

**TCEQ GRANT AGREEMENT
for Emissions Reduction Incentive Grant**

THIS AGREEMENT is entered by and between the Texas Commission on Environmental Quality (hereinafter called TCEQ) and «Legal Name of Applicant» (hereinafter called PERFORMING PARTY and includes all such parties, whether one or more).

The TCEQ and the PERFORMING PARTY, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. PURPOSE

The purpose of this Agreement is to provide a grant to financially assist the PERFORMING PARTY in implementing the Grant Activities, thereby creating verifiable emissions reductions through monitored, enforceable performance of activities listed in the Approved Application.

ARTICLE 2. MAXIMUM AMOUNT OF REIMBURSEMENT

2.1. The TCEQ will reimburse the PERFORMING PARTY's eligible costs of implementing the Grant Activities under the conditions in the Contract Documents, not to exceed the maximum amount of «Grant Amount Spelled Out» («Calculated Grant Amount»), unless the parties amend this amount in accordance with the Contract Documents.

2.2. Reimbursement is limited to costs determined by the TCEQ in its sole discretion as eligible costs under the conditions in the Contract Documents.

2.3. The maximum amount of reimbursement is not a guarantee of payment. The actual amount of reimbursement may be less than the maximum and will be determined under the conditions of the Contract Documents.

ARTICLE 3. CONTRACT TIMES

3.1. This Agreement will commence on the Effective Date of the Agreement. For purposes of availability of funding and completion of TCEQ's obligations to reimburse the PERFORMING PARTY for authorized expenses, this Agreement shall expire on August 31, 2013, or upon payment of reimbursement for completion of all grant activities, whichever is earlier, unless otherwise terminated by an act performed in accordance with the Contract Documents. TCEQ, at its own election, may extend this expiration date of the Agreement for up to one hundred and eighty (180) days.

3.2 As provided for in the Contract Documents, the PERFORMING PARTY agrees to performance in accordance with the Contract Documents beyond the expiration date of this Agreement and through the end of the Activity Life of each Activity included in the Approved Application for which the PERFORMING PARTY has received reimbursement.

3.3 For replacement activities, the vehicle or piece of equipment being purchased under a grant may not have been acquired prior to May 25, 2010, unless otherwise approved by the TCEQ.

3.4 For activities other than replacement activities, eligible costs submitted for reimbursement under a grant may not have been incurred prior to August 13, 2009 and must be approved by the TCEQ.

3.5 This Agreement shall immediately terminate at the end of any state fiscal year for which the Texas Legislature fails to appropriate and/or to provide sufficient funds in the subsequent fiscal year necessary to perform this Agreement.

ARTICLE 4. GRANT ACTIVITIES

4.1 Subject to the provisions of this Article, the PERFORMING PARTY agrees to complete all Grant Activities as described in the Approved Application and Approved Application Summary and in accordance with the Contract Documents.

4.2 The TCEQ may accept performance of a reduced number of the Grant Activities listed in the Approved Application, at its sole discretion, and reimburse the PERFORMING PARTY for only those Grant Activities for which eligible purchases are completed. For projects where a cost-effectiveness determination is required, if the changes to the Grant Activities result in an overall project cost-effectiveness that is higher than was originally approved for the project, the TCEQ is not obligated to reimburse the PERFORMING PARTY at the amount originally authorized for each Grant Activity. The TCEQ may reimburse authorized expenses at a lesser amount in order to achieve the same cost-effectiveness as was originally approved for the project, or may accept a higher cost-effectiveness for the project, as long as the cost-effectiveness does not exceed \$15,000 per ton of Oxides of Nitrogen (NO_x) emissions estimated to be reduced.

4.3 If the PERFORMING PARTY does not complete any of reimbursable transactions required as part of the Grant Activities prior to the termination date of this Agreement, and no reimbursement of expenses has been provided to the PERFORMING PARTY, this Agreement will terminate with no obligation to either party.

ARTICLE 5. NOTICE TO PROCEED

5.1 The PERFORMING PARTY understands, and agrees to, the provisions of this Article.

5.1.1 The TCEQ's funding for the reimbursement grants described in this Agreement may currently be unavailable or uncertain and the amount of funding may be unknown. Efficient use of public funds may be achieved by entering into agreements with potential grantees in which

reimbursements are contingent on availability of funds and a subsequent selection by the TCEQ. If funding for a reimbursement grant becomes available, the TCEQ, in its sole discretion, will select which of the contingent agreements will receive reimbursement and will issue a Notice to Proceed for any selected project.

5.1.2. The PERFORMING PARTY may begin the Grant Activities, at its own risk, prior to receiving a Notice to Proceed. However, regardless of the availability of funding, if this Agreement is not selected and a Notice to Proceed is not issued, the TCEQ will not provide reimbursement for the cost of the Grant Activities. Either party may terminate this Agreement prior to issuance of a Notice to Proceed, with no further obligation under this Agreement. If this Agreement is selected, the TCEQ will issue to the PERFORMING PARTY a Notice to Proceed, after which all other obligations and provisions of this Agreement shall apply.

5.1.3. Regardless of selection of this Agreement and the issuance of the Notice to Proceed, the reimbursement of the costs of the Grant Activities is subject to all other requirements of this Agreement. This Agreement does not create an entitlement to receive state funds and all payments are solely within the discretion of the TCEQ.

5.2. This Agreement may be entered into before the completion of the Approved Application. The TCEQ reserves the right to withhold issuance of the Notice to Proceed until the Approved Application is completed and incorporated into this Agreement. Completion and incorporation of the Approved Application in no way obligates TCEQ to issue the Notice to Proceed.

ARTICLE 6. REIMBURSEMENT PROCEDURES

6.1. The PERFORMING PARTY will submit requests for reimbursement in accordance with the conditions in the Contract Documents.

6.2. The TCEQ may reject requests for reimbursement that fail to demonstrate that costs are eligible for reimbursement or which fail to conform to the requirements of the Contract Documents.

6.3. The PERFORMING PARTY is not a “vendor” of goods and services within the meaning of Texas Government Code, Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this Agreement.

ARTICLE 7. LEGAL REQUIREMENTS

7.1. The PERFORMING PARTY must maintain sufficient property insurance for the repair or replacement of any Grant Equipment for the Activity Life as required by the Contract Documents, unless otherwise expressly agreed by the TCEQ. Failure to do so shall constitute a material breach of this Agreement.

7.2. Any insurance proceeds received by or on behalf of the PERFORMING PARTY under an insurance policy due to the damage or destruction of a low emissions engine or other Grant Equipment

must be utilized to acquire an equivalent or better low emissions engine or other Grant Equipment or be paid to the TCEQ. Failure to do so shall constitute a material breach of this Agreement.

7.3. At the sole discretion of the TCEQ, the PERFORMING PARTY will return to the TCEQ any reimbursement in proportion to any loss of emissions reductions compared with the volume of emissions reductions that was projected in awarding the grant.

7.4. Any notice issued pursuant to this Agreement shall be addressed to the respective party's Authorized Project Representative, or at such other address as they have theretofore specified by written notice. Such notices shall be sent by certified mail, return receipt requested, or shall be delivered in hand and a receipt provided thereof. Any notice or other written communication shall be considered delivered upon date of receipt.

7.5. In order for this Agreement to be effective, all authorized principals of an unincorporated business organization or association must sign the Agreement. An agent signing for a corporation must be authorized to sign by the corporation.

ARTICLE 8. FUNDING, LEGAL AUTHORITY AND LIABILITY

8.1. This Agreement and all claims, suits or obligations arising under or related to this Agreement are subject to and limited to those funds which are both: 1) appropriated by the Texas Legislature for the purposes of this Agreement and 2) actually received and deposited into an account of the treasury dedicated to the TCEQ for the purposes of this Agreement.

8.2. Any state funds provided are appropriated to TCEQ under the Appropriations Act (Senate Bill 1) of the 81st Texas Legislature and expenditure is authorized by Chapter 386, Texas Health and Safety Code.

8.3. This Agreement is entered into by and between the TCEQ and the PERFORMING PARTY pursuant to Chapter 386, Texas Health and Safety Code. Further authority is contained in the Texas Water Code, Chapter 5, Subchapter D, Section 5.124 (Authority to Award Grants) and Texas Water Code, Section 5.229, pertaining to the TCEQ's general authority to enter contracts.

ARTICLE 9. REPRESENTATIONS

The PERFORMING PARTY hereby ratifies and attests to all representations in the Approved Application and deliverables it has provided to the TCEQ during the proposal process and agrees to give prompt written notice to the TCEQ if there is any material change in these certifications or deliverables.

ARTICLE 10. MISCELLANEOUS

10.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

10.2. By stating at any place in this Agreement that any particular non-compliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.

10.3. The parties to this Agreement expressly agree that time is of the essence of this Contract.

10.4. The terms include, included, including, includes, when used in this Agreement shall mean “includes but not limited to”.

ARTICLE 11. CONTRACT DOCUMENTS

11.1. The Contract Documents which comprise the entire Agreement between TCEQ and the PERFORMING PARTY are (in order of precedence in the event of conflicts):

11.1.1. The TCEQ Grant Agreement for Emissions Reduction Incentive Grants

11.1.2. The General Conditions for Emissions Reduction Incentive Grants

11.1.3. The Guidelines for Emissions Reduction Incentive Grants (RG-388)

11.1.4. The Request for Grant Applications for Emissions Reduction Incentive Grants

11.1.5. The Special Conditions for Emissions Reduction Incentive Grants

11.1.6. The Approved Application Summary

11.1.7. The Approved Application

11.1.8. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: all written Notices to Proceed, Amendments, and other documents amending, modifying or supplementing the Contract Documents pursuant to the General Conditions.

11.2. The information and data provided in the original application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Approved Application (a Contract Document) and hereby ratifies, adopts, and agrees to all such alterations.

11.3. There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified, or supplemented only as provided in the General Conditions.

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ARTICLE 12. AUTHORIZED REPRESENTATIVES

TCEQ Project Representative

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

Mailing Address:

Mr. Joe Walton
MC-204
Air Quality Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Telephone No.: 800/919-8377
Facsimile No.: 512/239-0077

Physical Address:

Mr. Joe Walton
MC-204
Air Quality Division
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

PERFORMING PARTY Project Representative

12.2. The individual named in the Approved Application is the PERFORMING PARTY Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications, original contracts and related documents, and written correspondence to the PERFORMING PARTY will be addressed and delivered to the PERFORMING PARTY Project Representative or his or her designee.

Designated Location for Records Access and Review

12.3. The PERFORMING PARTY designates the physical location identified in the Approved Application for record access and review pursuant to any applicable provision of this contract.

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The Effective Date of this Agreement is the date on which the Agreement is signed by the last of the parties to sign.

IN WITNESS WHEREOF, TCEQ and PERFORMING PARTY have signed three (3) originals of this Agreement. One original has been delivered to the PERFORMING PARTY and two originals have been delivered to TCEQ.

Texas Commission on Environmental Quality (TCEQ)	«Legal_Name_of_Applicant» (PERFORMING PARTY)
By:	By:
Authorized Signature	Authorized Signature
Zak Covar	
Printed Name	Printed Name
Deputy Executive Director	
Title	Title
Date of Signature	Date of Signature

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GENERAL CONDITIONS
for
Emissions Reduction Incentive Grant

ARTICLE 1. DEFINITIONS

Unless defined herein, terms in this Agreement and Contract Documents will have the meanings provided in the *Uniform Grant Management Standards (UGMS)*. The following terms have the meanings indicated.

1.1. *Activity Life* - the period established by the TCEQ and designated in the Approved Application, that is used to determine the emissions reductions and cost effectiveness of the activity. The start date for the Activity Life will be established by the TCEQ. The TCEQ will notify the PERFORMING PARTY in writing of the Activity Life start and end dates for each activity upon completion of all reimbursements under this Agreement and submission by the PERFORMING PARTY and acceptance by TCEQ of the final disposition verification forms, if required. For replacement and repower activities, the TCEQ will normally set the start date of the Activity Life on the date the TCEQ receives notification that the vehicle, equipment, and/or engine being replaced was disposed of. For other types of activities, the start date will normally be set as the date on which the grant-funded purchases are completed and the reduced-emissions vehicle, equipment, engine, retrofit device, and/or infrastructure were placed into service.

1.2. *Administrative Requirements* - means those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from Grant Activities requirements, which concern matters that pertain to the specific Grant Activities approved by TCEQ

1.3. *Annual Usage* - the use factor designated by the TCEQ in the Approved Application, based on either the hours of operation, miles traveled, or fuel consumption. The PERFORMING PARTY's performance and accurate reporting of Annual Usage requirements is material to achieving the emissions reductions calculated in awarding the grant.

1.4. *Approved Application* - the application for emissions reduction incentive grant submitted by the PERFORMING PARTY and approved by the TCEQ, including any amendments or supplemental conditions added to the application in order for it to be approved. An Approved Application may include one or more Supplemental Activity Application Forms, which pertain to the individual activities to be conducted under the grant.

1.5. *Baseline Cost* - a specific amount designated by the TCEQ in the Approved Application to reflect the costs that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the provisions of the *Guidelines for the Emissions Reduction Incentive Grants (RG-388)*.

1.6. *Contract Documents* - the contract documents are composed of the TCEQ Grant Agreement for Emissions Reduction Incentive Grants, the General Conditions for Emissions Reduction Incentive Grants, the *Guidelines for Emissions Reduction Incentive Grants*, the Request for Grant Applications for Emissions Reduction Incentive Grants, the Special Conditions for Emissions Reduction Incentive Grant, the Approved Application Summary, the completed Approved Application, and any amendments to those documents. Together, the Contract Documents form the contractual agreement between the parties.

1.7. *Contract Amount* - the maximum amount of funds which may be reimbursed by the TCEQ to the PERFORMING PARTY for expenditures made in accordance with the Contract Documents.

1.8. *Contract Period* - the number of days or dates stated in the Agreement to complete expenditures related to the Grant Activities so that final payment is appropriate.

1.9. *Effective Date of the Agreement* - the date indicated in the Agreement on which the Agreement becomes effective; but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.10. *Eligible Counties* - the counties designated as affected counties in 386.001(2), Texas Health and Safety Code, and the additional counties included in a non-attainment area designated by the TCEQ. The eligible counties are listed in the *Guidelines for the Emissions Reduction Incentive Grants* (RG-388).

1.11. *Final Completion* - the Grant Activities are completed in the judgment of TCEQ. This will usually occur upon the completion of the longest-running Activity Life of the Grant Activities under this Agreement.

1.12. *Global Positioning System (GPS)* - A space-based, radio-positioning system nominally consisting of a minimum 24-satellite constellation that provides navigation and timing information to military and civilian users worldwide.

1.13. *Grant Activity/Activities* - each separate lease, purchase, replacement, repower, retrofit, add-on, purchases of qualifying fuel, purchase and installation of infrastructure, process and technology development and utilization, and related goods and services described in the Approved Application, including each separate Supplemental Activity Application Form that may be attached to the application.

1.14. *Grant Agreement* – means the agreement between TCEQ and the PERFORMING PARTY in writing, consisting of the documents listed in Article 11, Contract Documents. The term Grant Agreement shall be used interchangeably as “Agreement”, “Contract”, or “grant”.

1.15. *Grant Equipment* - the equipment, real property, vehicles, qualifying fuel, infrastructure, processes and technology and the related goods and services in a Grant Activity for which the cost of purchase, lease, or utilization is reimbursed by the TCEQ under the Agreement. The term includes replacements for the Grant Equipment which is lost, stolen, or irreparably damaged.

1.16. *Incremental Costs* - the cost of an approved activity less a baseline cost that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the provisions of the *Guidelines for the Emissions Reduction Incentive Grants*.

1.17. *Reserved*

1.18. *Reserved*

1.19. *Intracoastal Waterway* - The intracoastal waterway of Texas, as designated by official maps and charts published by the State of Texas.

1.20. *Minor Change* - a written document which provides for minor changes in the work in accordance with these General Conditions, but which does not involve a change in the Contract Amount or the Contract Period.

1.21. *NO_x* - Oxides of nitrogen (NO_x) are a class of pollutants formed when fuel is burned at a very high temperature (above 1200° F), such as in automobiles and power plants. For air pollution purposes, it is composed primarily of nitric oxide (NO), nitrogen dioxide (NO₂) and other oxides of nitrogen, and it plays a major role in the formation of ground-level ozone in the atmosphere through a complex series of reactions with volatile organic compounds (VOCs).

1.22. *Notice to Proceed* - A written notice given by the TCEQ to the PERFORMING PARTY that confirms that adequate funding is available to support the Agreement.

1.23. *Optimum Performance* - The level of performance at which Grant Equipment functions in order to achieve the anticipated emissions reductions.

1.24. *Project Life* - the period established by the TCEQ, based on the longest-running Activity Life of the Grant Activities under this Agreement, and used to determine the combined emissions reductions and cost-effectiveness for all of the activities funded under this Agreement.

1.25. *Project Representative* - the Project Representative of the TCEQ and the PERFORMING PARTY, as designated in writing elsewhere in the Agreement. All communications, original contracts and related documents, and written correspondence to the PERFORMING PARTY will be addressed and delivered to the PERFORMING PARTY Project Representative or his or her designee.

1.26. *Repower* - replacement of an existing diesel engine with a different engine, according to the criteria of the *Guidelines for the Emissions Reduction Incentive Grants*.

1.27. *State* - means the State of Texas.

1.28. *Termination* - means a permanent end and cessation of the Agreement either because the Contract Period has expired without completion of purchases eligible for reimbursement; because all requirements of this Agreement are completed within the sole discretion of the TCEQ; or because the Agreement is

ended by action of the TCEQ for cause or for convenience. The *Date of Termination* is the date of expiration of the Contract Period, or the date of completion of all requirements of this Agreement, or the effective date of action by the TCEQ ending the Agreement for cause or for convenience, as applicable.

1.29. *TERP GPS Monitoring Service (TGMS)* – Equipment and services used to aid TCEQ and TERP Grantees in recording usage data.

1.30. *TERP GPS Monitoring Service (TGMS) Contractor* – The company, selected by TCEQ through the competitive bid process, which furnishes equipment, installation/removal, and report services, both online and by report generation, to aid TCEQ and TERP Grantees in recording usage data.

1.31. *TCEQ* - the Texas Commission on Environmental Quality.

1.32. *Written Amendment* - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an addition, deletion or revision in the work, or an adjustment in the Contract Amount or the Contract Period, issued on or after the Effective Date of the Agreement.

ARTICLE 2. GOVERNING STANDARDS

This Agreement is subject to: (1) Chapter 386, Texas Health and Safety Code, (2) the Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Uniform Grant and Contract Management Standards for State Agencies, 1 Texas Administrative Code, Section 5.141 et seq., (3) the *Guidelines for the Emissions Reduction Incentive Grants* (RG-388) and (4) Appropriations Act of the 81st Texas Legislature pertaining to appropriation of funds to TCEQ for grants, etc. and grants by state agencies; (5) Texas Government Code Chapter 2261 (pertaining to cost reimbursement contracts); (6) Local Government Code Chapter 391 and implementation rules and of the Governors office of Budget and Planning (pertaining to costs for entities defined as Councils of Government, etc); (7) (Texas Government Code Section 556.0055 (pertaining to lobbying); (8) *TCEQ Allowable Expenditure Guidelines* (pertaining to allowable costs for cost reimbursement contracts and grants); (9) Rules and guidelines of the office of the Governor of Texas (implementing Local Government Code Chapter 391); (10) TCEQ rules and policies (pertaining to TCEQ contracts and grants); and (11) other applicable Federal and State rules and statutes.

ARTICLE 3. ELIGIBILITY FOR COST REIMBURSEMENT

3.1. The TCEQ will reimburse the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all requirements. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are the reasonable, necessary, actual, and allowable costs of implementing the Grant Activities approved by the TCEQ in the Approved Application. Costs must be included in the Approved Application to be eligible for reimbursement. Determinations of eligibility for reimbursement are solely within the discretion of the TCEQ.

Procurement

3.2. The PERFORMING PARTY agrees to follow all the requirements of the Uniform Grant Management Standards (UGMS) just as if PERFORMING PARTY were a covered local government grantee (except that the applicable cost principles are those listed as corresponding to PERFORMING PARTY's classification in UGMS, Part III State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart C, ____22 Allowable Costs, e.g., for-profit organization, private non-profit, etc.). The UGMS document is located on the internet at the following address:

<http://governor.state.tx.us/files/state-grants/UGMS062004.doc>

3.3. The cost plus a percentage of cost method of contracting for professional services is not allowable.

Reasonable Costs

3.4. To be reimbursable, a cost must be reasonable. Reasonableness of costs depends upon a variety of considerations and circumstances, including:

- 3.4.1. whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- 3.4.2. generally accepted sound business practices, arm's length bargaining, and federal and state laws and regulations;
- 3.4.3. the contractor's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
- 3.4.4. any significant deviations from the contractor's established practices.

3.5. As evidence that costs are reasonable, the PERFORMING PARTY may submit, if requested, three separate written bids or quotes from uninterested parties.

Necessary Costs

3.6. Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and must be included in the Approved Application.

3.7. Unless expressly authorized by the TCEQ, necessary costs do not include:

- 3.6.1. the cost of money;
- 3.6.2. the interest charges on a purchase money loan, or on a deferred payment purchase agreement; or
- 3.6.3. the cost of converting from a lease to a purchase at the end of the lease period.

Actual Costs

3.8. The criteria for actual costs include:

- 3.8.1. the direct Incremental Costs of implementing the Grant Activities; or
- 3.8.2. the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.

- 3.9. Unless expressly authorized by the TCEQ, actual costs do not include:
- 3.9.1. amounts deducted from the true price of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds or otherwise;
 - 3.9.2. amounts which the PERFORMING PARTY owes or agrees to pay the vendor or contractor for any purpose other than the implementation of Grant Activities;
 - 3.9.3. amounts in the charges which the vendor/contractor intends to return to PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value;
 - 3.9.4. baseline Costs as defined in the Contract Documents and the *Guidelines for Emissions Reduction Incentive Grants*, and identified in the Approved Application; or
 - 3.9.5. amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are received by the PERFORMING PARTY.
- 3.10. The PERFORMING PARTY's documentation of expenses is required under Article 7 of these General Conditions.

Allowable Costs

- 3.11. In order to be allowable, costs must be included in the Approved Application, and must satisfy the requirements of: this Agreement, the UGMS, the TCEQ *Allowable Expenditure Guidelines*, state agency rules, and all applicable state and federal laws.
- 3.12. Administrative costs and other internal costs of the PERFORMING PARTY, including but not limited to personnel expenses, internal salaries, indirect costs, and travel, are not allowable costs under this Agreement.
- 3.13. If travel costs are expressly authorized in the Approved Application, reimbursement of travel costs may not exceed the amounts explained in this section.
- 3.13.1. Reimbursement for lodging and meals within the State of Texas is to be based on actual expenses but may not exceed the reimbursements allowed for state employees under the State of Texas Travel Allowance Guide.
 - 3.13.2. Reimbursement for lodging and meals when traveling outside of the State of Texas is to be based on actual expenses but may not exceed the maximum established in the federal General Services Administration travel regulations.
 - 3.13.3. Mileage reimbursement rates are also established in the State of Texas Travel Allowance Guide.
- 3.14. If indirect costs are expressly authorized in the Approved Application, the PERFORMING PARTY shall comply with the UGMS requirements pertaining to Indirect Cost Rates.

Consulting (Application Assistance) Fees

3.15. Any fees charged by a consultant for preparation of a grant application, either directly or as an addition to the cost basis of the grant-funded vehicle, equipment, or engine, are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this Agreement. All purchase decisions must be based on sound business practices and arm's length bargaining. It is generally considered acceptable for an applicant to accept assistance from a vendor or an agent of a vendor in preparing an application, as long as any decision by the applicant to purchase the grant-funded vehicle or equipment from that vendor is made independently and meets the other reasonableness provisions in the grant contract. However, if the consultant is paid directly by the applicant to complete the application documents and to act as the PERFORMING PARTY's agent for the grant process, purchases of grant-funded vehicles or equipment from an entity in which the consultant has an interest will not normally be considered appropriate by the TCEQ under the reasonableness requirements of the grant contract.

3.16. Unless otherwise approved in advance by the TCEQ, fees for a third-party consultant hired by the PERFORMING PARTY to manage and administer the grant-funded activities, including coordination of the work and submission of reports and paperwork to the TCEQ, will be considered administrative costs of the PERFORMING PARTY and are not allowable under this Agreement. This provision does not limit the ability of an equipment vendor or installer to include ordinary, reasonable, and necessary operational costs in the price of the vehicle, equipment, or installation services.

Preapproval of Costs

3.17. The TCEQ may request additional details regarding costs listed in the Approved Application and may require that the PERFORMING PARTY obtain preapproval of specific costs from the TCEQ prior to incurring those costs.

3.18. Prior to executing a subcontract to be funded under this Agreement, and if requested by the TCEQ, the PERFORMING PARTY must submit the subcontract scope of work to the TCEQ for review and must receive approval from the TCEQ before proceeding with the contract.

Additional Evidence

3.19. The TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs.

Additional Criteria for Reimbursement

3.20. The TCEQ may at any time, in its sole discretion, in the best interests of the State establish additional criteria and requirements for reimbursement of costs.

Costs in Approved Application are Maximum Amounts, Not a Guarantee

3.21. Amounts of costs stated in the Approved Application are maximum amounts of reimbursement. By stating the amounts, TCEQ does not 1) guarantee payment of those amounts or 2) waive the requirements for reimbursement which must subsequently and continually be satisfied by the PERFORMING PARTY. The amount of costs for which reimbursement may be requested is the lesser of 1) the costs stated in the Approved Application or 2) the actual eligible costs.

No Entitlement to Funds

3.22. The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. Neither a request for reimbursement nor TCEQ's payment of reimbursement nor any other action will establish an entitlement in the PERFORMING PARTY to payment from the TCEQ.

3.23. By paying a request for reimbursement, the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may at any time before or after reimbursement, in its sole discretion, request additional evidence concerning costs. The TCEQ may audit the records of the PERFORMING PARTY and may also audit the PERFORMING PARTY's performance as to the Grant Activities, and the administrative requirements. The PERFORMING PARTY shall return grant funding reimbursed for expenses that are later determined to be unallowable under the terms of this Agreement.

Offsets for debts owed to the State

3.24. The TCEQ may offset against reimbursement payments, any amounts owed by the PERFORMING PARTY or its principals to the TCEQ or the State of Texas, whether owed under this program or otherwise.

3.25. The PERFORMING PARTY shall notify the TCEQ, in its Request for Reimbursement, of any financial incentive received by the PERFORMING PARTY which was not included in the Approved Application, if that incentive will offset the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance. The TCEQ, in reimbursing the PERFORMING PARTY, may reduce the amount of authorized incremental costs eligible for reimbursement, by the value of any additional financial incentive received by the PERFORMING PARTY, without an Amendment to this Agreement.

Leases and lease-purchase agreements

3.26. For any grant activity where the Grant Equipment will be acquired and used under a lease or lease-purchase agreement, the period of the lease agreement must extend for at least the Activity Life or, if the lease terminates before the end of the Activity Life, the lease agreement must include a binding commitment for the PERFORMING PARTY to pay any remaining costs and to take ownership of and title to the Grant Equipment. An option to buy at the end of the lease term, without a binding commitment on the part of the PERFORMING PARTY, shall not be sufficient to satisfy this provision.

Child Support

3.27. Under Section 231.006 of the Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state-funded grant or loan. By executing this Grant Agreement, the PERFORMING PARTY certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

ARTICLE 4. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, GRANT ACTIVITIES

4.1. All Grant Activities for which reimbursement is requested must be completed as set forth in the Approved Application, including any supplemental conditions attached thereto.

Annual Usage for Activity Life

4.2. In consideration for the award of grant funds, the PERFORMING PARTY agrees to fully implement the Grant Activities and utilize the Grant Equipment during the entire Activity Life according to the requirements stated in this Agreement. The PERFORMING PARTY's performance and accurate reporting of Annual Usage requirements is material to achieving the emissions reductions calculated in awarding the grant.

Professional Quality

4.3. The PERFORMING PARTY shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all Grant Activities under this Agreement.

Supervision and Superintendence

4.4. The PERFORMING PARTY is responsible for the supervision, inspection and direction of the Grant Activities in a competent and efficient manner, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Grant Activities in accordance with the Contract Documents. The PERFORMING PARTY shall be solely responsible for the means, methods, techniques, sequences and procedures of the Grant Activities. The PERFORMING PARTY shall be responsible to see that the completed implementation of the Grant Activities complies accurately with the Contract Documents.

Materials & Equipment

4.5. Unless otherwise specified in the Contract Documents, the PERFORMING PARTY will assume full responsibility for all materials, equipment, labor, transportation, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the implementation and completion of the Grant Activities.

4.6. Unless otherwise expressly agreed by the TCEQ, all Grant Equipment will be of good quality and as provided in the Contract Documents. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier, except as otherwise provided in the Contract Documents.

4.7. The PERFORMING PARTY agrees to maintain the Grant Equipment as necessary to keep the Grant Equipment in good condition and functioning at optimum performance during the Activity Life. Failure to maintain the Grant Equipment as necessary to achieve the required Annual Usage shall constitute a material breach of this Agreement.

4.8. Unless otherwise expressly agreed by the TCEQ, the PERFORMING PARTY must obtain and maintain a policy of insurance for the Activity Life which is sufficient to provide for replacement of

Grant Equipment which is lost, stolen, or irreparably damaged. Governmental entities may use an established self-insurance program to satisfy this requirement. If requested by the TCEQ, the PERFORMING PARTY shall provide proof of insurance coverage. The TCEQ may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. The TCEQ may also waive this requirement, at its sole discretion, for certain types of entities. Previously submitted certificates of insurance coverage may be amended to reflect newly extended coverage. A failure to comply with this requirement is considered a material breach of the Agreement.

4.9. Upon the occurrence of a repairable malfunction of or damage to Grant Equipment which affects emissions reductions during the Activity Life, the PERFORMING PARTY will cause the Grant Equipment to be repaired and restored to the level of optimum performance.

4.10. Upon the occurrence of loss, theft, or irreparable damage of Grant Equipment during the Activity Life, the PERFORMING PARTY will cause the lost, stolen, or damaged Grant Equipment to be replaced with similar equipment which achieves the same optimum performance or better. The PERFORMING PARTY will cause the replacement Grant Equipment to be in operation no later than 60 consecutive days from the occurrence of loss, theft or damage, unless the TCEQ expressly agrees to a longer period. Replacement Grant Equipment is subject to all the requirements of the applicable to Grant Equipment contained in this Agreement.

4.11. The PERFORMING PARTY shall fully comply with all requirements of any agreements with third parties that have a security interest or similar interest in the Grant Equipment. Repossession, seizure, or any other event where the PERFORMING PARTY loses possession of the Grant Equipment shall be considered a material breach of this Agreement and may be considered evidence that the expected emissions reductions have not been achieved.

ARTICLE 5. PERFORMING PARTY'S RESPONSIBILITIES, ADMINISTRATIVE REQUIREMENTS

Access to Records, Grant Equipment, and Vehicles, Equipment, and Engines Being Replaced

5.1 State Auditor's Office. The PERFORMING PARTY understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit on investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. The PERFORMING PARTY further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The PERFORMING PARTY will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING PARTY and the requirement to cooperate is included in any subcontract it awards under this Agreement. The PERFORMING PARTY will include in all subcontracts for work under this Agreement a requirement that subcontractors will provide access to all relevant financial records including bank statements.

5.2. The PERFORMING PARTY shall allow access to all Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under this Agreement, by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. In addition, the PERFORMING PARTY shall allow access to all vehicles, equipment, and engines being replaced under this Agreement.

Maintenance of Records

5.3. The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the Grant Activities and requirements of the Agreement, including the Agreement or amendments thereto. All financial records will be maintained in accordance with generally accepted accounting principles, the UGMS, and this Agreement. The PERFORMING PARTY shall also maintain the financial information and data used in the preparation or support of any request for reimbursement (direct and indirect), price or profit analysis for this Agreement, and a copy of any cost information or analysis submitted to the TCEQ. The PERFORMING PARTY shall allow access to all the material including bank statements and records by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.

5.4. The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from access to records under this Agreement.

5.5. Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity under this Agreement, for the Project Life as set forth in this Agreement, and for three (3) years after the ending date of the Project Life. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the three year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later.

5.6. Subject to the obligations and conditions set forth in this Agreement, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under this Agreement by the PERFORMING PARTY will vest upon acquisition in the PERFORMING PARTY.

5.7. The PERFORMING PARTY may develop and use its own property management system, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the PERFORMING PARTY must meet the requirements set forth in this section.

5.7.1. Property records of Grant Equipment must be maintained that include a description of the property, a serial number or other identification number, the source of property, usage and mileage (separated by location of usage and mileage), who holds title, the acquisition date, and

the cost of the property, percentage of TCEQ participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

5.7.2. The PERFORMING PARTY will conduct a physical inventory of all Grant Equipment no less frequently than once every two years during the Activity Life and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY must include adequate safeguards to prevent loss, damage, or theft of the Grant Equipment.

Accounting Systems

5.8. The PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies in all material respects with applicable State law, regulations, and policies relating to accounting standards or principles. The PERFORMING PARTY must account for costs in a manner consistent with such standards or principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

PERFORMING PARTY's Representative

5.9. The PERFORMING PARTY will identify in writing a Project Representative as the person authorized to receive and respond to inquiries and requests from the TCEQ, to manage the Grant Activities being performed, and to act on behalf of the PERFORMING PARTY.

5.10. The PERFORMING PARTY agrees to make arrangements necessary to ensure that its authorized Project Representative, or someone to whom that person has delegated his or her authority, is available at all times for consultation with the TCEQ. Written notice of any such delegation will be provided to the TCEQ.

Personnel

5.11. PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Contract Documents. The PERFORMING PARTY must at all times maintain good discipline and order on the location of Grant Activities.

Intellectual Property Requirements

5.12. *{This Section is not applicable to this project. The Section number is retained for numbering continuity.}*

Permits

5.13. Unless otherwise provided in the Contract Documents, the PERFORMING PARTY shall obtain and pay for all transportation, construction, and operating permits and licenses required for this performance of this Agreement. Failure to comply with a permit or administrative order issued by the TCEQ or other state agency may result in a determination, within the sole discretion of the TCEQ, that

the best interests of the state are served by withholding reimbursement or by the application of other remedies under this Agreement

Laws and Regulations

5.14. The PERFORMING PARTY shall give all notices and comply in all material respects with all Laws and Regulations applicable to furnishing and performance of the Grant Activities. Except where otherwise expressly required by applicable Laws and Regulations, TCEQ shall not be responsible for monitoring PERFORMING PARTY's compliance with any Laws or Regulations.

Data and Publicity

5.15. All data and other information developed under this Agreement shall be furnished, upon request, to the TCEQ and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code, Chapter 552. Upon termination of this Agreement, if requested by the TCEQ, all copies of data and information developed under this Agreement shall be furnished, at no charge to the TCEQ, to include databases for which the costs of preparation are reimbursed under this Agreement, and become the property of the TCEQ.

5.16. The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities.

Safety and Protection

5.17. Where applicable, the PERFORMING PARTY shall be responsible for requiring employees, contractors, and subcontractors to maintain and supervise all necessary safety precautions and programs in connection with the Grant Activities. The PERFORMING PARTY shall take all necessary safety precautions.

5.18. In performing the Grant Activities hereunder, the PERFORMING PARTY undertakes performance for its own benefit and not as agent for the TCEQ.

Lobbying Activities

5.19. As set forth in these Contract Documents, and in accordance with the UGMS and State law, the PERFORMING PARTY shall not use funds provided under this Agreement to support lobbying or political activity either directly or indirectly.

5.20. The PERFORMING PARTY will acknowledge the financial support of the TCEQ whenever a Grant Activity reimbursed, in whole or part, is publicized or reported in news media or publications.

ARTICLE 6. TCEQ'S RESPONSIBILITIES

6.1. The Executive Director of the TCEQ will identify a person authorized to give direction to the PERFORMING PARTY and act on behalf of the TCEQ.

6.2. The TCEQ will not supervise, direct or have control or authority over, nor be responsible for, PERFORMING PARTY's means, methods, techniques, sequences or procedures relating to the

implementation project or the Safety precautions and programs incident thereto, or for any failure of PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the work. TCEQ will not be responsible for PERFORMING PARTY's failure to perform or furnish the work in accordance with the Agreement.

6.3. Unless authorized in writing by the TCEQ in accordance with this Agreement, no waiver of any obligation of the PERFORMING PARTY shall bind the TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

ARTICLE 7. REQUEST FOR REIMBURSEMENT

7.1. Eligible expenses must have been incurred by the PERFORMING PARTY prior to the termination date of this Agreement. In order to receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form, to be made available to the PERFORMING PARTY by the TCEQ. The request and forms shall be mailed or delivered to:

Texas Commission on Environmental Quality
TERP Emissions Reduction Incentive Grants
Air Quality Division, MC-204
Implementation Grants Section
PO Box 13087
Austin, TX 78711-3087

7.2. The Request for Reimbursement Form shall include all required supplemental forms and shall list, for each activity, the total expenses obligated under a lease or financing agreement, the total activity expenses incurred to date, the baseline cost, and the incremental costs incurred to date. The report shall also list and explain any additional financial incentive received by the PERFORMING PARTY that directly offsets the activity costs reported by the PERFORMING PARTY, including tax credits or deductions, other grants, or any other public financial assistance.

7.3. Except as provided for under Section 7.6. below, to be eligible for reimbursement under this Agreement, a cost must have been incurred and paid by the PERFORMING PARTY prior to claiming reimbursement from TCEQ. A cost may not be considered incurred until the Grant Equipment and/or goods and services included under the cost have been received and accepted by the PERFORMING PARTY. The cost must have been paid by the PERFORMING PARTY prior to claiming reimbursement.

Replacement Projects Costs

7.4. For replacement projects, the TCEQ will reimburse the PERFORMING PARTY for no more than eighty (80) percent of the eligible incremental costs for the purchase of the replacement vehicle or equipment under this Agreement.

On-Site Infrastructure Project Costs

7.5. For on-site infrastructure projects, the TCEQ will reimburse the PERFORMING PARTY for no more than fifty (50) percent of the eligible incremental costs for the purchase and installation of the infrastructure under this Agreement.

7.6. Subject to approval by the TCEQ, the PERFORMING PARTY may assign the payments due from the TCEQ directly to the supplier, subcontractor, financing company, or other entity from which the goods or services were procured or financed by the PERFORMING PARTY. The Notice of Assignment section on the Request for Reimbursement (Form 1) must be properly completed and a Texas Application for Payee Identification Number (Form AP-152) must be completed and submitted with the Request for Reimbursement forms. Under this option, the PERFORMING PARTY must have incurred an obligation to pay Grant Equipment and/or goods and services costs. Sufficient supporting documentation must be submitted, as outlined in the form instructions, to document that the goods or services were received and that the payment amount is owed to the entity designated to receive the payment from the state.

7.7. For new purchase or lease category activities where a baseline cost applies, and unless otherwise approved by TCEQ, the costs incurred or otherwise obligated under a lease or financing agreement must exceed the value of the baseline costs before the TCEQ will reimburse eligible incremental costs. In addition, if financial incentives are received by the PERFORMING PARTY that directly offset the activity costs being reported, including tax credits or deductions, other grants, or any other public financial assistance, reimbursement of eligible incremental costs will be made only after the costs incurred or obligated under a lease or financing agreement exceed both the value of any baseline costs that apply and the value of the financial assistance received.

7.8. A final Request for Reimbursement form, indicating in the appropriate box that it is the final request, shall be submitted to the TCEQ by no later than forty-five (45) days after the termination date of this Agreement. The TCEQ, in its sole discretion, may accept and pay a reimbursement request submitted after this deadline.

7.9. All Request for Reimbursement forms shall contain sufficient identification of and information concerning the costs incurred or obligated under a lease or financing agreement and paid so as to enable the TCEQ to ascertain the eligibility of a particular cost and to enable subsequent audit thereof. Supporting documentation materials, as directed by the TCEQ in the instructions accompanying the forms, shall be attached to the report forms to clearly show that the cost was incurred and, except where the payment is assigned to another entity, paid.

Purchase/Payment Documents

7.10. In accordance with the terms of the Contract, for any purchase, lease, lease-purchase, and deferred payment purchase, the PERFORMING PARTY must submit any supporting documentation required or requested by TCEQ. In order to receive payment for each Request for Reimbursement, the PERFORMING PARTY is specifically required to submit the following supporting documents:

7.10.1. canceled checks or wire transfers;

7.10.2. written purchase and lease agreements;

7.10.3. Bills of Sale or Receipts for Delivery;

7.10.4. for deferred payment purchases and lease agreements, statements of account status showing the account in good standing and the equipment is in possession of the PERFORMING PARTY; and

7.10.5. other documentation requested by TCEQ in order to support the assertions in the request for reimbursement.

7.11. The PERFORMING PARTY must submit the Uniform Commercial Code (UCC) Financing Statement (Form UCC1) filing, if requested by the TCEQ. (The UCC allows a creditor to notify other creditors about a debtor's assets used as collateral for a secured transaction by filing a public notice (financing statement) with a particular filing office.).

7.12. The TCEQ may waive the requirement for submission of any supporting documents that are not applicable to the PERFORMING PARTY.

7.13. If the requests for reimbursement do not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and incurred costs, the TCEQ may reject the request, until such time as the deficiencies have been corrected. Satisfactory accomplishment of a task is within the judgment of the TCEQ; however, such judgment must be reasonable.

7.14. The TCEQ is not obligated to make payment until the request for reimbursement is approved by the TCEQ. Further, the TCEQ reserves the right to suspend or withhold all or part of a payment or all payments as authorized by the Contract Documents.

ARTICLE 8. PROJECT STATUS AND COMPLETION

If requested by the TCEQ, the PERFORMING PARTY shall provide information on the status and completion of grant activities. The PERFORMING PARTY shall provide such information on the form or in a format requested by the TCEQ, and within a reasonable time frame as may be requested by the TCEQ.

ARTICLE 9. GRANT EQUIPMENT

9.1. The Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under this Agreement, are listed in the Approved Application. For on-road vehicle replacement or repower projects only, the PERFORMING PARTY may substitute a different replacement vehicle and/or engine for the unit listed in the Approved Application, provided that the substitute unit meets all eligibility and other requirements, is of the same weight category, has the same or better certified NO_x emissions rate, and will result in the same or better NO_x emissions reductions as the unit listed. For other project types and categories, the PERFORMING PARTY may not substitute

different Grant Equipment for the units listed in the Approved Application without approval from the TCEQ. This provision includes conformance with the NO_x emissions of the engines as listed in the Approved Application. The PERFORMING PARTY understands that , in some cases, engines of the same make, model, and model year may be certified to different NO_x emissions standards, and that the TCEQ's approval of the application does not constitute final verification that an engine meets the required certified NO_x emissions rate.

9.2. The TCEQ may accept and approve an application for funding that does not include all of the information asked for in the application forms, including identifying information for equipment, vehicles, or engines. The TCEQ may withhold issuance of a Notice to Proceed, pending the PERFORMING PARTY providing additional information needed to make the Approved Application complete. Additional identifying information provided by the PERFORMING PARTY and accepted by the TCEQ will apply to the PERFORMING PARTY's compliance with the provisions of Section 9.1. of this Article.

New Purchase or Lease Category

9.3. The engine installed on Grant Equipment purchased or leased under the New Purchase or Lease category must be certified to a NO_x emissions level that is at least 25 percent below the federal emissions standard for that category of engine, at the time that the Grant Equipment is purchased or leased and delivered to the PERFORMING PARTY. The PERFORMING PARTY understands that the federal emissions standards change on specific dates and that delivery of the Grant Equipment after the date of the change may result in the engine not meeting this requirement and being ineligible for reimbursement from the TCEQ.

Trade-In of Equipment or Engines

9.4. *This Article is reserved for future use.*

Activity Life

9.5. The PERFORMING PARTY agrees to keep and use the Grant Equipment purchased or leased under this Agreement for the Activity Life as set forth in the Approved Application, regardless of the financing or leasing arrangements used for the purchase or lease of the Grant Equipment, and subject to the more specific provisions contained in the General Conditions, Article 15, of this Agreement.

ARTICLE 10. USE OF VEHICLES, EQUIPMENT, AND ENGINES BEING REPLACED

10.1. Except where an alternative disposition plan is authorized for a locomotive project, the PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced by destroying or otherwise rendering them permanently inoperable by drilling a hole through the engine block and cutting the frame rails or other structural components of the vehicle or equipment.

If an alternative disposition plan is approved for a locomotive project, the details of that plan will be included in this Agreement and the PERFORMING PARTY must commit to implementing the provisions as set forth in this Agreement. If the provisions of the alternative disposition plan are not met, the PERFORMING PARTY must then either destroy the replaced locomotive, as provided for above, or the PERFORMING PARTY may be required to return grant funds.

10.1.1. Destruction of the engine may include sending the engine to a remanufacture facility operated or authorized by the original engine manufacturer. The remanufacture of the engine must include removing all parts and using the old block to build a remanufactured engine with a new serial number.

10.1.2. Unless otherwise approved and accepted by the TCEQ, the vehicle or piece of equipment being replaced under a replacement activity must be in operating condition at the time the application is signed and submitted to the TCEQ by the PERFORMING PARTY.

10.2. The vehicles, equipment, and/or engines being replaced shall be destroyed within 90 days of the reimbursement payment being issued by the TCEQ for the replacement expenses, provided, however, that for a locomotive project, the Executive Director may allow permanent removal from the State of Texas in specific grants where the PERFORMING PARTY has provided sufficient assurances that the replaced locomotive will not be returned to the State of Texas. The TCEQ may grant an extension to this deadline without a change to this Agreement.

10.3. The PERFORMING PARTY shall submit on forms to be made available by the TCEQ information to verify the final disposition of the vehicles, equipment, and engines replaced under this Agreement. The final disposition information forms shall be submitted with the request for reimbursement or within 30 days after completion of the disposition, whichever occurs later. The PERFORMING PARTY must submit photographs of the vehicles, equipment and/or engines being destroyed, both before and after the vehicles, equipment and/or engines are destroyed or rendered inoperable. Disposition will not be deemed to have occurred until TCEQ has approved the forms and supplemental documentation submitted by the PERFORMING PARTY. Such approval is at the sole discretion of TCEQ. The PERFORMING PARTY shall provide TCEQ with any clarification and additional documentation as requested by TCEQ to approve disposition.

10.4. Failure of the PERFORMING PARTY to comply with the provisions of Sections 10.1, 10.2, or 10.3 of this Article will constitute a material failure to conform to the requirements of this Agreement. The remedies available under Article 19, General Conditions of this Agreement, may be invoked by the TCEQ for noncompliance with the provisions of this Article.

Credit For Replaced Vehicles Or Equipment

10.5. In determining the expenses eligible for reimbursement under this Agreement, the cost of replacement or repower activities shall be reduced by the value of any credit or other financial compensation received by the PERFORMING PARTY for the sale or trade-in of the destroyed vehicles, equipment, or engines being replaced, including, the parts from those vehicles, equipment, or engines, for the sale of the scrapped vehicles, equipment, engines being replaced, trade-in of engines for remanufacture, or insurance proceeds.

10.6. For on-road vehicle and non-road equipment replacement activities, the TCEQ may use a default scrappage value of \$1,000 in lieu of the actual value and in lieu of the PERFORMING PARTY reporting the value to the TCEQ.

10.6.1. If TCEQ does not use the above default scrappage value, the **actual** scrappage value or other value received for the old vehicle, equipment, or engine is considered a cost of performing the Grant Activities and as such must satisfy the cost guidelines of Article 3 of the General Conditions of this Agreement. The value received for the vehicle or equipment being replaced must be the result of arms-length bargaining with the entity disposing of the replaced vehicle or equipment and must reflect actual market value.

10.7. If the default value of Section 10.6. of this Article is **not** used by the TCEQ, the PERFORMING PARTY must list on the financial reporting forms any financial remuneration or other items or services of value received in exchange for the replaced vehicle or equipment including, but not limited to, cash, goods, services (including the services provided by a consultant to assist in preparing and/or submitting a grant application), gifts, intangibles, discounts, insurance proceeds, or any other items of value.

Purchase Agreements And Subcontracts

10.8. If requested by the TCEQ, the PERFORMING PARTY must provide the TCEQ with copies of purchase agreements or subcontracts for cost items to be reimbursed under this Agreement, prior to the PERFORMING PARTY entering into a final purchase agreement and/or subcontract.

ARTICLE 11. INSTALLATION AND USE OF IDENTIFYING MARK, TRACKING DEVICE

Identifying Mark

11.1. Upon request by TCEQ, PERFORMING PARTY shall install, or permit TCEQ or its contractor to install, a prominently placed identifying mark on the equipment, identifying it as TERP-funded equipment and containing such other information as TCEQ shall specify. The PERFORMING PARTY may remove the mark upon the expiration of the required use period.

Tracking Device - Voluntary

11.2. PERFORMING PARTY may voluntarily install a device for tracking the location and usage of the TERP-funded equipment during the Activity Life and maintaining monitoring services. GPS equipment and installation may be considered an allowable cost if the equipment and monitoring services are obtained from the designated TERP GPS Monitoring Service (TGMS) Contractor. Monitoring service charges are not reimbursable expenses.

11.3. Installation of a GPS tracking unit from the designated TGMS Contractor and maintenance of monitoring service through the designated TGMS Contractor, regardless of whether the purchase of the GPS tracking unit was reimbursed under the grant, shall waive the requirement of submission of written Monitoring Reports required under General Conditions, Article 13, of this Agreement.

11.4. Waiver of the written Monitoring Reports shall continue for such time as the PERFORMING PARTY maintains the GPS monitoring service. Termination of the GPS monitoring for any reason shall reinstate requirements for submission of written Monitoring Reports until such time as the GPS monitoring service is restored.

11.5. PERFORMING PARTY shall not tamper with or disable the GPS equipment or allow others to tamper with or disable the GPS equipment. Evidence of tampering with or disabling the GPS equipment shall reinstate requirements for submission of written Monitoring Reports.

11.6. The PERFORMING PARTY shall review data collected by the GPS monitoring to ensure its accuracy.

11.7. On a semi-annual basis, PERFORMING PARTY shall submit to TCEQ a certification of the accuracy of collected GPS data for each Grant Activity, using a form to be provided by TCEQ. Failure to submit this certification may be considered PERFORMING PARTY's confirmation of the accuracy of the GPS data. If PERFORMING PARTY detects data that it does not consider accurate, PERFORMING PARTY shall immediately notify TCEQ and the TGMS Contractor of the discrepancies.

Tracking Device - Mandatory

11.8. Under circumstances where TCEQ determines, at its sole discretion, that the PERFORMING PARTY is not meeting its commitments under this Agreement, and that the emissions reductions calculated in the Approved Application will not be met, TCEQ may require the PERFORMING PARTY to install, or permit TCEQ or its contractor to install, a device for tracking the location and usage of the TERP-funded equipment.

11.9. If PERFORMING PARTY is required to install a tracking device under Section 11.8 above, the PERFORMING PARTY and TCEQ shall execute a separate GPS Monitoring Agreement that will specifically define the terms of usage of the tracking device and associated monitoring services.

11.10. The PERFORMING PARTY agrees that failure to install a tracking device upon TCEQ request will be considered evidence that the expected emissions reductions have not been achieved. In such instances, the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of the reimbursement grant funds for the TERP equipment or vehicle(s), based on the failure to achieve expected emissions reductions within the Eligible Counties under General Conditions, Article 15.2, of this Agreement.

GPS Data

11.11. TCEQ recognizes that PERFORMING PARTY may consider the information recorded and maintained by the tracking device to contain confidential trade secret information. Therefore, TCEQ shall not release any of the information submitted to TCEQ by the tracking device to any party outside TCEQ, except as required under the Public Information Act or other applicable law. TCEQ shall inform PERFORMING PARTY of any Public Information Act request for the information and refer the request to the Office of the Attorney General for a ruling on whether the information contains protected trade secret information. TCEQ is not responsible for making arguments regarding trade secret status to the Attorney General, but PERFORMING PARTY may do so.

ARTICLE 12. TERMINATION

12.1. Termination of this Agreement under any circumstances shall not constitute a waiver of any rights or remedies that TCEQ may exercise under this Agreement or otherwise as provided by law.

12.2. This Agreement may be terminated in whole or in part by the TCEQ for cause, including a material failure to comply with the requirements of the Contract Documents. Unless advance notice of intent to terminate will place funds of the state at increased risk, the TCEQ will provide written notice (delivered by certified mail, return receipt requested) of intent to terminate. The PERFORMING PARTY shall have twenty (20) calendar days from the date such notice is sent to cure performance deficiencies.

12.3. This Agreement may be terminated in whole or part by the TCEQ if any delay or failure of performance of the Grant Activities by either PERFORMING PARTY or the TCEQ is caused by a *force majeure* event, as determined by the TCEQ in its sole discretion.

12.4. This Agreement may be terminated in whole or in part by the TCEQ for its convenience. Circumstances in which this may occur include without limitation the Texas Legislature's withdrawal of the appropriation for this project or the depletion of the Texas Emissions Reduction Plan Fund, which results in the unavailability of funds to complete this project. To the extent feasible, in the sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

12.5. If after termination for the PERFORMING PARTY's material failure to comply with the requirements of the Contract Documents, it is determined that the PERFORMING PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the TCEQ.

12.6. The PERFORMING PARTY acknowledges that certain requirements of this Agreement shall survive an event of termination. The PERFORMING PARTY agrees to performance of grant activities in accordance with the Contract Documents beyond the termination of this Agreement and through the end of the Activity Life of each Activity included in the Approved Application for which reimbursement has been requested. TCEQ reserves the right to assert any remedies available by law and under this contract for PERFORMING PARTY's performance of the grant activities for the length of the Activity Life of all grant activities.

12.7. In accordance with this Agreement, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under this Agreement. Therefore, PERFORMING PARTY waives any claim for damages arising from or resulting from TCEQ's termination of this Agreement for any reason.

12.8. If, during the performance of the Grant Activities, the PERFORMING PARTY chooses to not complete the Grant Activities and withdraw from the obligations under this Agreement, the PERFORMING PARTY may terminate this Agreement by providing ten (10) days written notice to the TCEQ and returning any reimbursements already received.

ARTICLE 13. LONG-TERM MONITORING AND REPORTING

13.1. As a condition of receiving grant funds, the PERFORMING PARTY agrees to monitor the use of Grant Equipment, including the use of Qualifying Fuel, for the Activity Life.

13.2. As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed Monitoring Reports to the TCEQ, on forms provided by TCEQ, for the Project Life. The Monitoring Reports shall have attached properly completed individual reports on the use of Grant Equipment, including Qualifying Fuel, for each activity, for the life of that activity (Activity Life). The PERFORMING PARTY will submit the required reports on the date specified by the TCEQ in the reporting instructions.

13.3. The PERFORMING PARTY's timely submission of accurate Monitoring Reports is material to performance under this contract. Failure to submit the required Monitoring Reports or submission of Monitoring Reports containing false or inaccurate information shall constitute a material breach of this Agreement and may be considered evidence that emissions reductions have not been achieved.

13.4. If an alternative disposition plan is approved for a locomotive project, the PERFORMING PARTY must monitor and track the location of the replaced locomotive to ensure that it is not returned to the State of Texas. The PERFORMING PARTY must also provide the TCEQ with the monitoring information, upon request. The PERFORMING PARTY must notify the TCEQ immediately if the use of the locomotive, including location of use, deviates from the approved alternative disposition plan.

ARTICLE 14. INDEMNIFICATION

To the extent permitted by law, the PERFORMING PARTY agrees to indemnify and hold harmless the State of Texas and the TCEQ, including its employees and officers, against and from any and all liability, loss, or damage arising out of actions of the PERFORMING PARTY in the performance of this Agreement.

ARTICLE 15. ACHIEVING EMISSIONS REDUCTIONS

15.1. The provisions of Section 386.055, Texas Health and Safety Code, apply to the emissions reductions generated over the Activity Life of each activity funded under this Agreement. The PERFORMING PARTY agrees that the emissions reductions generated by each activity over the Activity Life are transferred to the state implementation plan, or to the PERFORMING PARTY as provided under Section 386.056, Texas Health and Safety Code, and those reductions are permanently retired.

15.2. Except for activities involving non-road equipment used for natural gas recovery purposes, the PERFORMING PARTY agrees that if, during the Activity Life, the annual and total NO_x emissions reductions achieved within the areas specified in the Approved Application by the Grant Activities do not meet the amounts calculated by the TCEQ and listed in the Approved Application Summary of this Agreement, the TCEQ will be entitled to a return of the reimbursement funds, based on the failure to achieve expected emissions reductions.

15.2.1. The determination of whether the NO_x emissions reduction requirements have been met will be primarily based on the Annual Usage, the percentage of Annual Usage, and the Total Usage of the Grant Equipment during the Activity Life (including qualifying fuel usage) within the eligible counties marked in the Approved Application or, for marine vessels, within the Texas Intracoastal Waterway and bays adjacent to the eligible counties marked in the Approved Application. The usage factor will be either miles, hours of operation, or fuel use, according to the usage commitment contained within the Approved Application.

15.3. For activities involving non-road equipment used for natural gas recovery purposes, the PERFORMING PARTY agrees that if, by the end of the Activity Life, the total NO_x emissions reductions achieved within the areas specified in the Approved Application by the Grant Activities do not meet the amounts calculated by the TCEQ and listed in the Approved Application Summary of this Agreement, the TCEQ will be entitled to a return of the reimbursement funds, based on the failure to achieve expected emissions reductions.

15.3.1. The determination of whether the NO_x emissions reduction requirements have been met will be primarily based on the Total Usage of the Grant Equipment during the Activity Life within the eligible counties marked in the Approved Application. The usage factor will be hours of operation according to the usage commitment contained within the Approved Application.

15.4. Effective transfer of emissions reductions generated under this Agreement to the state implementation plan requires that TCEQ remain in contractual privity with the entity operating the grant equipment. TCEQ must retain the ability to enforce the Annual Usage commitments contained within the Approved Application until the completion of the last Activity Life of the Grant Activities under this Agreement. Any act by the PERFORMING PARTY that impairs the TCEQ's ability to enforce the Annual Usage commitments contained within the Approved Application, including sale of the Grant Equipment, transfer of the Grant Equipment, loss of the Grant Equipment, sale of the PERFORMING PARTY's business interests, or liquidation of the PERFORMING PARTY's assets (including the Grant Equipment), shall constitute a material breach of this Agreement and shall be considered evidence that the expected emissions reductions have not been achieved.

15.4.1. The decision by TCEQ on whether to require return of grant funds may include consideration of whether the Grant Equipment will continue to be used within the eligible counties, or in the case of marine equipment, within the Texas Intracoastal Waterway and bays adjacent to the eligible counties. If TCEQ, in its sole discretion, allows the assignment of this Agreement, the PERFORMING PARTY must obtain a binding agreement from a new owner of the Grant Equipment to continue to use the equipment subject to the terms of this Agreement related to use within the eligible counties for the percentage of use and total annual usage originally agreed to by the PERFORMING PARTY and to monitor and report on the annual usage.

15.5. TCEQ, at its sole discretion, may allow for the return of a pro-rata share of the reimbursement funds reflecting a partial failure to achieve the total NO_x emissions reductions calculated by the TCEQ

and listed in the Approved Application Summary of this Agreement. This determination shall depend on factors including, but not limited to, use of the grant equipment in a manner that maintained overall TERP eligibility, full completion of reimbursement and equipment disposition requirements, the PERFORMING PARTY's good-faith efforts to perform the grant activities during the Activity Life, and the PERFORMING PARTY's compliance with notification requirements of this Agreement (i.e., notification before sale of equipment).

15.6. The PERFORMING PARTY agrees that failure to adequately monitor the annual usage of Grant Equipment, failure to submit properly completed Monitoring Reports during the Project Life, and/or submitting Monitoring Reports with false, incorrect, or incomplete information constitutes a material breach of this Agreement. This shall be considered evidence that the expected emissions reductions have not been achieved and the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of the reimbursement grant funds, based on the failure to achieve expected emissions reductions within the Eligible Counties under General Conditions, Article 15.2, of this Agreement.

15.7. The PERFORMING PARTY agrees that failure to properly destroy or dispose of a vehicle, piece of equipment, marine vessel, locomotive, or engine replaced under this Agreement, in accordance with the destruction requirements or the provisions of an alternative disposition plan approved by the TCEQ will be considered evidence that the expected emissions reductions have not been achieved and shall require the return of the reimbursement grant funds, based on the failure to achieve expected emissions reductions within the Eligible Counties under General Conditions, Article 15.2, of this Agreement. This section shall also apply to a failure to provide properly completed documentation of final disposition of equipment as required by this Agreement.

15.8. For on-road vehicle activities, in order to maintain eligibility for the TERP program the PERFORMING PARTY agrees to operate the Grant Equipment over the Activity Life no less than 75 percent of the annual usage within the eligible counties and on the designated highways and roadways marked in the Approved Application and approved by the TCEQ. For other activities (excluding activities mentioned in 15.8.2), in order to maintain eligibility for the TERP program, the PERFORMING PARTY agrees to operate the Grant Equipment over the Activity Life no less than 75 percent of the annual usage within the eligible counties marked in the Approved Application and approved by the TCEQ. The PERFORMING PARTY agrees that failure to maintain eligibility constitutes a material breach of this Agreement and may be considered evidence that the expected emissions reductions have not been achieved.

15.8.1 For on-road vehicle activities, mileage occurring on the designated highways and roadways outside of the eligible counties shall only be credited towards the determination of overall eligibility of that grant activity. For that activity, only mileage occurring within the eligible counties designated in the Approved Application will be counted towards calculation of emissions reductions generated by that activity.

15.8.2 For non-road equipment used for natural gas recovery purposes, the eligibility determination will depend upon the overall fulfillment of the emissions reduction commitment and cost-effective requirements listed in the Approved Application over the Activity Life of the project.

15.9. The TCEQ may authorize changes to the designated eligible counties of use. Annual usage shall be determined according to the usage factor listed in the Approved Application and used to calculate the emissions reductions for the grant including: annual miles of operation for on-road vehicles, except in some cases where annual fuel may be used; annual hours of operation for non-road equipment, stationary equipment, on-vehicle electrification and idle reduction infrastructure, marine vessels and engines; and annual fuel use for locomotives, during the Activity Life of the Grant Activity. The usage factor for on-site infrastructure will be the factor normally used for the type of vehicle or equipment using the infrastructure.

Liquidated Damages

15.10. The parties agree that the actual damages that might be sustained by TCEQ by reason of the breach by the PERFORMING PARTY of its obligations under this Agreement are uncertain and would be difficult of ascertainment. Therefore, the parties agree that the sum consisting of the cost per ton of NOx emissions reduction listed in the Approved Application multiplied by the amount in tons of NOx reduced that is determined by TCEQ, in its sole discretion, to not have been achieved due to the PERFORMING PARTY's breach would be reasonable compensation for such breach. The PERFORMING PARTY hereby promises to pay, and TCEQ hereby agrees to accept, such sum as liquidated damages, and not as a penalty, in the event of such breach.

ARTICLE 16. DISPOSITION OF EQUIPMENT OR REAL PROPERTY, DEMONSTRATION PROJECTS

{This Article is not applicable to this project. The Article number is retained for numbering continuity.}

ARTICLE 17. RELEASE OF CLAIMS

The final Request for Reimbursement and Financial Status Report shall include a signed and executed Release of Claims, releasing all claims for payment of any funds due and payable by the TCEQ, upon TCEQ's payment of the final Request for Reimbursement.

ARTICLE 18. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Grant Activities or to modify the General Conditions thereof in one or more of the following ways: a formal Written Amendment or a Minor Change.

ARTICLE 19. REMEDIES AVAILABLE TO THE TCEQ

19.1. In accordance with Chapter 2261 Texas Government Code, the following Schedule of Remedies applies in the event of any breach of the requirements of this Agreement; including the substandard performance of Grant Activities or other failure, material or otherwise, to conform to the requirements of the Agreement or applicable law:

19.1.1. Reject substandard performance and request corrections without charge to the TCEQ;

19.1.2. Issue notice of substandard performance or other non-conforming act or omission;

19.1.3. Request and receive return of any over payments or inappropriate payments;

19.1.4. Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;

19.1.5. Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;

19.1.6. Reject reimbursement request and withhold and retain all or partial payments for recovery of administrative costs or to be returned to the TERP fund as authorized by state law;

19.1.7. Terminate the contract, demand and receive: return of all equipment purchased with contract funds, return of all unexpended funds, and repayment of improperly expended funds; or

19.1.8. Require payment of liquidated damages.

Cumulative Remedies

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

ARTICLE 20. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

20.1. In accordance with Texas Government Code Chapter 2261, the TCEQ is required to monitor the PERFORMING PARTY's performance under this Agreement. The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Agreement.

20.1.1. **Quality and Accuracy.** Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Agreement.

20.1.2. **Timeliness.** Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.

20.1.3. **Reports and Administrative and Financial Operations.** Standard: The PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Agreement, including record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.

20.1.4. **Communication.** Standard: The PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ; and including the PERFORMING PARTY's demonstrated relationship with subcontractors.

20.1.5. **Other.** Standard: Other factors unique to the type of project, as determined by the TCEQ.

20.2. The TCEQ will monitor the PERFORMING PARTY's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.

20.2.1. **Exceeds Expectations.** The PERFORMING PARTY fully complied with all the standards on a consistent basis.

20.2.2. **Satisfactory Performance.** The PERFORMING PARTY's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.

20.2.3. **Marginal Performance.** The PERFORMING PARTY's performance was acceptable, although a significant number of deficiencies had to be corrected before the contract requirements could be considered met.

20.2.4. **Unsatisfactory Performance.** The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

Contractor Evaluation

20.3. The TCEQ will prepare a written evaluation of the performance of the PERFORMING PARTY upon completion of all reimbursements under this Agreement and upon the completion of the Project Life, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation will be provided to the PERFORMING PARTY and a copy retained in the TCEQ's contract files. The content of the evaluation shall be wholly within the sole discretion of the TCEQ. The PERFORMING PARTY may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against TCEQ for the evaluation.

20.4 The performance rating on the contractor evaluations may be considered by the TCEQ in evaluating an application from the PERFORMING PARTY for additional funding under this program. The PERFORMING PARTY understands that a rating of marginal or unsatisfactory performance may have a negative impact on decisions regarding funding for additional projects applied for by the PERFORMING PARTY.

ARTICLE 21. MISCELLANEOUS

Computation of Times

21.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a federal holiday, such day will be omitted from the computation.

21.2. A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

Notice of Claim

21.3. Should the TCEQ or the PERFORMING PARTY suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose or sovereign immunity.

Survival of Obligations

21.4. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Grant Activities and termination or completion of the Agreement.

21.5. Notwithstanding any provisions relating to assignment in the Uniform Commercial Code, no delegation by a party hereto of any duties or obligations nor assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to an extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This Agreement is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of the TCEQ and any attempted transfer without such consent is void.

21.6. Subject to the provisions of Article 12, General Conditions, the TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party hereto, successors, assigns and representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

21.7. The parties hereby agree that this Agreement does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. No TCEQ personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of TCEQ, goods or services which are not required under the Contract Documents or any conforming amendment. The parties further agree that all claims, suits or obligations arising under or related to this Agreement are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

21.8. The PERFORMING PARTY acknowledges and agrees that this Agreement has been executed, and will be administered in Travis County, Texas. The PERFORMING PARTY also acknowledges and agrees that any permissible cause of action involving this Agreement will arise solely in Travis County. If a legal action related to this claim is permissible and there are two (2) or more counties of proper venue under the rules of mandatory, general, or permissive venue, and one such county is Travis County, the PERFORMING PARTY hereby agrees to venue in Travis County. This provision does not waive the TCEQ's sovereign immunity.

21.9. Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and PERFORMING PARTY, who agree that Contract Documents are reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Bankruptcy

21.10 If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to TCEQ Bankruptcy Program. The PERFORMING PARTY shall place TCEQ on distribution list for bankruptcy court documents. The PERFORMING PARTY's notice to the bankruptcy program must include the appropriate contract number(s).

— **End of General Conditions** —

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**SPECIAL CONDITIONS
for
Emissions Reduction Incentive Grant**

ARTICLE 1. SPECIAL CONDITIONS

The PERFORMING PARTY agrees to these Special Conditions.

{This Article is not applicable to this project. The Article number is retained for numbering continuity.}

— End of Special Conditions —

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APPROVED APPLICATION SUMMARY
for
Emissions Reduction Incentive Grant

ARTICLE 1. APPROVED APPLICATION

The attached Approved Application contains information on the activities to be conducted and the expenses that will be reimbursed under this Agreement. The information and data provided in the original application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Approved Application (a Contract Document) and, by signing this Agreement, ratifies, adopts, and agrees to all such alterations.

ARTICLE 2. ACTIVITY NUMBERS

2.1. The Activities included in the Approved Application Number 2010-1-«applast» are assigned the following Activity Number(s):

'Activity Number'	Description
001	Replace 1 On-Road Delivery Truck, VIN: 1FDNK64N0FVA66466
002	Replace 1 On-Road Delivery Truck, VIN: 1FDNK64N8GVA13225
003	Replace 1 On-Road Delivery Truck, VIN: 1FDNT64P3HVA13522
004	Replace 1 On-Road Delivery Truck, VIN: 1FDNT64PXHVA38062
005	Replace 1 On-Road Delivery Truck, VIN: 1FDNT64P2HVA38038
006	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P5KVA05995
007	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74PXKVA05992
008	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P2KVA05985
009	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P3KVA05994
010	Replace 1 On-Road Delivery Truck, VIN: 1FDNK74P5KVA38292
011	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P1KVA05993
012	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P0KVA05984
013	Replace 1 On-Road Delivery Truck, VIN: 1FDNK64P0MVA06136
014	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P5KVA06001
015	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P6KVA56390
016	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P7KVA56396
017	Replace 1 On-Road Delivery Truck, VIN:

	1FDPK74P3KVA51051
018	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P7KVA51053
019	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P1KVA51050
020	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74PXLVA12345
021	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P1LVA12363
022	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P0MVA02019
023	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P0MVA11402
024	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P7MVA08349
025	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P9MVA06179
026	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P0MVA08211
027	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P6MVA11405
028	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P0MVA13831
029	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P4MVA11404
030	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P0MVA07544
031	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P9MVA13830
032	Replace 1 On-Road Delivery Truck, VIN: 1FDNK64P9MVA06135
033	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P8KVA56391
034	Replace 1 On-Road Delivery Truck, VIN: 3FENF80C6XMA00693
035	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P3JVA37665
036	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P8KVA51045
037	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P0KVA56398
038	Replace 1 On-Road Delivery Truck, VIN: 3FENF80C4XMA00692
039	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74P9KVA05983
040	Replace 1 On-Road Delivery Truck, VIN: 1FDPK74PXKVA05975
041	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84P5JVA40802
042	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84N2GVA13371
043	Replace 1 On-Road Delivery Truck, VIN:

	1FDPT84P9HVA20821
044	Replace 1 On-Road Delivery Truck, VIN: 1FDPT84P4HVA47263
045	Replace 1 On-Road Delivery Truck, VIN: 1FDPT84P2HVA47276
046	Replace 1 On-Road Delivery Truck, VIN: 1FDPT84P0HVA47275
047	Replace 1 On-Road Delivery Truck, VIN: 1FDPT84P9HVA47260
048	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84P3JVA40801
049	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84P1KVA08284
050	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84P7KVA52354
051	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84P6KVA56976
052	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84P1KVA56979
053	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84P7KVA59773
054	Replace 1 On-Road Delivery Truck, VIN: 1FDPK84P3KVA59771

2.2. The PERFORMING PARTY shall use the assigned Activity numbers when tracking and reporting to the TCEQ on each Activity.

ARTICLE 3. EMISSIONS REDUCTIONS AND COST-EFFECTIVENESS

3.1. For purposes of this Agreement, the emissions reduction and cost per ton projections provided in this Article shall apply.

3.2. The TCEQ has calculated the projected cost per ton of the Project included in the Approved Application as:

«per ton»	per ton of NO _x reduced
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3.3. The TCEQ has calculated the projected NO_x emissions reductions and cost per ton for each Activity included in the Approved Application as follows:

'Activity Number'	'Total Tons of NO _x Reduced'	'Annual Tons'	'Cost Per Ton'
001	1.8928	0.2704	\$6,743.77
002	2.0146	0.2878	\$6,392.48
003	2.0293	0.2899	\$6,402.19
004	2.0293	0.2899	\$6,402.19
005	2.0293	0.2899	\$6,402.19
006	2.0447	0.2921	\$6,965.59
007	2.0447	0.2921	\$6,965.59

008	2.0447	0.2921	\$6,965.59
009	2.0447	0.2921	\$6,965.59
010	2.0447	0.2921	\$6,965.59
011	2.0447	0.2921	\$6,965.59
012	2.0447	0.2921	\$6,965.59
013	0.7343	0.1049	\$6,612.09
014	2.0447	0.2921	\$6,965.59
015	2.0447	0.2921	\$6,965.59
016	2.0447	0.2921	\$6,965.59
017	2.0447	0.2921	\$6,965.59
018	2.0447	0.2921	\$6,965.59
019	2.0447	0.2921	\$6,965.59
020	0.9611	0.1373	\$6,765.32
021	0.9611	0.1373	\$6,765.32
022	0.7343	0.1049	\$6,612.09
023	0.7343	0.1049	\$6,612.09
024	0.7343	0.1049	\$6,612.09
025	0.7343	0.1049	\$6,612.09
026	0.7343	0.1049	\$6,612.09
027	0.7343	0.1049	\$6,612.09
028	0.7343	0.1049	\$6,612.09
029	0.7343	0.1049	\$6,612.09
030	0.7343	0.1049	\$6,612.09
031	0.7343	0.1049	\$6,612.09
032	0.7343	0.1049	\$6,612.09
033	2.0223	0.2889	\$7,056.51
034	0.5677	0.0811	\$5,775.41
035	2.0069	0.2867	\$7,054.11
036	2.0223	0.2889	\$7,056.51
037	2.0223	0.2889	\$7,056.51
038	0.5733	0.0819	\$5,719.00
039	2.0223	0.2889	\$7,056.51
040	2.0223	0.2889	\$7,056.51
041	2.2344	0.3192	\$6,793.73
042	1.9922	0.2846	\$7,562.60
043	2.2197	0.3171	\$6,838.72
044	2.0069	0.2867	\$7,563.85
045	2.0069	0.2867	\$7,563.85
046	2.0069	0.2867	\$7,563.85
047	2.0069	0.2867	\$7,563.85
048	2.2344	0.3192	\$6,793.73
049	2.0223	0.2889	\$7,056.51
050	2.2344	0.3192	\$6,844.61
051	2.2344	0.3192	\$6,844.61
052	2.2344	0.3192	\$6,844.61
053	2.2344	0.3192	\$6,844.61
054	2.2344	0.3192	\$6,844.50

3.4. The TCEQ has calculated the projected NO_x emissions reductions for the Project included in the Approved Application as:

«totaltons»	Total tons of NO _x
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«Annualtons»	annual tons of NO _x reduced per year
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— **End of Approved Application Summary** —

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APPROVED APPLICATION