

Federal Conditions and Forms (GRANTS)

ARTICLE 1. FEDERAL REQUIREMENTS

This Agreement is funded in whole or in part with federal grant money. All applicable requirements of TCEQ's federal grants; 2 Code of Federal Regulations (CFR) Part 200, and any additional federal funding conditions that arise during the Agreement period, are incorporated herein by reference. (TCEQ will provide copies of applicable federal grants or regulations upon request). The term "Performing Party" as used in these *Federal Conditions* means either Performing Party, Grantee, or Contractor, as applicable.

ARTICLE 2. FEDERAL INTELLECTUAL PROPERTY REQUIREMENTS

A royalty-free, nonexclusive, and irrevocable license to use, copy, publish, and modify any intellectual property to which rights are granted or assigned to TCEQ in this Agreement are also granted to, assigned to, or reserved by the Federal Government.

ARTICLE 3. ACKNOWLEDGMENT OF FINANCIAL SUPPORT

The Performing Party shall acknowledge the financial support of the TCEQ and the U.S. EPA whenever work funded, in whole or part, by this Agreement is publicized or reported in news media or publications. All reports and other documents completed as a part of this Agreement, other than documents prepared exclusively for internal use within the TCEQ, shall carry the following notation on the front cover or title page:

PREPARED IN COOPERATION WITH THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND
U.S. ENVIRONMENTAL PROTECTION AGENCY

This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to Texas Commission on Environmental Quality. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document.

If the funding source is a U.S. agency other than U.S. EPA, the name of the appropriate federal agency should be substituted.

ARTICLE 4. RECYCLED MATERIALS

1. When Performing Party procures \$10,000 or more of a designated item in a fiscal year for this Contract or did so in the preceding fiscal year, Performing Party will select the item containing the highest percentage of recycled materials practicable as required by 42 U.S.C. 6962 and 2 CFR 200.322. This requirement does not apply to incidental purchases that are not a direct result of this Contract. Designated items are listed by the EPA in the most recent Consolidated Recovered Materials Advisory Notice. If the item with the highest percentage of recycled materials does not meet performance standards or is not available in a reasonable time or at a reasonable price, or the purchase of the item would not allow a reasonable level of competition, Performing Party may select a different item. With its invoice, Performing Party will report any purchases to which this section applies to TCEQ and indicate the percentage of recycled materials in the items purchased. If Performing Party does not select the item containing the highest percentage of recycled materials, it will also state the reason.
2. Paper for Reports to EPA. When directed to provide paper documents, the Performing Party agrees to use recycled paper and double sided printing for all reports which are prepared as a part

of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

ARTICLE 5. ACCOUNTING SYSTEMS AND PROPERTY MANAGEMENT

1. Performing Party shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with 2 CFR § 200.49. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.
2. Performing Party shall comply with the property management requirements of 2 CFR §§ 200.310 through 200.316.

ARTICLE 6. RECORDS, ACCESS, AND AUDIT

1. The Federal Government and its agencies will have the same rights of access to records as are granted to, assigned to, or reserved by the TCEQ under this Agreement. The Performing Party shall maintain fiscal records and supporting documentation for all expenditures of funds pursuant to 2 CFR Part 200, Subparts D and F, as appropriate.
2. In accordance with 2 CFR 200.501(a), the Performing Party shall obtain a single audit if it expends \$750,000 or more a year in federal awards.

ARTICLE 7. SUSPENSION AND DEBARMENT

Performing Party shall fully comply with Subpart C of 2 CFR Part 180, entitled "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part 1532. Performing Party is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Performing Party is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Performing Party acknowledges that failing to disclose the information required under 2 CFR § 180.335 may result in the delay or negation of this agreement or pursuance of legal remedies. Performing Party may access the System for Award Management at:
<https://www.sam.gov/portal/SAM/#1>.

ARTICLE 8. PROHIBITION ON USE OF FEDERAL FUNDS FOR LOBBYING AND LITIGATION

1. The Performing Party agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The Performing Party agrees that none of the funds paid under this Contract will be used to engage in the lobbying of the Federal Government in connection with obtaining any federal contract, grant, or other award, or in litigation against the United States unless authorized under existing law.
2. The Performing Party shall submit to the TCEQ the EPA Certification Regarding Lobbying form and if applicable, the Disclosure of Lobbying Activities form. The Performing Party must file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.
3. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

ARTICLE 9. CIVIL RIGHTS OBLIGATIONS

1. In carrying out this agreement, the recipient must comply with:
 - a. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.

- b. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 - c. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- 2. If the recipient is conducting an education program under this agreement, it must also comply with:
 - a. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.
- 3. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
 - a. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.
- 4. Regulatory Requirements
 - a. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
 - i. For Title IX obligations, 40 CFR Part 5; and
 - ii. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
 - iii. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.
- 5. TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation
 - a. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at <http://www.epa.gov/civilrights/lepaccess.htm>.
- 6. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
- 7. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

ARTICLE 10. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

- 1. The Performing Party shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Performing Party shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Performing Party to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.
- 2. Performing Party agrees that qualified DBEs shall have the maximum practicable opportunity to participate in the performance of the Work required under this Contract through possible subcontracts to carry out portions of the Work or any goods or services procured to directly support the Work.
- 3. The Performing Party is required to make a good faith effort to include Historically Underutilized Businesses (HUBs) or DBEs on any procurement for subcontractors or suppliers/vendors for Work under this Contract.

4. The Performing Party must submit EPA Form 5700-52A on or before October 15 of each year of the Contract. At minimum, this form shall include the name of the HUB or DBE; a description of the work, services, or materials provided; the amount paid to the HUB or DBE; and the name and telephone number of a contact person for the HUB or DBE.
5. The Performing Party must provide the DBE Subcontractor Participation Form (EPA Form 6100-2) to all its DBE subcontractors.
6. The Performing Party shall retain all records documenting compliance with good faith efforts whether performing under the EPA DBE program.
7. Before terminating a DBE for convenience, the Performing Party must notify TCEQ in writing.
8. If a DBE subcontractor fails to complete work for any reason, and the Performing Party plans to procure a replacement subcontractor, the Performing Party must demonstrate the same good faith effort to procure the replacement subcontractor.
9. The Performing Party must pay its subcontractors for satisfactory performance no more than 10 days from the Performing Party's receipt of payment from TCEQ.

ARTICLE 11. DEMONSTRATION OF COMPETENCY

In accordance with EPA directive FEM 2012-02 Rev. 1, "Policy to Assure the Competency of Organizations Generating Environmental Measurement Data Under Agency-Funded Assistance Agreements," if the Work performed by the Performing Party or any of its subcontractors under this Contract includes generating or using environmental data through sample collection, field measurements and/or laboratory analysis, then it must document and maintain certification demonstrating the competency of individuals using or generating environmental data under this Contract. Certification may include training records, certificates, or educational credentials.

ARTICLE 12. TRAFFICKING IN PERSONS

1. Prohibition Statement – Performing Party may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time of the award; or use forced labor in the performance of the award or subaward under the award.
 - a. TCEQ may unilaterally terminate this award, without penalty, if a Performing Party that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement above; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement through conduct that is either (a) associated with performance under this award; or (b) imputed to the Performing Party using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)", as implemented at 2 CFR Part 1532. The Performing Party must inform TCEQ immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement above.
 - b. TCEQ's right to terminate unilaterally: (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 TCEQ under this award.

ARTICLE 13. MISCELLANEOUS PROVISIONS

1. Drug-Free Workplace. The Performing Party must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536. Additionally, in accordance with these regulations, the Performing Party must identify all known workplaces under its federal awards and keep this information on file during the performance of the award.
2. Hotel and Motel Fire Safety Act. Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the Performing Party 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). Performing

Party may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance, or to find other information about the Act.

ARTICLE 14. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING

1. In accordance with 2 CFR Part 25, entities that receive subawards from TCEQ that are funded wholly or partially with federal funds must (1) be registered in the Central Contractor Registration (CCR) prior to submitting an application or plan or entering into an agreement; (2) maintain an active CCR registration with current information at all times while the application or plan is under consideration by TCEQ or during the term of the agreement; and (3) provide its Data Universal Numbering System (DUNS) number in each application or plan it submits to TCEQ, unless an exemption applies.
2. No funds may be received or awarded until Performing Party has complied with these requirements and provided a valid DUNS number.
3. Additionally, in accordance with 2 CFR Part 170, if certain elements are met, Performing Party must report the total compensation for each of its five most highly compensated executives for the preceding completed fiscal year.
4. These elements are found on the attached, completed TCEQ Pass-Through Funding Information and Federal Funding Accountability and Transparency Act Reporting Form.

ARTICLE 15. CONSULTANT SALARY CAP

1. The salary rate (excluding overhead) paid to individual consultants retained by the Performing Party is limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, and adjusted annually.
2. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This salary limit applies unless the consultant was selected through a procurement process that conforms to Subpart D of 2 CFR 200.
3. Under EPA's policy regarding payments to consultants under grants, consultants are typically individuals who are experts with excellent qualifications and are usually regarded as authorities or practitioners of unusual competence and skill by other individuals engaged in the same profession.

ARTICLE 16. COST AND PRICE OF THIS AGREEMENT

The Performing Party must comply with 2 CFR §200.323. The Performing Party may request a form from TCEQ to use when performing a cost or price analysis.

Instructions on how to fill out the attached Federal Forms:

- 1. Certification Regarding Lobbying (EPA Form 6600-06)**- Complete and return with signed contract. Contains certifications about the use of Federal appropriated funds in connection with lobbying. If at any time during the course of the contract you have any federal lobbying to report, you must provide a **Disclosure Regarding Lobbying Form (SF-LLL)** to the TCEQ Project Representative, with quarterly updates. Note, this form is not attached, but may be found online.
- 2. MBE/WBE Utilization Under Federal Grants and Cooperative Agreements (EPA Form 5700-52A)**— submitted annually on or before October 15. Detailed instructions are on the EPA Form.
- 3. DBE Subcontractor Participation Form – EPA Form 6100-2** – the Performing Party must give these forms to his/her subcontractors to fill out and turn into EPA DBE Coordinator for Region 6.
- 4. TCEQ Pass-Through Funding Information and Federal Funding Accountability and Transparency Act Reporting Form**- Completed prior to contract execution and attached below.