Texas Commission on Environmental Quality
Grant Agreement for

EMISSIONS REDUCTION INCENTIVE GRANTS PROGRAM

CONTRACT SIGNATURE PAGE

Contract Name	**Emissions Reduction Incentive Grants Program**
Contract No.	
PERFORMING PARTY Name	
Total Contract Amount Not To Exceed	

Effective Date	Expiration Date
The Effective Date of this Contract is the date on which the Contract is signed by the last of the parties to sign.	August 31, 20XX

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas and the named PERFORMING PARTY enter this Agreement (Contract) for the purpose of providing financial assistance for emissions reduction projects as authorized by Texas Health and Safety Code Chapter 386. The Parties agree: the PERFORMING PARTY will conduct the Grant Activities required by the Contract; and the TCEQ will reimburse authorized Allowable Costs subject to the Texas Uniform Grant Management Standards and the Contract.

	Texas Commission on Environmental Quality (TCEQ)	**(PERFORMING PARTY)**
By (Authorized Signature):		
Printed name:		
Title:		
Date of Signature:		

Contact Names, Addresses

	Texas Commission on Environmental Quality (TCEQ)		**(PERFORMING PARTY)**	
Grant Manager Name:	Joe Walton			
Contact Numbers:	512	239-4143		
Contact and Address for Notices:	TCEQ P.O. Box 13087 (MC-204) Austin, Texas 78711-3087			

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GENERAL CONDITIONS
for
EMISSIONS REDUCTION INCENTIVE GRANTS PROGRAM (ERIG)

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) or the *Guidelines for Emissions Reduction Incentive Grants (RG-388)*. The following terms have the meanings indicated.

1.1 Activity Life – the period established by the TCEQ and designated in the Scope of Work 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, submission by the PERFORMING PARTY and acceptance by TCEQ of the final disposition verification forms if required, and confirmation of initiation of TERP GPS Monitoring Service (TGMS) service 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 Annual Usage - the use factor designated by the TCEQ in the Scope of Work based on 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.

1.3 Application - the application for an ERIG grant submitted by the PERFORMING PARTY including any amendments or supplemental conditions added to the application. An Application may include one or more Supplemental Forms, which pertain to the individual activities to be conducted under the grant. The Application is used to develop the Scope of Work of this contract. In case of conflict between the Application and Scope of Work, the Scope of Work will take precedence.

1.4 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)*.

1.5 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 by the last of the two parties to sign and deliver.

1.6 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 TCEQ may designate a sub-set of these counties as eligible counties for each grant round. The eligible counties applicable to this contract are listed in the Request for Grant Applications for the ERIG and in the Application.

1.7 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.

1.8 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.

1.9 Grant Activity/Activities - activities the PERFORMING PARTY has agreed to perform under this Contract that are detailed in the Scope of Work.

1.10 Grant Agreement – means the agreement between TCEQ and the PERFORMING PARTY in writing, consisting of the documents listed in Article 12, Contract Documents. The term Grant Agreement shall be used interchangeably as "Agreement", "Contract", or "grant".

1.11 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.

1.12 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 (RG-388)*.

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

1.14 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.

1.15 Monitoring Report – periodic written reports required during the Activity Life of a grant project to verify compliance with the Annual Usage requirements of the Scope of Work.

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1.16 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).

1.17 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.

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

1.19 PERFORMING PARTY – the grant recipient indicated on the signature page of this Agreement, also referred to in this agreement as the "grantee".

1.20 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 either party will be addressed and delivered to the party's Project Representative or his or her designee.

1.21 Repower - replacement of an existing diesel engine with a different engine, according to the criteria of the *Guidelines for the Emissions Reduction Incentive Grants (RG-388)*.

1.22 Scope of Work – the contract document detailing the requirements of the Grant Activities.

1.23 State - means the State of Texas.

1.24 Termination - means a permanent end and cessation of the Agreement because: the period of funds availability has expired without completion of purchases eligible for reimbursement; all requirements of this Agreement are completed within the sole discretion of the TCEQ; or 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 period of funds availability, 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.

1.25 TERP GPS Monitoring Service (TGMS) – equipment and services used to aid TCEQ and the PERFORMING PARTY in recording usage data.

1.26 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 the PERFORMING PARTY in recording usage data.

1.27 TCEQ - the Texas Commission on Environmental Quality.

1.28 Written Amendment - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an addition, deletion, or revision of the Grant Activities, 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)*; (4) 30 Texas Administrative Code Sections 114.620-114.629; (5) Appropriations Act of the 82nd Texas Legislature pertaining to appropriation of funds to TCEQ for grants, etc. and grants by state agencies; (6) Texas Government Code Chapter 2261 (pertaining to cost reimbursement contracts); (7) Local Government Code Chapter 391 and implementation rules of the Governor's Office of Budget, Planning, and Policy (pertaining to costs for entities defined as Councils of Government, etc.); (8) Texas Government Code Section 556.0055 (pertaining to lobbying); (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. 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 detailed in the Scope of Work. Incentive funding is available for activities that will reduce the emissions of oxides of nitrogen (NOx) in designated eligible counties in Texas.

ARTICLE 4. FUNDS

4.1 Amount Limits on Funds. The TCEQ will reimburse the PERFORMING PARTY for the costs of the conforming Grant Activities. The maximum TCEQ reimbursement amount is shown on the Signature Page. Eligibility for reimbursement is subject to issuance by the TCEQ of a Notice to Proceed with the Grant Activities. The Contract does not guarantee a minimum amount of reimbursement.

4.2 Section 386.106, Texas Health and Safety Code, sets limits on the amount of grant awards. To ensure these limits are not exceeded, the TCEQ may reduce reimbursement amounts as necessary.

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4.3 Time Limits on Funds (Period of Funds Availability). Costs to be reimbursed under this Contract must be incurred and paid by May 31, 2015.

4.4 Reimbursement is limited to costs determined by the TCEQ in its sole discretion as eligible.

4.5 The maximum TCEQ reimbursement amount is not a guarantee of payment. The actual amount of reimbursement may be less than the maximum and will be determined by the TCEQ.

ARTICLE 5. CONTRACT PERIOD

5.1 This Contract will commence on the Effective Date of the Contract.

5.2 The Contract Period shall be the period of time from the Effective Date of the Contract through August 31, 2020, or the completion of the Reporting Period as specified in the Scope of Work, whichever is earlier; unless the Contract is otherwise terminated or extended in accordance with its terms.

5.3 Due to the time limitations on availability of the grant funds, the TCEQ's obligation to reimburse the PERFORMING PARTY's allowable costs incurred and paid under this Contract shall expire forty-five (45) days after date indicated in Article 4. If no reimbursement has been requested or paid as of this date, this Contract will terminate without any further obligations to either party.

5.4 This Contract 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 Contract.

ARTICLE 6. NOTICE TO PROCEED

6.1 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.

6.2 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.

6.3 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.

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

6.5 The TCEQ may award a grant that does not include all of the information required for completion of 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 complete the Scope of Work.

ARTICLE 7. ELIGIBLE ACTIVITIES

7.1 Subject to the provisions of this Article, the PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and in accordance with the Contract Documents.

7.2 The TCEQ may accept performance of a reduced number of the individual Grant Activities listed in the Scope of Work, at its sole discretion, and reimburse the PERFORMING PARTY for only those Grant Activities for which eligible purchases are completed. This does not affect or waive the usage or reporting requirements for the reimbursed Grant Activities.

7.3 For replacement activities, the vehicle or piece of equipment being acquired under a grant may not have been acquired prior to September 4, 2012, unless otherwise approved by the TCEQ.

7.4 For activities other than replacement activities, eligible costs submitted for reimbursement under a grant may not have been incurred prior to November 16, 2011, and must be approved by the TCEQ.

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 (House Bill 1) of the 82nd Texas Legislature and expenditure is authorized by Chapter 386, Texas Health and Safety Code.

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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 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 and certifications in the Application and agrees to give prompt written notice to the TCEQ if there is any material change in these representations or certifications.

ARTICLE 10. CONTRACT DOCUMENTS

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

10.1.1. Contract Signature Page.
10.1.2. The Scope of Work.
10.1.3. The ERIG Special Conditions.
10.1.4. The ERIG General Conditions.
10.1.5. The *Guidelines for the Emissions Reduction Incentive Grants (RG-388)*.
10.1.6. The TCEQ Request for Grant Applications, incorporated herein by reference.
10.1.7. The PERFORMING PARTY's Original ERIG Application, and any supplemental documentation submitted by the PERFORMING PARTY in support of the Application or grant award, incorporated herein by reference.
10.1.8. The following which may be delivered or issued after the Effective Date of the Contract 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.

10.2 The information and data provided in the 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 Scope of Work (a Contract Document) and hereby ratifies, adopts, and agrees to all such alterations contained within the Scope of Work.

10.3 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.

10.4 A listed document includes all amendments to the document.

ARTICLE 11. ELIGIBILITY FOR COST REIMBURSEMENT

11.1 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 listed in the Scope of Work. Costs must be included in the Scope of Work to be eligible for reimbursement. Determinations of eligibility for reimbursement are solely within the discretion of the TCEQ.

11.2 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 the Activity Life for each Grant Activity, or, if the lease terminates earlier, the lease must contain 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.

Procurement

11.3 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

Reasonable Costs

11.4 Reasonableness of costs depends upon a variety of considerations and circumstances, including:

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

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Necessary Costs

11.5 Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and must be included in the Scope of Work.

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

11.6.1. the cost of money; or
11.6.2. the interest charges on a purchase money loan or on a deferred payment purchase agreement; or
11.6.3. The cost of converting from a lease to a purchase at the end of the lease period.

Actual Costs

11.7 The criteria for actual costs include:

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

11.8 Unless expressly authorized by the TCEQ, actual costs do not include:

11.8.1. amounts deducted from the true price of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds or otherwise;
11.8.2. amounts which the PERFORMING PARTY owes or agrees to pay a vendor or contractor for any purpose other than the implementation of Grant Activities;
11.8.3. amounts in the charges which a vendor/contractor intends to return to PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value;
11.8.4. baseline Costs designated by the TCEQ in the Application reflecting the costs that would otherwise be incurred by the PERFORMING PARTY in the normal course of business; or
11.8.5. amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are, or will be received by the PERFORMING PARTY.

11.9 The PERFORMING PARTY's documentation of expenses is required under Article 20 of these General Conditions.

Allowable Costs

11.10 In order to be allowable, costs must be included in the Scope of Work, and must satisfy the requirements of: this Agreement, the UGMS, state agency rules, and all applicable state and federal laws.

Consulting (Application Assistance) Fees

11.11 Any fees charged by a consultant for preparation of the 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 the 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.

11.12 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

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

Purchase Agreements and Subcontracts

11.14 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 for approval, prior to the PERFORMING PARTY entering into a final purchase agreement and/or subcontract.

Additional Evidence

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

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Additional Criteria for Reimbursement

11.16 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 Scope of Work are Maximum Amounts, Not a Guarantee

11.17 Amounts of costs stated in the Scope of Work 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 Scope of Work or 2) the actual eligible costs.

No Entitlement to Funds

11.18 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.

11.19 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

11.20 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.

Tax Credits and Other Incentives

11.21 Throughout the performance of the grant the PERFORMING PARTY shall notify the TCEQ of any financial incentive received by the PERFORMING PARTY which was not included in the Application, if that incentive will offset the cost of the proposed project. This includes tax credits or deductions, other grants, or any other public financial assistance. The combination of this grant and other financial incentives may not exceed the incremental cost to the applicant for the purchase of a grant-funded vehicle. 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 a Written Amendment or Minor Change to this Agreement.

Child Support

11.22 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 12. REQUEST FOR REIMBURSEMENT

12.1 Eligible expenses must have been incurred by the PERFORMING PARTY prior to the date listed in Article 4. 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, MC-204
Implementation Grants Section
Air Quality Division
P.O. Box 13087
Austin, TX 78711-3087

12.2 The Request for Reimbursement Form shall include all required supplemental forms and shall list, for each activity, the total expenses obligated under a 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.

12.3 Except as provided for under Article 12.5 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.

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Project Costs

12.4 The TCEQ will reimburse the PERFORMING PARTY for no more than the amount specified for each Activity in the Scope of Work. This amount may be adjusted downward in accordance with the Grant Agreement and statutory limits on reimbursement.

12.5 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. 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.

12.6 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 date listed in Article 4 of this Contract.

12.7 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.

12.8 Unless otherwise approved by the TCEQ, all work on the Grant Equipment must be completed and the Grant Equipment ready for operation and delivered in final form before reimbursement will be made on an Activity. The invoices and payment documents provided by the PERFORMING PARTY to support the reimbursement request must document that all work is completed and the Grant Equipment is ready for operation.

Replacement Project Costs

12.9 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

12.10 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.

Repower Project Costs

12.11 For repower projects, the TCEQ will reimburse the PERFORMING PARTY for no more than eighty (80) percent of the eligible incremental costs for the purchase and installation of the repower equipment.

Purchase/Payment Documents

12.12 In accordance with the terms of this Agreement, for any purchase, lease, lease-purchase, deferred payment purchase, or other commercial financing arrangement, 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:

12.12.1. canceled checks or wire transfers;
12.12.2. written purchase and lease agreements;
12.12.3. Bills of Sale or Receipts for Delivery;
12.12.4. for deferred payment purchases, statements of account status showing the account in good standing and the equipment is in possession of the PERFORMING PARTY;
12.12.5. Uniform Commercial Code (UCC) Financing Statement (Form UCC1) filing, if applicable. (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.); and
12.12.6. other documentation requested by TCEQ in order to support the assertions in the request for reimbursement.

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

12.14 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.

12.15 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.

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ARTICLE 13. 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 14. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, GENERAL

14.1 All Grant Activities for which reimbursement is requested must be completed as set forth in the Scope of Work.

14.2 The Grant Equipment is listed in the Scope of Work. For on-road vehicle replacement or repower projects only, the PERFORMING PARTY may substitute a replacement vehicle and/or engine for the unit listed in the Scope of Work; 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 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.

14.3 The PERFORMING PARTY agrees to continuously own, lease, or otherwise commercially finance the Grant Equipment; continuously maintain registration of the Grant Equipment in Texas, and operate the Grant Equipment in Texas for the specified Activity Life, regardless of the financing arrangements used for the purchase of the Grant Equipment, and subject to the more specific provisions contained in the General Conditions, Article 15, of this Agreement.

Professional Quality

14.4 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

14.5 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

14.6 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.

14.7 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.

14.8 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.

14.9 The PERFORMING PARTY agrees that the emissions reductions generated by each activity over the Activity Life are transferred to the TCEQ and that any marketable credits are permanently retired. The PERFORMING PARTY may not combine with this grant funding from other incentive programs that require transfer of the emissions reductions to that other program.

ARTICLE 15. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, INSURANCE, REPAIR, AND REPLACEMENT

15.1 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.

15.2 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.

15.3 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

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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.

15.4 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 shall require the return of grant funds.

ARTICLE 16. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, GRANT ACTIVITIES

16.1 The emissions reduction benefit supporting the award of this grant is based upon the PERFORMING PARTY's successful performance of the Grant Activities as detailed in the Scope of Work.

16.2 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.

16.3 The PERFORMING PARTY agrees that if the reported usage of the Grant Equipment does not meet the requirements listed in the Scope of Work, the TCEQ will be entitled to a return of the grant funds.

16.4 State law and TCEQ policy require that TCEQ remain in contractual privity with the entity operating the Grant Equipment. TCEQ must retain the ability to enforce the usage and reporting commitments contained within the Scope of Work until the termination of this Agreement. Any act by the PERFORMING PARTY that impairs the TCEQ's ability to enforce the usage and reporting commitments, 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 require the return of grant funds.

16.4.1. 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 in a manner consistent with the Scope of Work. If TCEQ, in its sole discretion, allows the assignment of this Agreement, the PERFORMING PARTY must obtain a Consent to Assignment agreement from TCEQ that will bind the new operator to the terms of this Agreement.

16.5 TCEQ, at its sole discretion, may allow for the return of a pro-rated share of the reimbursement funds reflecting a partial failure to perform the requirements of the Scope of Work. This determination shall depend on factors including, but not limited to, use of the grant equipment in a manner that maintained overall program 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).

16.6 The PERFORMING PARTY agrees to operate the Grant Equipment over the Activity Life no less than the percentage of Annual Usage in the Eligible Counties as specified in the Scope of Work.

ARTICLE 17. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, PROJECT STATUS, LONG-TERM MONITORING AND REPORTING

17.1 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.

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

17.3 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 Activity Life. The Monitoring Reports shall have attached properly completed individual reports on the use of Grant Equipment 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. Reports will be required annually unless an alternative schedule is approved by the TCEQ. The TCEQ may, at its discretion, authorize the PERFORMING PARTY to submit monitoring reports on a less frequent schedule or to suspend the reporting requirements, based on an assessment of compliance with the usage and reporting requirements.

17.4 Suspension of the reporting requirements under Article 17.3 does not suspend the monitoring requirements under Article 17.2.

17.5 The PERFORMING PARTY agrees that failure to adequately monitor the annual usage of Grant Equipment, failure to submit properly completed Monitoring Reports during the Activity Life, and/or submitting Monitoring Reports with false, incorrect, or incomplete information constitutes a material breach of this Agreement and the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of the reimbursement grant funds.

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ARTICLE 18. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, DISPOSITION OF REPLACED VEHICLES AND ENGINES

18.1 Unless an alternative disposition method is approved by the TCEQ, the PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced by complete destruction or otherwise rendering them permanently inoperable by complete crushing of the vehicle and engine or drilling a 3-inch or larger hole through the engine block on both sides (or otherwise destroying it) and cutting both frame rails in half (or perform other structural damage to the vehicle or equipment so that repairs are not possible. Alternative disposition methods must be approved in writing by the TCEQ and documented in the Special Conditions of this Agreement. If the PERFORMING PARTY is unable to dispose of the vehicle and engine in accordance with an approved alternative disposition method, the PERFORMING PARTY agrees to dispose of the vehicle and engine using the standard disposition methods. If the TCEQ approves disposition by remanufacturing, the engine must be sent to a remanufacturing 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.

18.2 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. The TCEQ may grant an extension to this deadline without a change to this Agreement.

18.3 The PERFORMING PARTY shall submit on forms to be made available by the TCEQ information to verify the final disposition of the vehicles and engines replaced under this Agreement. PERFORMING PARTY must submit a copy of a Texas Nonrepairable Vehicle Title issued by the Texas Department of Motor Vehicles (TxDMV) for the vehicle(s) replaced under this grant contract. The Texas Nonrepairable Vehicle Title must be submitted at the same time that the required disposition documentation is submitted to the TCEQ. 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.

18.4 The PERFORMING PARTY must submit photographs of the vehicles and 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.

18.5 The PERFORMING PARTY agrees that failure to properly destroy or dispose of a vehicle replaced under this Agreement in accordance with the destruction requirements or the provisions of an alternative disposition plan approved by the TCEQ shall require the return of the grant funds. This Article shall also apply to a failure to provide properly completed documentation of final disposition of equipment as required by this Agreement.

Credit For Replaced Vehicles Or Equipment

18.6 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.

18.7 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.

18.8 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 11 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.

18.9 If the default value of Section 18.7. 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.

ARTICLE 19. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, INSTALLATION AND USE OF IDENTIFYING MARK, TRACKING DEVICE

Identifying Mark

19.1 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 Activity Life.

Tracking Device – Voluntary

19.2. PERFORMING PARTY may install a device for tracking the location and usage of the Grant Equipment and maintain monitoring services during the Activity Life. 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.

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19.3 With the exception of activities where fuel use is the applicable usage rate factor, 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 17, of this Agreement.

19.4 For activities with fuel use as the usage factor, PERFORMING PARTY shall track and report on fuel use in accordance with General Conditions, Article 17, of this Agreement, in addition to the installation of GPS.

19.5 For voluntary installation of a tracking device, the 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.

19.6 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.

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

19.8 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.

19.9 If the PERFORMING PARTY voluntarily elects to utilize GPS tracking, the requirements of this section shall apply.

Tracking Device – Mandatory as a Condition of Grant Award

19.10 PERFORMING PARTY may be required to obtain and install GPS equipment and monitoring services through the TGMS Contractor as a condition of the grant award. This requirement will be listed in the Scope of Work.

19.11 The provisions of Sections 19.2, 19.3, 19.4, 19.7, and 19.8 of this Article shall apply to mandatory installation of a GPS system as a condition of the grant award.

19.12 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 constitute a material breach of this Agreement and the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of the reimbursement grant funds.

19.13 For mandatory installation of a GPS system as a condition of the grant award, and unless reporting is suspended by TCEQ or alternative reporting authorized by TCEQ, termination of the GPS monitoring under this Section for any reason shall constitute a material breach of this Agreement and the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of the reimbursement grant funds.

Tracking Device – Mandatory After Grant Award

19.14 Under circumstances where TCEQ determines, at its sole discretion, that the PERFORMING PARTY is not meeting its commitments under this Agreement, 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 Grant Equipment. The PERFORMING PARTY will be required to bear the cost for the GPS equipment, installation, and monitoring service.

19.15 If PERFORMING PARTY is required to install a tracking device under Article 19.13 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.

19.16 The PERFORMING PARTY agrees that failure to install a tracking device upon TCEQ request will require the return of the reimbursement grant funds for the Grant Equipment.

GPS Data

19.17 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.

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ARTICLE 20. PERFORMING PARTY'S RESPONSIBILITIES, ADMINISTRATIVE REQUIREMENTS

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

20.1 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.

20.2 The PERFORMING PARTY shall allow access to all Grant Equipment, 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

20.3 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.

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

20.5 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activities under this Agreement and for three (3) years after the termination of this Agreement. 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.

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

20.7 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 *State Property Accounting Process User's Guide* (https://fmx.cpa.state.tx.us/fmx/pubs/spaproc/index.php) 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 Article.

20.7.1. 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.

20.7.2. 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

20.8 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.

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PERFORMING PARTY's Representative

20.9 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.

20.10 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 during regular business hours for consultation with the TCEQ. Written notice of any such delegation will be provided to the TCEQ.

Personnel

20.11 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.

Permits

20.12 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

20.13 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

20.14 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, including databases for which the costs of preparation are reimbursed under this Agreement, shall be furnished at no charge to the TCEQ, and shall become the property of the TCEQ.

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

Safety and Protection

20.16 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.

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

Lobbying Activities

20.18 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.

ARTICLE 21. TCEQ'S RESPONSIBILITIES

21.1 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.

21.2 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.

21.3 The TCEQ shall provide reimbursement funds for Grant Activities specified in the Scope of Work and performed in accordance with the requirements of this Agreement.

ARTICLE 22. TERMINATION

22.1 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.

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22.2 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.

22.3 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.

22.4 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.

22.5 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.

22.6 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.

22.7 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.

22.8 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 Scope of Work 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.

ARTICLE 23. REMEDIES AVAILABLE TO THE TCEQ

23.1. 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:

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

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

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

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

23.1.5. Reject reimbursement request and withhold and retain all or partial payments for recovery of administrative costs;

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

23.1.7. Terminate the contract and demand and receive return of all unexpended funds and repayment of improperly expended funds;

23.1.8. Demand restitution and recover payments where performance is subsequently determined non-conforming; or

23.1.9. Require payment of liquidated damages.

23.2. ***Liquidated Damages***. 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 reasonable compensation for such breach will be the sum consisting of the total of grant funds paid or obligated by TCEQ, reduced by a percentage reflecting the proportion of the total Activity Life for which the PERFORMING PARTY has submitted timely and accurate usage reporting meeting the requirements of the Scope of Work prior to the breach. Determination of timely and accurate usage reporting is in the sole discretion of TCEQ. 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.

23.3. ***Cumulative Remedies.*** TCEQ may avail itself of any remedy or sanction provided in this contract or in law to recover any losses arising 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.

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ARTICLE 24. 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, its subcontractors, agents, officers and directors, principals and employees in the performance of this Contract.

This paragraph is not intended and shall not be construed to require the PERFORMING PARTY to indemnify or hold harmless the State or the TCEQ for any claims or liabilities resulting from the negligent acts or omissions of the TCEQ or its employees.

ARTICLE 25. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Scope of Work or to modify the terms and conditions of this Agreement in one or more of the following ways: a formal Written Amendment or a Minor Change.

ARTICLE 26. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

26.1 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.

- 26.1.1. Quality and Accuracy. Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Agreement.
- 26.1.2. Timeliness. Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.
- 26.1.3. 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.
- 26.1.4. 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.
- 26.1.5. Other. Standard: Other factors unique to the type of project, as determined by the TCEQ.

26.2 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.

- 26.2.1. Exceeds Expectations. The PERFORMING PARTY fully complied with all the standards on a consistent basis.
- 26.2.2. 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.
- 26.2.3. 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.
- 26.2.4. Unsatisfactory Performance. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

Contractor Evaluation

26.3 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.

26.4 The performance rating on the contractor evaluations may be considered by the TCEQ in evaluating an application from the PEFORMING 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 27. MISCELLANEOUS

27.1 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.

27.2 In order for this Agreement to be effective, an authorized principal 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.

27.3 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.

27.4 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 Contract.

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27.5 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.

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

27.7 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.

27.8 The parties to this Agreement expressly agree that time is of the essence of this contract.

27.9 The terms include, included, including, includes, when used in this Agreement shall mean "includes but not limited to".

27.10 Notice of Claim. 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.

27.11 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 Contract until such time as enforcement of such representations, indemnifications, warranties and guarantees is barred by the applicable statute of limitations.

27.12 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.

27.13 Subject to the provisions of Article 16, 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.

27.14 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.

27.15 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.

27.16 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.

27.17 Bankruptcy. 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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AUTHORIZED REPRESENTATIVES/ LOCATION OF RECORDS

TCEQ Project Representative

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
TERP, MC-204
Texas Commission on Environmental Quality
Air Quality Division
P.O. Box 13087
Austin, TX 78711-3087
Telephone No.: (512) 239-4143
Facsimile No.: (512) 239-4410

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

PERFORMING PARTY's Authorized Official

2. The individual authorized to sign legal documents on behalf of the PERFORMING PARTY.

Mailing Address:
Authorized Official's Name
PERFORMING PARTY's Name
Address
(City) (State) (Zip Code)
Telephone No.: ( )

Facsimile No.: ( )

Physical Address
Authorized Official's Name
PERFORMING PARTY's Name
Address
(City) (State) (Zip Code)

PERFORMING PARTY's Representative

3. The individual named in the original 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 to the PERFORMING PARTY will be addressed to the PERFORMING PARTY Project Representative or his or her designee.

Mailing Address:
Representative's Name
PERFORMING PARTY's Name
Address
(City) (State) (Zip Code)
Telephone No.: ( )

Facsimile No.: ( )

Physical Address
Representative's Name
PERFORMING PARTY's Name
Address
(City) (State) (Zip Code)

4. 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.

Designated Location for Records Access and Review

5. The PERFORMING PARTY designates the physical location identified in the original application for record access and review pursuant to any applicable provision of this contract.

— End of Authorized Representatives/Location of Records —

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SPECIAL CONDITIONS

for

EMISSIONS REDUCTION INCENTIVE GRANT PROGRAM

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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SCOPE OF WORK

for

EMISSIONS REDUCTION INCENTIVE GRANTS GRANT PROGRAM

ARTICLE 1.

Tasks

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