

CITY SECRETARY
CONTRACT NO. 47243

CITY OF FORT WORTH - CAMS

TCEQ CONTRACT NUMBER: 582-16-60238

Texas Commission on Environmental Quality
Cooperative Reimbursement Contract
for State Agencies and Local Governments
CONTRACT SIGNATURE PAGE

Contract Name: City of Fort Worth -- CAMS
Contract Number: 582-16-60238
Performing Party: City of Fort Worth
Performing Party Identification Number: 17560005286
Maximum Authorized Reimbursement: \$ 35,000.00
Effective Date: September 1, 2015 Date of last signature
Expiration Date: August 31, 2016 Last day of Fiscal Year in which the Contract was signed
 If checked, this Contract requires matching funds. Match Requirement:
 If checked, this Contract is funded with federal funds.

CFDA Number:
Federal Grant Number:

This Contract is entered under: Gov't Code ch. 771 Gov't Code ch. 791 Water Code § 5.124

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas, and the named Performing Party, a state agency or local government of the State of Texas, enter this agreement (Contract) to cooperatively conduct authorized governmental functions and activities under the laws of the State of Texas.

The Parties agree as follows: (a) to be effective, the Contract must be signed by an authorized official of the TCEQ and the Performing Party; (b) this Contract consists of all documents specified in the list of Contract documents following this page; and (c) 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 (UGMS) and this Contract.

Texas Commission on
Environmental Quality (TCEQ)

City of Fort Worth
(Performing Party)

Richard C. Chism
Authorized Signature

Fernando Costa
Authorized Signature

Richard C. Chism
Printed Name

FERNANDO COSTA
Printed Name
ASSISTANT CITY MANAGER
Title

Director, Monitoring Division

10/12/15
Date

Title

11/3/15
Date

Jeanette Vrabel, CTPM, CTCM
Procurements & Contracts Representative

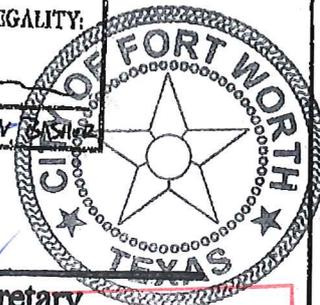
APPROVED AS TO FORM AND LEGALITY:
Arthur H. ...
Assistant City Attorney

Jeanette Vrabel, CTPM, CTCM
Printed Name

10-20-15
Date

Attested by:

Mary J. Kayser
Mary J. Kayser, City Secretary



OFFICIAL RECORD
CITY SECRETARY
FT. WORTH, TX

CONTRACT DOCUMENTS LIST
Cooperative Reimbursement Contract
for State Agencies and Local Governments

This Contract between TCEQ and Performing Party consists of the Contract Documents listed on this page and marked by an "X." Documents on this list include all amendments. 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.

- Contract Signature Page
- Contract Documents List (this page)
- Special Terms and Conditions
- Federal Section (Including Federal Conditions and Completed Forms)
- Scope of Work
- General Terms and Conditions
- Cost Budget
- Notices, Project Representatives and Records Locations
- Appendix A: Required Forms -- Form 1: IDC Form

SPECIAL TERMS AND CONDITIONS

1. The Term of the contract shall commence on September 1, 2015, or the date of last contract Signature, whichever is later, and continue through August 31, 2016. This contract may be renewed for three (3) one-year periods upon mutual written agreement between both Parties. The same contract requirements apply to a renewal period and any extension as apply to the contract period.
2. An extension of the contract Term beyond the expiration date up to a maximum of one-hundred (180) days may be exercised if mutually agreed upon between both Parties.

SCOPE OF WORK

I. FACTS/PURPOSE

The Performing Party will operate and maintain two continuous air monitoring stations (CAMS) in Fort Worth and Eagle Mountain Lake, Texas in accordance with the effective Texas Commission on Environmental Quality (TCEQ) quality assurance project plan (QAPP) pertaining to the State or Local Air Monitoring Stations (SLAMS) network, equipment standard operating procedures (SOPs), and the *Preventive Maintenance Instructions (PMI) Manual*. Documentation is available upon request.

Station locations:

CAMS 0017 -- **Keller**, Federal Aviation Administration (FAA) site off Alta Vista Road, Fort Worth, Texas

CAMS 0075 -- **Eagle Mountain Lake**, 14290 Morris Dido Newark Road, Eagle Mountain, Texas

These stations are subject to relocation upon property owner request. In the event of site relocation, the Performing Party will be notified 30 days prior to relocation and will operate the site at the new location.

Equipment at CAMS 0017 includes one oxides of nitrogen (NO_x) monitor.

Equipment at CAMS 0075 includes one NO_x monitor.

The Performing Party will operate any additional or relocated ambient air equipment at the currently established or new monitoring stations as agreed upon by both parties.

II. TCEQ RESPONSIBILITIES/DESIGNATION OF STAFF

- Provide all air monitoring equipment, parts, audit equipment, and equipment-related supplies, excluding office supplies, for the proper operation of the air monitoring stations.
- Provide all site maintenance equipment (i.e., lawnmower, edge trimmer).
- Provide shipping labels upon request for the Performing Party to ship air monitoring equipment, parts, audit equipment, and equipment-related supplies to the TCEQ.
- Provide the Performing Party staff with individual virtual private network (VPN) access accounts to check the site status remotely during the term of the contract using the agency's internal status report webpage.
- Provide training for equipment operations and other activities designed to increase technical capabilities required to support this agreement upon request by the Performing Party.
- Provide limited technical support related to equipment at the site by phone or email.
- Conduct annual field assessments of the air monitoring stations.

III. PERFORMING PARTY RESPONSIBILITIES

- A. Provide one primary site operator (with a minimum of six months experience with ambient air monitoring equipment) and one backup site operator. These site operators

- must be electrical/mechanical grade technicians capable of operating and performing light maintenance on meteorological hardware and electronic monitoring equipment. One operator must be present during all TCEQ assessments or site visits.
- B. Provide site operators proficient in the use of digital volt meters and personal computers.
 - C. Operate the equipment according to applicable SOPs, PMIs, QAPPs, and any guidance supplied by the TCEQ Contract Administrator. This documentation is available upon request and may be revised from time to time.
 - D. Monitor the site status remotely through the TCEQ's internal status report webpage using the TCEQ-provided VPN access. Ensure individual VPN access accounts remain active. If VPN access is lost, it is the Performing Party's responsibility to alert the TCEQ Contract Administrator upon discovery.
 - E. Possess and use the information, practical knowledge, techniques, and skills to comply with federal and state air monitoring rules, including those listed in the effective Code of Federal Regulations.
 - F. Communicate effectively with the TCEQ technical staff to troubleshoot malfunctioning equipment. Performing Party must provide at least one primary site operator with a minimum of six months experience with ambient air monitoring equipment.
 - G. Make travel arrangements and cover expenses for Performing Party staff associated with requested training and meetings.
 - H. Designate a project representative who receives directions from the TCEQ, manages the work being performed, and acts on behalf of the Performing Party as an authorized representative.
 - I. If an equipment failure requires a site visit by the site operator, visit the site the same day if feasible, but no later than the next business day in order to minimize data loss.
 - J. Communicate all equipment malfunctions or failures to the TCEQ by email the same day as discovered. Include symptoms or cause of failure and contact information for the Performing Party personnel immediately available to troubleshoot.
 - K. Provide a physical shipping address for replacement equipment, parts, and supplies.
 - L. Ensure contract deliverables are performed and delivered on time as described in Table VI.A.
 - M. Inform the TCEQ contract administrator in writing within one business day if any continuous monitor fails to collect data for more than 48 continuous hours or when two consecutive non-continuous samples are missed or invalid.
 - N. Submit quarterly invoices to the TCEQ Contract Administrator and the Contract Manager within one calendar month after the end of the quarter. Late submittal of invoices will be noted and documented in the end of the year evaluation that may determine the continuation of this contract. Invoices must include a detailed breakdown of all expenditures. Any inappropriate expenditure, including items not related to the project, will result in the invoice being rejected.
 - O. Submit a completed *Release of Claims* form with the final invoice within one calendar month of termination of the contract.
 - P. Respond to site and contractual information requests from the TCEQ Contract Administrator as requested.
 - Q. Provide limited logistical support related to relocating or establishing a new air monitoring site. This may include, but is not limited to, assistance with locating a new

- site, providing access to contractors and utility companies for site construction, and reviewing and documenting site construction activities.
- R. Transitional Services: Given the nature and importance of the services requested under this contract, the TCEQ must maintain uninterrupted services. The Performing Party shall provide services as needed to assist in the smooth transition of a replacement Performing Party. Transitional services include, but are not limited to the following:
- The Performing Party will provide one week of training to the replacement Performing Party.
 - The Performing Party will provide reports, maps, property site contact information, keys, equipment, and other TCEQ property to any replacement Performing Party upon execution of said future contract.
 - The Performing Party will report to any replacement Performing Party any pending problems being investigated or for which equipment repair is incomplete.
 - Upon request by the TCEQ, the Performing Party will provide to any replacement Performing Party access to site trailers, buildings, utilities, or other locked areas.
 - The Performing Party will notify the TCEQ Contract Administrator in writing when the transition of services is complete.
 - At all times, the Performing Party will provide complete cooperation, courtesy, civility, and professionalism when providing transitional services and communicating with any replacement Performing Party staff.

IV. DESCRIPTION OF DELIVERABLES

The Performing Party must operate and maintain the air monitoring stations and sites according to the current TCEQ QMP, TCEQ QAPPs, applicable SOPs, and the PMI manual. TCEQ documents can be accessed through the TCEQ RHONE page and are also available upon request.

V. SCHEDULE OF DELIVERABLES

The Performing Party must provide the following deliverables to the TCEQ in accordance with the schedule in Table V.1A.

Table V.1A:

Deliverable	Applicable Equipment	Respective Tasks and Timeframes	Submit to:
Data Collection	NO _x	<ul style="list-style-type: none"> Collect and monitor continuous ambient air data according to applicable SOPs provided by the Contract Administrator. Review continuous data in Leading Environmental Analysis and Display System (LEADS) daily to ensure sampler function. Document this review in the electronic operator log on the day it occurs. 	LEADS via VPN or through the on-site data logger
Equipment Failure Response	NO _x	<ul style="list-style-type: none"> Respond to equipment failures or malfunctions by visiting the site on the same day if feasible, but no later than the next business day. Notify TCEQ in writing within one business day of problem resolution. Document site visits in the electronic operator log on the same day the visit occurs for sites with access and within two business day for sites without access. 	Contract Administrator, TCEQ Implementation Team and LEADS via VPN
Equipment Failure and Sample Loss Report	NO _x	<ul style="list-style-type: none"> Report equipment failures or malfunctions in writing the same day as discovered. Include symptoms or cause of failure and a contact name of the person immediately available to troubleshoot with Monitoring Division staff. Report in writing within one business day after any continuous monitor fails to collect data for more than 48 consecutive hours. Provide a physical shipping address for replacement equipment, parts, and supplies. 	TCEQ Implementation Team and Contract Administrator
Laboratory Control Check (LCC) and Report	NO _x	<ul style="list-style-type: none"> Perform eight LCCs per year, two per seasonal quarter, approximately 45 days apart. Seasonal quarters are defined as: <ul style="list-style-type: none"> December - February March - May June - August September -- November Submit LCC reports within two business days of completion of LCC. 	lcc@tceq.texas.gov

Deliverable	Applicable Equipment	Respective Tasks and Timeframes	Submit to:
Preventive Maintenance Instruction (PMI) Completion	NO _x	<ul style="list-style-type: none"> • 4-014, Analyzer Sample Inlet Particulate Filter Replacement (NO_x), a minimum of every two weeks • 4-360, Ambient Sample Line Replacement, a minimum of once per year • 5-360, Exhaust Scrubber Charcoal Replacement, a minimum of once per year • 9-180, Zero Air Module Charcoal Scrubber Replacement, a minimum of once every six months • Any future PMIs developed for this equipment with TCEQ notification 	LEADS via VPN
Site Activities Documentation	NO _x	<ul style="list-style-type: none"> • Document all site activities in the electronic operator log before leaving the site where access to electronic logs is available. • Document all site activities in the electronic operator log within two business days where site access to electronic logs is not available. 	LEADS via VPN
Audit and Assessment Assistance	NO _x	<ul style="list-style-type: none"> • Submit completed pre-audit questionnaires within ten business days of audit notification. • Assist TCEQ staff or EPA auditors on-site during all TCEQ audits and assessments as requested. • Reply in writing to all TCEQ written requests for audit responses within one calendar month of the request. 	TCEQ Data Quality Team and Contract Administrator
Site Maintenance	shelter	<ul style="list-style-type: none"> • Maintain site free of vegetation higher than six inches and trash or debris. • Ensure site remains locked and secure when staff are not on-site. • Obtain written approval from TCEQ to change the site lock or combination. • Obtain vegetation control equipment from TCEQ. 	LEADS via VPN

Deliverable	Applicable Equipment	Respective Tasks and Timeframes	Submit to:
Initial Demonstration of Capability (IDC)	NO _x	<ul style="list-style-type: none"> • Within 6 months after the effective date of this contract, submit completed IDC forms and supporting documentation to the TCEQ Contract Administrator for all equipment and all current operators. Ensure all site operators demonstrate passing IDCs. • If an operator is hired after the effective date of this contract, submit completed IDC form within 6 months of the operator's hire date. Ensure the operator demonstrates a passing IDC. • Complete all IDCs using <i>Form 1: IDC Form</i>, provided in Appendix A, and make the completed forms and any supporting documentation available upon TCEQ request. 	Contract Administrator
Invoice and Release of Claims Submission	NO _x	<ul style="list-style-type: none"> • Submit quarterly invoices within one calendar month after close of fiscal quarter. Fiscal quarters are defined the same as seasonal quarters. • Submit completed <i>Release of Claims</i> form with final contract invoice. 	Contract Administrator and Contract Manager
Data Completeness	NO _x	<ul style="list-style-type: none"> • Track and submit data completeness reports with the quarterly invoices within one calendar month after close of fiscal quarter. Within the data completeness reports, include a description of how data completeness was determined. • Ensure data completeness is a minimum of 85 percent (%) per monitor per month. 	Contract Administrator
Inventory Management and Reports	NO _x	<ul style="list-style-type: none"> • Notify the Contract Administrator within two business days of equipment replacements. • Return inoperable equipment to the TCEQ within five business days of replacement. • Upon request, assist the Contract Administrator with maintaining Inventory control and with Inventory Management Database data requests within the specified timeframe. • Track and submit inventory reports with the quarterly invoices within one calendar month after close of fiscal quarter. Fiscal quarters are defined the same as seasonal quarters. 	Contract Administrator

NO_x – Nitrogen Oxide
 LEADS - Leading Environmental Analysis and Display System
 SOP - Standard Operating Procedure
 VPN - Virtual Private Network
 TCEQ - Texas Commission on Environmental Quality
 EPA - Environmental Protection Agency

VI. ACCEPTANCE CRITERIA

The Performing Party is required to provide the TCEQ at least an 85 percent (%) quarterly data return from all monitors and samplers. If the 85% data return is not achieved, assignable cause must be identified within a week after each month end. Assignable causes may include acts of nature (tornadoes, hurricanes, hail, etc.), vandalism, or circumstances beyond the control of the Performing Party. Neglect of the site is not an assignable cause. TCEQ may reduce Performing Party's payment for the fiscal year by up to 25% if the required data return is not achieved and there is no assignable cause. The possible reduction amount (25% of the fiscal year funds) will be divided evenly between each quarter of operation of each monitor. For example, if this Scope of Work calls for four monitors to be operated for four quarters each, the possible reduction amount will be divided 16 ways. In that example, for each quarter that a monitor does not achieve the required data return, TCEQ may deduct up to 1/16 of the possible reduction amount. Considerations for the reduction of payment will consist of evaluation of the Performing Party's performance of required operating procedures, quality control procedures, and effective and timely communication of non-compliance issues. Non-compliance issues include deviation from the documented procedures in the SOPs, QAPPs, PMIs, and the contract. This adjustment is cumulative with all other remedies.

Cost Budget

**Cooperative Reimbursement Contract
for State Agencies and Local Governments**

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

Budget Category	Cost for Work to be Performed
Salary / Wages	\$ 15,500.00
Fringe Benefits	\$ 6,185.00
Travel	\$ 500.00
Supplies	\$ 4,207.06
Equipment	\$ 0.00
Contractual	\$ 0.00
Construction	\$ 0.00
Other	\$ 3,950.00
Indirect Costs	\$ 4,657.94
Total	\$ 35,000.00

2. **Indirect Cost Reimbursable Rate.** The reimbursable rate for this Contract is 17.616 % of (check one):

- salary and fringe benefits
- modified total direct costs
- other direct costs base

If other direct cost base, identify:

This rate is less than or equal to (check one):

- approved predetermined rate
- experienced-based predetermined rate
- default rate

3. **Other.** If Budget Category "Other" is greater than \$25,000 or more than 10% of budget total, identify the main constituents:

4. **Budget Categories.** The Budget Categories above have the definitions, requirements and limitations stated in UGMS. Construction costs are not reimbursable without prior, specific written authorization from TCEQ.
5. **Budget Control and Transfers.** Notwithstanding any contrary provision of any Cost Budget, the following provisions apply to every Cost Budget incorporated into or approved under this Contract:
 - 5.1 Cumulative Annual Transfers Up To 10% of the Cost Budget Total. The Performing Party may transfer up to ten percent of the annual Cost Budget Total among direct cost categories by submitting a Revised Cost Budget. However, the ten percent limit is cumulative, and the Performing Party may not transfer into direct cost categories containing zero dollars without TCEQ pre-approval.
 - 5.2 Cumulative Annual Transfers Greater Than 10% of the Cost Budget Total. TCEQ must approve all budget revisions that transfer more than ten percent of the annual Cost Budget Total among direct cost categories before the Performing Party incurs the increased costs. If the Cost Budget is incorporated into the Contract, TCEQ approval must be in the form of a Contract Amendment.
 - 5.3 Calculation of Cumulative Annual Transfer. The cumulative annual transfer is equal to the sum of the amounts of increase of each direct cost category from the incorporated or approved Cost Budget. The amount by which any direct cost category has decreased is not included in this calculation.
 - 5.4 All invoices must clearly show how this budget control requirement has been met.
 - 5.5 At a minimum, invoices must show expenses for the invoice period, year-to-date expenses, projected totals for the year (or applicable contract period), percent of budget spent to date, and percentage of budget projected to be spent.
6. **Invoice Submittal.** Unless otherwise stipulated in the Contract, invoices must be submitted to the individual named in TCEQ Project Representatives and Records Location at quarterly intervals. Final invoices shall be submitted within two (2) calendar months after completing the Scope of Work activities. TCEQ may extend this deadline by unilateral contract agreement.
7. **Grant Chargeback Invoices.** In the case of an invoice for grant activities being paid during the second fiscal year for which the funds were appropriated, ALL INVOICES MUST BE SUBMITTED IN SUFFICIENT TIME FOR TCEQ REVIEW, NECESSARY CORRECTIONS, TCEQ APPROVAL, AND SUBSEQUENT PRESENTATION TO THE COMPTROLLER BEFORE THE END OF THE FISCAL YEAR.
8. **Travel.** In order to be reimbursable, travel costs must be specifically authorized in advance of the travel. Travel costs, including per diem, will be reimbursed only in the amount of actual costs, up to the maximum allowed by law for employees of the State of Texas at the time the cost is incurred.
9. **Supporting Records.** Performing Party shall submit records and documentation to TCEQ as appropriate for the review and approval of reimbursing costs. TCEQ may reject invoices without appropriate supporting documentation. TCEQ has the right to request additional documentation. Performing Party shall maintain records subject to the terms of this Contract.
10. **Indirect Costs.** Performing Party's indirect costs will be reimbursed at the reimbursable rate shown above (if no reimbursable rate is shown above, indirect costs are not reimbursable under this Contract). The reimbursable rate must be less than or equal to the rate authorized under UGMS. To the extent that the reimbursable rate is lower than Performing Party's actual indirect

costs, Performing Party is contributing its unreimbursed indirect costs to the successful performance of this Contract, and waives any right it may have to reimbursement of those costs (if this Contract requires matching funds, Performing Party may claim its unreimbursed indirect costs as part or all of its match).

11. Indirect Rates Authorized under UGMS. The following rates are authorized under UGMS:

- 11.1 Approved Predetermined Rate.** An approved predetermined rate is an indirect cost rate agreed to within the preceding 24 months in a signed indirect rate negotiation agreement with the applicable federal cognizant agency, state single audit coordinating agency, major state funding agency, or another state agency designated by the Governor. An approved predetermined rate shall be expressed as a percentage of the direct cost base specified in the signed indirect rate negotiation agreement.
- 11.2 Experience-Based Predetermined Rate.** An experience-based predetermined rate is an indirect cost rate agreed to between TCEQ and Performing Party, where there is no approved predetermined rate and there is sufficient cost experience and other pertinent facts to enable the parties to reach an informed judgment (a) as to the probable level of indirect costs in the Performing Party's programs during the term of the Contract, covered by the negotiated rate, and (b) that the amount allowable under that rate would not exceed actual indirect costs. An experience-based predetermined rate shall be expressed as a percentage of either (a) salary and wages, or (b) modified total direct costs. Modified total direct costs are total direct costs less "extraordinary or distorting expenditures," usually capital expenditures, subawards, contracts, assistance payments (e.g., to beneficiaries), and provider payments. The direct cost base selected should result in the fair distribution of indirect costs among all state and federal grants and contracts affected, as well as other Performing Party activities that share in the indirect costs.
- 11.3 Default Rate.** A default rate is an indirect of ten percent (10%) of direct salary and wages, to be used where (a) there is no approved or experience-based predetermined rate, and (b) the Performing Party represents that its actual indirect costs equal or exceed ten percent (10%) of salary and fringe.

12. Adjustment of Indirect Rates. A reimbursable rate is intended to be final. Performing Party acknowledges that TCEQ's budget is limited and funds may not be available to reimburse any increase in indirect costs. Performing Party waives any right it may have to upward adjustment of its indirect rate, and agrees to contribute any such increase to the successful performance of this Contract (if matching funds are required, Performing Party may claim such costs as all or part of its match). TCEQ waives any right it may have to a downward adjustment of Performing Party's indirect rate, unless the reimbursable rate is greater than the Performing Party's actual indirect costs. If the latter case, if reasonably feasible, a compensating adjustment shall be carried forward to this Contract or a future contract. If not feasible, where permitted by law TCEQ and Performing Party may identify additional services to be performed by Performing Party as a compensating adjustment, or Performing Party shall reimburse TCEQ the excess indirect costs paid.

**GENERAL TERMS AND CONDITIONS
for Cooperative Reimbursement Contract
for State Agencies and Local Governments**

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 and agreed to by both parties.
- 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 shown on the Contract Signature Page.
- 2.3 Fiscal Year Restrictions.** In order to be reimbursed under this Contract, costs must be incurred during the Contract Period and within the time limits applicable to the funds from which the Contract is being paid. TCEQ is under no obligation to offer deadline extensions which extend to the maximum availability of the contract funding source.
- 2.4 Grants.** If this Contract was entered under 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.

3. ALLOWABLE COSTS

- 3.1 Conforming Activities.** TCEQ will reimburse the Performing Party for necessary and reasonable Allowable Costs that are incurred and paid by the Performing Party in performance of the Scope of Work as authorized by this Contract in the Cost Budget or Fixed Payment Amounts.

- 3.2 **UGMS.** Allowable Costs are restricted to costs that comply with the Texas Uniform Management Standards (UGMS) and applicable state and federal rules and law. The text of UGMS is available online at the Governor's website. The parties agree that all the requirements of the UGMS 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 for performing the Scope of Work. Performing Party's invoice shall confirm to all reimbursement requirements specified by TCEQ.
- 4.2. **Conditional Payments.** Reimbursements are conditioned on the Scope of Work being performed in compliance with the Contract. 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.
- 4.3. **No Interest for Delayed Payment.** Because the Performing Party is not a vendor of goods and services within the meaning of Texas Government Code Chapter 2251, no interest is applicable in the case of late payments.
- 4.4. **Release of Claims.** As a condition to final payment or settlement, or both, the Performing Party shall execute and deliver to the TCEQ a release of all claims against the TCEQ for payment under this Contract.

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 in the conduct of the 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 furnished and performed at Performing Party's sole risk as to the means, methods, design, processes, procedures and performance.

- 6.2 Independent Contractor.** The parties agree that the Performing Party is an independent contractor. Nothing in this Contract 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.
- 6.3 Performing Party's Responsibilities for Subcontractors.** All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Scope of Work under a direct or indirect contract with Performing Party shall be considered to be the acts and omissions of Performing Party.
- 6.4 No Third Party Beneficiary.** TCEQ does not assume any duty to exercise any of its rights and powers under the Contract for the benefit of third parties. Nothing in this Contract 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.
- 7. TIME**
- 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).
- 8. CONFLICT OF INTEREST**
- The Performing Party shall timely notify TCEQ in writing of any actual, apparent, or potential conflict of interest regarding the Performing Party or any related entity or individual. No entity or individual with any actual, apparent, or potential conflict of interest shall 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 for cause.
- 9. DATA AND QUALITY**
- 9.1 Quality and Acceptance.** All work performed under this Contract must be complete and satisfactory in the reasonable judgment of 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, conditions, ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or literature. No data collection or other work covered by this requirement will be implemented prior to 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 Section 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.

- 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 of a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release, in the form of a unilateral amendment, constitutes a release of 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.

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

15. CONTRACT INTERPRETATION

- 15.1** **Definitions.** The word "include" and all forms such as "including" mean "including but not limited to" in the Contract and in documents issued in accordance with the Contract, such as Work Orders or Proposals for Grant Activities (PGAs).
- 15.2** **Headings.** The headings of the sections contained in this Contract are for convenience only and do not control or affect the meaning or construction of any provision of this Contract.
- 15.3** **Delivery of Notice.** Notices are deemed to be delivered three (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, facsimile transmission, email, or other commercially accepted means.
- 15.4** **Interpretation of Time.** All days are calendar days unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday or a state or federal holiday, it is omitted from the computation.
- 15.5** **State, Federal Law.** This Contract is governed by, and interpreted under the laws of the State of Texas, as well as applicable federal law.
- 15.6** **Severability.** If any provision of this Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it 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.
- 15.7 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.
- 15.8 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.
- 15.9 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.
- 15.10 Waiver.** With the exception of an express, written waiver in the form of a unilateral amendment signed by TCEQ, no act or omission will constitute a waiver or release of 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.
- 15.11 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.
- 15.12 Counterparts.** This Contract may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Contract.
- 15.13 Accessibility.** All electronic content and documents created as deliverables under this Contract must meet the accessibility standards prescribed in 1 Texas Administrative Code sections 206.50 and 213 for state agency web pages, web content, software, and hardware, unless TCEQ agrees that exceptions or exemptions apply.

NOTICES, PROJECT REPRESENTATIVES AND RECORDS LOCATION

CONTRACT NO. 582-16-60238 PROJECT TITLE: CITY OF FORT WORTH - CAMS

1. **Representatives.** The individual(s) named below are the representatives of TCEQ and Performing Party. They are authorized to give and receive communications and directions on behalf of the TCEQ and the Performing Party as indicated below. All communications including official contract notices must be addressed to the appropriate representative or his or her designee.
2. **Changes in Representatives.** Either party may change its representative by unilateral amendment.
3. **TCEQ Representatives**

**TCEQ CONTRACT MANAGER
(for Contractual Matters)**

**TCEQ PROJECT MANAGER
(for Technical Matters)**

Max Hernandez

Abhishek Nakarmi

Contract Manager
Title

Contract Administrator
Title

Texas Commission on
Environmental Quality
P.O. Box 13087
MC-165
Austin, Texas 78711-3087
Telephone No. (512) 239-0461
Facsimile No. (512) 239-1605

Texas Commission on
Environmental Quality
P.O. Box 13087
MC-165
Austin, Texas 78711-3087
Telephone No. (512) 239-1766
Facsimile No. (512) 239-1605

4. **Performing Party Representatives.**
For Contractual Matters

For Technical Matters

CODY WHITENBURG

MICHAEL KAZDA

ENVIRONMENTAL PROGRAM MANAGER
Title

ENVIRONMENTAL SUPERVISOR
Title

Telephone No. 817.392.5455
Facsimile No. 817.392.6359

Telephone No. 817.392.8136
Facsimile No. 817.392.6359

5. **Invoice Submittal.** Invoices must be submitted to the TCEQ Contract Manager, unless another recipient is identified below:

TCEQ Project Manager / TCEQ Disbursements Section / Other:

- 6. 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:

908 MONROE STREET
FORT WORTH, TX 76102
(City / State ZIP)

APPENDIX A: Required Forms

Form 1: IDC Form



TCEQ IDC Documentation Form

I. SOP Name:																					
Current Date of SOP:	Date Read:																				
II. Analysis/Procedure Demonstrated by Experienced Analyst and Date:																					
III. Analysis/Procedure Performed by Trainee Analyst and Date:																					
IV. Results of Analysis/Procedure:																					
Accuracy Required by SOP:	Precision Required by SOP:																				
V. Trainee Analyst:	Signature of Experienced Analyst:																				
Print Name:	Print Name:																				
Signature:	Signature:																				
Employee ID:																					
<table border="1" style="width: 100%; border-collapse: collapse; height: 20px;"> <tr> <td style="width: 10%;"></td> </tr> </table>																					
VI. Supervisor Name:																					
Supervisor's Signature:	Date:																				

If more than one IDC was performed, attach all IDCs attempted including separate "TCEQ IDC Documentation Forms" for each IDC.