

**CONTRACT AMENDMENT BETWEEN  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND  
CITY OF CORPUS CHRISTI**

**Amendment No. 3**

Pursuant to Article 1 Section 1.2, Amendments and Minor Changes, of the Special Terms and Conditions, the Texas Commission on Environmental Quality (TCEQ) and City of Corpus Christi agree to amend Contract No. 582-20-11981 as follows:

1. In accordance with Article 2.2, Maximum Authorized Reimbursement, of the General Terms and Conditions, the Maximum Authorized Reimbursement Amount is increased by \$424,212.00. The Maximum Authorized Reimbursement Amount on the Contract Signature Page now reads \$1,123,120.38.

<b>Original Amount of Grant Obligation</b>	<b>\$ 281,250.00</b>
<b>Amendment No. 1 (FY22/23)</b>	<b>\$ 417,658.38</b>
<b>Amendment No. 2 (90 Day Extension)</b>	<b>\$ 0.00</b>
<b>Amendment No. 3 (FY24/25)</b>	<b><u>\$ 424,212.00</u></b>
<b>Revised Maximum Total TCEQ Obligation</b>	<b>\$1,123,120.38</b>

2. In accordance with Article 1.3, Extensions, of the General Terms and Conditions, the Expiration Period of Contract Number 582-20-11981 is extended to December 31, 2025.

3. Special Terms and Conditions now reads:

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

1. Article 1, Section 1.2, Amendments, in the General Terms and Conditions is replaced with the following:

1.2. Amendments and Minor Changes

1.2.1. A formal Amendment to the contract signed by authorized officials of both Parties is required for changes to the substantive obligations of the Performing Party and/or TCEQ, including the following:

1.2.1.1. Changes in the total amount of funds in the Cost Budget or the Contract

1.2.1.2. Changes to the Contract's Expiration Date

1.2.1.3. Changes to the Scope of Work that affect TCEQ obligations to the Texas Legislature, and

1.2.1.4. Changes that affect the material obligations of the Performing Party in this Contract.

1.2.2. The TCEQ Contract Manager and/or the TCEQ Project Manager has the authority, without a formal amendment, to make written Contract interpretations and agree in writing to minor, non-material changes to requirements in the Scope of Work or Performing Party's Statement of Work including:

1.2.2.1. Changes to the schedule in the Contract including an extension of a deliverable due date, not to exceed the expiration date of the Contract;

1.2.2.2. Changes to the individual tasks in the Scope of Work or Performing Party's Statement of Work that do not substantially change the obligations of the parties relative to those tasks, and

1.2.2.3. Transfers between the authorized amounts of expenditures in the Cost Budget, not to exceed 10% of the total amount.

1.2.3. To be effective, the contract changes agreed to by TCEQ must be in writing and must also be agreed to by an authorized Representative of the Performing Party. An email containing the change and an approving response from the other Party is sufficient. A copy of the agreed change must be retained in the appropriate file of both the Performing Party and TCEQ.

1.2.4. It is the responsibility of the Performing Party to request extensions to the deliverable schedule and the other changes that are within the authority of

2. The following is added to Article 4, REIMBURSEMENT, in the General Terms and Conditions:

4.9 Advance Requests. The TCEQ will advance payments to the Performing Party up to 50% of the amount the Maximum Authorized Reimbursement on the Contract Signature Page is increased by this Amendment. This advance payment is for work to be performed in accordance with the Scope of Work and Rider 7 in the TCEQ FY24-25 appropriation (HB 1, 88th Legislature). This advance must be requested in writing by the Performing Party after this Amendment is fully executed and once funds are available.

4.9.1 Conditional Advance. Funds are advanced on the condition of the Scope of Work being performed in compliance with the Contract. Performing Party shall return payment to TCEQ for either funds unspent or activities undertaken that are not compliant with the Scope of Work. This does not limit or waive any other TCEQ remedy. Any money that has not been spent in accordance with this Contract by December 31, 2025 must be immediately refunded to TCEQ in accordance with TXGMS Closeout procedures. Performing Party agrees to return unspent or unauthorized funds within 90 days of the Contract Expiration Date.

4.10 Financial Status Report. The Performing Party will submit a quarterly report on the Financial Status Report (FSR, Attachment D to original contract), documenting the allowable expenditures, and administrative costs incurred in the previous quarter for performing the Scope of Work and the remaining balance of funds. The Performing Party's FSRs shall be complete and conform to all reimbursement or invoice requirements specified by TCEQ. The Performing Party must include documentation with the FSR demonstrating expenses incurred. All

administrative costs are capped by Rider 7 in the TCEQ FY24-25 appropriation (HB 1, 88th Legislature) at 10%, and this limit must be demonstrated on each FSR.

4.11 Reporting by Subcontractors. Performing Party shall require, by contract, its subcontractors to invoice it monthly. Costs relating to subcontractors shall be invoiced to TCEQ quarterly.

### 3. ADMINISTRATIVE COSTS

3.1. In accordance with Rider 7 in the TCEQ FY24-25 appropriation (HB 1, 88th Legislature), no more than 10 percent of the allocation can be used for administrative purposes.

3.2. Administrative Costs are costs incurred by the Performing Party that can be identified separately and assigned to a specific project, used in order to properly administer and manage the contract funds. Administrative costs may include, but are not limited to, providing general supervision for grant activities, administering sub-contracts, and submitting reports and invoices.

### 4. SPECIFIC INFORMATION REQUIREMENTS FOR INVOICES.

4.1 Invoices must include the following, as applicable, on the face of the invoice:

Invoice date

Service dates

TCEQ Contract No.

Performing Party Vendor Identification No.

Performing Party mailing address, Fax No. and Telephone No.

Name(s) of Performing Party Project Representative

Item/service description

Amount invoiced

Name and telephone number of individuals designated by Performing Party to answer questions regarding the invoice (if other than Performing Party's Project Representative for Contractual Matters)

Invoice total

Backup documentation for Performing Party and subcontractor costs. A Financial Status Report (may also be referred to as FSR, Form 269a, or TCEQ Form 20248)

4.2 Whenever a cost is to be determined under a Cost Budget, Performing Party will establish and maintain records of costs in accordance with TXGMS and generally accepted accounting principles and practices and submit, in a format acceptable to TCEQ, an itemized price breakdown together with supporting documentation. All service dates on invoices must match supporting documentation dates.

### 5. RELATIONSHIP OF CERTAIN PROVISIONS

5.1. Unless there is a clear conflict between the requirements in the General Terms and Conditions and the Scope of Work (SOW), the requirements should be read in harmony. The SOW may waive or modify General Terms and Conditions regarding: intellectual property, lab accreditation, technical data, and Quality Assurance

Project Plans. The waiver or modification in the SOW must explicitly refer to the provision in the General Terms and Conditions that it waives or modifies.

#### 6. GRANTEE PERFORMANCE EVALUATION

6.1. Performance evaluations are a part of the TCEQ review of the Performing Party and may be a factor in the selection of future grants. The TCEQ may provide this information to state agencies and others. The Performing Party consents to the disclosure of any information or opinion in the evaluations.

#### 7. PERSONNEL ELIGIBILITY UST (PEL)

7.1. All individuals charged as direct costs under the contract must be included on the PEL (Attachment B to the original Contract). To make substitutions to individuals listed on the PEL or to add individuals to the PEL, the Performing Party must submit an updated PEL to the TCEQ Contract Manager. The Performing Party shall not use the individuals substituted or added to the PEL prior to receiving an electronic mail from the TCEQ Contract Manager stating that TCEQ has no objection to the updated PEL, unless failure to immediately proceed with the substitution or addition will jeopardize the successful performance of the grant activities. If prior notification of the substitution or addition will jeopardize the successful performance of the Grant Activities, the Performing Party must immediately notify TCEQ by providing the updated PEL.

#### 8. AUTHORIZATION

8.1. A Notice to Proceed document will not be required for this Contract. The last date of signature by the parties shown on the Contract Signature Page shall make the agreement effective and allow the Performing Party to proceed with the Contract Activities.

#### 9. LIMITATION ON GRANTS TO UNITS OF LOCAL GOVERNMENT

9.1. The Performing Party will ensure that any expenditure of funds received under this grant complies with the Limitation on Grants to Units of Local Government under Article IX, Part 4, Section 4.04 of the General Appropriations Act (HB 1, 88th Legislature).

4. General Terms and Conditions now reads as follows. These terms are modified by the above Special Terms and Conditions. The Special Terms and Conditions take precedence over the General Terms and Conditions as here amended.

##### 1. CONTRACT PERIOD

- 1.1. **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Contract Signature Page. If no Effective Date is provided, the Effective Date of the Contract is the date of last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the same Fiscal Year in which the Contract is signed.
- 1.2. **Amendments.** This Contract is not subject to competitive selection requirements and may be amended by mutual agreement. Except as specifically allowed by the Contract, all changes to the Contract require a

written amendment that is signed by both parties.

- 1.2.1. **Material Changes.** Material changes to the Contract require a written amendment signed by both parties. These amendments take effect when signed by the Performing Party and TCEQ, unless otherwise designated in the amendment. Material changes include the following:
  - 1.2.1.1. Changes in the total amount of funds in the Budget or the Contract;
  - 1.2.1.2. Changes to the Contract's Expiration Date;
  - 1.2.1.3. Changes to the Scope of Work that affect TCEQ's obligations to the entity providing funding, such as the United States Environmental Protection Agency (EPA), another state or federal agency, or the Texas Legislature; and
  - 1.2.1.4. Changes that affect the material obligations of the Performing Party in this Contract.
- 1.2.2. **Unilateral Amendments.** As specifically allowed by the Contract, TCEQ may issue unilateral amendments. Unilateral amendments take effect when issued by TCEQ.
- 1.2.3. **Minor Changes.** The TCEQ Contract Manager and/or the TCEQ Project Manager has the authority, without a written amendment, to correct typographical errors; make written Contract interpretations; and make minor, non-material changes to the requirements in the Scope of Work, the Procedures for Work Orders, or the Work Orders (including Proposals for Grant Activities); or as agreed to elsewhere in the Contract. Performing Party must provide TCEQ with a written objection to any Minor Change no later than five (5) business days from the effective date of the Minor Change. A copy of the agreed change shall be retained in the appropriate file by both the Performing Party and TCEQ.
  - 1.2.3.1. Minor, non-material changes include:
    - 1.2.3.1.1. Changes to the schedule in the Scope of Work including an extension of a deliverable due date, not to exceed the expiration date of the Contract;
    - 1.2.3.1.2. Changes to the schedule in the Work Order including an extension of a deliverable due date, not to exceed the expiration date of the Work Order;
    - 1.2.3.1.3. Changes to the individual tasks/activities in the Scope of Work or Work Order, if applicable, that do not substantially change the obligations of the Parties relative to those tasks/activities;
- 1.2.4. It is the Performing Party's responsibility to request extensions to the deliverable schedule and other changes that are within the authority of TCEQ.

- 1.3. **Extensions.** TCEQ may by unilateral written amendment extend the Expiration Date for a period of up to 90 days. Unless otherwise indicated in the applicable contract amendment, an extension does not extend any other deadlines or due dates other than the expiration of the Contract Period.

## 2. FUNDS

- 2.1 **Availability of Funds.** This Contract and all claims, suits or obligations arising under or related to this Contract are subject to the receipt and availability of funds appropriated by the Texas Legislature for the purposes of this Contract or the respective claim, suit or obligation, as applicable. Performing Party will ensure that this article is included in any subcontract it awards.
- 2.2 **Maximum Authorized Reimbursement.** The total amount of funds provided by TCEQ for the Contract will not exceed the amount of the Maximum Authorized Reimbursement, as amended.
- 2.3 **Fiscal Year Restrictions.** In order to be reimbursed under this Contract, costs must be incurred during the Contract Period and within the time limits applicable to the funds from which the Contract is being paid. TCEQ is not obligated to extend deadlines to match the maximum period of the funding.
- 2.4 **Grants.** If this Contract was entered under the TCEQ's authority to award grants, TCEQ is providing financial assistance to the recipient to undertake its own project.
- 2.5 **No Debt against the State.** This Contract is contingent on the continuing appropriation of funds. This Contract shall not be construed to create debt against the State of Texas.
- 2.6 **Abortion Funding Limitation.** Performing Party represents and warrants that payments made by TCEQ to Performing Party and Performing Party's receipt of appropriated funds under the Contract are not prohibited by Article IX, Section 6 of the General Appropriations Act, nor by Texas Government Code Chapter 2273 *Prohibited Transactions*.
- 2.7 **Excluded Parties.** Performing Party represents and warrants that it is not listed in the prohibited vendors lists authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control. Performing Party will notify TCEQ if it can no longer make this representation.
- 2.8 **COVID-19 Vaccine Passport Prohibition.** Under § 161.0085 of the Texas Health and Safety Code, Performing Party certifies that it is not ineligible to receive the Contract and will maintain this certification throughout the term of the Contract.

## 3. ALLOWABLE COSTS

- 3.1 **Conforming Activities.** TCEQ will reimburse the Performing Party for

necessary and reasonable Allowable Costs that are incurred and paid by the Performing Party in performance of the Scope of Work as authorized by this Contract in the Cost Budget or Fixed Payment Amounts.

- 3.2 **TxGMS.** Allowable Costs are restricted to costs that comply with the Texas Grant Management Standards (TxGMS) and applicable state and federal rules and law. The parties agree that all the requirements of TxGMS apply to this Contract, including the criteria for Allowable Costs. Additional federal requirements apply if this Contract is funded, in whole or in part, with federal funds.

#### 4. REIMBURSEMENT

- 4.1. **Reimbursement Requests.** Performing Party shall invoice TCEQ to request reimbursement for its Allowable Costs incurred in performing the Scope of Work. Performing Party's invoice shall conform to all reimbursement requirements specified by TCEQ.
- 4.2. **Personnel Eligibility List (PEL).** If TCEQ will be reimbursing salary or wages, Performing Party must submit a completed Personnel Eligibility List (PEL) prior to starting activities under this Contract and an updated PEL with any invoice following changes to the information provided in the most recent PEL. If a Contract amendment is necessary due to changes reflected on the PEL, Performing Party must immediately submit an updated PEL with a request to amend the Contract.
- 4.3. **Level-of-Effort Reporting.** Performing Party must submit records to support reimbursement requests for exempt employee salaries, where costs are determined based on percentage of the employee's time performing activities. These records must meet the Standards for Documentation of Personnel Expenses in TxGMS or 2 CFR § 200.430, as applicable based on whether state or federal money is used by TCEQ to fund the grant activities.

If TCEQ determines that the records do not comply with the requirements of TxGMS or 2 CFR § 200.430, the Performing Party will work with TCEQ to bring the level of certification into compliance. TCEQ may require the Performing Party to complete the attached Level-of Effort Certification form. The LEC form must be completed and submitted with each invoice, unless otherwise approved by TCEQ in writing.

- 4.4. **Timesheets.** The performing Party must retain records of timesheets supporting reimbursement requests for nonexempt employees, which are maintained as part of Performing Party's timekeeping system. Timesheets are not required to be submitted with each request for reimbursement; however, the Performing Party must make timesheets available upon request by TCEQ, as necessary for TCEQ to perform its monitoring requirements and audit purposes.

- 4.5. **Conditional Payments.** Reimbursements are conditioned on the Scope of Work being performed in compliance with the Contract. Performing Party shall return payment to TCEQ for either overpayment or activities undertaken that are not compliant with the Scope of Work. This does not limit or waive any other TCEQ remedy.
- 4.6. **No Interest for Delayed Payment.** Since the Performing Party is not a vendor of goods and services within the meaning of Texas Government Code Chapter 2251, no interest is applicable for any late payments.
- 4.7. **Release of Claims.** As a condition to final payment or settlement, or both, the Performing Party shall execute and deliver to the TCEQ a release of all claims against the TCEQ for payment under this Contract.
- 4.8. **State Agencies/Institutions of Higher Education.** If the Performing Party is a state agency or institution of higher education, payments must be made via interagency transaction voucher (ITV); please provide a Recurring Transaction Index (RTI) number on the face of the invoice. For payments that are to be deposited into a local bank account, the following statement must be placed on the face of the invoice: "Funds to be deposited into local bank account." For additional information, please refer to the Texas Comptroller's Accounting Policy Statement (APS) 014.

## 5. FINANCIAL RECORDS, ACCESS, AND AUDITS

- 5.1 **Audit of Funds.** The Performing Party understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Performing Party further agrees to fully cooperate with the State Auditor's Office or its successor during any audit or investigation, including providing all records requested. Performing Party shall ensure that this clause concerning the audit of funds accepted under this Contract is included in any subcontract it awards.
- 5.2 **Financial Records.** Performing Party shall establish and maintain financial records including records of costs of the Scope of Work in accordance with generally accepted accounting practices. Upon request Performing Party shall submit records in support of reimbursement requests. Performing Party shall allow access during business hours to its financial records by TCEQ and other state agencies for the purpose of inspection and audit. Financial records regarding this contract shall be retained for a period of three (3) years after date of submission of the final reimbursement request.

## 6. PERFORMING PARTY'S RESPONSIBILITIES

- 6.1 **Performing Party's Responsibility for the Scope of Work.** Performing Party undertakes performance of the Scope of Work as its own project and does not act in any capacity on behalf of the TCEQ nor as a TCEQ agent or employee. Performing Party agrees that the Scope of Work is performed at Performing Party's sole risk as to the means, methods, design, processes, procedures, and performance.
- 6.2 **Identification and Flow Down Requirements.** Any subaward from this Contract by the Performing Party to a subgrantee must be clearly



identified as a subaward. The Performing Party must flow down applicable Contract requirements to subgrantees and subcontractors.

- 6.3 **Independent Contractor.** The parties agree that the Performing Party is an independent contractor. Nothing in this Contract shall create an employee- employer relationship between Performing Party and TCEQ. Nothing in this Contract shall create a joint venture between TCEQ and the Performing Party.
- 6.4 **Performing Party’s Responsibilities for Subcontractors.** All acts and omissions of subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Scope of Work under a direct or indirect contract with Performing Party shall be considered to be the acts and omissions of Performing Party.
- 6.5 **No Third Party Beneficiary.** TCEQ does not exercise any of its rights and powers under the Contract for the benefit of third parties. Nothing in this Contract shall create a contractual relationship between TCEQ and any of the Performing Party’s subcontractors, suppliers, or other persons or organizations with a contractual relationship with the Performing Party.
- 6.6 **Security Requirements.** If Performing Party accesses, transmits, uses, or stores TCEQ data:
- 1) Performing Party shall meet the security controls specified by TCEQ; and
  - 2) Performing Party must annually provide TCEQ documentation demonstrating that it meets the specified TCEQ security requirements.
- 6.7 **Cybersecurity Training.** Performing Party shall ensure that any Performing Party representative (employee, officer, or subcontractor personnel) who has Access to a TCEQ Computer System or Database completes a cybersecurity training program certified by the Texas Department of Information Resources (DIR) under § 2054.519 of the Texas Government Code, when the Contract is executed and annually as applicable.
- 6.7.1 “Access to TCEQ Computer System or Database” means having a TCEQ network user account or the authorization to maintain, modify, or allow access control to any TCEQ web page, TCEQ computer system, or TCEQ database.
- 6.7.2 Within seven (7) days after the execution of the Contract, the Performing shall provide a list of persons requiring training to the TCEQ Contract Manager, and thereafter provide an updated list by the first workday of any additional person who becomes subject to the cybersecurity training requirements. For applicable umbrella contracts, Performing Party shall provide a list of any persons requiring training within seven (7) days of issuance of Notice to Proceed/Commence for any Work Order that requires Access to a TCEQ Computer System or Database.
- 6.7.3 If a Performing Party representative has previously completed a DIR-certified cybersecurity training during a State of Texas fiscal year in which the Contract is effective, Performing Party shall provide evidence

that the Performing Party representative completed the required training to the TCEQ Contract Manager within seven (7) days after the execution of the Contract or as applicable, the issuance of a Notice to Proceed/Commence for any Work Order that requires Access to a TCEQ Computer System or Database.

- 6.7.4 For Contracts that have contract periods that exceed a year (extend beyond August 31 of the year in which they are entered), all persons performing Work under the Contract shall take cybersecurity training renewal each fiscal year after the year in which the contract becomes effective. By August 1<sup>st</sup> each year, the Performing Party must provide to the TCEQ Contract Manager either: (1) a list of persons that must complete cybersecurity training during the upcoming State of Texas Fiscal Year; or (2) provide evidence that the Performing Party representative completed the required training. Performing Party shall retain in their records, and upon request, provide the TCEQ Contract Manager evidence that the training was successfully completed.
- 6.7.5 TCEQ will provide access to the cybersecurity training program. Performing Party is responsible for all other costs associated with their representatives completing the training, including time spent completing the training.
- 6.7.6 Performing Party shall notify the TCEQ Contract Manager within two (2) business days when a person with Access to a TCEQ Computer System or Database no longer needs Access to such Computer System or Database.
- 6.7.7 TCEQ may terminate the Contract for Cause if Performing Party fails to adhere to any of the above terms, including completing the required certified cybersecurity training or notifying the TCEQ Contract Manager when access is no longer needed.
- 6.7.8 TCEQ may terminate the Contract for Cause if a Performing Party representative misuses a TCEQ Computer System or Database, including allowing multiple individuals to utilize a single individual's TCEQ network user account.
- 6.8 ***Prohibited Technologies.*** Performing Party certifies that Prohibited Technologies will not be used on any of Performing Party's or its employees', contractors', and subcontractors' devices including personally-owned devices, if those devices are used to access state-owned data or information systems. These devices include cell phones, tablets, desktop and laptop computers, and other internet-capable devices. "Prohibited Technologies" refers to software, applications, technologies, hardware, and equipment, and any of the aforementioned items made by the developers or manufacturers on the Prohibited Technologies list located on the Texas Department of Information Resources' website at: <https://dir.texas.gov/information-security/prohibited-technologies>. In addition to the DIR list, TCEQ in its sole discretion may designate additional prohibited technologies.

## 7. TIME AND FORCE MAJEURE

- 7.1 **Time is of the Essence.** Performing Party's timely performance is a material term of this Contract.
- 7.2 **Delays.** Where Performing Party's performance is delayed, except by Force Majeure or act of the TCEQ, TCEQ may withhold or suspend reimbursement, terminate the Contract for cause, or enforce any of its other rights (termination for convenience may be effected even in case of Force Majeure or act of TCEQ).
- 7.3 **Force Majeure.** Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, or other causes that are beyond the reasonable control of either party, could not reasonably be foreseen, and by the exercise of all reasonable due diligence, is unable to be overcome by either party. Neither party shall be liable to the other for any failure or delay of performance of any requirement included in the contract caused by force majeure. Upon timely notice by the non-performing party, the time for performance shall be extended for a reasonable period after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. The non-performing party must provide evidence of any failure resulting in impossibility to perform.

## 8. CONFLICT OF INTEREST

- 8.1 Performing Party shall have a policy governing disclosure of actual and potential conflicts of interests. Specifically, for work performed under this Contract by Performing Party or any related entity or individual, Performing Party shall promptly disclose in writing to TCEQ any actual, apparent, or potential conflicts of interest, including but not limited to disclosure of:
- a. Any consulting fees or other compensation paid to employees, officers, agents of Performing Party, or members of their immediate families, or paid by subcontractor or subrecipients; or
  - b. Any organizational conflicts of interest between Performing Party and its subcontractors or subrecipients under a subaward.
- 8.2 No entity or individual with any actual, apparent, or potential conflict of interest will take part in the performance of any portion of the Scope of Work, nor have access to information regarding any portion of the Scope of Work, without TCEQ's written consent in the form of a unilateral amendment. Performing Party agrees that TCEQ has sole discretion to determine whether a conflict exists, and that a conflict of interest is grounds for termination of this Contract.

## 9. DATA AND QUALITY

- 9.1 **Quality and Acceptance.** All work performed under this Contract must be complete and satisfactory in the reasonable judgment of the TCEQ. All materials and equipment shall be handled in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract.
- 9.2 **Quality Assurance.** All work performed under this Contract that involves the acquisition of environmental data will be performed in accordance with a TCEQ- approved Quality Assurance Project Plan (QAPP)

meeting all applicable TCEQ and EPA requirements. Environmental data includes any measurements or information that describe environmental processes, location, or conditions, and ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or literature. No data collection or other work covered by this requirement will be implemented prior to Performing Party's receipt of the QAPP signed by TCEQ and, if necessary, the EPA. Without prejudice to any other remedies available to TCEQ, TCEQ may refuse reimbursement for any environmental data acquisition performed prior to approval of a QAPP by TCEQ and, if necessary, the EPA. Also, without prejudice to any other remedies available to TCEQ, Performing Party's failure to meet the terms of the QAPP may result in TCEQ's suspension of associated activities and non-reimbursement of expenses related to the associated activities.

- 9.3 **Laboratory Accreditation.** Any laboratory data or analyses provided under this Contract must be prepared by a laboratory that is accredited by TCEQ according to 30 Texas Administrative Code Chapter 25, subchapters A and B, unless TCEQ agrees in writing to allow one of the regulatory exceptions specified in 30 Texas Administrative Code § 25.6.

## 10. INTELLECTUAL PROPERTY

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

## 11. INSURANCE AND INDEMNIFICATION

- 11.1 **Insurance.** Unless prohibited by law, the Performing Party shall require its contractors to obtain and maintain during the Contract Period adequate insurance coverage 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. Unless specifically waived by the TCEQ, sufficient coverage shall include Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance. Before any

Performing Party contractor performs any work at a TCEQ facility, Performing Party shall provide TCEQ a Certificate of Insurance for the Contractor's Workers Compensation and Employer's Liability Insurance.

- 11.2 **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, THE PERFORMING PARTY SHALL REQUIRE ALL CONTRACTORS PERFORMING CONTRACT ACTIVITIES ON BEHALF OF PERFORMING PARTY TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE TCEQ AND PERFORMING PARTY AND THEIR OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF CONTRACT ACTIVITIES BY THE CONTRACTOR OR ITS SUBCONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK, OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY STANDARDS, OR DIRECTIVES. THE DEFENSE OF TCEQ SHALL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT TCEQ. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

## 12. TERMINATION

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

## 13. DISPUTES, CLAIMS AND REMEDIES

- 13.1 **Payment as a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release, in the form of a unilateral amendment, constitutes a release of Performing Party from liability under this Contract.

- 13.2 **Schedule of Remedies available to the TCEQ.** In accordance with Texas Government Code Chapter 2261 the following Schedule of Remedies applies to this Contract. In the event of Performing Party's nonconformance, TCEQ may do one or more of the following:
- 13.2.1. Issue notice of nonconforming performance;
  - 13.2.2. Reject nonconforming performance and request corrections without charge to the TCEQ;
  - 13.2.3. Reject a reimbursement request or suspend further payments, or both, pending accepted revision of the nonconformity;
  - 13.2.4. Suspend all or part of the Contract Activities or payments, or both, pending accepted revision of the nonconformity;
  - 13.2.5. Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
  - 13.2.6. Terminate the contract without further obligation for pending or further payment by the TCEQ and receive restitution of previous payments.
- 13.3 Opportunity to Cure. The Performing Party will have a reasonable opportunity to cure its nonconforming performance, if possible under the circumstances.
- 13.4 Cumulative Remedies. Remedies are cumulative; the exercise of any remedy under this Contract or applicable law does not preclude or limit the exercise of any other remedy available under this Contract or applicable law.

#### 14. SOVEREIGN IMMUNITY

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

#### 15. SURVIVAL OF OBLIGATIONS

Except where a different period is specified in this Contract or applicable law, all representations, indemnifications, and warranties made in, required by or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, survive for four (4) years beyond the termination or completion of the Contract, or until four (4) years after the end of a related proceeding. A related proceeding includes any litigation, legal proceeding, permit application, or State Office of Administrative Hearings proceeding, which is brought in relation to the Contract or which in TCEQ's opinion is related to the subject matter of the Contract. Either party shall notify the other of any related proceeding if notice of the proceeding has not been provided directly to that other party.

#### 16. UNIFORM ASSURANCES

- 16.1 **Uniform Assurances.** Performing Party assures compliance with the following uniform assurances from TxGMS, as applicable to this Contract. Other assurances from TxGMS may be included elsewhere in this Contract.
- 16.1.1 Performing Party represents and warrants its compliance with Texas Government Code Section 2054.5191 relating to the

cybersecurity training program for local government employees who have access to a local government computer system or database.

- 16.1.2 Performing Party certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.
- 16.1.3 Performing Party agrees that any payments due under the Contract shall be applied towards any debt or delinquency that is owed to the State of Texas.
- 16.1.4 Performing Party represents and warrants that it will comply with Texas Government Code Section 2252.906 relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.
- 16.1.5 In accordance with Texas Government Code Section 669.003, relating to contracting with the executive head of a state agency, Performing Party certifies that it is not (1) the executive head of the TCEQ, (2) a person who at any time during the four years before the date of the Contract was the executive head of the TCEQ, or (3) a person who employs a current or former executive head of the TCEQ affected by this section.
- 16.1.6 Performing Party acknowledges and agrees that appropriated funds may not be expended in the form of a grant to, or contract with, a unit of local government unless the terms of the grant or contract require that the funds received under the grant or contract will be expended subject to the limitations and reporting requirements similar to those provided by the following:
- Parts 2 and 3 of the Texas General Appropriations Act, Art. IX, except there is no requirement for increased salaries for local government employees;
  - Sections 556.004, 556.005, and 556.006 of the Texas Government Code; and
  - Sections 2113.012 and 2113.101 of the Texas Government Code.
- 16.1.7 Performing Party represents and warrants that TCEQ's payments to Performing Party and Performing Party's receipt of appropriated or other funds under the Contract are not prohibited by Texas Government Code Section 556.0055 which restricts lobbying expenditures.
- 16.1.8 Performing Party represents and warrants that in the administration of the Contract, it will comply with all conflict of interest prohibitions and disclosure requirements required by applicable law, rules, and policies, including Texas Local Government Code Chapter 176. If circumstances change during the course of the contract or grant, Performing Party shall promptly

notify TCEQ.

- 16.1.9 Performing Party represents and warrants its compliance with Chapter 551 of the Texas Government Code which requires all regular, special or called meeting of a governmental body to be open to the public, except as otherwise provided by law.
- 16.1.10 Performing Party represents and warrants that it does not perform political polling and acknowledges that appropriated funds may not be granted to, or expended by, any entity which performs political polling.
- 16.1.11 Performing Party certifies that it has not received a final judicial determination finding it intentionally adopted or enforced a policy that prohibited or discouraged the enforcement of a public camping ban in an action brought by the Attorney General under Local Government Code §364.003. If Performing Party is currently being sued under the provisions of Local Government Code §364.003, or is sued under this section at any point during the duration of this grant, Performing Party must immediately disclose the lawsuit and its current posture to the TCEQ.
- 16.1.12 Performing Party represents and warrants that it will comply with Texas Government Code Section 321.022, which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

## 17. CONTRACT INTERPRETATION

- 17.1 **Definitions.** The word "include" and all forms such as "including" mean "including but not limited to" in the Contract and in documents issued in accordance with the Contract, such as Work Orders or Proposals for Grant Activities (PGAs).
- 17.2 **Headings.** The headings of the sections contained in this Contract are for convenience only and do not control or affect the meaning or construction of any provision of this Contract.
- 17.3 **Delivery of Notice.** Notices are deemed to be delivered three (3) working days after postmarked if sent by U.S. Postal Service certified or registered mail, return receipt requested. Notices delivered by other means are deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, email, or other commercially accepted means.
- 17.4 **Interpretation of Time.** All days are calendar days unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday or a state or federal holiday, it is omitted from the computation.
- 17.5 **State, Federal Law.** This Contract is governed by, and interpreted under the laws of the State of Texas, as well as applicable federal law.
- 17.6 **Severability.** If any provision of this Contract is found by any court, tribunal, or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall be deemed severable



(to the extent of such illegality, invalidity, or unenforceability) and the remaining part of the provision and the rest of the provisions of this Contract shall continue in full force and effect. If possible, the severed provision shall be deemed to have been replaced by a valid provision having as near an effect to that intended by the severed provision as will be legal and enforceable.

- 17.7 **Assignment.** No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by Performing Party will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge the Performing Party from any duty or responsibility under the Contract.
- 17.8 **Venue.** Performing Party agrees that the Contract is being performed in Travis County, Texas, because this Contract has been performed or administered, or both, in Travis County, Texas. The Performing Party agrees that any cause of action involving this Contract arises solely in Travis County, Texas.
- 17.9 **Publication.** Performing Party agrees to notify TCEQ five (5) days prior to the publication or advertisement of information related to this Contract. Performing Party agrees not to use the TCEQ logo or the TCEQ graphic as an advertisement or endorsement without written permission signed by the appropriate TCEQ authority.
- 17.10 **Waiver.** With the exception of an express, written waiver in the form of a unilateral amendment signed by TCEQ, no act or omission will constitute a waiver or release of Performing Party's obligation to perform conforming Contract Activities. No waiver on one occasion, whether expressed or implied, shall be construed as a waiver on any other occasion.
- 17.11 **Compliance with Laws.** TCEQ relies on Performing Party to perform all Contract Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.
- 17.12 **Counterparts.** This Contract may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Contract.
- 17.13 **Accessibility.** All electronic content and documents created as deliverables under this Contract must meet the accessibility standards prescribed in 1 Texas Administrative Code §§ 206.50 and 213 for state agency web pages, web content, software, and hardware, unless TCEQ agrees that exceptions or exemptions apply.

The Effective Date of this Amendment is the date of last signature. All other terms, conditions and requirements remain unchanged and shall apply to all modifications made through this Amendment.

**TCEQ:**

**Grantee:**

Texas Commission on Environmental Quality

City of Corpus Christi

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Steven Schar  
(Printed Name)

Steven Viera  
(Printed Name)

Deputy Executive Director  
(Title)

Assistant City Manager  
(Title)

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

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