

AN ORDINANCE

2009-06-04-0460

**AUTHORIZING AGREEMENTS WITH THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY WHICH WILL PROVIDE \$431,100.00 IN TOTAL FUNDING FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S PUBLIC CENTER FOR ENVIRONMENTAL HEALTH TO CONTINUE THE OPERATION AND MAINTENANCE OF VARIOUS AIR MONITORS AND AIR SAMPLERS IN THE SAN ANTONIO AREA FOR A ONE-YEAR PERIOD BEGINNING SEPTEMBER 1, 2009.**

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**WHEREAS**, the Public Center for Environmental Health (PCEH) was established to protect the environment of residents in San Antonio, since air quality has a potential health impact, air monitoring and follow up measures to address the problems identified are important public health efforts; and

**WHEREAS**, the Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, has contracted with the City of San Antonio for PCEH to manage two local air monitoring efforts; and

**WHEREAS**, through one contract PCEH operates and maintains various air quality monitors, while two other contracts from TCEQ support work by PCEH to operate and maintain air particulate matter monitors that measure small air particles known to trigger asthma and other respiratory illnesses in children; and

**WHEREAS**, current contracts end on August 31, 2009 and TCEQ wishes for the PCEH to continue these services through August 31, 2010; and

**WHEREAS**, to accomplish this, TCEQ has offered a contract amendment in the amount of \$103,000.00 for operation and maintenance of six particulate matter monitors in San Antonio, a contract amendment of \$42,100.00 for a continuous air monitoring station located at Lake Calaveras and two particulate matter monitors, and a contract of \$286,000.00 for air quality monitors located throughout San Antonio; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee or the Director of the San Antonio Metropolitan Health District (SAMHD) or his designee, is authorized to execute a contract and two contract amendments with the Texas Commission on Environmental Quality which will provide \$431,100.00 in total funding for the SAMHD's Public Center for Environmental Health to continue the operation and maintenance of various air monitors and air samplers in the San Antonio area for a one-year period beginning September 1, 2009. A copy of the contract and the two contract amendments are attached hereto and incorporated herein for all purposes as **Attachments I, II and III.**

**SECTION 2.** The City Manager or her designee or the Director of the SAMHD or his designee, is further authorized to execute contract amendments to contract #582-10-86408 in the following instances: a) amendments which will increase the compensation by up to \$104,000.00 and revise the program budget from \$286,000.00 to \$390,000.00 b) line item budget revisions authorized by the funding agency of up to 20% of the total dollar amount of the initial program budget of \$286,000.00 c) modifications to the performance measures authorized by the funding agency and listed in the contract so long as the terms of the amendment stay within the general parameters of the intent of the grant and d) changes in state or federal regulations mandated by the funding agency.

**SECTION 3.** Fund 26008000 entitled "TCEQ" is hereby designated for use in the accounting for the fiscal transaction in the acceptance of these grant contracts, and the amount listed in SECTION 1, as well as additional funds awarded during the grant year in contract #582-10-86408 will be appropriated in said fund. Formal final budgets which will include a department specific fund, Internal Order numbers and General Ledger numbers will be submitted by the department upon award. The proposed budgets which are attached hereto and incorporated herein for all purposes as **Attachment IV, V and VI** are approved.

**SECTION 4.** The City Manager or her designee or the Director of the SAMHD or his designee, is hereby authorized to carry-over funds, when ascertained and approved by the funding agency through a revised notice of award.

**SECTION 5.** The proposed personnel complement which is attached hereto and incorporated herein for all purposes in **Attachment IV** is hereby approved.

**SECTION 6.** The financial fiscal allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 7.** This ordinance shall be effective on and after June 14, 2009.

PASSED AND APPROVED this 4<sup>th</sup> day of June, 2009.



M A Y O R

JULIÁN CASTRO

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney

<b>Agenda Item:</b>	<b>20 ( in consent vote: 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 29, 30, 32 )</b>						
<b>Date:</b>	06/04/2009						
<b>Time:</b>	10:58:40 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing agreements with the Texas Commission on Environmental Quality which will provide \$431,100.00 in total funding for the San Antonio Metropolitan Health District's Public Center for Environmental Health to continue the operation and maintenance of various air monitors and air samplers in the San Antonio area for a one-year period beginning September 1, 2009. [Frances A. Gonzalez, Assistant City Manager; Dr. Fernando A. Guerra, Director, Health]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julian Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				x
Diane G. Cibrian	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

## Texas Commission on Environmental Quality

**Intergovernmental Cooperative Reimbursement Agreement**  
with  
**Federal, State and Local Governments and Agencies**  
**CONTRACT SIGNATURE PAGE**

Contract Name	Whole Air Monitoring
Contract Number	582-10-86408
Performing Party	City of San Antonio
Performing Party Identification Number	17460020708

Maximum TCEQ Obligation: \$286,000.00	Effective Date: 9/1/09 or Date of last signature, whichever is later.	Expiration Date: 8/31/2010
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The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and the named Performing Party, a governmental body, agency, or political subdivision of: the United States, the State of Texas, or another State, enter this agreement (Contract) to cooperatively conduct authorized governmental functions and activities under the laws of the State of Texas, including, without limitation, the Interagency Cooperation Act, the Interlocal Cooperative Act, and Texas Water Code §§ 5.124 and 5.229. The Parties agree: to be effective, the Contract must be signed by an authorized official of the TCEQ and the Performing Party; as authorized by TCEQ, Performing Party will conduct Contract Activities as part of its own authorized governmental functions and TCEQ will reimburse Allowable Costs subject to the Texas Uniform Grant Management Standards and this Contract; the Performing Party is not a vendor of goods and services under Texas Government Code Chapter 2251, therefore, no interest is applicable; and the Contract may be terminated by TCEQ for its own convenience with 30 days written notice.

Parties to the Contract:	Texas Commission on Environmental Quality (TCEQ)	(Performing Party) City of San Antonio
By (Authorized Signature)		By: _____ Signature
Printed Name:	Carlos Rubinstein	Date
Title:	Deputy Executive Director	Fernando A. Guerra, M.D., MPH Director of Health
Date of Signature:		332 W. Commerce, Suite 307 San Antonio, Texas 78205 210-207-8730 Fernando.Guerra@sanantonio.gov
Contract Manager:	Daniel McClellan	
Contact Phone:	512/239-6306	
Procurement and Contracts Representative:	Paula N. Castilleja, CTPM	

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Leticia M. Vacek, City Clerk\_\_\_\_\_  
Michael D. Bernard  
City Attorney

Date: \_\_\_\_\_

**Intergovernmental Cooperative Reimbursement Agreement  
CONTRACT DOCUMENTS**

The entire Contract between TCEQ and Performing Party is composed of the Contract Documents listed on this Page and marked by an "X." A listed document includes all amendments. The terms "Contract" and "Grant Agreement" include all the Contract Documents. In the event of a conflict of terms, the Contract Documents as amended control in the descending order of the list, subject to provisions in the Special Terms and Conditions, if any. All Contract provisions, however, are subject to control by the latest amendment and most specific provision and by the applicable state and federal laws, rules, and regulations.

X	Contract Signature Page
X	Special Terms and Conditions
X	Documents Created During the Contract (including any Work Plan, or Work Plan amendment approved by TCEQ in accordance with Contract procedures)
X	Contract Activities ("Scope of Work")
	TCEQ - Approved Work Plan / Performing Party Proposal
	Work Order Section
X	Contract Budget
X	General Terms and Conditions
	Schedule of Fixed Cost for Reimbursement
X	Federal Section (Including Conditions and Completed Forms)
X	Project Representatives and Records Location
X	Exhibit F – Operations Security Procedures for the Bio-Watch Program
X	Exhibit G – Department of Homeland Security Management Directive 11042.1
X	Exhibit H – Department of Homeland Security Non-Disclosure Agreement (Form 11000-6)
X	Exhibit I – TCEQ Financial Status Report Form (FSR)
X	Exhibit J - HUB Progress Assessment Report Form

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
**Inter-Governmental Cooperative Reimbursement Agreement**  
with  
**Federal, State and Local Governments and Agencies**

CONTRACT ACTIVITIES

Scope of Work

A. Facts/Purpose

1. The Texas Commission on Environmental Quality (TCEQ) has a need to contract for the service to operate and maintain six (6) whole-air samplers in the San Antonio, Texas area.
2. In general, information about the BioWatch program operations, including locations of sites, cities, etc, is considered to be "For Official Use Only" (FOUO), or Sensitive but Unclassified (SBU) information. The PERFORMING PARTY will protect such information in accordance with the U.S. Department of Homeland Security (DHS) Management Directive 11042.1 and the DHS BioWatch Program Security Classification Guide (copies of both documents are attached). As such, the PERFORMING PARTY cannot publish reports or disseminate data on this program for general public consumption, unless otherwise approved in writing by the TCEQ Program Manager or the DHS BioWatch Program Manager.

All PERFORMING PARTY personnel who may have access to SBU or FOUO information will be required to sign the DHS Non-Disclosure Agreement Form (DHS Form 11000-6 (08-04) copy attached).

3. The proposed work must be performed in compliance with all applicable federal and state statutes, regulations, executive orders, Office of Management and Budget (OMB) circulars, and the terms and conditions presented herein.
4. The proposed work must also be performed in accordance with currently applicable Standard Operating Procedures (SOP) developed by the U.S. Department of Homeland Security (DHS) (reference follows), the TCEQ, and the respective instrument manufacturers. (*Ref: BioWatch Field SOP-Version 1-1b-FINAL; Date Issued: December 19, 2007*). In the event of conflict in procedural instructions, instructions approved by the Department of Homeland Security shall prevail.
5. Funds provided under this Contract may only be used for the purposes set forth and relating to the BioWatch Program as described below.

TCEQ Responsibilities

TCEQ staff will be responsible for providing:

1. Specific equipment and supplies necessary to perform this service, unless otherwise noted under Section C (PERFORMING PARTY Responsibilities) below.

C. PERFORMING PARTY Responsibilities

The PERFORMING PARTY shall provide:

1. The transfer of sensitive information through a secure means such as the BioWatch Portal or password-protected email.
2. Competent personnel who, if a new hire or have not previously held a position in the BioWatch Program, must meet the following requirements:
  - a. Have U.S. citizenship;
  - b. Have successfully passed a background or suitability investigation consistent with specific guidance from DHS or the local Federal Bureau of Investigation (FBI);
  - c. Have no criminal record of felonies; and
  - d. Have passed an "Initial Display of Analytical Capability (IDAC)" if involved in the operation of a collector (form provided by TCEQ).

Failure to comply with these personnel requirements may be considered a material failure to comply with the Contract Terms.

3. Cell phones assigned to all appropriate BioWatch personnel at all times during assigned working hours.
4. Vehicles necessary to provide for all on-site services and the maintenance of an accurate mileage record reflecting BioWatch-related activities.
5. All minor equipment or supply components considered either durable (e.g., hinges, locks) or consumable/disposable (e.g., fuses, wiring, wipes, gloves) and that are considered normally available at a local hardware or electronics store.
6. Purchases of equipment having a unit cost exceeding \$1,000 are subject to review and prior approval of TCEQ.

Qualifications and Experience

Site operators shall have sufficient hands-on experience with the operation and maintenance of ambient-air particulate samplers/collectors to pass the IDAC as required in Article C.2.d. listed above.

Description and Schedule of Deliverables

All deliverables must be in accordance with currently applicable guidelines including the DHS Compendium of Standard Operating Procedures (SOP) referenced in Article A.3., listed above, and any other guidance mutually-agreed upon with the TCEQ, DHS, the Center for Disease Control and Prevention (CDC), and the DHS designated national laboratories, as applicable.

The PERFORMING PARTY shall provide:

1. The collection of air monitoring samples from each active collector, seven (7) days a week, including, but not limited to, operations, maintenance, Quality Assurance/Quality Control (QA/QC), data review, and reporting on these activities in accordance with currently applicable SOP's.
2. Delivery of the collected daily samples to the designated analytical laboratory by the laboratory's requested deadline and no later than three (3) hours following the last daily sample collected.
3. Routine filter-holder cleaning, assembly, and maintenance as assigned.
4. Assurance that each sample is collected in accordance with the guidelines specified in the referenced DHS SOP.
5. Exclusive utilization of the Sample Management System (SMS) as provided by DHS or the DHS designated national laboratory.
6. Completion and storage of all required documentation in accordance with the guidelines specified in the referenced DHS SOP, including:
  - a. The required Filter Holder Log Form and chain-of-custody;
  - b. The creation of biweekly electronic backup files on securely-stored removable media; and,
  - c. The maintenance of each full year's data records in a secure location for one (1) full year following December 31<sup>st</sup> of the year in which the data was generated and, after which, will be destroyed in accordance with the currently applicable DHS SOP.
7. A record and concatenation (linking) of the Unique Identification (ID) Numbers of each collector with site location information and provide this information as well as any updating or revisions of such information to the TCEQ within three (3) business days of such changes (not to be confused with the twenty four (24) hour reporting deadlines applying to Item 9., listed below).
8. The arrangement for new collector-site setup(s) or the relocation of existing collector(s) including, but not limited to, property agreements, building contractor negotiations, electrical power, security (fencing), and site-access requirements.
9. Performing Party shall notify TCEQ by telephone, as soon as possible and no later than twenty four (24) hours, following any significant exceptions to the normal sample-collection routine. TCEQ shall provide a list of contact telephone numbers. These exceptions include, but are not limited to:
  - a. Collector failures or downtimes;
  - b. Site start-up or closure (whether seasonal or permanent, planned or sudden);
  - c. Collector relocations (note that consensus approval must be received from the TCEQ and DHS/EPA/LANL, as applicable, for any relocation of permanent BioWatch-network collectors);
  - d. Special-event monitoring (i.e., activation of spare collectors) (note that costs associated with special-event monitoring are not reimbursable under this Contract without approval by TCEQ);
  - e. Details regarding any breach of security including tampering, break-in, theft, defacement, or other suspicious activity; or,
  - f. Any deviation from normal operations or the approved and currently applicable SOP.

10. Participation in the annual National BioWatch Workshop.
11. Appropriate training of personnel assigned to BioWatch operations and the maintenance of a pool of appropriately trained personnel.
12. The assignment of persons experienced with BioWatch operations to be available via telephone on a 24-hour, 7-day per week, 365-day per year basis.
13. Written quarterly reports submitted to TCEQ electronically within Fifteen (15) days following the end of each calendar quarter and in accordance with established security procedures that include the following:
  - a. Identification of the primary Point of Contact (POC) and all staff conducting operations with notation of any changes from previous reports (e.g., new hires or turnover);
  - b. QA information as specified in the currently applicable SOP;
  - c. Collector inventory details including number of operable and non-operable collectors in reserve (i.e., spares); and,
  - d. Summary of exceptions that occurred within the referenced quarter.
14. Invoicing on a quarterly basis accompanied by a detailed breakdown of expenditures including, but not limited to:
  - a. Personnel time specifying persons billing under this Contract by name, position, and cost;
  - b. Fringe benefits;
  - c. Travel outside of the normal work routine, including mileage/transportation (including pre-approved costs for training);
  - d. Equipment (including pre-approved vehicle purchases);
  - e. Supplies; and
  - f. Other relevant expenses (including vehicular fuel and maintenance costs).

Note that the use of BioWatch funds for construction activities is not allowable. Costs associated with the setup of new or relocated collector sites or improvements to existing collector sites, subject to prior written approval of TCEQ, are not generally considered construction activities. All expenses for which reimbursement will be sought under this contract must be 100%-related to BioWatch or otherwise apportioned according to the percent of the expense that is BioWatch-related.

15. Annual inventory of any equipment purchased having a cost of \$5,000 or more per unit, due on September 30 following each year of the Contract. The inventory shall include a description of the item, serial number, and purchase amount. See Article 6(e) of the Special Terms and Conditions.
16. Maintain a level of inter-governmental exchange and situational awareness through substantial participation in local BioWatch planning and training activities including, but not limited to, attendance at local BioWatch Advisory Committee (BAC) meetings; participation in local and regional exercises; maintaining routine communications with TCEQ (including monthly conference calls) and DHS as requested or necessitated by unforeseen events.

F. Acceptance Criteria

If, during any quarter, a 90% efficiency in filter delivery to the laboratory is not met (excluding missed deliveries due to acts of God), TCEQ may take actions consistent with Section 15 of the General Terms and Conditions.

**SPECIAL TERMS AND CONDITIONS**

These conditions add to, or in the case of conflicts, supersede and take precedence over the general conditions set forth in this Contract.

1. The contract period shall be in effect from Contract execution through August 31, 2010. TCEQ reserves the option to renew, by written agreement of the parties, the Contract for two (2) additional one (1) year periods.
2. Any information provided to, gathered or produced by the PERFORMING PARTY in connection with providing services under this Contract constitutes confidential information under Texas Government Code §§ 418.176-77 and 418.181, and the PERFORMING PARTY shall not release such information without prior written authorization of the TCEQ. Confidential information includes, but is not limited to, the areas covered, the number of areas covered, the total number of monitors, the numbers of monitors in any given area, the specific location of monitors, the types of monitors, the identity of employees involved in the project, and the nature of the parameters monitored.
3. Force Majeure. If either party is delayed in carrying out its obligations due to acts of God, labor stoppages, or other similar irresistible forces, the Party shall give notice and full particulars of such delay supported by sufficient evidence, in writing, to the other Party within a reasonable time after occurrence of the delay. The time of performance by the Party shall be extended for such a period of time as is reasonably necessary to remedy the effects thereof. Force majeure does not include ordinary delays that are common to the industry or location. Force majeure does not include an event of the sort that this network is designed to detect.
4. PERFORMING PARTY agrees that the contract award is subject to the following requirements in addition to other requirements listed in this Contract. The PERFORMING PARTY will ensure that these requirements are included in any subcontract it awards.
  - a. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964. As amended, provides that no person in the United States shall, *on the grounds of race, color, or national origin*, be excluded from participation in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. Title VI also extends protection to persons with limited English proficiency. (42 U.S.C. 2000d et seq.)
  - b. TITLE IX OF THE EDUCATION AMENDMENTS OF 1972. Provides that no person in the United States shall, *on the basis of sex*, be excluded from participation in, or be denied benefits of, or be subject to discrimination under any education program or activity receiving federal financial assistance. (20 U.S.C. 1681 et seq.)
  - c. THE AGE DISCRIMINATION ACT OF 1975. Provides that no person in the United States shall, *on the basis of age*, be excluded from participation in, or be denied benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. (42 U.S.C. 6101 et seq.)
  - d. SECTION 504 OF THE REHABILITATION ACT OF 1973. Provides that no other: qualified individual with a disability in the United States, shall, *solely by reason of his/her disability*, be excluded from participation in, or be denied benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. (29 U.S.C. 794)
  - e. THE AMERICANS WITH DISABILITIES ACT OF 1990 ("ADA"). Prohibits discrimination *on the basis of disability* in employment (Title I), state and local government services (Title II), places of public accommodation and commercial facilities (Title III). (42 U.S.C. 12101-12213)

5. PERFORMING PARTY agrees to comply with the following requirements in addition to other requirements listed in this Contract. The PERFORMING PARTY will ensure that these requirements are included in any subcontract it awards.

a. DRUG-FREE WORKPLACE ACT. Requires the recipient to publish a statement about its drug-free workplace program and give a copy of the statement to each employee (including consultants and temporary personnel) who will be involved in federally funded activities at any site where these activities will be carried out. Also, place(s) where work is being performed (i.e., street address, city, state, and zip code) must be maintained on file. The PERFORMING PARTY must notify the TCEQ Project Manager of any employee convicted of a violation of a criminal drug statute that occurs in the workplace. (41 U.S.C. 701 et seq.)

b. FEDERAL DEBT STATUS. The PERFORMING PARTY may not be delinquent in the repayment of any federal debt. Examples of relevant debt include delinquent payroll or other taxes, audit disallowances, and benefit overpayments. (OMB Circular A-129)

c. HOTEL AND MOTEL SAFETY ACT. The PERFORMING PARTY agrees to ensure that all conference, meeting, convention or training space funded in whole or in part with federal funds, complies with the Hotel and Motel Fire Safety Act of 1990.

5. **Equipment.**

a. Subject to the obligations and conditions set forth in this Contract, title to all equipment acquired under this Contract shall vest, upon acquisition or construction, in the PERFORMING PARTY.

b. The PERFORMING PARTY agrees to conduct physical property inventories, to maintain property records and necessary control procedures, and to provide adequate maintenance with respect to all equipment acquired under this Contract.

c. The PERFORMING PARTY may develop and use its own property management system which must conform to all applicable state and local laws, rules and regulations. If an adequate system for accounting for personal property owned by the PERFORMING PARTY or its subcontractor is not in place or currently in use, the Property Accounting System Manual issued by the State of Texas Comptroller of Public Accounts shall be used as a guide for establishing such a system.

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

e. A physical inventory of all equipment acquired or replaced under this Contract having an initial purchase price of Five Thousand Dollars (\$5,000) or more shall be conducted annually and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY shall include adequate safeguards to prevent loss, damage, or theft of the acquired property. Any loss, damage or theft shall be investigated. The PERFORMING PARTY agrees to develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such equipment is sold.

f. All equipment acquired or replaced under this Contract shall be used for the duration of its normally expected useful life to support the purposes of this Contract whether or not the original projects or programs continue to be supported by federal or state funds.

g. Subject to the provisions of this Article, if no longer needed for the support of the authorized projects or programs referred to in the Scope of Work, equipment acquired under this Contract, whether original or replacement, may be used in support of other activities currently or previously supported by the TCEQ or the Federal Government, or

alternatively, may be made available for use on other projects or programs, providing such other use will not interfere with the work on those projects or programs for which such equipment was originally acquired.

h. The PERFORMING PARTY may, for the purpose of replacing various equipment utilized under this Contract, either trade or sell the equipment or properties referred to in Paragraph 7(a) and use the proceeds of such trade or sale to offset the cost of acquiring needed replacement property.

i. Items of equipment with a current per unit fair market value of less than One Thousand Dollars (\$1,000) may be retained, sold or otherwise disposed of with no further obligation to the awarding agency. Methods used to determine per unit fair market value must be documented, kept on file and made available to the awarding agency upon request.

Items of equipment with a current per unit market value of Five Thousand Dollars (\$5,000) or more may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment. Methods used to determine per unit fair market value must be documented, retained on file and made available to the awarding agency upon request.

j. If prior to the termination date of this Contract, the PERFORMING PARTY or its subcontractors or subgrantees determine that any equipment acquired with funds provided as a result of this Contract is no longer needed for support of the programs or projects referred to in the Scope of Work, the TCEQ may require the PERFORMING PARTY to transfer title and possession to such equipment to the TCEQ or a third party named by the TCEQ.

k. The PERFORMING PARTY agrees that if a determination is made within six (6) years of the initiation date of this Contract that any equipment acquired with funds provided as a result of this Contract is no longer needed for support of the programs or projects referred to in the Scope of Work, the TCEQ has a right to require the transfer of any equipment having a fair market, per unit value of more than Five Thousand Dollars (\$5,000) to the TCEQ or a third party named by the TCEQ.

7. **Administrative and Cost Principles.** Performing Party agrees that the following Administrative and Cost Principles, as applicable, apply to this Contract:

- a. The Uniform Grant and Contract Management Act (UGCMA), Texas Government Code, Section 783.001 et seq., and the Uniform Grant Management Standards (UGMS) for State Agencies
- b. OMB Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments"
- c. OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments"
- d. OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations"

## GENERAL CONDITIONS

### ARTICLE 1. WORK

PERFORMING PARTY agrees to provide the work described in and required by this Contract. In this Contract the term "Work" means the entire completed undertaking, or the various separately identifiable parts thereof. Work includes all goods, labor, services, materials and equipment provided in fulfillment of this Contract by any person or entity including PERFORMING PARTY's employees, agents, assigns, suppliers, and subcontractors.

### ARTICLE 2. AMENDMENT

This Contract may be amended only by written agreement signed by both parties.

### ARTICLE 3. INSURANCE

PERFORMING PARTY will require its contractors and their subcontractors to maintain insurance coverage sufficient to protect TCEQ against any and all claims that may arise out of or resulting from their performance of the Work and the other obligations undertaken in this Contract, and to maintain Workers Compensation Insurance which complies with Texas statutory requirements.

### ARTICLE 4. ACCEPTANCE. CORRECTIONS. WAIVER. WARRANTY. QUALITY

1. Acceptance. All Work must be complete and satisfactory in the reasonable judgment of the TCEQ.
2. Corrections. PERFORMING PARTY will correct errors, omissions, and deficiencies at no charge to the TCEQ.
3. Waiver. No waiver, whether expressed or implied, shall be construed as a continuing waiver unless it is specifically described in writing as a continuing waiver.
4. Warranty. All warranties implied by law are applicable to the Work. Nothing in this Contract nor any action of the TCEQ will act as a disclaimer of any warranty. All warranties are for a period of ONE YEAR from the date of acceptance unless a different period is stated in this Contract or in a written warranty. PERFORMING PARTY expressly warrants that the TCEQ will receive the benefits of third-party warranties (whether manufacturer or supplier) applicable to the Work.
5. Quality. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract. If required by TCEQ, PERFORMING PARTY will furnish satisfactory evidence (which may include reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract.

### ARTICLE 5. PAYMENT

1. Payment Methods. TCEQ will reimburse PERFORMING PARTY's allowable costs of providing Work which is satisfactory, accepted by TCEQ, and in conformity with all requirements of this Contract and applicable law.
2. Reimbursement of Actual Cost as Incurred. This Contract contains a *Contract Costs Budget* indicating expected contract-related costs for the required Work. PERFORMING PARTY will be paid on the basis of reimbursement of actual costs. At the intervals specified in the *Contract Costs Budget*, PERFORMING PARTY may submit a request for reimbursement of the actual costs it has incurred. All such requests must be accompanied by supporting documentation as required by this Contract. PERFORMING PARTY agrees that the TCEQ's obligation to reimburse the PERFORMING PARTY's costs will remain within the *Contract Costs Budget* and that cumulative transfers among the budgeted direct cost categories will not exceed ten percent (10%) of the total reflected therein.
  - a. If PERFORMING PARTY is a state agency as defined in GOV'T CODE, Chapter 791, then all reimbursement requests must be submitted to the TCEQ Project Representative on a State of Texas Interagency Transaction Voucher. All requests must be accompanied by a summary report or invoice showing the budgeted cost categories for the reported expenditures and indicating the amount remaining in each category.
  - b. If PERFORMING PARTY is not a state agency, then all reimbursement requests must be submitted to the TCEQ Project Representative with a completed TCEQ *Financial Status Report* (TCEQ Form 269a) and (as applicable) TCEQ *Supplemental*

*Financial Status Report* Forms 269a-1, 269a-3, and 269a-4. A final *Financial Status Report* must be submitted no later than 90 days following the termination date of this Contract.

3. Timely Payment Requests Required. TCEQ may refuse to pay any request submitted more than 90 days after the termination of this Contract.

#### ARTICLE 6. SUBCONTRACTORS, OTHERS

1. Qualified Personnel. All employees and subcontractors employed by PERFORMING PARTY on or for the Work must have sufficient qualifications to perform the Work.

2. Objections. PERFORMING PARTY will not employ any particular subcontractor, supplier or other person or organization on or for the Work if TCEQ makes a reasonable written objection against such subcontractor, supplier, person, or organization. PERFORMING PARTY will not be required to employ any particular subcontractor, supplier or other person or organization if PERFORMING PARTY makes a reasonable objection.

3. Subcontracts. PERFORMING PARTY will include all provisions which may be necessary to accomplish all requirements of this Contract in its employment policies and contracts and its subcontracts, and shall require its subcontractors to do the same.

#### ARTICLE 7. INTELLECTUAL PROPERTY

1. License of Future Rights. With respect to any intellectual property which is conceived, developed, written, invented, first actually reduced to practice or otherwise produced by PERFORMING PARTY, its employees, subcontractors, or subcontractor's employees during the performance of the Work, PERFORMING PARTY hereby assigns to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish and modify such intellectual property and authorize others to do so for TCEQ purposes. Upon termination of this Contract, all data and information by PERFORMING PARTY will be furnished to TCEQ.

2. License of Existing Rights. PERFORMING PARTY grants to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to use, copy, publish, and modify any intellectual property in the Work and to authorize others to do so for TCEQ purposes. PERFORMING PARTY shall secure all necessary intellectual property licenses from third parties and warrants that the Work and the intended use of the Work will not infringe any property rights of any third-party. PERFORMING PARTY agrees to require its contractors to indemnify and hold harmless TCEQ from damages arising from or related to any infringement of rights in intellectual property. To the extent permitted by law, PERFORMING PARTY agrees to indemnify and hold harmless TCEQ from damages arising from or related to any infringement of rights in intellectual property.

#### ARTICLE 8. SEVERABILITY

The fact that a particular provision is held under any applicable law to be void or unenforceable in no way affects the validity of other provisions and the contract will continue to be binding on both parties. Any provision that is held to be void or unenforceable will be replaced with language that is as close as possible to the intent of the original provision.

#### ARTICLE 9. SUSPENSION, TERMINATION

1. For Cause. In the event of PERFORMING PARTY's failure to perform the Work as required by the Contract, violation of applicable law, substantial or material default, or other cause, TCEQ may suspend the Work or terminate this Contract for cause.

2. *Force Majeure*. In the event of delay or failure of performance caused by *force majeure*, TCEQ may terminate this Agreement in whole or part upon seven (7) days written notice.

3. For Convenience. TCEQ may terminate this Contract for convenience and without cause upon seven (7) days notice.

4. Payment Adjustment. If the TCEQ terminates for convenience or because of *force majeure*, PERFORMING PARTY shall be paid only for goods and services provided and necessary expenses incurred prior to termination.

#### ARTICLE 10. SURVIVAL OF OBLIGATIONS

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion and acceptance of the Work and

termination or completion of the Contract.

ARTICLE 11. LAWS AND REGULATIONS

PERFORMING PARTY shall give all notices and comply with all applicable law regarding the Work. Except where otherwise expressly required by applicable law, TCEQ shall not be responsible for monitoring PERFORMING PARTY compliance with any applicable law.

ARTICLE 12. AUDIT, ACCESS TO RECORDS

The PERFORMING PARTY shall maintain books and records concerning all Work under this Contract (including that performed by subcontractors), and shall retain them for at least three (3) years from the date of termination of this Contract. The TCEQ, the Texas State Auditor's Office, or any of their duly authorized representatives may review, audit, copy, or disclose the contents of such books or records at any time.

ARTICLE 13. MISCELLANEOUS

1. Except as otherwise provided in this Contract, PERFORMING PARTY will direct all communications with the TCEQ to the Project Representative designated by the TCEQ. The PERFORMING PARTY will designate a Project Representative to receive all communications from the TCEQ. Both Project Representatives will be designated in writing (see *Project Representatives / Records Location*).

2. "Time is of the Essence" will apply to all time limits stated in the Contract.

3. The PERFORMING PARTY will adhere to all applicable standards, principles and guidelines detailed in the Uniform Grant and Contract Management Standards (UGCMS), including those related to financial monitoring, auditing and record keeping.

ARTICLE 14. DELINQUENT STATE TAXES

The PERFORMING PARTY agrees that any payments due under this Contract will be applied towards any debt owed to the State of Texas. This requirement is not applicable to PERFORMING PARTIES who are state agencies as defined in Gov't Code, Chapter 791.

ARTICLE 15. REMEDIES AND SANCTIONS

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

- a. Reject the substandard performance and request corrections without charge to the TCEQ.
- b. Issue a notice of substandard performance or other non-conforming act or omission.
- c. Request and receive the return of any over payments or inappropriate payments.
- d. Reject associated reimbursement requests and suspend payments, pending accepted revision of substandard performance or non-conformity. Note: Funds may be retained by TCEQ for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law.
- e. Suspend all or part of the Work, pending accepted revision of substandard performance or non-conformity.
- f. Terminate the contract, demand and receive: return of all equipment purchased of contract funds, return of all unexpended funds, and repayment of expended funds.

2. If the TCEQ finds the PERFORMING PARTY's performance to be substandard, TCEQ may provide its written evaluation report to other governmental entities at any time. TCEQ may also provide its written evaluation report to the public as authorized by law.

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

ARTICLE 16. DISPUTES, CLAIMS, REMEDIES

Continuing the Contract Activities. Performing Party shall carry on the Contract Activities and adhere to the progress schedule during all disputes or disagreements with TCEQ unless ordered to stop the Contract Activities. No Contract Activities shall be delayed or postponed pending resolution of any disputes or disagreements.

**Payment not a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release constitutes a release of Performing Party from liability for losses under this Contract.

**Cumulative Remedies.** The rights and remedies provided to the TCEQ in this Contract, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available under state and federal rules, regulations, and laws and at common law.

#### ARTICLE 17. INSURANCE AND INDEMNIFICATION

**Insurance.** Unless prohibited by law, the Performing Party shall require its contractors and suppliers to obtain and maintain during the Contract Term adequate insurance coverages sufficient to protect the Performing Party and the TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract, whether caused by the Performing Party or by the contractor(s) or by anyone directly or indirectly employed by either. The Performing Party shall insure the activity of its contractor in Performing Party's own policies. Unless specifically waived by the TCEQ, sufficient coverages shall include but are not limited to Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.

**Indemnification.** To the extent authorized by law, the Performing Party shall require all contractors performing the Contract Activities on behalf of Performing Party to indemnify, defend, and hold harmless the TCEQ and Performing Party and their officers, employees and representatives from and against all losses, liabilities, damages, and other claims of any type arising from the performance of the Contract Activities by the Performing Party or its contractors, suppliers and agents, including those arising from a defect in design, workmanship, materials, or from infringement of any U.S. or foreign patent, trademark or copyright; or from a breach of applicable laws, regulations, safety standards or directives regardless of whether such acts or omissions are negligently or recklessly performed. The defense of the TCEQ shall be subject to the authority of the Office of the Attorney General of Texas to represent the TCEQ. This covenant survives the termination of the Contract.

#### ARTICLE 18. RELEASE OF CLAIMS

Upon satisfactory completion of the work performed hereunder and prior to final payment under this Agreement for such work, or prior to settlement upon termination of this Agreement and as a condition to final payment/settlement, the PERFORMING PARTY shall execute and deliver to the TCEQ a release of all claims against the TCEQ arising under or by virtue of this Agreement.

#### ARTICLE 19. BANKRUPTCY CLAUSE

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

**PROJECT REPRESENTATIVES/ RECORDS LOCATION**

**ARTICLE 21.1 TCEQ PROJECT REPRESENTATIVE**

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

Daniel McClellan Telephone No.: (512) 239-6306  
 (Name)  
Air Monitoring Coordinator for Homeland Security 165 Facsimile No.: (512) 239-1605  
 (Title) (Mail Code)  
 Texas Commission on Environmental Quality  
 P.O. Box 13087  
 Austin, Texas 78711-3087

**ARTICLE 21.2 PERFORMING PARTY PROJECT REPRESENTATIVE**

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

For Technical Matters:  
Kyle Cunningham Telephone No.: (210) 532-5765  
 (Name)  
Program Manager Facsimile No.: (210) 532-3747  
 (Title)  
2513 Kennedy Circle, Bldg. 180, Suite 105  
 (Mailing Address)  
San Antonio Texas 72835  
 (City) (State) (Zip Code)

**ARTICLE 21.3 SUBMITTAL OF PAYMENT REQUESTS**

Payment requests must be submitted to (whichever is checked):  
 the TCEQ Project Representative.  
 the TCEQ Disbursements Section.  
*(If neither box is checked, payment requests must be submitted to the TCEQ Project Representative).*

**ARTICLE 21.4 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:

\_\_\_\_\_  
 (Name) Telephone No.: ( ) \_\_\_\_\_  
 \_\_\_\_\_  
 (Title) Facsimile No.: ( ) \_\_\_\_\_  
 \_\_\_\_\_  
 (Mailing Address)  
 \_\_\_\_\_  
 (City) (State) (Zip Code)

**CONTRACT BUDGET FOR ACTUAL COST REIMBURSEMENT****ARTICLE 1. AUTHORIZED EXPENSE BUDGET**

1.1. The authorized expenses, acquisitions, or expenditures under this Contract are as follows:

<u>Budget Category</u>	<u>FY10 Budget</u>
Personnel/Salary	\$152,023.83
Fringe Benefits <sup>1</sup>	\$57,116.54
Travel	\$5,051.78
Supplies	\$32,340.00
Equipment	0.00
Contractual	0.00
Other	\$2,450.00
Other - Third Party In-kind	0.00
<b>Total Direct Costs</b>	<b>\$248,982.15</b>
<b>Authorized Indirect Costs<sup>2</sup></b>	<b>\$37,017.85</b>
<b>TCEQ Share</b>	<b>286,000.00</b>
Grantee Cost Share	0.00
<b>TOTAL COSTS</b>	<b>286,000.00</b>
Fringe Rate <sup>1</sup>	38.00%
Indirect Rate <sup>2</sup>	17.70%

1. Fringe benefits shall be reimbursed at actual costs and shall not exceed the above stated percentage of total direct personnel/salary costs for the applicable period of the term of the Contract. Prior to the termination date of this Contract, an audited fringe rate which is different from the above stated percentage of total direct personnel/salary costs for the applicable period of the term of the Contract may be accepted by Commission. If cumulative transfers among the budgeted cost categories caused by this approved change in fringe rate exceed ten percent (10%) of the total costs, the Commission and PERFORMING PARTY must negotiate a new contract budget and incorporate such into this Contract by way of a contract amendment.

The PERFORMING PARTY agrees to reimburse the Commission any overpayments received as a result of the above stated rate being higher than the approved final audited fringe rate for the period under consideration. Nothing in this Section, or the results of any fringe rate audit or final fringe rate approval, shall cause the Commission to owe the PERFORMING PARTY more than the "Total Costs" or result in a reduction in the deliverables as set forth in the Scope of Work. If the final fringe rate is higher than the provisional rate, an adjustment may be made in a future year contract.

2. The indirect rate currently authorized (for the purpose of calculating amounts to be reimbursed by the TCEQ) shall not exceed the above stated percentage for the applicable period of the term of the Contract, subject to the provisions outlined in the Indirect Cost Rate section of this Article.

TCEQ and Performing Party agree that costs shall not be categorized as both indirect costs and as "other" direct costs. To facilitate this end, Performing Party shall provide to TCEQ a quarterly narrative of expenditures under the indirect cost category. If a particular cost has been categorized as both indirect and direct (other), then Performing Party shall return the overpaid costs to TCEQ, or TCEQ will count the overpaid cost as an offset against future invoices.

1.2. The PERFORMING PARTY is responsible, throughout the term of this Contract, for tracking and ensuring that expenditure amounts under this Contract remain within the various budgeted cost categories as set forth in this Article. If, after taking into consideration the requirements set forth in this Article, the PERFORMING PARTY determines that changes or adjustments to any of the current cost category amounts are likely to be necessary, the PERFORMING PARTY shall submit a Budget Revision Form to the TCEQ for review and approval.

1.3. *Indirect Cost Rate:* The Commission and the PERFORMING PARTY must choose one of the following options relating to indirect rate, and identify that option clearly in the contract budget. If no option is selected, indirect rate will NOT be reimbursed.

*Option One: X*

1.3.1. The PERFORMING PARTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.

1.3.2. The PERFORMING PARTY shall maintain all indirect rate records for the Commission's inspection or submit records as per the agency's request.

1.3.3. The PERFORMING PARTY agrees to utilize the provisional rate as established below and agrees to conduct an indirect rate audit. A final indirect rate will be established based on the actual allowable costs, as provided in UGMS, for the period as established by an audit conducted by a currently licensed independent certified public accountant and submitted to the PERFORMING PARTY and the Commission. This indirect rate audit may be conducted at the same time as any other audit required of the PERFORMING PARTY. The cost of the indirect rate audit will be accounted for within the indirect rate, and not directly charged to the Commission. If the indirect rate audit is not provided to the Commission within the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the audit period, *Option Two* (below) will apply.

(i) In accordance with OMB Circular A-87 and the UGMS, when the PERFORMING PARTY has a federal cognizant agency or a state coordinating agency, the PERFORMING PARTY must submit the indirect rate approved by the federal cognizant agency or state coordinating agency within the past twenty four (24) months as the provisional indirect rate.

(ii) Alternatively, if the PERFORMING PARTY does not have an assigned federal cognizant agency or a designated state coordinating agency or if no rate is approved by the designated oversight agency, the Commission and the PERFORMING PARTY may negotiate a provisional indirect rate in accordance with UGMS.

(iii) In the event, prior to the termination date of this Contract, an audited indirect rate which is different from the initial provisional indirect rate set forth in this Section is accepted by Commission, the Commission and PERFORMING PARTY may negotiate a new contract budget and incorporate such into this Contract by way of a contract change.

(iv) The provisional rate will be included in the Authorized Expense Budget and shall remain in effect subject to determination of a final indirect rate which is based on an audit of the contract period, performed by a currently licensed independent certified public accountant, which specifically examines and reports the indirect rate for the PERFORMING PARTY's accounting period(s) covered under this Contract.

(v) The PERFORMING PARTY agrees to reimburse the Commission any overpayments received as a result of this provisional rate being higher than the approved final audited indirect rate for the period under consideration. Nothing in this Section, or the results of any indirect cost audit or final indirect rate approval, shall cause the Commission to owe the PERFORMING PARTY more than the "Total Obligation Amount" or result in a reduction in the deliverables set forth in the Scope of Work. If the final indirect rate is higher than the provisional rate, an adjustment may be made in a future year contract.

*Option Two:*

1.3.4. Indirect Cost Rates. The PERFORMING PARTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.

1.3.5. The PERFORMING PARTY shall maintain all indirect rate records for the Commission's inspection or submit records as per the agency's request.

1.3.6. PERFORMING PARTY agrees to an indirect rate of ten percent (10%) or less of the direct salary and wage costs of providing the service, in accordance with UGMS Part II, Attachment E, Paragraph E.2.d. No audit of this rate will be required by the Commission.

*Option Three:*

1.3.7. PERFORMING PARTY agrees to direct bill all costs and not require indirect cost for the Contract.

1.3.8. When the PERFORMING PARTY applies for final payment, the PERFORMING PARTY will certify on a written form provided by TCEQ that the PERFORMING PARTY has not engaged in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

ARTICLE 2. SUBMITTAL OF PAYMENT REQUESTS

Payment requests must be submitted at the interval specified below (whichever is checked; if none are checked, payment requests must be submitted monthly; if more than one (1) is checked, invoices must be submitted when both requirements are met):

monthly

upon completion of deliverables specified herein (see \_\_\_\_\_).

upon completion of all Work

Other (specify) Quarterly to be received within thirty (30) days after the end of the fiscal quarter. Included with the invoice which shall be provided in a format acceptable to the TCEQ. will be the PSR (Financial Status Report) and the PAR form.

## FEDERAL FORMS

### FEDERAL CONDITIONS

#### ARTICLE 1. FEDERAL REQUIREMENTS

This Contract is funded in part with federal grant money. The following conditions apply to this Contract in addition to all other contract terms. All applicable requirements of TCEQ's federal grants and 40 CFR Parts 30 through 35 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 or CONTRACTOR, as applicable.

#### ARTICLE 2. FEDERAL INTELLECTUAL PROPERTY REQUIREMENTS

A nonexclusive, perpetual, irrevocable license to use, copy, publish, and modify any intellectual property to which rights are granted or assigned to TCEQ in this Contract are hereby also granted to, assigned to, or reserved by the Federal Government. To the extent consistent with the rights of third parties, the Federal Government shall also have the right to sell any intellectual property right it reserves or acquires through this Contract.

#### 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 Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, 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

The preparation of this report was financed through grants from the U.S. Environmental Protection Agency through the Texas Commission on Environmental Quality.

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. COST AND PRICE OF THIS CONTRACT

If this Contract was not competitively procured or if payment is based on reimbursement of actual costs, then PERFORMING PARTY shall submit cost information sufficient for a cost analysis as required by 40 CFR §31.36. This information must be submitted on forms provided by the TCEQ.

#### ARTICLE 5. ACCOUNTING SYSTEMS AND PROPERTY MANAGEMENT SYSTEMS

PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with 40 CFR §31.20. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

PERFORMING PARTY shall have a property management system that complies with the standard of and requirements in 40 CFR §§ 31.32 through 31.33.

#### ARTICLE 6. RECORD DOCUMENTS, DATA, RECORDS, ACCESS, AND AUDIT

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 Contract.

#### ARTICLE 7. DEBARMENT

On or prior to the effective date of this Contract, PERFORMING PARTY must submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters. PERFORMING PARTY must also submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters / Lower Tier for each subcontractor it employs to conduct the Work. These certifications must be submitted on forms provided by the TCEQ.

#### ARTICLE 8. DISADVANTAGED BUSINESS ENTERPRISES; MINORITY BUSINESS ENTERPRISES / WOMEN'S BUSINESS ENTERPRISES (DBE's)

In order to qualify and participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity must be properly certified as required by 40 C.F.R. 33 Subpart B. DBE's must be certified by the following entities: EPA; the U.S. Small Business Administration, under its 8(a) Business Development Program or its Small Disadvantaged Business Program; the U.S. Department of Transportation, under its regulations for Participation by DBE's in DOT Programs; an Indian Tribal Government, State Government, Local Government, or independent private organization in accordance with EPA's 8% or 10% statute as applicable. State of Texas certified Historically Underutilized Businesses (HUB's) are certified DBE's.

If the *General Conditions* of this Contract contain a requirement that PERFORMING PARTY submit information regarding its

subcontracts with HUBs as defined by Texas law, then PERFORMING PARTY shall comply with the Hub requirements as well as the DBE requirements imposed on TCEQ in the federal grant or grants funding this Contract, and submit information regarding its subcontracts with Certified DBE's and Hub's on forms provided by the TCEQ.

3. PERFORMING PARTY agrees that qualified DBE's 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 and by way of goods and/or services procurement contracts that directly support the required Work.

4. PERFORMING PARTY will submit a completed HUB PROGRESS ASSESSMENT REPORT with each reimbursement request submitted. At a minimum this report shall include the name of the DBE, a description of the work, services or materials provided, the amount paid to the DBE, and the name and telephone number of a contact person within the DBE.

5. The PERFORMING PARTY shall conduct the following actions in connection with solicitations for subcontractors and for suppliers (vendors) of contract-required goods and/or services:

5.1. Place qualified DBE's on solicitation lists for subcontractors and vendors;

5.2. Assure that at least three (3) DBE's are solicited whenever they are potential sources for subcontractor-performed work or vendor-provided goods and/or services;

5.3. Each solicitation shall include a copy of the specifications, adequate information about the plans, Scope of Service, and requirements of the work to be subcontracted or the goods and/or services to be procured, and shall provide sufficient time to allow all interested parties the opportunity to participate effectively;

5.4. Records of solicitations for subcontractor and/or vendor services, including the responses received from potential DBE's subcontractors and vendors, shall be maintained and reported to TCEQ;

5.5. Submit explanatory information in cases where bids were not solicited prior to obtaining the services of subcontractors or vendors, or where a DBE's was low bidder but the subcontract or procurement contract was awarded to a non DBE;

5.6. Divide total subcontractor or vendor requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such business enterprises; if sufficient subcontracting or goods and/or service provider opportunities are not available, PERFORMING PARTY shall submit explanatory information to TCEQ;

5.7. Establish delivery schedules, where requirements permit, which encourage participation by DBE's;

5.8. Utilize the Texas Comptroller of Public Accounts (CPA) Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Directory (<<http://www.cpa.state.tx.us>>) and the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce (<<http://www.doc.gov>>) when searching for DBE's.

6. The PERFORMING PARTY must pay its subcontractors for satisfactory performance no more than 30 days from the Performing Party's receipt of payment from TCEQ.

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 undertake the actions listed in 5.1 - 5.8 of this Article.

9. The PERFORMING PARTY shall provide the attached DBE Subcontractor Participation Form, EPA Form 6100-2, to all its DBE subcontractors with instructions that each DBE may complete the form and submit it directly to the appropriate EPA DBE Coordinator, Deborah Bradford, EPA Region 6, Small and Disadvantaged Business Coordinator. EPA Form 6100-2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the PERFORMING PARTY.

10. The PERFORMING PARTY must have its DBE subcontractors complete EPA Form 6100-3, DBE Program Subcontractor Performance Form. The Performing Party must include all completed forms as part of the Performing Party's proposal\* package.

11. The PERFORMING PARTY must complete and submit EPA Form 6100-4, DBE Program Subcontractor Utilization Form, as part of its proposal\* package.

#### ARTICLE 9. PROHIBITION USE OF FEDERAL FUNDS FOR LOBBYING AND LITIGATION

Contractor agrees that none of the funds paid under this Contract will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. When Contractor applies for final payment, Contractor will certify on a written form provided by the TCEQ that Contractor has complied with this provision.

\* Proposal in this context refers to a response to a solicitation for goods or services being paid for, at least in part, with EPA grant funds submitted to TCEQ, a TCEQ grantee, or lower tier recipient. Proposal in this context does not refer to an EPA grant application package TCEQ submits to EPA, nor to a grant application submitted to TCEQ, a TCEQ grantee, or lower tier recipient requesting financial assistance that is at least partially funded with an EPA grant. After TCEQ, a TCEQ grantee, or lower tier recipient receives the grant and attempts to procure goods and services with the grant funds, the responses submitted to such solicitations must include EPA Forms 6100-3 and 6100-4.

EPA Project Control Number

EPA  
United States Environmental Protection Agency  
Washington, DC 20460

Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters

The Prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this Offer been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/Offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

understand that a false statement on this certification may be grounds for rejection of this Offer or termination of the award. In addition, under 18 USC Sec. 001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

I am unable to certify to the above statements. My explanation is attached.

PA Form 5700-09 (11-88)

LOWER TIER

EPA Project Control Number

EPA  
United States Environmental Protection Agency  
Washington, DC 20460

Certification Regarding  
Debarment, Suspension, and Other Responsibility Matters

The Prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this Offer been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/Offer had one or more public transactions (Federal, State, or local) terminated for cause or default.

understand that a false statement on this certification may be grounds for rejection of this Offer or termination of the award. In addition, under 18 USC Sec. 001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

\_\_\_\_\_  
Typed Name & Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

I am unable to certify to the above statements. My explanation is attached.

PA Form 5700-49 (11-88)

**CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loan, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to the civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ORGANIZATION NAME    AWARD NUMBER

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE        DATE

Please check appropriate box below:

- Disclosure Form attached
- Disclosure Form Forthcoming
- Disclosure Form Not Applicable

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 USC 1352

<p>1. Type of Federal Action: <input type="checkbox"/></p> <p>a. contract</p> <p>b. grant</p> <p>c. cooperative agreement</p> <p>d. loan</p> <p>e. loan guarantee</p> <p>f. loan insurance</p>	<p>2. Status of Federal Action: <input type="checkbox"/></p> <p>a. bid/offer/application</p> <p>b. initial award</p> <p>c. post-award</p>	<p>3. Report Type: <input type="checkbox"/></p> <p>a. initial filing</p> <p>b. material change</p> <p>For Material change only:                  year _____ Quarter _____                  date of last report _____</p>
<p>4. Name and Address of Report Entity  <input type="checkbox"/> prime <input type="checkbox"/> subawardee</p> <p>tier _____, if known:                  Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, enter name and address of Prime:                   Congressional District, if known</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program name/Description:                   CFDA Number, if applicable:</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount if known:                  \$ _____</p>	
<p>10. a. Name and address of Lobbying Entity (if individual, last name, first name, MI): (attach Continuation Sheet(s))</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): SF-LLL-A if necessary)</p>	
<p>11. Amount of Payment (check all that apply):                   \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <p><input type="checkbox"/> a. retainer</p> <p><input type="checkbox"/> b. one-time fee</p> <p><input type="checkbox"/> c. commission</p> <p><input type="checkbox"/> d. contingent fee</p> <p><input type="checkbox"/> e. deferred</p> <p><input type="checkbox"/> f. other, specify:                  _____</p>	
<p>12. Amount of payment (check all that apply):</p> <p><input type="checkbox"/> a. cash</p> <p><input type="checkbox"/> b. in-kind; specify nature                  _____                  value                  _____</p>		
<p>14. Brief description of services performed or to be performed and date(s) of service, including officer(s), employee(s), or Member(s) contacted for Payment indicated in Item 11:                   (attach Continuation sheet(s) SF-LLL-A if necessary)</p>		
<p>15. Continuation sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		

16. Information requested through this form is authorized by Title 31 U.S.C. , Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Print Name

Title

Telephone No.

Date

Standard Form-LL

DISCLOSURE OF LOBBYING  
CONTINUATION SHEET

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

Authorized for Local Reproduction

Standard Form - LLL-A

## INSTRUCTIONS FOR COMPLETION OF SF-LL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to Subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal Agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Offer (RFP) number, invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/Offer control number assigned by the Federal agency) include prefixes, e.g., RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10.
  - (a) Enter the full name, address, city, state and zip code for the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
  - (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget Paperwork Reduction Project (0348-0046), Washington, D.C. 29503.

**PURPOSE AND APPLICABILITY OF THE COST OR PRICE SUMMARY  
(COST OR PRICE SUMMARY IS ATTACHED BELOW)**

The purpose of this form is to provide a simple form for the display of cost and price data. 40 CFR 33.290 requires the recipient to perform cost or price analysis for every procurement action, including subagreement modifications. This form is not required by EPA, but may be used at the recipient's option. If the recipient currently uses a cost and price analysis form which accomplishes the same objectives as this form, the recipient may use its own form.

**INSTRUCTIONS**

If this form is used, CAREFULLY READ AND FOLLOW ALL INSTRUCTIONS. Many items are not self-explanatory. Attach additional sheets if necessary.

Use only the applicable portion of this form:

Part I is applicable to all subagreements.

Part II is applicable to all subagreements requiring a cost analysis pursuant to EPA procurement regulations.

Part III is applicable to all subagreements where review is based on price comparison (i.e., price analysis).

Part IV certification will be executed as required by the instructions for each block.

**PART I - GENERAL**

Item 1 - Enter the name of the recipient as shown on the assistance agreement.

Item 2 - Enter the assistance identification number shown on the assistance agreement (or assigned to the project, if no assistance agreement has yet been executed).

Item 3 - Enter the name of the contractor or Subcontractor with whom the subagreement is proposed to be executed.

Item 4 - Enter the date of the contractor's or Subcontractor's Offer to the recipient.

Item 5 - Enter the full mailing address of the contractor or Subcontractor.

Item 6 - Give a brief description of the work to be performed under the proposed subagreement.

**Part II - COST SUMMARY**

This portion of the form is to be completed by the contractor (or his/her Subcontractor) with whom a subagreement is a formally advertised, competitively bid, fixed price subagreement.

Nothing in the following discussion should be interpreted as recommending the inclusion as direct costs any items normally treated as overhead costs in the firm's accounting or estimating system. 40 CFR Part 30 identifies general cost principles applicable to subagreements under EPA assistance. Pursuant to that Part, all subagreements awarded to profit-making organizations are subject to cost principles of 48 CFR 31.2. Architect engineer and construction contracts are also subject to 48 CFR 31.105.

Item 7 - Direct Labor

Direct labor costs normally include salaries at a regular time rate. Overtime premiums should be identified separately on an

attachment. Incurrence of unanticipated overtime costs requires the approval of the recipient at the time of incurrence. If significant overtime is known to be needed at the time of completion of the cost review form, the reasons therefore, labor categories, rates and hours should be identified on the attachment. Also included is the cost of partners' or principals' time when they are directly engaged in services to be rendered under the subagreement. In case the full time of any employee is not to be devoted to work to be performed under the subagreement, only the cost of actual time to be applied should be included. The compensation of a partner or principal shall be included as direct cost only for the time that she/he is expected to be engaged directly in the performance of work under the subagreement and only if it is the firm's normal practice to charge such time directly to all jobs. The rate of compensation of a partner or principal shall be commensurate with the cost of employing another qualified person to do such work, but the salary portion shall not exceed the actual salary rate of the individual concerned. Distribution of profits shall not be included in the rate of compensation.

Enter in block 7 the categories of professional or technical personnel necessary to perform each major element of work under the subagreement scope of services. Estimate hours worked for each category and extend them by the wage rates to be paid during the actual performance of the work. Current rates, adjusted for projected increases, if any should be useful for the actual categories of labor contemplated. All projected increases should be supported by recent experience or established personnel policy. Enter in the far right column the total estimated direct labor cost.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

- a. The method of estimating proposed hours worked.
- b. The computation techniques used in arriving at proposed labor rates.
- c. The specific documents, books or other records used as factual source material to develop proposed hours worked and labor rates.
- d. Detailed rate computations which were used in computing the information submitted on the form.

If in block 14a, the contractor has checked "No," a brief narrative description of the methods used in arriving at items a through d above shall be included on an attached sheet.

Item 8 - Indirect Costs  
Indirect cost may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost

objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. Neither is the use of any particular allocation base mandatory. However, it is mandatory that the method used results in an equitable allocation of indirect costs objectives which they support.

Normally, the firm's accounting system and estimating practices will determine the method used to allocate overhead costs. The firm's established practices, if in accord with generally accepted accounting principles and PROVIDED THEY PRODUCE EQUITABLE RESULTS IN THE CIRCUMSTANCES, will generally be accepted. Proposed overhead rates should represent the firm's best estimate of the rates to be experienced during the subagreement period. They should be based upon recent experience and be adjusted for known factors which will influence experienced trends.

Common overhead groupings are overhead on direct labor and general and administrative expenses. The first groupings usually include employment taxes, fringe benefits, holidays, vacation idle time, bonuses, applicable and direct labor, etc. The second generally includes the remaining costs, which, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs. It is expected, however, that Offer groupings will correspond with the firm's normal method for accumulating indirect costs. (Under some accounting systems, the first grouping would be included instead under item 7.) No special categorization is required, provided the results are realistic and equitable.

Direct salaries are the normal distribution base for overhead cost but in some circumstances other bases produce more equitable results. As in the case of overhead cost groupings, the method to be used will depend upon the firm's normal practices and the equity of the results produced in the circumstances.

In the case of multibranch firms, joint ventures, or affiliates, it is expected that overhead costs applicable to specific location(s) where work is to be based on cost data from the most recent fiscal periods updated to reflect changes in volume of business or operations.

Enter in block 8 the indirect cost pools normally used by the firm for allocation of indirect costs. Enter indirect cost rate for each pool and extend each one by the rate base to which it applies to arrive at the estimated indirect costs to be incurred during the actual performance of the work. If the indirect labor total from block 7 is not used as the rate base for any of the indirect cost pools, the rate base used must be explained on an attached sheet.

A brief narrative statement outlining the firm's policies and practices for accumulating indirect costs. Enter the indirect cost rate costs and the method used to compute the proposed rate or rates shall accompany the form. Include comment on the firm's policies regarding the pricing and costing of principals' time. The normal accounting treatment of principals' salaries, the annual amounts, and the hourly charge rate, if used, should be discussed.

Enter in the far right column the total estimated indirect costs.

Supporting records to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

a. Detailed cost data showing overhead accounts, allocation bases, and rate computations for the preceding fiscal period. If more than six

months of the current fiscal period have elapsed, cost data for this period should be included as one of the three period(s).

b. Company budgets, budgetary cost data and overhead rates computations for future period(s).

Item 9 - Other Direct Costs

*The following items are illustrative of costs normally included in this category of costs:*

a. *Travel cost, including transportation, lodging, subsistence, and incidental expenses incurred by personnel or consultants while in travel status in connection with the performance of services required by the contract. The cost principles generally require the use of less than first class air accommodations and also limit the cost of private aircraft.*

b. *Equipment, Materials, and Supplies*

*(1) Long distance telephone calls, telegraph and cable expenses to be incurred in connection with the performance of services required in connection the subagreement.*

*(2) Reproduction costs, including blueprints, black and white prints, azalid prints, photographs, photostats, negatives; and express charges.*

*(3) Commercial printing, binding, artwork, and models.*

*(4) Special equipment.*

c. *Subcontractors*

d. *Other Direct costs, if any, not included above.*

Enter in blocks 9a-d all other direct costs proposed. Travel costs entered must be supported by an attachment which identifies the number of staff trips proposed and the estimated cost per staff trip for both local and long distance transportation. The number of days and the rate per day must be provided to support the per diem shown. Each Subcontract and consultant agreement must be identified separately in block 9c.

Enter in the far right column on line 9e the total of all other direct costs (9a-d).

Supporting data to be maintained by the contractor and which must be submitted or made available to the recipient or EPA upon request include:

a. *basis for other direct costs proposed.*

b. *factual sources of costs, rates, etc., used in computing proposed amount of each cost element.*

Item 10 - Total Estimated Cost

Enter the total of all direct labor, indirect costs and other direct costs from items 7, 8, and 9.

Item 11 - Profit

*A fair and reasonable provision for profit cannot be made by simply applying a certain predetermined percentage to the total estimated cost. Rather, profit will be estimated as a dollar amount after considering:*

a. *degree of risk.*

b. *nature of the work to be performed.*

c. *extent of firm's investment.*

d. *Subcontracting of work, and*

e. *Other criteria.*

The federal Acquisitions Regulation cost principles applicable to subagreements with profit-making organizations (40 CFR 31.2 and 31.105) disallow certain types of costs which are sometimes incurred by firms in the normal conduct of their business. Examples of costs which are not allowable under these costs principles include, but are not limited to, entertainment, interest on borrowed capital, and bad debits. Because the Government considers "profit" to be the excess of price over allowable costs, such computation can indicate a higher profit estimate than the firm's experienced profit as it customarily computes it.

The contractor may separately disclose to the recipient its customary computation.

Enter the dollar amount of profit in block 11.

Item 12 - Total Price

Enter the total of items 10 and 11.

**Part III - PRICE SUMMARY**

This portion of the form is for use by a recipient when price comparison, i.e. price analysis, is used for subagreement review. It may also be used by a contractor when price comparison is used as a basis for award of a Subcontract.

Item 13 - Competitor's Catalog Listings, In-House Estimates, Price Quotes

Enter sources of all competitive bids or quotes received, or catalogs used and their prices, or in-house estimates made, if appropriate, for comparison. Attach additional sheets if necessary, particularly for purchases of several different items.

Enter in the far right column the proposed price for the subagreement.

**Part IV - Certifications**

Item 14 - Contractor - FOR USE BY CONTRACTOR OR SUBCONTRACTOR ONLY.

Complete this block only if Part II has been completed.

Enter the specific cost principles with which the costs summary of Part II conforms. Cost principles applicable to subagreements with various types or organizations are identified in 40 CFR Part 30.4010. Cost principles applicable to subagreements with profit-making organizations are those at 48 CFR 31.2 and, for architect-engineer or construction contracts, 48 CFR 31.105.

c. (1) Describe the Offer, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., RFP No. \_\_\_\_\_).

(2) Enter the date when the price negotiations were concluded and the contract price was agreed to. The responsibility of the subagreement is not limited by the personal knowledge of the contractor's negotiator if the time of agreement, showing that the negotiated price is not based on complete, current, and accurate data.

(3) Enter the date of signature. This date should be as close as practicable to the date when the price negotiations were concluded and the subagreement price was agreed to (not to exceed 30 days).

Item 15 - Recipient Reviewer - FOR USE BY RECIPIENT ONLY.

If required by applicable assistance regulations, the recipient must submit the signed form for EPA review prior to executive of the subagreement.

Item 16 - EPA Reviewer - FOR USE BY EPA ONLY.

		<b>COST OR PRICE SUMMARY</b> (see accompanying instructions before completing this form)		Form approved OMB No. 2030-0011 Approval expires 10-31-86	
<b>PART I - GENERAL</b>					
1. RECIPIENT			2. ASSISTANCE IDENTIFICATION NO.		
3. NAME CONTRACTOR OR SUBCONTRACTOR			4. DATE OF PROPOSAL		
5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR (Include ZIP Code)			6. TYPE OF SERVICE TO BE FURNISHED		
TELEPHONE NUMBER(Include Area Code)					
<b>PART II - COST SUMMARY</b>					
7. DIRECT LABOR (specify labor categories)		ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
			\$	\$	



<b>PART IV - CERTIFICATIONS</b>		
14 CONTRACTOR OR		
14a. HAS A FEDERAL AGENCY OR FEDERALLY CERTIFIED STATE OR LOCAL AGENCY PERFORMED ANY REVIEW OF YOUR ACCOUNTS OR RECORDS IN CONNECTION WITH ANY OTHER FEDERAL ASSISTANCE AGREEMENT OR CONTRACT WITHIN THE PAST 12 MONTHS?		
NO (If "Yes" give name, address, and telephone number of reviewing office)		

		NO (If "Yes" give name, address, and telephone number of reviewing office)

		14b. THIS SUMMARY CONFORMS WITH THE FOLLOWING COST PRINCIPLES

		14c. This proposal is submitted for use in connection with and in response to:
		This is to certify to the best of my knowledge and belief that the cost and pricing data summarized herein are complete, current, and accurate as of: (2) DATE
		I further certify that a financial management capability exists to fully accurately account for the financial transactions under this project. I further certify that I understand that the subagreement price may be subject to downward renegotiation and/or recoupment where the above cost and pricing data have been determined, as a result of audit, not to have been complete, current, and accurate as of the date above.

(3) TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION

15. RECIPIENT REVIEWER	
------------------------	--

I certify that I have reviewed the cost/price summary set forth herein and the proposed cost/price appear acceptable for subagreement award.

TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION

16. EPA REVIEWER	
------------------	--

TITLE OF PROPOSER	SIGNATURE OF REVIEWER	DATE OF EXECUTION

CONTRACT NAME: Biowatch Monitoring Activities

TCEQ CONTRACT NUMBER: 582-10-86408

OMB Control No: 2090-0030

Approved: 05/01/2008

Approval Expires: 01/31/2011



Environmental Protection Agency

Disadvantaged Business Enterprise Program  
DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR <sup>1</sup>	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

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CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

Subcontractor Signature \_\_\_\_\_ Title/Date \_\_\_\_\_

<sup>1</sup>Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

CONTRACT NAME: Biowatch Monitoring Activities

TCEQ CONTRACT NUMBER: 582-10-86408

OMB Control No: 2090-0030

Approved: 05/01/2008

Approval Expires: 01/31/2011



Environmental Protection Agency

DBE

Disadvantaged Business Enterprise Program Subcontractor Participation Form

NAME OF SUBCONTRACTOR:	PROJECT NAME
ADDRESS	BID/PROPOSAL NO.
TELEPHONE NO.	E-MAIL ADDRESS

PRIME CONTRACTOR NAME

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR

Currently certified as an MBE or WBE under EPA's DBE Program?  Yes  No Signature of Prime Contractor Date Print Name Title

Signature of Subcontractor Date

Print Name Title

Subcontractor is defined a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

PA FORM 6100-3 (DBE Subcontractor Performance Form)

OMB Control No: 2090-0030

Approved:

05/01/2008 Approval Expires:

01/31/2011



Environmental  
Protection Agency

**Disadvantaged Business Enterprise Program  
DBE Subcontractor Performance Form**

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATE D DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

\_\_\_\_\_  
Signature of Prime Contractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

<sup>1</sup>Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

## Exhibit F

Operations Security Procedures for the Bio-Watch Program  
27 February 2003

1. References: National Security Decision Directive (NSDD) Number 298; National Operations Security Program; The White House, Washington D.C.; Dated: January 22, 1988

2. Scope and Applicability:

This document describes the procedures necessary to protect information associated with the Bio-Watch Program. Information that is generally available to the public through observation or access to open sources of information can reveal the existence of, and sometimes details about sensitive information or undertakings. Application of the operations security (OPSEC) process promotes operational effectiveness by helping to prevent the inadvertent compromise of sensitive government activities, capabilities or intentions. For Bio-Watch, the information the public needs to know is that the program is a US Environmental Protection Agency managed air-monitoring program. Requests for additional program information need to be formally submitted to the US EPA, and if required, to the Centers for Disease Control and Prevention (for laboratory issues) or the Department of Homeland Security (for other programmatic issues).

3. Summary of Method:

The operations security process involves five steps: identification of sensitive information, analysis of threats, analysis of vulnerabilities, assessments of risks, and application of appropriate countermeasures. The Bio-Watch process began with an examination of the total activity to determine what exploitable indicators could be pieced together to discern critical information. The indicators stem from routine administrative, physical, or technical actions taken to plan, train and execute the Bio-watch program.

Once the indicators are identified, they are analyzed against the threat to determine the extent to which they may reveal critical information. The program manager in conjunction with other Bio-Watch participants, used risk assessment to select and adopt countermeasures.

4. Sensitive Information

- a. Number of cities actually protected
- b. Names of cities actually protected
- c. Agents to be detected
- d. Size of attacks that can be detected
- e. Names of individuals involved in the deployment
- f. Names of cities not protected
- g. Anything that provides information about areas not-monitored by Bio-Watch -- e.g. detects only outdoors, or protects only facilities, or only special venues or does not monitor
- h. Nature of attacks that cannot be detected
- i. Specific equipment or protocols used

Exhibit F

5. Analysis of threats
  - a. "Terrorists"
  - b. Environmental activists
  - c. Disgruntled employees/disaffected/disrupter
  
6. Analysis of Vulnerabilities
  - a. Detector location accessibility and lack of physical security
  - b. Sabotage of filter when installed in collector, enroute, or at lab for processing
  - c. Sampler results and subsequent chain of custody
  - d. Program associates (employees and those knowledgeable of the program)
  
7. Application of appropriate countermeasures
  - a. Physical security
  - b. Tag names for cities
  - c. Data entry, processing, and access password protected
  - d. Sensitivity to personnel reliability
  - e. Background clearance checks (National Agency Check, or local background checks)
  - f. Initial QPSEC training and annual refresher training
  
8. Ultimately, responsibility for protecting the information associated with the Bio-Watch program rests with those associated with the program. No training or policy document can address every conceivable issue that may arise. When an individual encounters a situation where they feel they need guidance when questioned about the Bio-Watch program, or how to handle requests for information, they should refer the individual to the appropriate Department of Homeland Security representative.

Exhibit G  
Department of Homeland Security  
Management Directive System  
MD Number: 11042.1

## SAFEGUARDING SENSITIVE BUT UNCLASSIFIED (FOR OFFICIAL USE ONLY) INFORMATION

1.6.2005

### 1. Purpose

This directive establishes Department of Homeland Security (DHS) policy regarding the identification and safeguarding of sensitive but unclassified information originated within DHS. It also applies to other sensitive but unclassified information received by DHS from other government and non-governmental activities.

### 2. Scope

This directive is applicable to all DHS Headquarters, components, organizational elements, detailees, contractors, consultants, and others to whom access to information covered by this directive is granted.

### 3. Authorities

Homeland Security Act of 2002.

### 4. Definitions

**Access:** The ability or opportunity to gain knowledge of information.

**For Official Use Only (FOUO):** The term used within DHS to identify unclassified information of a sensitive nature, not otherwise categorized by statute or regulation, the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national interest. Information impacting the National Security of the United States and classified Confidential, Secret, or Top Secret under Executive Order 12958, "Classified National Security Information," as amended, or its predecessor or successor orders, is not to be considered FOUO. FOUO is not to be considered classified information.

**Need-to-know:** The determination made by an authorized holder of information that a prospective recipient requires access to specific information in order to

MD 11042.1

Exhibit G

perform or assist in a lawful and authorized governmental function, i.e., access is required for the performance of official duties.

**Organizational Element:** As used in this directive, organizational element is as defined in DHS MD Number 0010.1, Management Directive System and DHS Announcements.

**Protected Critical Infrastructure Information (PCII):** Critical infrastructure information (CII) is defined in 6 U.S.C. 131(3) (Section 212(3) of the Homeland Security Act). Critical infrastructure information means information not customarily in the public domain and related to the security of critical infrastructure or protected systems. Protected Critical Infrastructure Information is a subset of CII that is voluntarily submitted to the Federal Government and for which protection is requested under the PCII program by the requestor.

**Sensitive Security Information (SSI):** Sensitive security information (SSI) is defined in 49 C.F.R. Part 1520. SSI is a specific category of information that requires protection against disclosure. 49 U.S.C. 40119 limits the disclosure of information obtained or developed in carrying out certain security or research and development activities to the extent that it has been determined that disclosure of the information would be an unwarranted invasion of personal privacy; reveal a trade secret or privileged or confidential commercial or financial information; or be detrimental to the safety of passengers in transportation.

## 5. Responsibilities

A. The DHS Office of Security will:

1. Be responsible for practical application of all aspects of the program to protect FOUO.
2. Promulgate Department-wide policy guidance.
3. Develop and implement an education and awareness program for the safeguarding of FOUO and other sensitive but unclassified information.

B. Heads of DHS Organizational Elements will:

1. Ensure compliance with the standards for safeguarding FOUO and other sensitive but unclassified information as cited in this directive.
2. Designate an official to serve as a Security Officer or Security Liaison.

C. The organizational element's Security Officer/Security Liaison will:

MD 11042.1

Exhibit G

Be responsible for implementation and oversight of the FOUO information protection program and will serve as liaison between the DHS Office of Security and other organizational security officers.

D. DHS employees, detailees, contractors, consultants and others to whom access is granted will:

1. Be aware of and comply with the safeguarding requirements for FOUO information as outlined in this directive.
2. Participate in formal classroom or computer based training sessions presented to communicate the requirements for safeguarding FOUO and other sensitive but unclassified information.
3. Be aware that divulging information without proper authority could result in administrative or disciplinary action.

E. Contractors and Consultants shall:

Execute a DHS Form 11000-6, Sensitive But Unclassified Information Non-Disclosure Agreement (NDA), as a condition of access to such information. Other individuals not assigned to or contractually obligated to DHS, but to whom access to information will be granted, may be requested to execute an NDA as determined by the applicable program manager. Execution of the NDA shall be effective upon publication of this directive and not applied retroactively.

F. Supervisors and managers will:

1. Ensure that an adequate level of education and awareness is established and maintained that serves to emphasize safeguarding and prevent unauthorized disclosure of FOUO information.
2. Take appropriate corrective actions, to include administrative or disciplinary action as appropriate, when violations occur.

## 6. Policy and Procedures

A. General

1. The Computer Security Act of 1987, Public Law 100-235, defines "sensitive information" as "any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under Section 552a of Title 5, United States Code (the Privacy Act) but which has not been specifically authorized under criteria established by an executive

MD 11042.1

## Exhibit G

order or an act of Congress to be kept secret in the interest of national defense or foreign policy." However, with the exception of certain types of information protected by statute, specific, standard criteria and terminology defining the types of information warranting designation as "sensitive information" does not exist within the Federal government. Such designations are left to the discretion of each individual agency.

2. Within the "sensitive but unclassified" arena, in addition to the various categories of information specifically described and protected by statute or regulation, e.g., Tax Return Information, Privacy Act Information, Sensitive Security Information (SSI), Critical Infrastructure Information (CII), Grand Jury Information, etc. There are numerous additional caveats used by various agencies to identify unclassified information as sensitive, e.g., For Official Use Only; Law Enforcement Sensitive; Official Use Only; Limited Official Use; etc. Regardless of the caveat used to identify it, however, the reason for the designation does not change. Information is designated as sensitive to control and restrict access to certain information, the release of which could cause harm to a person's privacy or welfare, adversely impact economic or industrial institutions, or compromise programs or operations essential to the safeguarding of our national interests.

3. Information shall not be designated as FOUO in order to conceal government negligence, ineptitude, illegalities, or other disreputable circumstances embarrassing to a government agency.

4. Information designated as FOUO is not automatically exempt from disclosure under the provisions of the Freedom of Information Act, 5 U.S.C. 552, (FOIA). Information requested by the public under a FOIA request must still be reviewed on a case-by-case basis.

#### B. For Official Use Only

Within DHS, the caveat "FOR OFFICIAL USE ONLY" will be used to identify sensitive but unclassified information within the DHS community that is not otherwise specifically described and governed by statute or regulation. The use of these and other approved caveats will be governed by the statutes and regulations issued for the applicable category of information.

#### C. Information Designated as FOUO

1. The following types of information will be treated as FOUO information. Where information cited below also meets the standards for designation pursuant to other existing statutes or regulations, the applicable statutory or regulatory guidance will take precedence. For example, should information meet the standards for designation as Sensitive Security Information (SSI), then SSI guidance for marking, handling, and safeguarding will take precedence.

MD 11042.1

Exhibit G

- (a) Information of the type that may be exempt from disclosure per 5 U.S.C. 552, Freedom of Information Act, and its amendments. Designation of information as FOUO does not imply that the information is already exempt from disclosure under FOIA. Requests under FOIA, for information designated as FOUO, will be reviewed and processed in the same manner as any other FOIA request.
- (b) Information exempt from disclosure per 5 U.S.C. 552a, Privacy Act.
- (c) Information within the international and domestic banking and financial communities protected by statute, treaty, or other agreements.
- (d) Other international and domestic information protected by statute, treaty, regulation or other agreements.
- (e) Information that could be sold for profit.
- (f) Information that could result in physical risk to personnel.
- (g) DHS information technology (IT) internal systems data revealing infrastructure used for servers, desktops, and networks; applications name, version and release; switching, router, and gateway information; interconnections and access methods; mission or business use/need. Examples of information are systems inventories and enterprise architecture models. Information pertaining to national security systems and eligible for classification under Executive Order 12958, as amended, will be classified as appropriate.
- (h) Systems security data revealing the security posture of the system. For example, threat assessments, system security plans, contingency plans, risk management plans, Business Impact Analysis studies, and Certification and Accreditation documentation.
- (i) Reviews or reports illustrating or disclosing facility infrastructure or security vulnerabilities, whether to persons, systems, or facilities, not otherwise eligible for classification under Executive Order 12958, as amended.
- (j) Information that could constitute an indicator of U.S. government intentions, capabilities, operations, or activities or otherwise threaten operations security.
- (k) Developing or current technology, the release of which could hinder the objectives of DHS, compromise a technological advantage or countermeasure, cause a denial of service, or provide an adversary with

MD 11042.1

## Exhibit G

sufficient information to clone, counterfeit, or circumvent a process or system.

2. Other government agencies and international organizations may use different terminology to identify sensitive information, such as "Limited Official Use (LOU)," and "Official Use Only (OOU)." In most instances the safeguarding requirements for this type of information are equivalent to FOUO. However, other agencies and international organizations may have additional requirements concerning the safeguarding of sensitive information. Follow the safeguarding guidance provided by the other agency or organization. Should there be no such guidance, the information will be safeguarded in accordance with the requirements for FOUO as provided in this manual. Should the additional guidance be less restrictive than in this directive, the information will be safeguarded in accordance with this directive.

#### D. Designation Authority

Any DHS employee, detailee, or contractor can designate information falling within one or more of the categories cited in section 6, paragraph C, as FOUO. Officials occupying supervisory or managerial positions are authorized to designate other information, not listed above and originating under their jurisdiction, as FOUO.

#### E. Duration of Designation

Information designated as FOUO will retain its designation until determined otherwise by the originator or a supervisory or management official having program management responsibility over the originator and/or the information.

#### F. Marking

1. Information designated as FOUO will be sufficiently marked so that persons having access to it are aware of its sensitivity and protection requirements. The lack of FOUO markings on materials does not relieve the holder from safeguarding responsibilities. Where the FOUO marking is not present on materials known by the holder to be FOUO, the holder of the material will protect it as FOUO. Other sensitive information protected by statute or regulation, e.g., PCI and SSI, etc., will be marked in accordance with the applicable guidance for that type of information. Information marked in accordance with the guidance provided for the type of information need not be additionally marked FOUO.

(a) Prominently mark the bottom of the front cover, first page, title page, back cover and each individual page containing FOUO information with the caveat "FOR OFFICIAL USE ONLY."

MD 11042.1

Exhibit G

(b) Materials containing specific types of FOUO may be further marked with the applicable caveat, e.g., "LAW ENFORCEMENT SENSITIVE," in order to alert the reader of the type of information conveyed. Where the sensitivity of the information warrants additional access and dissemination restrictions, the originator may cite additional access and dissemination restrictions. For example:

*WARNING: This document is FOR OFFICIAL USE ONLY (FOUO). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information. This information shall not be distributed beyond the original addressees without prior authorization of the originator.*

(c) Materials being transmitted to recipients outside of DHS, for example, other federal agencies, state or local officials, etc. who may not be aware of what the FOUO caveat represents, shall include the following additional notice:

*WARNING: This document is FOR OFFICIAL USE ONLY (FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official.*

(d) Computer storage media, i.e., disks, tapes, removable drives, etc., containing FOUO information will be marked "FOR OFFICIAL USE ONLY."

(e) Portions of a classified document, i.e., subjects, titles, paragraphs, and subparagraphs that contain only FOUO information will be marked with the abbreviation (FOUO).

(f) Individual portion markings on a document that contains no other designation are not required.

(g) Designator or originator information and markings, downgrading instructions, and date/event markings are not required.

G. General Handling Procedures

Although FOUO is the DHS standard caveat for identifying sensitive unclassified information, some types of FOUO information may be more sensitive than others

MD 11042.1

## Exhibit G

and thus warrant additional safeguarding measures beyond the minimum requirements established in this manual. For example, certain types of information may be considered extremely sensitive based on the repercussions that could result should the information be released or compromised. Such repercussions could be the loss of life or compromise of an informant or operation. Additional control requirements may be added as necessary to afford appropriate protection to the information. DHS employees, contractors, and detailees must use sound judgment coupled with an evaluation of the risks, vulnerabilities, and the potential damage to personnel or property as the basis for determining the need for safeguards in excess of the minimum requirements and protect the information accordingly.

1. When removed from an authorized storage location (see section 6.1) and persons without a need-to-know are present, or where casual observation would reveal FOUO information to unauthorized persons, a "FOR OFFICIAL USE ONLY" cover sheet (Enclosure 1) will be used to prevent unauthorized or inadvertent disclosure.
2. When forwarding FOUO information, a FOUO cover sheet should be placed on top of the transmittal letter, memorandum or document.
3. When receiving FOUO equivalent information from another government agency, handle in accordance with the guidance provided by the other government agency. Where no guidance is provided, handle in accordance with the requirements of this directive.

#### H. Dissemination and Access

1. FOUO information will not be disseminated in any manner - orally, visually, or electronically - to unauthorized personnel.
2. Access to FOUO information is based on "need-to-know" as determined by the holder of the information. Where there is uncertainty as to a person's need-to-know, the holder of the information will request dissemination instructions from their next-level supervisor or the information's originator.
3. The holder of the information will comply with any access and dissemination restrictions.
4. A security clearance is not required for access to FOUO information.
5. When discussing or transferring FOUO information to another individual(s), ensure that the individual with whom the discussion is to be held or the information is to be transferred has a valid need-to-know, and that precautions are taken to prevent unauthorized individuals from overhearing the conversation, observing the materials, or otherwise obtaining the information.

MD 11042.1

## Exhibit G

6. FOUO information may be shared with other agencies, federal, state, tribal, or local government and law enforcement officials, provided a specific need-to-know has been established and the information is shared in furtherance of a coordinated and official governmental activity. Where FOUO information is requested by an official of another agency and there is no coordinated or other official governmental activity, a written request will be made from the requesting agency to the applicable DHS program office providing the name(s) of personnel for whom access is requested, the specific information to which access is requested, and basis for need-to-know. The DHS program office shall then determine if it is appropriate to release the information to the other agency official. (see section 6.F for marking requirements)

7. Other sensitive information protected by statute or regulation, i.e., Privacy Act, CII, SSI, Grand Jury, etc., will be controlled and disseminated in accordance with the applicable guidance for that type of information.

8. If the information requested or to be discussed belongs to another agency or organization, comply with that agency's policy concerning third party discussion and dissemination.

9. When discussing FOUO information over a telephone, the use of a STU III (Secure Telephone Unit), or Secure Telephone Equipment (STE), is encouraged, but not required.

#### I. Storage

1. When unattended, FOUO materials will, at a minimum, be stored in a locked file cabinet, locked desk drawer, a locked overhead storage compartment such as a systems furniture credenza, or similar locked compartment. Materials can also be stored in a room or area that has sufficient physical access control measures to afford adequate protection and prevent unauthorized access by members of the public, visitors, or other persons without a need-to-know, such as a locked room, or an area where access is controlled by a guard, cipher lock, or card reader.

2. FOUO information will not be stored in the same container used for the storage of classified information unless there is a correlation between the information. When FOUO materials are stored in the same container used for the storage of classified materials, they will be segregated from the classified materials to the extent possible, i.e. separate folders, separate drawers, etc.

3. IT systems that store FOUO information will be certified and accredited for operation in accordance with federal and DHS standards. Consult the DHS Information Technology Security Program Handbook for Sensitive Systems, Publication 4300A, for more detailed information.

MD 11042.1

Exhibit G

4. Laptop computers and other media containing FOUO information will be stored and protected to prevent loss, theft, unauthorized access and unauthorized disclosure. Storage and control will be in accordance with DHS Information Technology Security Program Handbook for Sensitive Systems, Publication 4300A.

J. Transmission

1. Transmission of hard copy FOUO within the U.S. and its Territories:
  - (a) Material will be placed in a single opaque envelope or container and sufficiently sealed to prevent inadvertent opening and to show evidence of tampering. The envelope or container will bear the complete name and address of the sender and addressee, to include program office and the name of the intended recipient (if known).
  - (b) FOUO materials may be mailed by U.S. Postal Service First Class Mail or an accountable commercial delivery service such as Federal Express or United Parcel Service.
  - (c) FOUO materials may be entered into an inter-office mail system provided it is afforded sufficient protection to prevent unauthorized access, e.g., sealed envelope.
2. Transmission to Overseas Offices: When an overseas office is serviced by a military postal facility, i.e., APO/FPO, FOUO may be transmitted directly to the office. Where the overseas office is not serviced by a military postal facility, the materials will be sent through the Department of State, Diplomatic Courier.
3. Electronic Transmission.
  - (a) Transmittal via Fax. Unless otherwise restricted by the originator, FOUO information may be sent via nonsecure fax. However, the use of a secure fax machine is highly encouraged. Where a nonsecure fax is used, the sender will coordinate with the recipient to ensure that the materials faxed will not be left unattended or subjected to possible unauthorized disclosure on the receiving end. The holder of the material will comply with any access, dissemination, and transmittal restrictions cited on the material or verbally communicated by the originator.
  - (b) Transmittal via E-Mail
    - (i) FOUO information transmitted via email should be protected by encryption or transmitted within secure communications systems. When this is impractical or unavailable, FOUO may be transmitted over regular email channels. For added security, when

MD 11042.1

Exhibit G

transmitting FOUO over a regular email channel, the information can be included as a password protected attachment with the password provided under separate cover. Recipients of FOUO information will comply with any email restrictions imposed by the originator.

(II) Per DHS MD 4300, DHS Sensitive Systems Handbook, due to inherent vulnerabilities, FOUO information shall not be sent to personal email accounts.

(c) DHS Internet/Intranet

(i) FOUO information will not be posted on a DHS or any other internet (public) website.

(ii) FOUO information may be posted on the DHS intranet or other government controlled or sponsored protected encrypted data networks, such as the Homeland Security Information Network (HSIN). However, the official authorized to post the information should be aware that access to the information is open to all personnel who have been granted access to that particular intranet site. The official must determine the nature of the information is such that need-to-know applies to all personnel; the benefits of posting the information outweigh the risk of potential compromise; the information posted is prominently marked as FOR OFFICIAL USE ONLY; and information posted does not violate any provisions of the Privacy Act.

K. Destruction

1. FOUO material will be destroyed when no longer needed. Destruction may be accomplished by:

(a) "Hard Copy" materials will be destroyed by shredding, burning, pulping, pulverizing, such as to assure destruction beyond recognition and reconstruction. After destruction, materials may be disposed of with normal waste.

(b) Electronic storage media shall be sanitized appropriately by overwriting or degaussing. Contact local IT security personnel for additional guidance.

(c) Paper products containing FOUO information will not be disposed of in regular trash or recycling receptacles unless the materials have first been destroyed as specified above.

MD 11042.1

Exhibit G

L. Incident Reporting

1. The loss, compromise, suspected compromise, or unauthorized disclosure of FOUO information will be reported. Incidents involving FOUO in DHS IT systems will be reported to the organizational element Computer Security Incident Response Center in accordance with IT incident reporting requirements.
2. Suspicious or inappropriate requests for information by any means, e.g., email or verbal, shall be report to the DHS Office of Security.
3. Employees or contractors who observe or become aware of the loss, compromise, suspected compromise, or unauthorized disclosure of FOUO information will report it immediately, but not later than the next duty day, to the originator and the local Security Official.
4. Additional notifications to appropriate DHS management personnel will be made without delay when the disclosure or compromise could result in physical harm to an individual(s) or the compromise of a planned or on-going operation.
5. At the request of the originator, an inquiry will be conducted by the local security official or other designee to determine the cause and affect of the incident and the appropriateness of administrative or disciplinary action against the offender.

Dated: 1/6/05

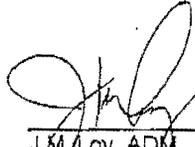
  
\_\_\_\_\_  
J.M. Loy, ADM  
Deputy Secretary of Homeland Security

Exhibit G

## Department of Homeland Security

### **FOR OFFICIAL USE ONLY**

THE ATTACHED MATERIALS CONTAIN DEPARTMENT OF HOMELAND SECURITY INFORMATION THAT IS "FOR OFFICIAL USE ONLY," OR OTHER TYPES OF SENSITIVE BUT UNCLASSIFIED INFORMATION REQUIRING PROTECTION AGAINST UNAUTHORIZED DISCLOSURE. THE ATTACHED MATERIALS WILL BE HANDLED AND SAFEGUARDED IN ACCORDANCE WITH DHS MANAGEMENT DIRECTIVES GOVERNING PROTECTION AND DISSEMINATION OF SUCH INFORMATION.

AT A MINIMUM, THE ATTACHED MATERIALS WILL BE DISSEMINATED ONLY ON A "NEED-TO-KNOW" BASIS AND WHEN UNATTENDED, WILL BE STORED IN A LOCKED CONTAINER OR AREA OFFERING SUFFICIENT PROTECTION AGAINST THEFT, COMPROMISE, INADVERTENT ACCESS AND UNAUTHORIZED DISCLOSURE.

MD 11042.1

DEPARTMENT OF HOMELAND SECURITY

Exhibit H

**NON-DISCLOSURE AGREEMENT**

I, \_\_\_\_\_, an individual official, employee, consultant, or subcontractor of or to \_\_\_\_\_ (the Authorized Entity), intending to be legally bound, hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain information, specified below, that is owned by, produced by, or in the possession of the United States Government.

(Signer will acknowledge the category or categories of information that he or she may have access to, and the signer's willingness to comply with the standards for protection by placing his or her initials in front of the applicable category or categories.)

Initials:	Protected Critical Infrastructure Information (PCII)
-----------	--

I attest that I am familiar with, and I will comply with all requirements of the PCII program set out in the Critical Infrastructure Information Act of 2002 (CII Act) (Title II, Subtitle B, of the Homeland Security Act of 2002, Public Law 107-296, 196 Stat. 2135, 6 USC 101 et seq.), as amended, the implementing regulations thereto (6 CFR Part 29), as amended, and the applicable PCII Procedures Manual, as amended, and with any such requirements that may be officially communicated to me by the PCII Program Manager or the PCII Program Manager's designee.

Initials:	Sensitive Security Information (SSI)
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I attest that I am familiar with, and I will comply with the standards for access, dissemination, handling, and safeguarding of SSI information as cited in this Agreement and in accordance with 49 CFR Part 1520, "Protection of Sensitive Security Information," "Policies and Procedures for Safeguarding and Control of SSI," as amended, and any supplementary guidance issued by an authorized official of the Department of Homeland Security.

Initials:	Other Sensitive but Unclassified (SBU)
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As used in this Agreement, sensitive but unclassified information is an over-arching term that covers any information, not otherwise indicated above, which the loss of, misuse of, or unauthorized access to or modification of could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under Section 552a of Title 5, as amended, but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy. This includes information categorized by DHS or other government agencies as: For Official Use Only (FOUO); Official Use Only (OUO); Sensitive Homeland Security Information (SHSI); Limited Official Use (LOU); Law Enforcement Sensitive (LES); Safeguarding Information (SGI); Unclassified Controlled Nuclear Information (UCNI); and any other identifier used by other government agencies to categorize information as sensitive but unclassified.

I attest that I am familiar with, and I will comply with the standards for access, dissemination, handling, and safeguarding of the information to which I am granted access as cited in this Agreement and in accordance with the guidance provided to me relative to the specific category of information.

I understand and agree to the following terms and conditions of my access to the information indicated above:

1. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of information to which I have been provided conditional access, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.
2. By being granted conditional access to the information indicated above, the United States Government has placed special confidence and trust in me and I am obligated to protect this information from unauthorized disclosure, in accordance with the terms of this Agreement and the laws, regulations, and directives applicable to the specific categories of information to which I am granted access.
3. I attest that I understand my responsibilities and that I am familiar with and will comply with the standards for protecting such information that I may have access to in accordance with the terms of this Agreement and the laws, regulations, and/or directives applicable to the specific categories of information to which I am granted access. I understand that the United States Government may conduct inspections, at any time or place, for the purpose of ensuring compliance with the conditions for access, dissemination, handling and safeguarding information under this Agreement.

## EXHIBIT HH

4. I will not disclose or release any information provided to me pursuant to this Agreement without proper authority or authorization. Should situations arise that warrant the disclosure or release of such information I will do so only under approved circumstances and in accordance with the laws, regulations, or directives applicable to the specific categories of information. I will honor and comply with any and all dissemination restrictions cited or verbally relayed to me by the proper authority.

5. (a) For PCII - (1) Upon the completion of my engagement as an employee, consultant, or subcontractor under the contract, or the completion of my work on the PCII Program, whichever occurs first, I will surrender promptly to the PCII Program Manager or his designee, or to the appropriate PCII officer, PCII of any type whatsoever that is in my possession.

(2) If the Authorized Entity is a United States Government contractor performing services in support of the PCII Program, I will not request, obtain, maintain, or use PCII unless the PCII Program Manager or Program Manager's designee has first made in writing, with respect to the contractor, the certification as provided for in Section 29.8(c) of the implementing regulations to the CII Act, as amended.

(b) For SSI and SBU - I hereby agree that material which I have in my possession and containing information covered by this Agreement, will be handled and safeguarded in a manner that affords sufficient protection to prevent the unauthorized disclosure of or inadvertent access to such information, consistent with the laws, regulations, or directives applicable to the specific categories of information. I agree that I shall return all information to which I have had access or which is in my possession 1) upon demand by an authorized individual; and/or 2) upon the conclusion of my duties, association, or support to DHS; and/or 3) upon the determination that my official duties do not require further access to such information.

6. I hereby agree that I will not alter or remove markings, which indicate a category of information or require specific handling instructions, from any material I may come in contact with, in the case of SSI or SBU, unless such alteration or removal is consistent with the requirements set forth in the laws, regulations, or directives applicable to the specific category of information or, in the case of PCII, unless such alteration or removal is authorized by the PCII Program Manager or the PCII Program Manager's designee. I agree that if I use information from a sensitive document or other medium, I will carry forward any markings or other required restrictions to derivative products, and will protect them in the same matter as the original.

7. I hereby agree that I shall promptly report to the appropriate official, in accordance with the guidance issued for the applicable category of information, any loss, theft, misuse, misplacement, unauthorized disclosure, or other security violation, I have knowledge of and whether or not I am personally involved. I also understand that my anonymity will be kept to the extent possible when reporting security violations.

8. If I violate the terms and conditions of this Agreement, such violation may result in the cancellation of my conditional access to the information covered by this Agreement. This may serve as a basis for denying me conditional access to other types of information, to include classified national security information.

9. (a) With respect to SSI and SBU, I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation of the information not consistent with the terms of this Agreement.

(b) With respect to PCII I hereby assign to the entity owning the PCII and the United States Government, all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation of PCII not consistent with the terms of this Agreement.

10. This Agreement is made and intended for the benefit of the United States Government and may be enforced by the United States Government or the Authorized Entity. By granting me conditional access to information in this context, the United States Government and, with respect to PCII, the Authorized Entity, may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement. I understand that if I violate the terms and conditions of this Agreement, I could be subjected to administrative, disciplinary, civil, or criminal action, as appropriate, under the laws, regulations, or directives applicable to the category of information involved and neither the United States Government nor the Authorized Entity have waived any statutory or common law evidentiary privileges or protections that they may assert in any administrative or court proceeding to protect any sensitive information to which I have been given conditional access under the terms of this Agreement.

EXHIBIT H

11. Unless and until I am released in writing by an authorized representative of the Department of Homeland Security (if permissible for the particular category of information), I understand that all conditions and obligations imposed upon me by this Agreement apply during the time that I am granted conditional access, and at all times thereafter.

12. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions shall remain in full force and effect.

13. My execution of this Agreement shall not nullify or affect in any manner any other secrecy or non-disclosure Agreement which I have executed or may execute with the United States Government or any of its departments or agencies.

14. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958, as amended; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 USC 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 USC 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this agreement and are controlling.

15. Signing this Agreement does not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

16. I represent and warrant that I have the authority to enter into this Agreement.

17. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me any laws, regulations, or directives referenced in this document so that I may read them at this time, if I so choose.

DEPARTMENT OF HOMELAND SECURITY  
NON-DISCLOSURE AGREEMENT  
Acknowledgement

Typed/Printed Name:	Government/Department/Agency/Business Address	Telephone Number:

I make this Agreement in good faith, without mental reservation or purpose of evasion.

Signature:

WITNESS:

Typed/Printed Name:	Government/Department/Agency/Business Address	Telephone Number:

Signature:

This form is not subject to the requirements of P.L. 104-13, "Paperwork Reduction Act of 1995" 44 USC, Chapter 35:

DHS Form 11000-6 (08-04)



**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 269a)			\$	

**CONTRACTUAL EXPENDITURES (during this report period)**

SUBCONTRACTOR (NAME)	FOR	COST (THIS PERIOD)	TASKS
TOTAL CONTRACTUAL EXPENDITURES (must agree with line 10f on Form 269a)		\$	

\* 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 269a)			\$	

**OTHER EXPENDITURES (during this report period)**

NUMBER PURCHASED	DESCRIPTION	UNIT COST	TOTAL COST	TASKS
TOTAL OTHER EXPENDITURES (must agree with line 10h on Form 269a)			\$	

\*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 269a)		\$	

**TRAVEL EXPENDITURES (during this report period)**

DESCRIPTION	REASON	COST (THIS PERIOD)	TASKS
TOTAL TRAVEL EXPENDITURES (must agree with line 10c on Form 269a)		\$	

\* 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 269a) and any required TCEQ Supplemental 269a 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 269a-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 269a-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 269a-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 269a-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 269a-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 269a-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 269a-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 269a-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 269a-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.

### HUB Progress Assessment Report (PAR)

Exhibit J

**Part A. Identifying Information.**

1. TCEQ Contract No.: \_\_\_\_\_ 2. Your Invoice No.: \_\_\_\_\_  
 3. Work Order No. (if applicable) \_\_\_\_\_ 4. For work completed between \_\_\_\_/\_\_\_\_/\_\_\_\_ and \_\_\_\_/\_\_\_\_/\_\_\_\_  
 5. Prime Contractor ("You"): \_\_\_\_\_ 6. Prime Contractor Vendor ID #: \_\_\_\_\_  
 7. Contact: \_\_\_\_\_ 8. Phone: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ 9. Is the Prime Contractor a Texas certified HUB and performing at least 25% of the total value of the contract? Yes \_\_\_ No \_\_\_

**Part B. Invoice and HUB Subcontracting Information.**

10.  If you have used no subcontractors this period, check here.

Name and Address of HUB Subcontractor	Vendor ID No.	Type of HUB	Provided*:	Value of this subcontractors participation for this invoicing period
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$ _____
		<input type="checkbox"/> MBE <input type="checkbox"/> WBE	<input type="checkbox"/> Services <input type="checkbox"/> Commodities	\$ _____
<b>Total</b>				<b>\$ _____</b>

\* If subcontractor's services include both labor and materials, check "services" only.

Note: If you need room to list more subcontractors, enter this information on a plain sheet of paper and attach it to this form.

11. Total of invoice: \$ \_\_\_\_\_  
 12. Total of invoice from certified HUB subcontractors: \$ \_\_\_\_\_  
 13. Percent of HUB expenditures for this invoice: \_\_\_\_\_ %  
 (line 11 ÷ line 10) x 100

**Part C. HUB Subcontracting Information**

14. Total amount invoiced to date: \$ \_\_\_\_\_  
 15. Total HUB expenditures for contract to date: \$ \_\_\_\_\_  
 16. Percent of HUB expenditures for contract to date: \_\_\_\_\_ %  
 (line 15 ÷ line 14) x 100  
 17. HUB subcontracting goal for this contract: \_\_\_\_\_ %

**Part D. Affirmation.** The information provided on this form is complete and correct. *Your representative must sign here.*

18. Signature: \_\_\_\_\_ 19. Date: \_\_\_\_\_

**Part E. Other Information.** For TCEQ use only. (Project manager: Complete this box and sign.)

Type of funding: <input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Both	Index: COBJ: _____
Fund No. _____	Date In: ____/____/____ PCA Code(s) _____
Check if prime contractor is one of the following: <input type="checkbox"/> River Authority <input type="checkbox"/> COG <input type="checkbox"/> Local govt. <input type="checkbox"/> Interlocal	Signature: _____

## General Information

The purpose of this form is to help the Texas Commission on Environmental Quality (TCEQ: "us") to track the value of business we do with Texas-certified "historically underutilized businesses" (HUBs) and federally designated "minority- or woman-owned business enterprises" (MWBEs). In this form, the acronym "HUB" refers to both of these classes of businesses.

### Do I Have to Complete This Form?

If we have awarded you a contract to provide us with professional services, other services, or commodities *and* your contract contains a subcontracting plan, then you must complete this form each time you submit an invoice or set of invoices to us—even if *no subcontracting occurred during the period covered by these invoices*.

If you are a HUB, you must perform at least 25 percent of the total value of the contract with your own or leased employees as defined by the Internal Revenue Service in order for the agency to receive 100 percent HUB credit for the entire contract. You may subcontract up to 75 percent of the contract with HUBs or non-HUB subcontractors, but you must report to us the value—both dollar amount and percentage—of your contract that was actually performed by you and your subcontractors during each invoicing period.

### Where Do I Turn This Form In?

When you have completed this form, attach it to your invoices and submit it to our project manager for your contract.

### Where Can I Get More Answers?

If you have any other questions, call the project manager named on your contract or our HUB Program Director (512/239-1273).

## Definitions

These brief definitions may help you complete this form. For terms where a full legal definition may be helpful, we have cited the rule or law that gives that definition.

**Commodities**—materials, supplies, or equipment. May include consumable articles (for example, office supplies) or durable items (for example, computers, furniture, or equipment).

**Other services**—all services other than construction and professional services, including consulting services (Texas Government Code, Chapter 2254, Subchapter B).

**Prime contractor (or "prime")**—any business, agency, or individual who provides commodities or services to us under a purchase order or other contract.

**Professional services**—services of accountants, architects, engineers, land surveyors, optometrists, and physicians (Texas Government Code, Chapter 2254, Subchapter A).

**Services**—(1) functions performed for us by an outside source—for example, equipment repair, consulting, hazardous waste disposal, or work by short-term temporary employees. (2) similar functions performed for the prime contractor by an outside source.

**Subcontractor**—any business, agency, or individual (other than an employee) who provides commodities or services to the prime contractor.

**Total contract (Item 14)**—on this form, total value of your contract with us, including all monetary amendments, if any.

**Vendor ID No.**—the 11-digit taxpayer identification number assigned to this subcontractor by Comptroller of Public Accounts. The subcontractor should be able to provide you with this number.

## Instructions

1. **TCEQ Contract No.** - Enter the contract number we have assigned to this contract. This number appears on the first page of the contract.
2. **Your Invoice No.** - Enter your invoice number for each invoice you are submitting with this form.
3. **Work Order No.** - If applicable, enter your work order number for the site, phase, or program.
4. **For work completed between** - Enter the period of time in which the work covered by these invoices was carried out.
5. **Prime Contractor** - Enter the name of the contractor to which we awarded this contract.
6. **Prime Contractor Vendor ID#** - Enter the 13-digit vendor identification number the Comptroller of Public Accounts has assigned the prime contractor.
7. **Contact** - Enter the name of the person authorized to complete this form for the prime contractor. We will contact this person if we have any questions about the information you have provided on this form.
8. **Phone** - Enter the phone number at which we can reach the contact person named in Item 7.
9. This percentage is applicable only when the prime contractor is a HUB.

10. HUB Subcontractor Information - *First column*—Enter the complete name of each HUB subcontractor. Enter information about this HUB subcontractor in the remaining columns of this row.

*Second column*—Enter the 13-digit vendor identification number the Comptroller of Public Accounts has assigned to this HUB subcontractor.

*Third column*—You have three options:

- If this subcontractor is a minority-owned business enterprise, check "MBE."
- If this subcontractor is a woman-owned business enterprise, check "WBE."
- If this subcontractor qualifies as *both* an MBE *and* a WBE, check *both* boxes.

*Fourth column*—Indicate, by checking the appropriate box, whether the subcontractor provided services or commodities. (If both, check "services" only.)

*Fifth column*—Enter the total of all invoices attached for this HUB subcontractor.

11. Total of invoice - Enter the total of *all* attached invoices

12. Total of invoice from certified HUB subcontractors - Enter the total amount of all attached invoices from HUBs.

13. Percent of HUB expenditures for this invoice - Use the instructions on the PAR form to calculate the percentage of this invoice that HUB subcontractors have completed.

14. Total amount invoiced to date - Enter the total of all invoices you have submitted to us to date for this contract, including the invoices attached to this PAR form.

15. Total of HUB expenditures on contract to date - Enter the total of all HUB subcontractor invoices for this contract to date.

16. Percent of HUB expenditures for contract to date - Use the instructions on the PAR form to calculate the percentage of this contract that HUB subcontractors have completed to date.

17. HUB Subcontracting goal for this contract - Your HUB goal is stated as a percentage in your contract. Enter your HUB goal here.

18. Signature - The person named in Item 5 must sign here as the representative of the prime contractor.

19. Date - Enter the date you completed this report.

CONTRACT AMENDMENT

STATE OF TEXAS §  
COUNTY OF TRAVIS §

AMENDMENT NUMBER 3

The Texas Commission on Environmental Quality (TCEQ), and the City of San Antonio hereby agree to amend Contract No. 582-8-72698, as shown below. This amendment increases the total compensation possible under the contract so that the City of San Antonio may continue to operate and maintain the PM2.5 Samplers covered under the contract.

- 1. TCEQ and the City of San Antonio agree that the total compensation possible under this contract is increased as follows:

The Original Contract Amount	\$ 40,000.00
Contract Amendment No. 1	\$ 48,000.00
Contract Amendment No. 2	\$103,000.00
<u>Contract Amendment No. 3, FY10</u>	<u>\$103,000.00</u>
Total Contract Amount	\$294,000.00

- 2. Article 2 (Pricing and Payment) contains a Contract Costs Budget Sheet. The TCEQ has reviewed and approved the budget submitted by the City of San Antonio. The Contract Costs Budget is hereby included in its entirety by Attachment A of this Amendment.
- 3. Article 3 (Maximum Amount of Contract) is amended to reflect that the contract amount shall not exceed:

Two Hundred Ninety Four Thousand Dollars and no cents \$294,000.00

- 4. The Section titled "Term of Contract," is amended to extend the contract period through August 31, 2010. With this amendment, this section now reads:

Article 4. TERM OF CONTRACT

This Contract shall begin on 9/1/2007, and shall terminate on full performance, which is due on 8/31/2010, unless terminated early or extended in accordance with the terms of the Contract.

- 5. Article 5 of the General Conditions (relating to Payment) requires that invoices be provided in a format acceptable to the TCEQ. TCEQ has attached a Financial Status Report (FSR) which is an acceptable format for invoice submittals and has included a template in this Amendment as Attachment B.

All other conditions and requirements of Contract Number 582-8-72698 will remain unchanged.

**TCEQ:**

**PERFORMING PARTY:**

Texas Commission on Environmental Quality City of San Antonio

By: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Signature

Authorized Signature

Carlos Rubinstein, P.E.

Fernando A. Guerra, M.D., MPH

Printed Name

Director of Health

Deputy Executive Director

332 W. Commerce, Suite 307

Title

San Antonio, Texas 78205

210-207-8730

Fernando.Guerra@sanantonio.gov

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard, City Attorney

**Attachment A**  
**Contract Costs Budget for FY10**

**ARTICLE 1. AUTHORIZED EXPENSE BUDGET**

1.1. The authorized expenses, acquisitions, or expenditures under this Contract are as follows:

<u>Budget Category</u>	<u>Amendment Amount</u>
Personnel/Salary	\$50,409.73
Fringe Benefits <sup>1</sup>	\$18,857.00
Travel	\$8,748.00
Supplies	\$4,519.00
Equipment	\$6,206.06
Contractual	\$0.00
Other	\$2,000.00
Other - Third Party In-kind	<u>\$0.00</u>
<b>Total Direct Costs</b>	<b>\$90,739.79</b>
 Authorized Indirect Costs <sup>2</sup>	 <u>\$12,260.21</u>
 TCEQ Share	 <b>\$103,000.00</b>
Grantee Cost Share	<u>\$0.00</u>
<b>TOTAL COSTS</b>	<b>\$103,000.00</b>

1. Fringe benefits shall be reimbursed at actual costs and shall not exceed 38 % of total direct personnel/salary costs for the term of the Contract without written approval of the TCEQ Project Representative.
2. The indirect rate currently authorized (for the purpose of calculating amounts to be reimbursed by the TCEQ) shall not exceed 17.70 % of salaries & fringe benefits (distribution base) for the Term of the Contract, subject to the provisions outlined in the Indirect Cost Rate section of this Article.

1.2. The PERFORMING PARTY is responsible, throughout the term of this Contract, for tracking and ensuring that expenditure amounts under this Contract remain within the various budgeted cost categories set forth in this Article. If, after taking into consideration the requirements set forth in this Article, the PERFORMING PARTY determines that changes or adjustments to any of the current cost category amounts are likely to be necessary, the PERFORMING PARTY shall submit a Budget Revision Form to the TCEQ for review and approval.

1.3. *Indirect Cost Rate:* The Commission and the PERFORMING PARTY must choose one of the following options relating to indirect rate, and identify that option clearly in the contract budget. If no option is selected, indirect rate will NOT be reimbursed.

*Option One: X*

1.3.1. The PERFORMING PARTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.

1.3.2. The PERFORMING PARTY shall maintain all indirect rate records for the Commission's inspection or submit records as per the agency's request.

1.3.3. PERFORMING PARTY agrees to utilize the provisional rate as established below and agrees to conduct an indirect rate audit. A final indirect rate will be established based on the actual allowable costs, as provided in UGMS, for the period as established by an audit conducted by a currently licensed independent certified public accountant and submitted to the PERFORMING PARTY and the Commission. This indirect rate audit may be conducted at the same time as any other audit required of the PERFORMING PARTY. The cost of the indirect rate audit will be accounted for within the indirect rate, and not directly charged to the Commission. If the

indirect rate audit is not provided to the Commission within the earlier of 30 days after receipt of the auditor's report or nine months after the end of the audit period, Option Two (below) will apply.

(i) In accordance with OMB Circular A-87 and the UGMS, when the PERFORMING PARTY has a federal cognizant agency or a state coordinating agency, the PERFORMING PARTY must submit the indirect rate approved by the federal cognizant agency or state coordinating agency within the past 24 months as the provisional indirect rate.

(ii) Alternatively, if the PERFORMING PARTY does not have an assigned federal cognizant agency or a designated state coordinating agency or if no rate is approved by the designated oversight agency, the Commission and the PERFORMING PARTY may negotiate a provisional indirect rate in accordance with UGMS.

(iii) In the event, prior to the termination date of this Contract, an audited indirect rate which is different from the initial provisional indirect rate set forth in this section is accepted by Commission, the Commission and PERFORMING PARTY may negotiate a new contract budget and incorporate such into this Contract by way of a contract change.

(iv) The provisional rate will be included in the Authorized Expense Budget and shall remain in effect subject to determination of a final indirect rate which is based on an audit of the contract period, performed by a currently licensed independent certified public accountant, which specifically examines and reports the indirect rate for the PERFORMING PARTY's accounting period(s) covered under this Contract.

(v) The PERFORMING PARTY agrees to reimburse the Commission any overpayments received as a result of this provisional rate being higher than the approved final audited indirect rate for the period under consideration. Nothing in this section, or the results of any indirect cost audit or final indirect rate approval, shall cause the Commission to owe the PERFORMING PARTY more than the "Total Obligation Amount" or result in a reduction in the deliverables set forth in the Scope of Work. If the final indirect rate is higher than the provisional rate, an adjustment may be made in a future year contract.

*Option Two:*

1.3.4. Indirect Cost Rates. The PERFORMING PARTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.

1.3.5. The PERFORMING PARTY shall maintain all indirect rate records for the Commission's inspection or submit records as per the agency's request.

1.3.6. PERFORMING PARTY agrees to an indirect rate of 10% or less of the direct salary and wage costs of providing the service, in accordance with UGMS Part II, Attachment E, Paragraph E.2.d. No audit of this rate will be required by the Commission.

*Option Three:*

1.3.7. PERFORMING PARTY agrees to direct bill all costs and not require indirect cost for the contract.

1.4. When the PERFORMING PARTY applies for final payment, the PERFORMING PARTY will certify on a written form provided by TCEQ that the PERFORMING PARTY has not engaged in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

**ARTICLE 2. SUBMITTAL OF PAYMENT REQUESTS**

Payment requests must be submitted at the interval specified below (whichever is checked; if none is checked, payment requests must be submitted monthly; if more than one is checked, invoices must be submitted when both requirements are met):

- monthly
- upon completion of deliverables specified herein (see \_\_\_\_\_).
- upon completion of all Work

X Other (specify) Quarterly to be received within 30 days after the end of the quarter. Included with the invoice which shall be provided in a format acceptable to the TCEQ, must be the FSR (Financial Status Report) and the PAR form. Payment requests shall be submitted at quarterly intervals except for March 1 - 31, 2010, which must be submitted by April 30, 2010.

## Texas Commission on Environmental Quality

## FINANCIAL STATUS REPORT

STATE AGENCY ORGANIZATION UNIT TO WHICH REPORT IS SUBMITTED:				
1.				
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:			9. PERIOD COVERED BY THIS REPORT:	
FROM			FROM	
TO			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)				
*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.				
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		

**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 269a)			\$	

**CONTRACTUAL EXPENDITURES (during this report period)**

SUBCONTRACTOR (NAME)	FOR	COST (THIS PERIOD)	TASKS
TOTAL CONTRACTUAL EXPENDITURES (must agree with line 10f on Form 269a)		\$	

- 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 269a)			\$	

**OTHER EXPENDITURES (during this report period)**

NUMBER PURCHASED	DESCRIPTION	UNIT COST	TOTAL COST	TASKS
TOTAL OTHER EXPENDITURES (must agree with line 10h on Form 269a)			\$	

\*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 269a)		\$	

**TRAVEL EXPENDITURES (during this report period)**

DESCRIPTION	REASON	COST (THIS PERIOD)	TASKS
TOTAL TRAVEL EXPENDITURES (must agree with line 10c on Form 269a)		\$	

\* 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 269a) and any required TCEQ Supplemental 269a 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 269a-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 269a-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 269a-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 269a-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 269a-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 269a-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 269a-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 269a-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 269a-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.

CONTRACT AMENDMENT

STATE OF TEXAS           §  
COUNTY OF TRAVIS       §

AMENDMENT NUMBER 4

The Texas Commission on Environmental Quality (TCEQ), and the City of San Antonio hereby agree to amend Contract No. 582-6-72649, as shown below. This amendment increases the total compensation possible under the Contract and extends the Contract period in order that the City of San Antonio may continue to operate and maintain the continuous and non-continuous air monitoring station at Lake Calaveras in San Antonio, Texas.

1. TCEQ and the City of San Antonio agree that the total compensation possible under this Contract is increased as follows:

The Original Contract Amount	\$ 27,000.00
Contract Amendment No. 1	\$ 40,500.00
Contract Amendment No. 2	\$ 40,500.00
Contract Amendment No. 3	\$ 42,098.68
<u>Contract Amendment No. 4, FY10</u>	<u>\$ 42,100.00</u>
Total Contract Amount	\$192,198.68

2. Based on the requirements of the Contract Costs Budget Section of the Contract, the TCEQ has reviewed and approved the budget submitted by the City of San Antonio. The Contract Costs Budget is hereby replaced in its entirety by Attachment A of this Amendment.

3. Article 3 (Maximum Amount of Contract) is amended to reflect that the Contract amount shall not exceed:

One Hundred Ninety-Two Thousand, One Hundred Ninety Eight Dollars and Sixty-Eight Cents   \$192,198.68

4. The Section titled "Term of Contract," is amended to extend the Contract period through August 31, 2010. With this Amendment, this Section now reads:

Article 4. TERM OF CONTRACT

This Contract shall begin on 1/26/2006, and shall terminate on full performance, which is due on 8/31/2010, unless terminated early or extended in accordance with the terms of the Contract.

All other conditions and requirements of Contract Number 582-6-72649 will remain unchanged.

**TCEQ:**

**PERFORMING PARTY:**

Texas Commission on Environmental Quality

City of San Antonio

By: \_\_\_\_\_

Authorized Signature

John Sadler

Printed Name

Deputy Director, Office of Compliance

Title and Enforcement

Date: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Signature

Fernando A. Guerra, M.D., MPH

Director of Health

332 W. Commerce, Suite 307

San Antonio, Texas 78205

210-207-8730

Fernando.Guerra@sanantonio.gov

ATTEST:

\_\_\_\_\_  
Leticia M. Vacek, City Clerk

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard, City Attorney

Attachment A

Contract Costs Budget for FY10

ARTICLE 1. AUTHORIZED EXPENSE BUDGET

1.1. The authorized expenses, acquisitions, or expenditures under this Contract Amendment #4 are as follows:

Budget Category	Amendment Amount
Personnel/Salary	\$22,271.68
Fringe Benefits <sup>1</sup>	\$8,437.74
Travel	\$4,165.02
Supplies	\$750.00
Equipment	\$0.00
Contractual	\$0.00
Other	\$1,040.00
Other - Third Party In-kind	\$0.00
<b>Total Direct Costs</b>	<b>\$36,664.44</b>
Authorized Indirect Costs <sup>2</sup>	\$5,435.56
TCEQ Share	\$42,100.00
Grantee Cost Share	\$0.00
<b>TOTAL COSTS</b>	<b>\$42,100.00</b>

1. Fringe benefits shall be reimbursed at actual costs and shall not exceed 38 % of total direct personnel/salary costs for the term of the Contract without written approval of the TCEQ Project Representative.
2. The indirect rate currently authorized (for the purpose of calculating amounts to be reimbursed by the TCEQ) shall not exceed 17.70 % of salaries & fringe benefits (distribution base) for the Term of the Contract, subject to the provisions outlined in the Indirect Cost Rate Section of this Article.

1.2. The PERFORMING PARTY is responsible, throughout the term of this Contract, for tracking and ensuring that expenditure amounts under this Contract remain within the various budgeted cost categories set forth in this Article. If, after taking into consideration the requirements set forth in this Article, the PERFORMING PARTY determines that changes or adjustments to any of the current cost category amounts are likely to be necessary, the PERFORMING PARTY shall submit a Budget Revision Form to the TCEQ for review and approval.

1.3. *Indirect Cost Rate:* The Commission and the PERFORMING PARTY must choose one of the following options relating to indirect rate, and identify that option clearly in the contract budget. If no option is selected, indirect rate will NOT be reimbursed.

*Option One: X*

1.3.1. The PERFORMING PARTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.

1.3.2. The PERFORMING PARTY shall maintain all indirect rate records for the Commission's inspection or submit records as per the agency's request.

1.3.3. PERFORMING PARTY agrees to utilize the provisional rate as established below and agrees to conduct an indirect rate audit. A final indirect rate will be established based on the actual allowable costs, as provided in UGMS, for the period as established by an audit conducted by a currently licensed independent Certified Public Accountant and submitted to the PERFORMING PARTY and the Commission. This indirect rate audit may be conducted at the same time as any other audit required of the PERFORMING PARTY. The cost of the indirect rate audit will be accounted for within the indirect rate, and not directly charged to the Commission. If the indirect rate audit is not provided to the Commission within the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the audit period, Option Two (below) will apply.

(i) In accordance with OMB Circular A-87 and the UGMS, when the PERFORMING PARTY has a federal cognizant agency or a state coordinating agency, the PERFORMING PARTY must submit the indirect rate approved by the federal cognizant agency or state coordinating agency within the past twenty-four (24) months as the provisional indirect rate.

(ii) Alternatively, if the PERFORMING PARTY does not have an assigned federal cognizant agency or a designated state coordinating agency or if no rate is approved by the designated oversight agency, the Commission and the PERFORMING PARTY may negotiate a provisional indirect rate in accordance with UGMS.

(iii) In the event, prior to the termination date of this Contract, an audited indirect rate which is different from the initial provisional indirect rate set forth in this section is accepted by Commission, the Commission and PERFORMING PARTY may negotiate a new contract budget and incorporate such into this Contract by way of a contract change.

(iv) The provisional rate will be included in the Authorized Expense Budget and shall remain in effect subject to determination of a final indirect rate which is based on an audit of the contract period, performed by a currently licensed independent certified public accountant, which specifically examines and reports the indirect rate for the PERFORMING PARTY's accounting period(s) covered under this Contract.

(v) The PERFORMING PARTY agrees to reimburse the Commission any overpayments received as a result of this provisional rate being higher than the approved final audited indirect rate for the period under consideration. Nothing in this section, or the results of any indirect cost audit or final indirect rate approval, shall cause the Commission to owe the PERFORMING PARTY more than the "Total Obligation Amount" or result in a reduction in the deliverables set forth in the Scope of Work. If the final indirect rate is higher than the provisional rate, an adjustment may be made in a future year contract.

*Option Two:*

1.3.4. Indirect Cost Rates. The PERFORMING PARTY shall comply with OMB Circular A-87 and the Uniform Grant Management Standards (UGMS) relating to Indirect Cost Rates.

1.3.5. The PERFORMING PARTY shall maintain all indirect rate records for the Commission's inspection or submit records as per the agency's request.

1.3.6. PERFORMING PARTY agrees to an indirect rate of 10% or less of the direct salary and wage costs of providing the service, in accordance with UGMS Part II, Attachment E, Paragraph E.2.d. No audit of this rate will be required by the Commission.

*Option Three:*

1.3.7. PERFORMING PARTY agrees to direct bill all costs and not require indirect cost for the contract.

1.4. When the PERFORMING PARTY applies for final payment, the PERFORMING PARTY will certify on a written form provided by TCEQ that the PERFORMING PARTY has not engaged in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

**ARTICLE 2. SUBMITTAL OF PAYMENT REQUESTS**

Payment requests must be submitted at the interval specified below (whichever is checked; if none is checked, payment requests must be submitted monthly; if more than one is checked, invoices must be submitted when both requirements are met):

- monthly
- upon completion of deliverables specified herein (see \_\_\_\_\_).
- upon completion of all Work
- Other (specify) Quarterly to be received within thirty (30) days after the end of the quarter. Included with the invoice which shall be provided in a format acceptable to the TCEO, must be the FSR (Financial Status Report) and the PAR form.

Attachment IV

Whole Air Monitoring  
 Fund No. 26008045 ??  
 Fund 2600836004  
 Funds Center 3611250001  
 Functional Area 3600300000040019  
 Budget for period: 09/01/09-08/31/10

<u>ESTIMATED REVENUES</u>	<u>GL</u>	<u>CURRENT AMOUNT</u>	<u>ADD (DEDUCT)</u>	<u>REVISED AMOUNT</u>
TCEQ Contract Number 582-x-xxxxx Amendment # x	4501110	286,000.00		
		<u>286,000.00</u>		

APPROPRIATIONS

Whole Air Monitoring 09/01/08 - 08/31/09  
 Activity: 36-11-25  
 Internal Order 136000000xxx

Regular Salaries & Wages	5101010	131,560.70		
Overtime Salaries	5101020	14,040.00		
Language Skills Pay.	5101050	1,200.00		
Personal Leave Buy Back	5103035	5,223.13		
<b>Total Personnel Costs</b>		<b>152,023.83</b>		
Social Security	5103005	11,029.82		
Life Insurance	5105010	152.03		
Group Health Insurance	5104030	25,466.70		
TMRS	5103010	19,867.99		
Workers Compensation	5405020	0.00		
<b>Total Fringe Benefit Costs</b>		<b>57,116.54</b>		
Education/Training	5201025	0.00		
Transportation	5203090	250.00		
Travel	5207010	4,801.78		
<b>Travel (BioWatch Related)</b>		<b>5,051.78</b>		
Auto - Miscellaneous	5204020	1,000.00		
Maintenance & Repair - M&E	5204080	500.00		
Auto Maint. & Repair - Labor	5204090	3,000.00		
Auto Maint. & Repair - Parts	5301020	1,000.00		
Office Supplies	5302010	500.00		
Janitorial Supplies	5303010	500.00		
Clothing & Linen	5304005	800.00		
Tools, Apparatus & Accessories	5304050	500.00		
Motor Fuel & Lubricants	5403545	11,140.00		
Vehicle Management Fec	5404510	140.00		
Rental of Rolling Equipment	5407510	13,260.00		
<b>Supplies</b>		<b>32,340.00</b>		
Equipment - Vehicle	5701085			
Computer Equipment	5501000			
Furniture and Fixtures	5501065			
<b>Equipment - Vehicle</b>				
Mail & Parcel Post	5205010	300.00		
Computer Software	5304075			
Communications - Telephones	5403010	150.00		
Cell Phone	5403040	2,000.00		
Wireless Data Communications	5403510			
ADP Services	5403520			
<b>Other Costs</b>		<b>2,450.00</b>		
<b>Total Direct Costs</b>		<b>248,982.15</b>		
<b>Indirect Costs</b>	<b>5406530</b>	<b>37,017.85</b>		
<b>Grand Total Costs</b>		<b>286,000.00</b>		

17.70 % for FY 2010

PERSONNEL COMPLEMENT

Activity: 36-11-25  
 Internal Order 136000000xxx

<u>Class No.</u>	<u>Title</u>	<u>CURRENT POSITIONS</u>	<u>ADD (DEDUCT)</u>	<u>REVISED POSITIONS</u>
0041	Administrative Assistant II (.20)	1		1
0202	Sanitarian II (.70)	3		3
0206	Health Program Manager (.35)	1		1
0865	Management Analyst (.10)	1		1
0870	Senior Management Analyst (.40)	1		1
0892	Fiscal Officer (.20)	1		1
	<b>Total:</b>	<u>8</u>		<u>8</u>

Attachment V

San Antonio Air Monitoring  
 Fund No. 26008045 ??  
 Fund 2600836001  
 Funds Center 361124001  
 Functional Area 3600300000040018  
 Budget for period: 09/01/09-08/31/10

<u>ESTIMATED REVENUES</u>	<u>GL</u>	<u>CURRENT AMOUNT</u>	<u>ADD (DEDUCT)</u>	<u>REVISED AMOUNT</u>
TCEQ Contract Number 582-x-xxxx Amendment # x	4501110	103,000.00		
		<u>103,000.00</u>		
<b>APPROPRIATIONS</b>				
San Antonio PM 2.5	09/01/09 - 08/31/10			
Activity: 36-11-24				
Internal Order 136000000xxx				
Regular Salaries & Wages	5101010	50,409.73		
Total Personnel Costs		<u>50,409.73</u>		
Social Security	5103005	3,856.34		
TMRS	5105010	6,588.05		
Group Health Insurance	5104030	8,362.20		
Life Insurance	5103010	50.41		
Workers Compensation	5405020	0.00		
Total Fringe Benefit Costs		<u>18,857.00</u>		
Education/Training	5201025	3,300.00		
Travel	5207010	5,448.00		
Travel		<u>8,748.00</u>		
Office Supplies	5302010	250.00		
Tools, Apparatus & Accessories	5304050	500.00		
Motor Fuel & Lubricants	5403545	1,429.00		
Rolling equipment	5407510	2,340.00		
Supplies		<u>4,519.00</u>		
Machinery and Equipment - Other	5501055	6,206.05		
Equipment		<u>6,206.05</u>		
Computer Software License	5404520	2,000.00		
Other Costs		<u>2,000.00</u>		
Total Direct Costs		<u>90,739.78</u>		
Indirect Costs	5406530	12,260.21		
Grand Total Costs		<u>103,000.00</u>		

PERSONNEL COMPLEMENT

Activity: 36-11-24  
 Internal Order 136000000xxx

Class No.	Title	CURRENT POSITIONS	ADD (DEDUCT)	REVISED POSITIONS
0041	Administrative Assistant II (0.10)	1	1	1
0202	Sanitarian II (0.20)	3	3	3
0206	Health Program Manager (0.15)	1	1	1
0865	Senior Management Analyst (0.25)	1	1	1
0870	Management Analyst (0.10)	1	1	1
0892	Fiscal Officer (0.05)	1	1	1
	Total:	<u>8</u>	<u>8</u>	<u>8</u>

Attachment VI

San Antonio Air Monitoring  
 Fund No. 26008045 ??  
 Fund 2600836003  
 Funds Center 3611230002  
 Functional Area 360030000040022  
 Budget for period: 09/01/09-08/31/10

<u>ESTIMATED REVENUES</u>	<u>GL</u>	<u>CURRENT AMOUNT</u>	<u>ADD (DEDUCT)</u>	<u>REVISED AMOUNT</u>
TCEQ Contract 582-xxxxxxx Amend x	4501110	42,100.00		
		<u>42,100.00</u>		

**APPROPRIATIONS**

Lake Calaveras Air Monitoring 09/01/09 - 08/31/10  
 Activity: 36-11-23  
 Internal Order 136000000xxx

Regular Salaries & Wages	5101010	22,271.68		
Total Personnel Costs		22,271.68		
Social Security	5103005	1,703.78		
TMRs	5105010	2,910.69		
Group Health Insurance	5104030	3,801.00		
Life Insurance	5103010	22.27		
Workers Compensation	5405020	0.00		
Total Fringe Benefit Costs		8,437.74		
Education	5201025	1,333.01		
Travel	5207010	2,832.00		
Travel		4,165.01		
Office Supplies	5302010	250.00		
Tools, Apparatus & Accessories	5304050	500.00		
Supplies		750.00		
Computer Equipment	5501000			
Equipment		0.00		
Membership Dues	5203050	790.00	RS license	5 employees
Mail & Parcel Post	5205010	250.00		
Other Costs		1,040.00		
Total Direct Costs		36,664.43		
Indirect Costs	5406530	5,435.57		
Grand Total Costs		42,100.00		

**PERSONNEL COMPLEMENT**

Activity: 36-11-23  
 Internal Order 136000000xxx

Class No.	Title	CURRENT POSITIONS	ADD (DEDUCT)	REVISED POSITIONS
0041	Administrative Assistant II (0.05)	1	1	1
0202	Sanitarian II (0.10)	3	3	3
0206	Health Program Manager (0.05)	1	1	1
0865	Senior Management Analyst (0.10)	1	1	1
0870	Management Analyst (0)	0	0	0
0892	Fiscal Officer (0.05)	1	1	1
	Total:	<u>7</u>	<u>7</u>	<u>7</u>