neither a request for reimbursement nor the TCEQ's payment of reimbursement nor any other action will establish an entitlement in the Performing Party to payment from the TCEQ.
- 5.18. By paying a request for reimbursement or advancing funds, the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may at any time before or after reimbursement, in its sole discretion, request additional evidence concerning costs. The TCEQ may audit the records of the Performing Party and may also audit the Performing Party's performance as to the Grant Activities, and the Administrative Requirements.

Offsets for debts owed to the State

- 5.19. The TCEQ may offset against reimbursement payments, any amounts owed by the Performing Party or its principals to the TCEQ, the State of Texas, or for child support.

ARTICLE 6. REQUEST FOR REIMBURSEMENT

6.1. In order to receive reimbursement for eligible expenses and document expenditure of advanced funds, the Performing Party shall submit monthly, a completed TCEQ Request for Reimbursement (RFR) form, to be made available to the Performing Party by the TCEQ. The RFR shall be submitted no later than 15 days after the end of the following month. Each RFR shall be accompanied by a properly completed FSR for each activity for which reimbursement is requested. For a RFR solely documenting expenditure of advanced funds and not requesting payment, only submission of an FSR is necessary. The request and forms shall be mailed or delivered to:

Texas Commission on Environmental Quality

ATTN: Deanna Sivek

Critical Infrastructure Division, MC-177

Texas LEPC Grant Program

PO Box 13087

Austin, TX 78711-3087

6.2 Performing Party may submit requests and forms electronically via email. The scanned copies of the request, forms, and Supporting Documents in pdf format shall be emailed to LEPCGRANTS@tceq.texas.gov

6.3. All RFR's shall be completed on forms provided by the TCEQ. 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.

6.4. If not previously required to be submitted with the grant application, a properly completed Texas Application for Payee Identification Number must be completed and submitted with the first invoice, or prior to request for advanced funds.

6.5. A final RFR, indicating in the appropriate box that it is the final request, shall be submitted to the TCEQ by no later than forty-five (45) days after the date listed in Article 4.5 of the Special Terms of this Contract.

6.6. All RFR's shall contain sufficient identification of and information concerning the costs incurred 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 paid.

6.7. If an RFR does not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and incurred and paid costs, the TCEQ may reject the RFR, or FSR in the case of advanced funds, 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.

6.8. The TCEQ is not obligated to make payment until the RFR 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.

6.9. All RFR's 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.

6.10. The TCEQ may at any time before or after approval of the RFR or FSR, as necessary in its sole discretion, request additional evidence concerning costs.

6.11. 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; request return of unexpended advanced funds; or for termination of this Contract in accordance with the General Conditions and for such other remedies as are allowed by law.

6.12. Required Forms: The Performing Party, and any subcontractor or subrecipient if any, in order to obtain reimbursement for those expenditures authorized under this Contract, shall submit, pursuant to the Grant Activities, a fully completed and legible:

6.12.1. Progress Report;

6.12.2. Reimbursement Forms, including an FSR;

6.12.3. Supplemental Request for Reimbursement Form(s) for those budget categories with expenses;
and

6.12.4. Release of Claims (the PERFORMING PARTY only and only with final RFR).

Reimbursement Forms

6.13. Request for Reimbursement: Each filed TCEQ RFR 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. Each RFR shall indicate, for each budget category the Performing Party'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.

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

6.15. Required Documentation: When the Performing Party is required to attach source documentation for a reimbursable cost that documentation shall:

6.15.1. be legible;

6.15.2. identify the specific equipment received or the services provided;

6.15.3. 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

6.15.4. 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 the TCEQ. Although canceled checks represent the preferred types of documentation for purposes of this section, the Performing Party or subcontractor may substitute/attach other records or documents that provide the same type of information, such as issued purchase orders and/or invoices marked "received/paid", or other evidence of payment. The Performing Party or subcontractor shall not intentionally break up single orders of identical or similar items, materials, or supplies simply for the purpose of avoiding the above requirement to provide confirming documentation when submitting reimbursement requests to the TCEQ.

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

6.17. All requests for reimbursement of expenditures that fall within either the Personnel/Salary categories of the Approved Grant Budget, if authorized and included, shall be itemized by the Performing Party or subcontractor.

6.17.1. Personnel/Salary: No supporting documentation is required to be attached invoice with respect to reported "Personnel/Salary" expenditures on the invoice. The Performing Party or subcontractor is expected to maintain signed time sheets that can serve to verify the total, overall hours of staff time being directly billed to this Contract.

6.18. Travel: If employee travel costs are authorized and included in the Approved Grant Budget, all costs listed in the invoices 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. If TCEQ waives the requirement for submitting the following travel documentation with the RFR, documentation which must be maintained by the Performing Party or subcontractor and made available during an on-site audit/monitoring visit, or upon request, for the purpose of substantiating travel-related costs, includes the following: (1) legible copies of the Performing Party- or subcontractor-approved travel vouchers, or other equivalent documentation, signed by the employees who traveled; and (2) any travel-related expenses under this Contract borne directly by the Performing Party or subcontractor (and for which reimbursement by the

Performing Party to the traveler was not required). Receipts should be separate and show, at a minimum, the traveler's name, the travel location, and the travel date(s).

6.19. All RFR's with expenditures that fall within the Equipment, Supplies, Other, Contractual, and Construction categories of the Approved Grant Budget shall be itemized by the Performing Party or subcontractor on the RFR. In addition, the Performing Party or subcontractor shall attach, for each reimbursable cost listed, documentation as specified in the Required Documentation paragraph in this section. An updated equipment inventory shall be attached to reimbursement requests with equipment purchases.

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

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

6.22. All RFR's must be signed by an authorized representative of the Performing Party.

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

ARTICLE 7. PERFORMING PARTY'S PERFORMANCE EVALUATION

Performance evaluations are a part of the TCEQ review of the Performing Party and may be a factor in the selection of future grants. TCEQ may provide this information to state agencies and, upon request, to others. The Performing Party consents to the disclosure of any information or opinion contained in the evaluations. (Attachment D)

APPROVED GRANT APPLICATION SUMMARY

DRAFT

GENERAL TERMS AND CONDITIONS

1. CONTRACT PERIOD

- 1.1. **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Contract Signature Page. If no Effective Date is provided, the Effective Date of the Contract is the date of last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the same Fiscal Year in which the Contract is signed.
- 1.2. **Amendments.** This Contract may be amended by mutual agreement. Except as specifically allowed by the Contract, all changes to the Contract require a written amendment and agreement by both parties.
 - 1.2.2 A formal Amendment to the Contract signed by authorizing officials of both Parties is required for changes to the substantive obligations of the Performing Party and/or TCEQ, including the following:
 - 1.2.2.1 Changes in the total amount of funds in the Budget or the Contract;
 - 1.2.2.2 Changes to the Contract's Expiration Date;
 - 1.2.2.3 Changes to the Scope of Work that affect TCEQ obligations in this Contract and in other Contracts with the funding source such as EPA, and obligations to another state or federal agency or the Texas Legislature; and
 - 1.2.2.4 Changes that affect the material obligations of the Performing Party in this Contract.
- 1.3. **Extensions.** TCEQ may by unilateral written amendment extend the Expiration Date for a period of up to 90 days. Unless otherwise indicated in the applicable Contract Amendment, an extension does not extend any other deadlines or due dates other than the expiration of the Contract Period.

2. FUNDS

- 2.1. **Availability of Funds.** This Contract and all claims, suits or obligations arising under or related to this Contract are subject to the receipt and availability of funds appropriated by the Texas Legislature for the purposes of this Contract or the respective claim, suit or obligation, as applicable. The Performing Party will ensure that this article is included in any subcontract it awards.
- 2.2. **Maximum Authorized Reimbursement.** The total amount of funds provided by TCEQ for the Contract will not exceed the amount of the Maximum Authorized Reimbursement as shown on the Contract Signature Page.
- 2.3. **Fiscal Year Restrictions.** In order to be reimbursed under this Contract, costs must be incurred during the Contract Period and within the time limits applicable to the funds from which the Contract is being paid. TCEQ is under no obligation to offer deadline extensions which extend to the maximum availability of the Contract funding source.
- 2.4. **Grants.** If this Contract was entered under TCEQ's authority to award grants, TCEQ is providing financial assistance to the recipient to undertake its own project.
- 2.5. **No Debt against the State.** This Contract is contingent on the continuing appropriation of funds. This Contract will not be construed to create debt against the State of Texas.

3. ALLOWABLE COSTS

- 3.1. **Conforming Activities.** TCEQ will reimburse the Performing Party for necessary and reasonable Allowable Costs that are incurred and paid by the Performing Party in performance of the Scope of Work as authorized by this Contract in the Cost Budget or Fixed Payment Amounts.
- 3.2. **UGMS.** Allowable Costs are restricted to costs that comply with the Texas Uniform Grant Management Standards (UGMS) and applicable state and federal rules and law. **THE PARTIES AGREE THAT ALL THE REQUIREMENTS OF THE UGMS APPLY TO THIS CONTRACT, INCLUDING THE CRITERIA FOR PROCUREMENT AND ALLOWABLE COSTS.** Additional federal requirements apply if this Contract is funded, in whole or in part, with federal funds.

4. REIMBURSEMENT

- 4.1. **Reimbursement Requests.** The Performing Party will invoice TCEQ to request reimbursement for its Allowable Costs for performing the Scope of Work. The Performing Party's invoice will conform to all reimbursement requirements specified by TCEQ.
- 4.2. **Conditional Payments.** Reimbursements are conditioned on the Scope of Work being performed in compliance with the Contract. The Performing Party will return payment to TCEQ for either overpayment or activities undertaken that are not compliant with the Scope of Work. This does not limit or waive any other TCEQ remedy.
- 4.3. **No Interest for Delayed Payment.** Because the Performing Party is not a vendor of goods and services within the meaning of Texas Government Code Chapter 2251, no interest is applicable in the case of late payments.
- 4.4. **Release of Claims.** As a condition to final payment or settlement, or both, the Performing Party will execute and deliver to TCEQ a release of all claims against TCEQ for payment under this Contract. (Attachment B)

5. FINANCIAL RECORDS, ACCESS AND AUDITS

- 5.1. **Audit of Funds.** 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 fully cooperate 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 audit of funds accepted under this Contract is included in any subcontract it awards.
- 5.2. **Financial Records.** The Performing Party will establish and maintain financial records including records of costs of the Scope of Work in accordance with generally accepted accounting practices. Upon request the Performing Party will submit records in support of reimbursement requests. The Performing Party will allow access during business hours to its financial records by TCEQ and other state agencies for the purpose of inspection and audit. Financial records regarding this Contract will be retained for a period of three years after date of submission of the final reimbursement request.

6. PERFORMING PARTY'S RESPONSIBILITIES

- 6.1. **Performing Party's Responsibility for the Scope of Work.** The Performing Party undertakes performance of the Scope of Work as its own project and does not act in any capacity on behalf of TCEQ nor as a TCEQ agent or employee. The Performing Party agrees that the Scope of Work is furnished and performed at the Performing Party's sole risk as to the means, methods, design, processes, procedures and performance.
- 6.2. **Independent Contractor.** The parties agree that the Performing Party is an independent contractor. Nothing in this Contract will create an employee-employer relationship between the Performing Party and TCEQ. Nothing in this Contract will create a joint venture between TCEQ and the Performing Party.
- 6.3. **Performing Party's Responsibilities for Subcontractors.** All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Scope of Work under a direct or indirect Contract with the Performing Party will be considered to be the acts and omissions of the Performing Party.
- 6.4. **No Third Party Beneficiary.** TCEQ does not assume any duty to exercise any of its rights and powers under the Contract for the benefit of third parties. Nothing in this Contract will create a contractual relationship between TCEQ and any of the Performing Party's subcontractors, suppliers or other persons or organizations with a contractual relationship with the Performing Party.

7. TIME

- 7.1. **Time is of the Essence.** The Performing Party's timely performance is a material term of this Contract.
- 7.2. **Delays.** Where the Performing Party's performance is delayed, except by Force Majeure or act of TCEQ, TCEQ may withhold or suspend reimbursement, terminate the Contract for cause, or enforce any of its other rights (termination for convenience may be effected even in case of Force Majeure or act of TCEQ).

8. CONFLICT OF INTEREST

The Performing Party will timely notify TCEQ in writing of any actual, apparent, or potential conflict of interest regarding the Performing Party or any related entity or individual. No entity or individual with any actual, apparent, or potential conflict of interest will take part in the performance of any portion of the Scope of Work, nor have access to information regarding any portion of the Scope of Work, without TCEQ's written consent in the form of a unilateral amendment. The Performing Party agrees that TCEQ has sole discretion to determine whether a conflict exists, and that a conflict of interest is grounds for termination for cause.

9. DATA AND QUALITY

- 9.1. **Quality and Acceptance.** All work performed under this Contract must be complete and satisfactory in the reasonable judgment of TCEQ. All materials and equipment will be handled in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract.
- 9.2. **Quality Assurance.** All work performed under this Contract that involves the acquisition of environmental data will be performed in accordance with a TCEQ-approved Quality Assurance Project Plan (QAPP) meeting all applicable TCEQ and EPA requirements. Environmental data includes any measurements or information that describes environmental processes, location, conditions, ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or literature. No data collection or other work covered by this requirement will be implemented prior to the Performing Party's receipt of the QAPP signed by TCEQ and, if necessary, the EPA. Without prejudice to any other remedies available to TCEQ, TCEQ may refuse reimbursement for any environmental data acquisition performed prior to approval of a QAPP by TCEQ and, if necessary, the EPA. Also, without prejudice to any other remedies available to TCEQ, the Performing Party's failure to meet the terms of the QAPP may result in TCEQ's suspension of associated activities and non-reimbursement of expenses related to the associated activities.
- 9.3. **Laboratory Accreditation.** Any laboratory data or analyses provided under this Contract must be prepared by a laboratory that is accredited by TCEQ according to 30 Texas Administrative Code Chapter 25, subchapters A and B, unless TCEQ agrees in writing to allow one of the regulatory exceptions specified in 30 Texas Administrative Code Section 25.6.

10. INTELLECTUAL PROPERTY

- 10.1. **Third Party Intellectual Property.** Unless specifically modified in an amendment or waived in a unilateral amendment, the Performing Party must obtain all intellectual property licenses expressly required in the Scope of Work, or incident to the use or possession of any deliverable under the Contract. The Performing Party Will obtain and furnish to TCEQ: documentation on the use of such intellectual property, and a perpetual, irrevocable, enterprise-wide license to reproduce, publish, otherwise use, or modify such intellectual property and associated user documentation, and to authorize others to reproduce, publish, otherwise use, or modify such intellectual property for TCEQ non-commercial purposes, and other purposes of the State of Texas.
- 10.2. **Grant of License.** The Performing Party grants to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, modify or otherwise use for any non-commercial TCEQ purpose any preexisting intellectual property belonging to the Performing Party that is incorporated into any new works created as part of the Scope of Work, intellectual property created under this Contract, and associated user documentation.

11. INSURANCE AND INDEMNIFICATION

- 11.1. **Insurance.** Unless prohibited by law, the Performing Party will obtain and maintain during the Contract Period adequate insurance coverage sufficient to protect the Performing Party and TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract. Unless specifically waived by TCEQ, sufficient coverage will include Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.
- 11.2. **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, THE PERFORMING PARTY AND ANY SUBCONTRACTORS PERFORMING CONTRACT ACTIVITIES ON BEHALF OF PERFORMING PARTY AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE TCEQ AND ITS OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER

CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF CONTRACT ACTIVITIES BY THE PERFORMING PARTY OR ITS SUBCONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY STANDARDS OR DIRECTIVES. THE DEFENSE OF TCEQ WILL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT TCEQ. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

12. TERMINATION

- 12.1. **Termination for Cause.** TCEQ may, upon providing 10 days written notice and the opportunity to cure to the Performing Party, terminate this Contract for cause if the Performing Party materially fails to comply with the Contract including any one or more of the following acts or omissions: nonconforming work, or existence of a conflict of interest. Termination for cause does not prejudice TCEQ's other remedies authorized by this Contract or by law.
- 12.2. **Termination for Convenience.** TCEQ may, upon providing 10 days written notice to the Performing Party, terminate this Contract for convenience. Termination will not prejudice any other right or remedy of TCEQ or the Performing Party. The Performing Party may request reimbursement for: conforming work and timely, reasonable costs directly attributable to termination. The Performing Party will not be paid for: work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from the termination.
- 12.3. If, after termination for cause by TCEQ, it is determined that the Performing Party had not materially failed to comply with the Contract, the termination will be deemed to have been for the convenience of TCEQ.

13. DISPUTES, CLAIMS AND REMEDIES

- 13.1. **Payment of a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release, in the form of a unilateral amendment, constitutes a release of the Performing Party from liability under this Contract.
- 13.2. **Schedule of Remedies available to TCEQ.** In accordance with Texas Government Code Chapter 2261 the following Schedule of Remedies applies to this Contract. In the event of the Performing Party's nonconformance, TCEQ may do one or more of the following:
- 13.2.1. Issue notice of nonconforming performance;
 - 13.2.2. Reject nonconforming performance and request corrections without charge to TCEQ;
 - 13.2.3. Reject a reimbursement request or suspend further payments, or both, pending accepted revision of the nonconformity;
 - 13.2.4. Suspend all or part of the Contract Activities or payments, or both, pending accepted revision of the nonconformity;
 - 13.2.5. Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
 - 13.2.6. Terminate the Contract without further obligation for pending or further payment by TCEQ and receive restitution of previous payments.
- 13.3. **Opportunity to Cure.** The Performing Party will have a reasonable opportunity to cure its nonconforming performance, if possible under the circumstances.
- 13.4. **Cumulative Remedies.** Remedies are cumulative; the exercise of any remedy under this Contract or applicable law does not preclude or limit the exercise of any other remedy available under this Contract or applicable law.

14. SOVEREIGN IMMUNITY

The parties agree that this Contract does not waive any sovereign immunity to which either party is entitled by law.

- 14.1. **Survival of Obligations.** Except where a different period is specified in this Contract or applicable law, all representations, indemnifications, and warranties made in, required by or given in accordance

with the Contract, as well as all continuing obligations indicated in the Contract, survive for four (4) years beyond the termination or completion of the Contract, or until four (4) years after the end of a related proceeding. A related proceeding includes any litigation, legal proceeding, permit application, or State Office of Administrative Hearings proceeding, which is brought in relation to the Contract or which in TCEQ's opinion is related to the subject matter of the Contract. Either party will notify the other of any related proceeding if notice of the proceeding has not been provided directly to that other party.

15. CONTRACT INTERPRETATION

- 15.1 **Definitions.** The word “include” and all forms such as “including” mean “including but not limited to” in the Contract and in documents issued in accordance with the Contract, such as Work Orders or Proposals for Grant Activities (PGAs).
- 15.2 **Headings.** The headings of the sections contained in this Contract are for convenience only and do not control or affect the meaning or construction of any provision of this Contract.
- 15.3 **Delivery of Notice.** Notices are deemed to be delivered three working days after postmarked if sent by U.S. Postal Service certified or registered mail, return receipt requested. Notices delivered by other means are deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile transmission, email, or other commercially accepted means.
- 15.4 **Interpretation of Time.** All days are calendar days unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday or a state or federal holiday, it is omitted from the computation.
- 15.5 **State, Federal Law.** This Contract is governed by, and interpreted under the laws of the State of Texas, as well as applicable federal law.
- 15.6 **Severability.** If any provision of this Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it will be deemed severable (to the extent of such illegality, invalidity or unenforceability) and the remaining part of the provision and the rest of the provisions of this Contract will continue in full force and effect. If possible, the severed provision will be deemed to have been replaced by a valid provision having as near an effect to that intended by the severed provision as will be legal and enforceable.
- 15.7 **Assignment.** No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by the Performing Party will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge the Performing Party from any duty or responsibility under the Contract.
- 15.8 **Venue.** The Performing Party agrees that the Contract is being performed in Travis County, Texas, because this Contract has been performed or administered, or both, in Travis County, Texas. The Performing Party agrees that any cause of action involving this Contract arises solely in Travis County, Texas.
- 15.9 **Publication.** The Performing Party agrees to notify TCEQ five days prior to the publication or advertisement of information related to this Contract. The Performing Party agrees not to use the TCEQ logo or the TCEQ graphic as an advertisement or endorsement without written permission signed by the appropriate TCEQ authority.
- 15.10 **Waiver.** With the exception of an express, written waiver in the form of a unilateral amendment signed by TCEQ, no act or omission will constitute a waiver or release of the Performing Party's obligation to perform conforming Contract Activities. No waiver on one occasion, whether expressed or implied, will be construed as a waiver on any other occasion.
- 15.11 **Compliance with Laws.** TCEQ relies on the Performing Party to perform all Contract Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.
- 15.12 **Counterparts.** This Contract may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Contract.
- 15.13 **Accessibility.** All electronic content and documents created as deliverables under this Contract must meet the accessibility standards prescribed in 1 Texas Administrative Code sections 206.50 and 213 for state agency web pages, web content, software, and hardware, unless TCEQ agrees that exceptions or exemptions apply.

COST BUDGET

16. Budget. Authorized budgeted expenditures for work performed are as follows:

Budget Category	Cost for Work to be Performed
Salary/Wages	\$
Contracts	\$
Travel	\$
Training	\$
Supplies	\$
Equipment	\$
Other	\$
	\$
	\$
	\$
Total	\$

Budget Narrative

- 16.1 **Indirect Cost Reimbursable Rate.** Indirect costs are not reimbursable under this grant
- 16.2 **Other.** If Budget Category “Other” is greater than \$25,000 or more than 10% of budget total, identify the main constituents:
- 16.3 **Budget Categories.** The Budget Categories above have the definitions, requirements and limitations stated in UGMS. Construction costs are not reimbursable without prior, specific written authorization from TCEQ.
- 16.4 **Budget Control and Transfers**
 - 16.4.1 **Cumulative transfers less than 10% of the Total Budget.** The Performing Party may transfer amounts between the approved direct cost budget categories so long as cumulative transfers between the direct cost categories during the Contract do not exceed ten percent (10%) of the Total Budget amount. The Performing Party must timely submit a Budget Revision Request Form reflecting the revised budget. The Performing Party may not transfer amounts to budget categories containing zero dollars without TCEQ pre-approval. (Attachment C)
 - 16.1.2 **Cumulative transfers greater than 10% of the Total Budget.** TCEQ must **pre-approve** all budget revisions that result in the cumulative transfer of funds greater than 10% of the Total Budget during a Contract. A Contract Amendment is required **before** the Performing Party incurs these costs.
 - 16.1.3 All invoices must be submitted in a format that clearly shows how this budget control requirement is being met.
- 16.5 **Invoice/Request for Reimbursement Submittal.** Invoices/Requests for Reimbursement must be submitted to the individual named in the TCEQ Project Representatives and Records Location at intervals specified in the Special Conditions. This will be submitted on the form shown in Attachment A, Financial Status Report, or on another form approved by the TCEQ Contract Manager.
- 16.6 **Grant Chargeback Invoices.** In the case of an invoice for grant activities being paid during the second fiscal year for which the funds were appropriated, ALL INVOICES MUST BE SUBMITTED IN SUFFICIENT TIME FOR TCEQ REVIEW, NECESSARY CORRECTIONS, TCEQ APPROVAL, AND SUBSEQUENT PRESENTATION TO THE COMPTROLLER BEFORE THE END OF THE FISCAL YEAR.

- 16.7 Travel.** In order to be reimbursable, travel costs must be specifically authorized in advance of the travel. Travel costs, including per diem, will be reimbursed only in the amount of actual costs, up to the maximum allowed by law for employees of the State of Texas at the time the cost is incurred.
- 16.8 Supporting Records.** The Performing Party will submit records and documentation to TCEQ as appropriate for the review and approval of reimbursing costs. TCEQ may reject invoices without appropriate supporting documentation. TCEQ has the right to request additional documentation. The Performing Party will maintain records subject to the terms of this Contract.

DRAFT

NOTICES, PROJECT REPRESENTATIVES AND RECORDS LOCATION

1. Representatives. The individual(s) named below are the representatives of TCEQ and the Performing Party. They are authorized to give and receive communications and directions on behalf of TCEQ and the Performing Party as indicated below. All communications including official Contract notices must be addressed to the appropriate representative or his or her designee.

2. Changes in Representatives. Either party may change its representative by notice to the other party.

3. TCEQ Representatives

**TCEQ Contract Manager
(For Contractual Matters)**

Deanna Sivek
Texas Commission on Environmental Quality
P.O. Box 13087 MC-177
Austin, Texas 78711-3087
Telephone No.: (512) 239-5074
Facsimile No.: (512) 239-0404
deanna.sivek@tceq.texas.gov

4. Performing Party Representatives

Name
Org
17330 Highway 3
Webster, Texas 77598
Telephone No.: (281)-332-3381 ext. 211
bstokes@galvbay.org

Invoice Submittal. Invoices may be submitted electronically to the TCEQ Contract Manager at LEPCGrants@tceq.texas.gov. Invoices submitted by mail must be addressed to the TCEQ Contract Manager.

5. Designated Location for Records Access and Review. The Performing Party designates the physical location indicated below for record access and review pursuant to any applicable provision of this Contract:

ORG
17330 Highway 3
Webster, Texas 77598

Attachment A

**Texas Commission on Environmental Quality
FINANCIAL STATUS REPORT**

STATE AGENCY ORGANIZATION UNIT				
1. TO WHICH REPORT IS SUBMITTED:				
2. GRANT/CONTRACT TITLE:				
3. PAYEE IDENTIFICATION NUMBER:			4. RECIPIENT ORGANIZATION (NAME AND COMPLETE ADDRESS, INCLUDING ZIP CODE) :	
5. TCEQ CONTRACT NUMBER:				
6. FINAL REPORT: YES		NO		
7. ACCOUNTING BASIS: CASH		ACCRUAL		
8. TOTAL PROJECT/GRANT PERIOD: FROM TO			9. PERIOD COVERED BY THIS REPORT: FROM TO	
10. BUDGET CATEGORIES:	Approved Budget	Project Cost This Report	Cumulative Project Cost	Balance **
a. Personnel/Salary		*		
b. Fringe Benefits				
c. Travel		*		
d. Supplies		*		
e. Equipment		*		
f. Contractual		*		
g. Construction		*		
h. Other		*		
i. Total Direct Costs (Sum a - h)				
j. Indirect Costs				
k. Total (Sum of i & j)				
<p>*List (Itemize) on the appropriate supplemental form all component expenses comprising the total for each of these categories. Please attach receipts, as required, in accordance with Attachment B of your contract. **Negative balances in any of the budget categories should be explained in a brief accompanying narrative.</p>				
11. CERTIFICATION I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award document.				
_____ Signature of Authorized Certifying Official				
_____ Typed or Printed Name and Title				
_____ Telephone (Area code, number and ext.)			_____ Date Submitted	

Attachment A (contd.)

ITEMIZATION OF EQUIPMENT AND CONTRACTUAL COSTS

EQUIPMENT PURCHASES (during this report period)

NUMBER PURCHASED	ITEM DESCRIPTION (Should match description provided for approval)	UNIT COST	TOTAL COST	TASKS
TOTAL EQUIPMENT EXPENDITURES (must agree with line 10e on Form 20248)			\$	

CONTRACTUAL EXPENDITURES (during this report period)

SUBCONTRACTOR (NAME)	FOR	COST (THIS PERIOD)	TASKS
TOTAL CONTRACTUAL EXPENDITURES (must agree with line 10f on Form 20248)		\$	

* LEGIBLE PURCHASE ORDER AND/OR INVOICES MUST BE ATTACHED TO THIS FORM FOR EACH LISTED ITEM OR EXPENDITURE.

ITEMIZATION OF SUPPLY AND OTHER COSTS

SUPPLIES PURCHASED (during this report period)

NUMBER PURCHASED	ITEM DESCRIPTION (Should match description provided for approval)	UNIT COST	TOTAL COST	TASKS
TOTAL SUPPLY EXPENDITURES (must agree with line 10d on Form 20248)			\$	

OTHER EXPENDITURES (during this report period)

NUMBER PURCHASED	DESCRIPTION	UNIT COST	TOTAL COST	TASKS
TOTAL OTHER EXPENDITURES (must agree with line 10h on Form 20248)			\$	

*LEGIBLE RECEIPTS OR OTHER SUBSTANTIATING DOCUMENTATION MAY BE ATTACHED FOR EXPENDITURES THAT EQUAL OR EXCEED \$500.

ITEMIZATION OF PERSONNEL/SALARY AND TRAVEL COSTS

PERSONNEL/SALARY EXPENDITURES (during this report period)

EMPLOYEE NAME	TITLE/POSITION	SALARY (THIS PERIOD)	TASKS
TOTAL PERSONNEL/SALARY EXPENDITURES (must agree with line 10a on Form 20248)		\$	

TRAVEL EXPENDITURES (during this report period)

DESCRIPTION	REASON	COST (THIS PERIOD)	TASKS
TOTAL TRAVEL EXPENDITURES (must agree with line 10c on Form 20248)		\$	

* SUBSTANTIATING DOCUMENTATION (time sheets, travel receipts, etc.) MAY BE REQUIRED TO BE ATTACHED TO THIS FORM

Financial Status Report Preparation Instructions

1. The PERFORMING PARTY, in order to obtain reimbursement for those expenditures authorized under this Contract, shall submit, a completed, legible TCEQ Financial Status Report (TCEQ Form 20248) and any required TCEQ Supplemental 20248 forms. Unless directed otherwise in the Contract, the PERFORMING PARTY shall submit such payment request documents by not later than twenty-one (21) days after the close of each state fiscal year quarter. The reporting periods shall also correspond to the State of Texas fiscal year quarters (September-November; December-February, March-May; June-August). Each Financial Status Report shall indicate, for each budget sub-category the PERFORMING PARTY'S project expenditures for the period in question, the cumulative expenditures with respect to each budget sub-category, and the balance remaining in each budget sub-category following reimbursement of the amount being requested. A quarterly Financial Status Report is required even if no expenses were incurred during the report period.

2. All requests for reimbursement of expenditures that fall within either the "Equipment" or "Contractual" categories of the Contracts Cost Budget shall be itemized by the PERFORMING PARTY on Supplemental Form 20248-1 and identified with respect to the major tasks or objectives, set forth in the Scope of Work, that such expenditures support or satisfy. In addition, the PERFORMING PARTY shall attach, for each reimbursable cost listed on Supplemental Form 20248-1, legible documentation that (1) serves to further identify the specific piece of equipment received or the services provided, (2) clearly identifies the vendor or subcontractor who provided the equipment or services, and (3) that confirms the reimbursable amount listed on the form. In the case of equipment purchases, the attached documentation shall be either a purchase order marked "received/paid" or a vendor-submitted invoice similarly marked. In the case of subcontractor provided services, the documentation shall consist of a dated invoice that shows the amount billed to the PERFORMING PARTY and any "past due" amount from previous invoices.

3. All requests under this Contract for the reimbursement of expenditures that fall within the "Construction" category of the Contracts Cost Budget shall be itemized by the PERFORMING PARTY on Supplemental Form 20248-2 and identified with respect to the major tasks or objectives, set forth in the Scope of Work, that such expenditures support or satisfy. In addition, the PERFORMING PARTY shall attach, for each reimbursable cost listed on Supplemental Form 20248-2, legible documentation that (1) serves to further identify the specific cost, (2) clearly identifies the vendor or subcontractor who provided the construction related materials or services, and (3) that confirms the reimbursable amount listed on the form. The attached documentation shall be either a purchase order marked "received/paid" or an invoice similarly marked. In the case of subcontractor provided construction services, the documentation shall consist of a dated invoice that shows the amount billed to the PERFORMING PARTY and any "past due" amount from previous invoices.

4. All requests for the reimbursement of expenditures that fall within either the "Supply" or "Other" categories of the Contracts Cost Budget shall be itemized by the PERFORMING PARTY on Supplemental Form 20248-3 and identified with respect to the major tasks or objectives, set forth in the Scope of Work, that such expenditures support or satisfy. In addition, for any single-listed item or service costing more than \$500, the PERFORMING PARTY shall attach, for each reimbursable cost listed on Supplemental Form 20248-3, legible documentation that (1) serves to further identify the specific items or services, (2) clearly identifies the vendor or subcontractor who provided the items or services, and (3) that confirms the reimbursable amount listed on the form. Although issued purchase orders and/or invoices marked "received/paid" represent the preferred types of documentation for purposes of this section, the PERFORMING PARTY may substitute/attach other records or documents that provide the same type of information. The PERFORMING PARTY 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.

5. All requests for reimbursement of expenditures that fall within either the "Personnel/Salary" or "Travel" categories of the Contracts Cost Budget shall be itemized by the PERFORMING PARTY on Supplemental Form 20248-4 and identified with respect to the major tasks or objectives, set forth in the Scope of Work, that such expenditures support or satisfy. Although no supporting documentation is required to be attached to Supplemental Form 20248-4 with respect to reported "Personnel/Salary" expenditures in order to receive reimbursement, the PERFORMING PARTY is expected to maintain signed time sheets that can serve to verify the total, overall hours of staff time being directly billed to this Contract. With respect to employee travel, all costs listed on Form 20248-4 must be supported by attached documentation that identifies the name of the traveler's, and that substantiates the reported reimbursable costs. Documentation, for the purpose of substantiating travel-related costs, includes the following: (1) legible copies of the PERFORMING PARTY-approved travel vouchers, signed by the employees who traveled, and (2) for any travel-related expenses under this contract borne directly by the PERFORMING PARTY (and thus for which reimbursement by the PERFORMING PARTY to the traveler was not required) separate receipts showing, at a minimum, the traveler's name, the travel location, and the travel date(s).

6. When a single expenditure supports or satisfies more than one task or objective, the PERFORMING PARTY need not breakdown that particular expenditure by specific contract task or objective but may simply identify, in relative cost order, the various tasks or objectives supported.

Attachment B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Release of Claims

_____ hereby releases the Texas Commission on Environmental Quality (TCEQ), its officers, agents, and employees from any and all future claims arising under or by virtue of TCEQ Contract Number _____.

_____ further certifies that all subcontractors, suppliers, employees and any party which has performed or provided service for this Contract has been paid in full and satisfied.

All services and tasks required to be completed under the referenced Contract have been completed.

Prompt payment, therefore, of any and all funds which may have been "retained" by TCEQ in accordance with said Contract is requested.

Executed on this _____ day of _____, 20____.

By: _____
(signature)

(name, typed or printed)

(title)

Attachment C

BUDGET REVISION REQUEST FORM

Purpose: For TCEQ review and approval of recipient organization proposed budget changes to ensure project deliverables are met and fiscal accountability. Prior TCEQ review and approval is required before incurring specific costs which would result in cumulative transfers of 10% or more of total budget.

Instructions: Complete 1. - 8. The spreadsheet will total the amounts in 9., i., and k.

1. Recipient Organization (Name & Complete Address Including Zip Code):

2. Grant/ Contract Title:

3. Payee Identification No.:

4. TCEQ Contract No.:

5. Total Project/ Grant Period:

6. Budget Categories:

7. Approved Budget

8. Change Requested (+ or -)

9. New or Revised Budget

a. Personnel/Salaries

b. Fringe Benefits

c. Travel

d. Supplies

e. Equipment

f. Contractual

g. Construction

h. Other

i. Total Direct Costs (sum a - h)

j. Indirect Costs (____% x \$ _____ Salary)

k. Total (sum i & j)

Justification (Attach additional sheets, if necessary):

Budget Revision Request must contain both the TCEQ Project Manager and TCEQ Contract Manager signatures to be valid.

Signature of Authorized Representative Date

Type or Printed Name and Title

Signature of TCEQ Project Manager Date

Type or Printed Name and Title

Signature of TCEQ Contract Manager Date

Type or Printed Name and Title

Attachment D

PERFORMING PARTY'S PERFORMANCE EVALUATION REPORT

Final Report (Check only if the Agreement has ended and this is the last Performance Report)
 Report No. _____ of _____
 Grantee: _____
 Project Name (if applicable) _____
 Date of Last Report: _____
 Date of Program's Last Site Visit (if applicable): _____
 Brief Description of Work / Services (optional): _____

Today's Date: _____
 Evaluation Period: from _____ to _____
 Contract No./ Purchase Order No. _____
 Phase (if applicable): _____

Performance Category	Ratings				Comments
	<u>Exceeds Expectations</u> Score=3	<u>Satisfactory Performance</u> Score=2	<u>Marginal Performance</u> Score=1	<u>Unsatisfactory Performance</u> Score=0	
Quality & Accuracy					Please provide a narrative description for ratings of <u>one</u> or below (<i>attachments are acceptable.</i>)
Reimbursement Request					
Tangible Resources					
Cost Control					
Meeting Frequency					

Evaluator's Name: _____
 (Printed or Typed)

Signature: _____

Division: _____

Section: _____

Note: Please see reverse side for specific definitions for each performance category and an explanation for each score.

Attachment E

PERFORMING PARTY'S PERFORMANCE EVALUATION REPORT - Category Descriptions

PERFORMANCE CATEGORY	<u>EXCEEDS EXPECTATIONS</u> (Score = 3)	<u>SATISFACTORY PERFORMANCE</u> (Score = 2)	<u>MARGINAL PERFORMANCE</u> (Score = 1)	<u>UNSATISFACTORY PERFORMANCE</u> (Score = 0)
1. <u>Quality and Accuracy</u> Quality, sufficiency, and accuracy of contract-required work, including work or Tasks performed by subcontractors.	Work product always, with rare exceptions, of excellent quality. Revisions rarely or never required.	Work product of satisfactory quality with only typical errors and omissions, which were corrected upon request.	Work product is acceptable, although many errors and/or omissions had to be corrected prior to product being acceptable.	Work product not acceptable or of very low quality, with many errors and omissions noted. Not all errors and omissions corrected.
2. <u>Reimbursement Request</u> Accuracy and timeliness of Contract-required activity/progress reports, notifications, financial reports, invoices, pay requests and other required documents.	All reports accurate and complete, as well as on time. No rewrites or additional information required.	Reports satisfactory with respect to both quality and timeliness. Contractor responded quickly and appropriately to questions or comments raised.	Numerous errors and/or omissions corrected prior to reports being acceptable (or reminders of reports due were required to be sent). Reports no later than 5 working days.	Reports consistently of poor quality and/or late. Contents inadequate to permit interpretation or analysis. Reports more than 5 working days late.
3. <u>Tangible Resources</u> Performing party had resources that could be used through multiple years or by other LEPCs.	Performing Party had more than two projects with tangible resources that will continue to be used by the Performing Party or other LEPCs.	Performing Party had one or two projects with tangible resources that will continue to be used by the Performing Party or other LEPCs.	Performing Party had partial projects with tangible resources that will continue to be used by the Performing Party or other LEPCs.	Performing Party had zero projects with tangible resources that will continue to be used by the Performing Party or other LEPCs.

<p>4. <u>Cost Control</u>* Contractor's ability to observe current cost levels; compare them with Contract or Work Order budget, as applicable; and institute corrective action to keep cost within budget. *Do not include consideration of Contract or Work Order budget amount changes requested or caused by TCEQ.</p>	<p>Contractor took strong initiative to observe current cost levels; compare them with Contract or Work Order budget, as applicable; and institute corrective action to keep cost within budget.</p>	<p>Contractor observed current cost levels; compared them with Contract or Work Order budget, as applicable; and instituted corrective action to keep cost within budget.</p>	<p>Contractor sometimes failed to observe current cost levels; compare them with Contract or Work Order budget, as applicable; and institute corrective action to keep cost within budget.</p>	<p>Contractor failed to observe current cost levels; compare them with Contract or Work Order budget, as applicable; and institute corrective action to keep cost within budget.</p>
<p>5. <u>Meeting Frequency</u> Performing Party meeting frequency will include all meetings that all LEPC members are invited to. Meeting notes may be requested by the program area.</p>	<p>Performing Party met more than quarterly and submitted all meeting notes to the TCEQ.</p>	<p>Performing Party met quarterly and had meeting notes available upon request.</p>	<p>Performing Party had three meetings or less and had notes from some meetings.</p>	<p>Performing party had two or less meetings and no notes available.</p>