

**TEXAS WORKFORCE COMMISSION  
GRANT AWARD AGREEMENT  
AMENDMENT NUMBER 001**

TWC Award Number	<b>0323PQI001</b>
Grant Program Title	<b>LOCAL PERFORMANCE QUALITY IMPROVEMENT AWARD</b>
<b>Grantee Name</b>	
<b>ESC REGION 9</b>	
<b>Effective Date</b>	
This Grant Award Amendment shall be effective on <b>January 2, 2023</b> or on the date the Grant Award Amendment is signed by all Parties, whichever occurs last. All terms and conditions not otherwise amended herein remain in effect.	
<b>Grant Period</b>	
The Grant Period is amended as follows:  Current End Date:  Amended End Date:  If blank, there are no changes to this section.	
<b>General Terms and Conditions</b>	
The General Terms and Conditions are amended as follows:  • Updated GTCs and STCs needed to be added  If blank, there are no changes to this section.	
<b>Attachment A: Statement of Work - Project Requirements</b>	
Attachment A: Statement of Work - Project Requirements are amended as follows:  If blank, there are no changes to this section.	
<b>Attachment B: Statement of Work - Financial Requirements</b>	
Attachment B: Statement of Work - Financial Requirements are amended as follows:  If blank, there are no changes to this section.	

**Grant Award Amount**

Grant award amount amended as follows:

If blank, there are no changes to this section.

**Total Amended Grant Award Amount: No Change**

**Attachment D: Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards**

Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards amended as follows:

If blank, there are no changes to this section.

**Changes to Other than the Listed Amendment Details Categories**

Other:

If blank, there are no changes to this section.

<b>Signature Authority</b>	
<p>The person signing this Grant Award Amendment on behalf of TWC, the Grantee, and the Grantee's Fiscal Agent (if applicable) hereby warrants that he or she has been fully authorized to:</p> <ul style="list-style-type: none"> <li>• execute this Grant Award Amendment on behalf of TWC or Grantee's organization, and</li> <li>• validly and legally bind the organization to all the terms, performances, and provisions of this Grant Award Amendment.</li> </ul>	
<b>Amendment Approval</b>	<p><b>Texas Workforce Commission</b></p> <p style="text-align: center;"><i>Courtney Arbour</i></p> <hr style="border: 0.5px solid black; margin: 5px 0;"/> <p>Courtney Arbour Director, Workforce Development Division Date <u>1/13/2023</u></p>
<b>Award Acceptance</b>	<p><b>ESC REGION 9</b></p> <p style="text-align: center;"><i>Wes Pierce</i></p> <hr style="border: 0.5px solid black; margin: 5px 0;"/> <p>Wes Pierce Executive Director Date <u>1/13/2023</u></p>

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## SPECIAL TERMS AND CONDITIONS

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### ADULT EDUCATION AND FAMILY LITERACY ACT

Pursuant to the terms of the Federal award, and to 2 Code of Federal Regulations (C.F.R.) §§ 200.101(b)(1) and 200.332(a)(2), these Special Terms and Conditions pass through Terms and Conditions of the Federal award, which are not set forth elsewhere in this grant award. This grant award must be used in compliance with the following Federal Terms and Conditions in addition to the other provisions of this grant award.

#### **A. Availability of Federal Award Terms**

In some cases, Federal grant funds become available to the Texas Workforce Commission (TWC) for award before TWC obtains the associated Federal Award Terms for the monies. When award execution does not allow for delay, TWC may base the Special Federal Award Terms and Conditions for a grant award on the most recent prior Federal Award Terms and Conditions available, and later amend the TWC grant award when updated Federal terms are available. This action is most often used when Federal Award Terms and Conditions are not expected to differ significantly from the most recent prior terms available at the time TWC makes award.

#### **B. Definitions**

As used in these Special Federal Award Terms and Conditions: (1) the term, non-Federal entity, has the meaning defined in 2 C.F.R. Parts 200; and (2) the term, subrecipient, has the meaning defined in 2 C.F.R. Part 200.

#### **C. Order of Precedence**

In the event of any inconsistency between the terms and conditions of this grant award and other requirements, the following order of precedence shall apply:

1. Adult Education and Family Literacy Act;
2. Consolidated Appropriations Act, 2021, Public Law 116-260;
3. Other applicable Federal Statutes;

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4. Implementing Regulations;
5. Executive Orders (EOs);
6. Office of Management and Budget (OMB) Guidance, including the Uniform Guidance at 2 C.F.R. Parts 200 and 3474;
7. Department of Education directives;
8. The terms and conditions of the Federal award, as included in this Grant Award as the Special Federal Award Terms and Conditions; and
9. The terms and conditions of this TWC grant award.

### **D. Fund Use**

The funds that are provided under this grant award must be expended according to all applicable Federal statutes, regulations and policies, including those of Adult Education and Family Literacy Act ; the applicable approved State WIOA plan (including approved modifications/amendments to the plan, any waiver plan approved under WIOA § 189(i)(3), or any Workforce Flexibility (Workflex) plan approved under WIOA § 190); the negotiated performance levels and policies established pursuant to the Labor Secretary's authority under WIOA § 116; and the applicable provisions in the appropriations act.

### **E. Audits**

The audit provisions contained elsewhere in this grant award are inclusive of Federal award terms requiring that organization-wide or program-specific audits shall be performed in accordance with Subpart F, the Audit Requirements of the Uniform Guidance, which apply to audits for fiscal years beginning on or after December 26, 2014. Award recipients and subrecipients that expend \$750,000 or more in a year from any Federal awards must have an audit conducted for that year in accordance with 2 C.F.R. § 200.501.

### **F. Changes in Micro-purchase and Simplified Acquisition Thresholds**

The OMB memorandum (M-18-18), issued on June 20, 2018, increased the threshold for micro-purchases under Federal financial assistance awards from \$3,500 to \$10,000 and the

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threshold for simplified acquisitions under Federal financial assistance awards from \$100,000 to \$250,000.

### **G. Closeout Requirements**

During the closeout process, the Grantee must be able to provide documentation for all direct and indirect costs that are incurred. For instance, if an organization is claiming indirect costs, the documentation that is required is a Negotiated Indirect Cost Rate Agreement or Cost Allocation Plan issued by the grantee's Federal cognizant agency. Documentation for those approved to utilize a de minimis rate for indirect costs is demonstrated through the grant agreement. Not having documentation for direct or indirect costs will result in costs being disallowed and subject to debt collection. (Note: Unless specified otherwise by TWC, subrecipients must maintain such documentation in accordance with applicable record retention requirements and make it available for review upon request.)

### **H. Program Income**

2 C.F.R. § 200.307 applies to this award, which allows grantees under the AEFLA to earn program income. 2 C.F.R. § 200.1 defines "program income" generally to mean "gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance...". Ordinarily, program income is deducted from total allowable program costs and all program income, except for tuition and fees charged to students and employers earned by a subgrantee under this award, must be deducted. A local subgrantee charging reasonable and necessary tuition or fees to students and employers may use that income to provide additional adult education and literacy services that it would otherwise be unable to provide. Program income from tuition and fees must be (1) governed by the terms of the agreement between the TWC and grantee, (2) accounted for in program records, and (3) used only for costs allowable under AEFLA.

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Also applicable to this award is 34 C.F.R. § 76.534, which provides that States and subgrantees may not count tuition and fees collected from students toward meeting federal matching federal matching, cost-sharing, or maintenance of effort requirements related to this award. Moreover, TWC must ensure that fees charged to students participating in an adult education program that receives federal support are equitably administered and do not reach levels that have an adverse effect on the participation of economically disadvantaged students.

Note: TWC will recover any program income found remaining at the end of the grant award through the closeout process.

### **I. Publicity**

No funds provided under this grant shall be used for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress or any state or local legislature or legislative body, except in presentation to the Congress or any state or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government, except in presentation to the executive branch of any state or local government itself.

Nor shall grant funds be used to pay the salary or expenses of any subrecipient or agent acting for such subrecipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or EO proposed or pending before the Congress, or any state government, state legislature, or local legislative body other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a state, local, or tribal government in policymaking and administrative processes within the executive branch of that government.

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### **J. Requirements for Conference and Conference Space**

1. Before deciding to use grant funds to attend or host a meeting or conference, a grantee should:
  - a. Ensure that attending or hosting a conference or meeting is consistent with its approved application and is reasonable and necessary to achieve the goals and objectives of the grant;
  - b. Ensure that the primary purpose of the meeting or conference is to disseminate technical information, (e.g., provide information on specific programmatic requirements, best practices in a particular field, or theoretical, empirical, or methodological advances made in a particular field; conduct training or professional development; plan/coordinate the work being done under the grant); and
  - c. Consider whether there are more effective or efficient alternatives that can accomplish the desired results at a lower cost, for example, using webinars or video conferencing.
2. Grantees must follow all applicable statutory and regulatory requirements in determining whether costs are reasonable and necessary, especially the Cost Principles for Federal grants set out at 2 CFR Part 200 Subpart E of the, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." In particular, remember that:
  - a. Federal grant funds cannot be used to pay for alcoholic beverages; and
  - b. Federal grant funds cannot be used to pay for entertainment, which includes costs for amusement, diversion, and social activities.
3. Grant funds may be used to pay for the costs of attending a conference. Specifically, Federal grant funds may be used to pay for conference fees and travel expenses (transportation, per diem, and lodging) of grantee employees, consultants, or experts to attend a conference or meeting if those expenses are reasonable and necessary to achieve the purposes of the grant. When planning to use grant funds for attending a meeting or conference, grantees should consider how many people should attend the



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meeting or conference on their behalf. The number of attendees should be reasonable and necessary to accomplish the goals and objectives of the grant.

4. A grantee hosting a meeting or conference may not use grant funds to pay for food for conference attendees unless doing so is necessary to accomplish legitimate meeting or conference business. A working lunch is an example of a cost for food that might be allowable under a Federal grant if attendance at the lunch is needed to ensure the full participation by conference attendees in essential discussions and speeches concerning the purpose of the conference and to achieve the goals and objectives of the project.
5. A meeting or conference hosted by a grantee and charged to a Department grant must not be promoted as a U.S. Department of Education conference. This means that the seal of the U.S. Department of Education must not be used on conference materials or signage without Department approval. All meeting or conference materials paid for with grant funds must include appropriate disclaimers, such as the following:

The contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.
6. Grantees are strongly encouraged to contact TWC with any questions or concerns about whether using grant funds for a meeting or conference is allowable prior to committing grant funds for such purposes. A short conversation could help avoid a costly and embarrassing mistake.
7. Grantees are responsible for the proper use of their grant awards and may have to repay funds to TWC if they violate the rules on the use of grant funds, including the rules for meeting- and conference-related expenses.
8. Subawards
  - a. A subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form

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of legal agreement, including an agreement that the pass-through entity considers a contract.

- b. The provisions of the Terms and Conditions of this award will be applied to any subrecipient under this award. Each pass-through entity is responsible for monitoring subrecipients, ensuring that the Terms and Conditions are in all subaward packages and that the subrecipients comply with all applicable regulations and the terms and conditions of this award (2 C.F.R. § 200.201(b)(1)).

**K. Procurement**

1. Award recipients must follow the same procurement policies and procedures it uses for non-Federal funds. Every purchase order or contract must include any clauses required by section 2 CFR 200.327 Contract Provisions.
2. Privacy Act. No funds can be used in contravention of 5 U.S.C. § 552a (Privacy Act) or regulations implementing the Privacy Act.
3. Prohibition on Contracting with Corporations with Felony Criminal Convictions. Subrecipients may not knowingly enter into a contract, memorandum of understanding, or cooperative agreement with, make a subgrant to, or provide a loan or loan guarantee to, any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months.
4. Prohibition on Contracting with Corporations with Unpaid Tax Liabilities. Subrecipients may not knowingly enter into a contract, memorandum of understanding, or cooperative agreement with, make a subgrant to, or provide a loan or loan guarantee to, any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
5. Reporting of Waste, Fraud and Abuse. No entity receiving federal funds may require employees or contractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting

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such employees or contractors from lawfully reporting such waste, fraud, or abuse to designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

6. Requirement to Provide Certain Information in Public Communications. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all non-Federal entities receiving Federal funds shall clearly state:

- a. The percentage of the total costs of the program or project which will be financed with Federal money;
- b. The dollar amount of Federal funds for the project or program; and
- c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Grantees must comply with these conditions under Division H, Title V, Section 505 of Public Law 116-260, Consolidated Appropriations Act, 2021.

The requirements of this part are separate from those in 2 C.F.R. Part 200 and, when, appropriate, both must be complied with.

7. Restrictions on Lobbying/Advocacy. No federal funds may be used by subrecipients, other than for normal and recognized executive-legislative relationships, to engage in lobbying or advocacy activities (including publicity or propaganda purposes or for the preparation of any publication or electronic communication) designed to support or defeat the enactment of federal, state, or local legislation, regulations, appropriations, order, or other administrative action, except in presentation to Congress or a State or local legislature itself or for participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

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**L. Public Policy**

1. Architectural Barriers. The Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 et seq., as amended, the Federal Property Management Regulations (see 41 C.F.R. Part 102-76), and the Uniform Federal Accessibility Standards issued by GSA (see 36 C.F.R. Part 1191, Appendices C and D) set forth requirements to make facilities accessible to, and usable by, the physically handicapped and include minimum design standards. All new facilities designed or constructed with grant support must comply with these requirements.
2. Drug-Free Workplace. The Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 702 et seq., and 2 C.F.R. Part 182 require that all organizations receiving grants from any Federal agency maintain a drug-free workplace. Refer to the Drug-Free Workplace Certification applicable to this grant award for notification and other requirements. Failure to comply with these requirements may be cause for suspension or debarment.
3. Executive Orders.
  - a. Subcontracting/Subgranting Opportunities to certain Entities and Individuals (EO 12928). Pursuant to EO 12928, subrecipients are strongly encouraged to provide subcontracting/subgranting opportunities to Historically Black Colleges and Universities and other Minority Institutions such as Hispanic-Serving Institutions and Tribal Colleges and Universities; and to Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals.
  - b. Seat Belt Use (EO 13043). Pursuant to EO 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, subrecipients are encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.
  - c. Improving Access to Services for Persons with Limited English Proficiency (EO 13166). As clarified by EO 13166, Improving Access to Services for Persons with Limited English Proficiency, dated August 11, 2000, and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP).

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To ensure compliance with Title VI of the Civil Rights Act of 1964, subrecipients must take reasonable steps to ensure that LEP persons have meaningful access to programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipients are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding LEP obligations, go to the Federal Government's interagency website on Limited English Proficiency at <http://www.lep.gov>.

d. Text Messaging While Driving (EO 13513). Pursuant to EO 13513, "Federal Leadership on Reducing Text Messaging While Driving", dated October 1, 2009, subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles, or government-owned vehicles, or while driving personally-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Subrecipients are also encouraged to conduct initiatives of the type described in section 3(a) of EO 13513.

e. Buy American Act (EO 13788). Pursuant to EO 13788, by drawing down funds, subrecipients agree to comply with 41 U.S.C. §§ 8301 – 8303 (commonly known as the "Buy American Act"). Additionally, no funds may be made available to any person or entity that has been convicted of violating the Buy American Act. For the purposes of this award, the Buy American Act requires subrecipients to use, with limited exceptions, only: 1) unmanufactured items that have been mined or produced in the United States; and 2) manufactured items that have been manufactured in the United States substantially all from articles, materials, or supplies that were mined, produced, or manufactured in the United States. These requirements do not apply to: 1) items for use outside of the United States; 2) items that are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of

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a satisfactory quality; and 3) manufactured items procured under any contract with an award value that is less than the micro-purchase threshold.

In order to claim an exception under options 1 or 2 above, the Grantee must get prior approval from TWC. Subrecipients must submit such requests through the TWC Grant Manager assigned to this Grant Award. Prior approval is not needed for purchases under the micro-purchase threshold.

Note: TWC defines the micro-purchase threshold in TWC's Financial Manual for Grants and Contracts.

4. Flood Insurance. The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. §§ 4001 et seq., provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in communities in the United States identified as flood-prone, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within one year of the identification. The flood insurance purchase requirement applies to both public and private applicants. Lists of flood-prone areas that are eligible for flood insurance are published in the Federal Register by the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA).
5. Hotel-Motel Fire Safety. Pursuant to 15 U.S.C. § 2225a, subrecipients must ensure that all space for conferences, and, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (Pub. L. 101-391, as amended). Subrecipients may search the Hotel Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.
6. Prohibition on Trafficking in Persons. Grantee shall comply with 2 C.F.R. § 175. The grant condition specified in 2 CFR 175.15(b) is incorporated into this grant with the following changes. Paragraphs a.2.ii.B and b.2.ii. are revised to read as follows:  

“a.2.ii.B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 34 CFR part 85.”

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“b.2.ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 34 CFR part 85.”

Under this condition, TWC may terminate a grant without penalty for any violation of these provisions by the grantee, its employees, or its subrecipients.

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## GENERAL TERMS AND CONDITIONS

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### **1. Legal Authority.**

The Texas Workforce Commission (TWC) is responsible for administering an integrated workforce development system, including job training, employment, employment related educational programs, and the unemployment compensation insurance program, under the authority of Texas Labor Code § 302.021. TWC has the authority to enter into contracts and administer programs pursuant to Texas Labor Code § 302.002(b).

### **2. Purpose.**

This grant award sets forth the responsibilities and obligations of TWC, the other party(ies) to this grant (hereinafter identified as the Grantee), and its Fiscal Agent (if different from the Grantee), with respect to the implementation and administration of the program defined within the Request for Applications (RFA) and the Grant Application.

### **3. Grant Performance.**

3.1 The Grantee agrees to perform under this grant award in accordance with the commitments established within the Statements of Work. Services under this award shall be provided in compliance with:

- all applicable federal and state laws, regulations, and rules;
- all TWC policies and procedures or guidance materials incorporated herein by specific reference; and
- all terms and conditions of this grant award.

3.2 The Grantee has, or shall obtain within forty-five (45) days, personnel capabilities necessary to implement project requirements and to ensure compliance with this grant award.

3.3 The Grantee shall notify TWC in writing, within ten (10) calendar days, of any change in key personnel assigned to the implementation and administration of this grant award. Key personnel are defined for the purposes of this grant award, as those personnel whose oversight and guidance is essential to the work being performed hereunder and whose knowledge,



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qualifications, and experiences are critical to the achievement of the objectives of this grant award.

3.4 In consideration of the Grantee's full and satisfactory performance of the specified services, TWC shall be liable to the Grantee in accordance with the terms and limitations established within this grant award.

3.5 Except with respect to defaults of contractors or subrecipients, no liability or loss of rights hereunder shall result to either party from delay or failure in performance (including any failure by the grantee to progress in the performance of the work) if such failure arises out of causes beyond the reasonable control and without the default or negligence of the party affected. Such causes may include but are not limited to acts of God, acts of a public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, serious labor disputes, shortage of or inability to obtain material or equipment, and unusually severe weather. In every case, however, the failure to perform must be beyond the control and without the fault or negligence of the party affected.

## **4. Administrative Requirements.**

4.1 This grant award shall be construed, interpreted, and applied in accordance with the laws of Texas, excluding its choice of law rules.

4.2 If any of the provisions of this grant award shall contravene or be invalid under the laws of the United States or the State of Texas, such contravention or invalidity shall not invalidate the entire grant award. It shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly. The Grantee and TWC shall endeavor to agree on a mutually acceptable alternative provision.

In the event of a conflict between such laws and regulations and the terms and conditions of this grant award, precedence shall be given to the laws and regulations.

4.3 This grant award between the Grantee and TWC shall conform to the administrative requirements found in:

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- The Office of Management and Budget (OMB) Uniform Guidance (UG), 2 Code of Federal Regulations (C.F.R.) Part 200, as supplemented by either the Uniform Grant Management Standards (UGMS) or by the Texas Grant Management Standards (TxGMS) (as applicable);
- TWC Rules in 40 Texas Administrative Code (TAC) Part 20;
- TWC's Financial Manual for Grants and Contracts (FMGC); and
- any directives specified by TWC issuance except as otherwise specifically authorized by TWC in writing.

### 4.4 All costs must conform to cost principles found in:

- any specific term or condition within the RFA, Grant Application, grant award and attachments;
- OMB UG, 2 C.F.R. Part 200, or 48 C.F.R. Part 31 (as applicable), as supplemented by either UGMS or TxGMS (as applicable);
- TWC's FMGC; and
- any TWC directives, as applicable.

4.5 In addition to the other requirements herein, commercial organizations will be subject to the administrative provisions of 48 C.F.R. § 31.103 and the cost principles and procedures in 48 C.F.R. Part 31, Subpart 31.2. The process for determining reimbursable costs in contracts with commercial organizations shall incorporate the cost principles and procedures in 48 C.F.R. Part 31, Subpart 31.2.

4.6 The OMB issued revisions to 2 C.F.R. Parts 25, 170, 183, and 200 (the UG) on August 13, 2020. These revisions are effective under grant awards that TWC finances with federal awards that federal awarding agencies issue on or after November 12, 2020, except for the amendments to 2 C.F.R. §§ 200.216 and 200.340, which were immediately effective on August 13, 2020. Note that under the revisions, the section numbering in the Uniform Guidance has changed in some instances.

## **5. Surety Requirements (Includes Public Education Institutions).**

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5.1 The Grantee understands and agrees that it shall be liable to repay to TWC any funds not expended in accordance with this grant or determined to be expended in violation of the terms of this grant and under OMB UG, 2 C.F.R. Part 200, including loss arising from a fraudulent or dishonest act of the Grantee's officers and employees holding positions of fiduciary trust.

5.2 All repayment made by the Grantee to TWC pursuant to Section 5.1 of these General Terms and Conditions (GTCs) shall be from non-federal funds.

5.3 The Grantee's failure to make repayment to TWC within thirty (30) days after demand may result in legal actions to recover such funds and any additional costs incurred by TWC, including allowable interest.

## **6. Bonding Requirements.**

Entities backed by a taxing authority are exempt from the following bonding requirements. Examples of entities that are backed by a taxing authority include, but are not limited to public colleges, public universities, independent school districts, and consolidated school districts.

6.1 The funds provided by this grant award shall be included in coverage provided by a fidelity bond that indemnifies TWC against loss arising from a fraudulent or dishonest act of the Grantee's officers and employees holding positions of fiduciary trust.

6.2 The Grantee shall obtain a bond sufficient to cover the largest cumulative amount of all cash requests submitted by a grantee on any given day or the cumulative amount of funds on hand at any given point. This determination shall be made by aggregating the cumulative amounts drawn from TWC by the Grantee during any consecutive three-day period.

Under no circumstances shall TWC disburse to the Grantee an amount of cash that exceeds the bond amount.

6.3 The bond shall be executed by a corporate surety or sureties holding Certificates of authority, authorized to do business in the State of Texas, and acceptable to TWC.

If a surety upon a bond loses its authority to do business in the State of Texas, or the bond is cancelled, reduced, or otherwise amended, the Grantee shall immediately notify TWC and

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provide a replacement bond adequate to cover the terms and conditions of this section. Until such time that, an adequate replacement bond is secured by the insurer and provided to TWC, no further disbursements shall be made to the Grantee.

6.4 The Grantee shall be the insured entity and TWC shall be the assigned Certificate holder. A copy of the bond shall be forwarded to:

Texas Workforce Commission  
Financial Operations - Contracts Payable  
101 East 15th Street  
Austin, Texas 78778 – 0001

6.5 The failure of the Grantee to provide evidence of the required bond within fifteen (15) calendar days of the beginning date of this grant award may result in termination of the grant award.

6.6 The Grantee will include the substance of the provisions of this section in any subcontracts for goods or services under this grant award.

**7. Rights in Data, Products, or Inventions.**

7.1 TWC may reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, by or on behalf of TWC any data, product, or invention developed under this grant award or purchased with funds from this grant award.

7.2 Excluding copyrighted, licensed, and public domain software, the Grantee grants to TWC and its designated representatives, unlimited rights to any data, databases, or data processing programs first developed, produced, or delivered under this grant award. Such data includes recorded information regardless of form or media.

7.3 Upon termination of this grant award, whether for cause or convenience, all finished or unfinished documents, records, reports, photographs, etc. prepared by the Grantee shall, at the option of TWC, become the property of TWC.

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In the event of such termination, the Grantee may be requested to transfer title and deliver to TWC any property or products the Grantee has acquired or produced in performance of the grant award.

7.4 All data and rights necessary to fulfill the Grantee's obligations to TWC under this grant award must be secured and obtained from its contractors and subrecipients.

If a contractor or subrecipient refuses to accept terms affording TWC such rights, the Grantee shall promptly bring such refusal to the attention of TWC.

7.5 TWC and its officers, agents and employees are indemnified against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U. S. Code (U.S.C.) § 181) arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property under this grant award, or out of the use or disposal by or for the account of TWC of such supplies or construction work.

7.6 TWC retains non-exclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced the subject invention throughout the world with respect to any invention resulting from activities funded by this grant award in which the Grantee retains title.

## **8. Prevention of Fraud.**

8.1 The Grantee shall establish and implement procedures for preventing, reporting, investigating, and taking appropriate legal and/or administrative action concerning any fraud, program abuse, possible illegal expenditures, unlawful activity, violations of law, or TWC rules, policies, and procedures occurring under this grant award.

8.2 Any member of the Grantee's staff or Grantee's contractor's or subrecipient's staff having knowledge of suspected fraud, program abuse, possible illegal expenditures, unlawful activity, violations of law or TWC rules, policies and procedures occurring under this grant award, shall report such information to TWC's Office of Investigations no later than five (5) business days from the date of discovery of such act.

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8.3 An Incident Report regarding such an act must be submitted to:

Texas Workforce Commission

Office of Investigations

101 East 15th Street, Room 230

Austin, Texas 78778-0001

8.4 The Grantee shall establish and implement reasonable internal program management procedures sufficient to ensure that its employees, participants, contractors and subrecipients are aware of TWC's Fraud and Program Abuse Hotline (1-800-252-3642) and that Hotline posters are displayed to ensure maximum exposure to all persons associated with or having an interest in the programs or services provided under this grant award.

8.5 Except as provided by law or court order, the parties to this grant award shall ensure the confidentiality of all reports of violations, as listed above. Neither the Grantee nor TWC shall retaliate against any person filing a report.

8.6 Upon review of submitted reports, TWC's Office of Investigations may elevate the report to the appropriate federal authority, accept the case for investigation and/or action at the state level, or return the case to the Grantee, or Grantee's contractor or subrecipient, for action including, but not limited to, the following:

- further investigation;
- referral for prosecution under the Texas Penal Code, or other state or federal laws; and/or
- other corrective action, as may be appropriate.

8.7 When referred back to the Grantee, the Grantee shall ensure that a final investigation closing report is submitted to TWC's Office of Investigations after all feasible avenues of investigation and legal and/or corrective action have been taken.

**9. Preventing Conflict of Interest.**

9.1 The Grantee shall take every reasonable course of action to maintain integrity in the expenditure of these public funds and to avoid favoritism and questionable or improper conduct.

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9.2 The Grantee shall administer this award in an impartial manner, free from efforts to gain personal, financial, or political benefit, tangible or intangible. The Grantee and its executive staff and employees, while administering this grant award shall avoid situations, which could give the appearance that any decision was influenced by prejudice, bias, special interest or desire for personal gain.

9.3 The Grantee assures that no person shall participate in any decision relating to any subcontract which affects his/her personal pecuniary interest including, but not limited to:

- employees, contractors or subrecipients of the Grantee; or
- persons who exercise any function or responsibility in the review or approval of the undertaking or carrying out of this grant award.

9.4 The Grantee shall maintain on file, and make available for inspection by TWC, a statement submitted by each Grantee employee, contractor, subrecipient or governing body member disclosing any interest, fact or circumstance, which does or may present a potential conflict of interest. Such conflict of interest disclosure statements shall be updated, as circumstances require, but at least annually.

The above paragraph shall serve as a minimum standard and shall not be construed as to limit the Grantee's authority for more restrictive governance to prevent real and/or apparent conflicts of interest.

## **10. Grant Provisions.**

10.1 The Grantee shall comply with the following:

- Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794, as amended;
- Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and 2000e-16, as amended;
- Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, as amended;
- The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., as amended;
- The Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., as amended;
- Women in Apprenticeship and Non-traditional Occupations Act, 29 U.S.C. § 2501, et seq.;

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- Applicable provisions of the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.;
- The rights and responsibilities for charitable and faith-based providers set forth in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) § 104, 42 U.S.C. § 604a, as applicable; and
- The Job Training or Employment Assistance Programs, Services, and Preferences Available to Veterans, as set forth in the Texas Labor Code §§ 302.151-302.153.

10.2 TWC and the Grantee may not deny services under this grant award to any person and are prohibited from discriminating against any employee, applicant for employment, or beneficiary because of race, color, religion, sex, national origin, age, physical or mental disability, temporary medical condition, political affiliation or belief, or citizenship.

10.3 The Grantee shall ensure that the evaluation and treatment of employees and applicants for employment are free from discrimination.

10.4 The Grantee shall make a reasonable effort to meet the state goal on subcontracts and supplier contracts to historically underutilized businesses certified by the State of Texas, as defined in Texas Government Code § 2161.001, including any certified women or minority owned businesses or enterprises.

10.5 The Grantee shall adopt and implement applicable provisions of the model HIV/AIDS workplace guidelines of the Texas Department of State Health Services as required by the Texas Health and Safety Code § 85.001 et seq. (Applicable to state agencies only).

## **11. Contractors and Subrecipients.**

The Grantee assures that the performance rendered by all contractors and subrecipients shall comply with all the terms and provisions of this grant award as if the performance were rendered by the Grantee and shall require such contractors and subrecipients to comply with all requirements, as covered in this grant award.

## **12. Records: Retention, Confidentiality, and Access.**



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12.1 The Grantee shall retain financial and supporting documents, statistical records, and any other records pertinent to the services provided under this grant for which a claim or report was submitted to TWC. These supporting records and documents must be kept for a minimum of **three (3)** years after final payment and all other pending matters are closed out.

12.2 The Grantee shall establish and maintain a method to secure the confidentiality of records and other information relating to clients in accordance with applicable federal and state laws, rules, and regulations. This provision shall not be construed, as limiting TWC's right of access to client case records or other information relating to clients served under this contract.

12.3 The Grantee shall grant access and the right to examine, copy, or mechanically reproduce, all reports, books, papers, documents, automated data systems, and other records pertaining to this contract from Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., local time, excluding state or federal holidays. Such rights of access and examination are granted to the duly authorized representatives of:

- the United States Department of Agriculture;
- the United States Department of Education;
- the United States Department of Health and Human Services;
- the United States Department of Labor;
- the Comptroller General of the United States;
- the General Accounting Office;
- the State Auditor's Office (SAO);
- the TWC; and
- other state and federal auditing agencies.

12.4 Such rights to access under paragraph 11.3 of this section shall continue as long as the Grantee retains the records.

12.5 TWC, and any of its authorized representatives, shall have timely and reasonable access to all Grantee records and personnel related to this grant award for the purpose of inspection, monitoring, auditing, evaluation, interview, and discussion.

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**13. Monitoring, Audits, and Evaluations.**

13.1 The Grantee shall supply to TWC an audit that is in compliance with the Single Audit Act of 1984, as amended July 1996, 31 U.S.C., Chapter 75, and OMB UG, 2 C.F.R. Part 200, Subpart F, applicable at the time costs were incurred.

13.2 TWC reserves the right to conduct, or cause to be conducted, an independent audit of all funds received by the Grantee under this grant award. Such an audit may be performed by the local government audit staff, a certified public accounting firm, or other auditors as designated by TWC and must be conducted in accordance with applicable federal rules and regulations, grant award guidelines, and established professional standards and practices.

13.3 The Grantee understands that acceptance of funds under this grant award acts as acceptance of the authority of the SAO, or any successor agency, to audit or investigate the expenditure of funds under this grant award or any subcontract. The Grantee further agrees to cooperate fully with the SAO or its successor, including providing all records requested. The Grantee will ensure that this clause concerning the authority to audit funds received indirectly by contractors and subrecipients through the Grantee and the requirement to cooperate is included in any subcontract it awards.

13.4 The Grantee shall develop and maintain a contractor or subrecipient monitoring system, acceptable to TWC, covering any contract or subrecipient it awards from this grant award.

Complete records of all monitoring performed by the Grantee shall be maintained and made available to TWC during such subcontract performance periods and for as long thereafter as an unresolved deficiency may require.

13.5 TWC reserves the right to conduct or cause a designee to conduct monitoring and evaluation studies of the performance of the Grantee or any contractor or subrecipient for services rendered under this grant award.

TWC retains the right to perform such monitoring and evaluation studies that it determines necessary and will report preliminary results to the Grantee and any contractor or subrecipient

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before the monitoring and evaluation is concluded and the final results are made a matter of record.

13.6 If a charitable or faith-based organization who is a contractor or subrecipient to the Grantee establishes a separate account for the government funds provided through this grant award, then only the services and activities supported by those funds will be subject to audit by TWC or its duly authorized representatives.

13.7 The Grantee shall cooperate with any audit or examination conducted pursuant to this section.

### **14. Dispute Resolution.**

14.1 To the extent applicable under state and federal law, a Grantee's claim for breach that the parties cannot resolve in the ordinary course of business shall be submitted to the dispute resolution process provided for in 40 TAC, Chapter 800, Subchapter K, as further described in this section.

- To initiate the process, the Grantee shall submit written notice to TWC's contract manager. Said notice shall specifically include the information required by 40 TAC § 800.453, as well as other supporting documentation or other tangible evidence to facilitate TWC's evaluation of the Grantee's claim.
- Neither the execution of this grant award by TWC nor any other conduct of any representative of TWC relating to this grant award or the dispute resolution process described herein shall be considered a waiver of sovereign immunity to suit.

14.2 Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Grantee, in whole or in part.

### **15. Sanctions and Penalties.**

15.1 The Grantee acknowledges and accepts that special conditions may be imposed by TWC, and certain enforcement remedies exercised (set forth within OMB UG, 2 C.F.R. Part 200) if the

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Grantee has been designated as a "high risk" grantee. Special conditions or restrictions could include:

- payment on a reimbursement basis;
- withholding authority to proceed to the next project phase until receipt of evidence of acceptable performance;
- additional and more detailed financial reporting;
- additional project monitoring;
- requiring the Grantee to obtain technical or management assistance;
- establishing additional prior approvals; or
- other conditions or restrictions appropriate to the circumstances.

15.2 The Grantee acknowledges and accepts that failure of the Grantee to comply with any provision of this grant award, whether stated in a federal or state statute or regulation, Commission rules, an assurance, a certification, an application or TWC policies or procedures referenced in a grant award may subject the Grantee to sanctions and enforcement or remedial measures appropriate to the circumstances, including temporary withholding of cash payments, disallowance of costs, whole or partial suspension of the award, withholding of further awards, or other remedies that may be legally available.

## **16. Appeals.**

Any sanctions or penalties imposed under this grant may be appealed pursuant to Texas Government Code, Chapter 2260.

## **17. Changes and Amendments.**

17.1 This grant award, and all documents or subsequent agreements referenced herein, is the entire agreement between the parties. All oral or written agreements between the parties hereto relating to the subject matter of this grant award that were made prior to the execution of this grant award have been reduced to writing and are contained or referenced herein.

17.2 Any alterations, additions, or deletions to the terms of this grant award required by changes in federal or state law or by regulations are automatically incorporated into this grant

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award without written amendment hereto and shall become effective on the date designated by such law or regulation.

17.3 To ensure effective performance under this grant award, all parties agree that TWC may amend performance requirements during this grant period, to interpret or clarify a change in federal or state law, rules or regulations, by issuing formal directives to establish or clarify such performance requirements.

- After a period of no less than thirty (30) days subsequent to written notice (unless more rapid implementation is required by law) such formal directives shall have the effect of qualifying the terms of this grant award and shall be binding upon the Grantee and TWC as if written herein.
- Such TWC directives shall not alter the terms of this grant award to relieve the TWC of any obligation specified in this grant award to reimburse the Grantee for costs properly incurred prior to the effective date of such formal directives.

17.4 Except as specifically provided by Sections 16.1, 16.2 and 16.3 of these GTCs, any additions, alterations, deletions, or extensions, to the terms of this grant award shall be by amendment hereto in writing and executed by all parties to this grant award except for budget line item changes, which shall be processed pursuant to Financial Requirements, Section I, Expenditure Limitations attached to this grant award. Any other attempted changes, including oral modifications, written notices that have not been signed by all parties, or other modifications of any type, shall be invalid.

17.5 TWC reserves the sole option to renew or extend this grant award after the initial period. Such renewal will be based upon a compliance review and TWC's continuing need for the services. TWC may consider a written request for renewal or extension submitted by the Grantee. Such written request must be received by TWC no later than thirty (30) calendar days prior to the expiration of this grant award.

## **18. Termination.**

18.1 This grant award may be terminated without cause, in whole or in part, by TWC whenever it determines that such termination is in the best interest of TWC or the State.

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18.2 Either party may terminate this grant award for breach, pending completion of any reports or audits required by TWC. Such termination shall be effective upon receipt of written notification of termination, provided no less than sixty (60) days in advance.

**19. Certifications**

The Grantee certifies compliance with the federal, state, and TWC requirements set forth in Certifications (Attachment C) of this grant award.