

Texas Commission on Environmental Quality

CONTRACT SIGNATURE PAGE

Contract Name:

Contract Number:

Performing Party:

Performing Party Identification Number:

Maximum Authorized Reimbursement:

Effective Date: 09/01/2019 Date of last signature

Expiration Date: 08/31/2026 Last day of Fiscal Year in which the Contract was signed

If checked, this Contract requires matching funds. Match Requirement:

If checked, this Contract is funded with federal funds.

CFDA Number:

Federal Grant Number:

This Contract is entered under: Gov't Code ch. 771 (Interagency) Gov't Code ch. 791 (Interlocal)

Water Code § 5.229 (Intergovernmental) Water Code§ 5.124 (Grant)

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

The Parties agree as follows: (a) to be effective, the Contract must be signed by an authorized official of the TCEQ and the Performing Party; (b) this Contract consists of all documents specified in the list of Contract Documents following this page; and (c) as authorized by TCEQ, Performing Party will conduct Contract Activities as part of its own authorized governmental functions and TCEQ will reimburse Allowable Costs subject to the Texas Uniform Grant Management Standards (UGMS) and this Contract.

**Texas Commission on
Environmental Quality**

(Performing Party)

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Date

Date

CONTRACT DOCUMENTS LIST

This Contract between TCEQ and Performing Party consists of the Contract Documents listed on this page and marked by an "X." Documents on this list include all amendments. In the event of a conflict of terms, the Contract Documents as amended control in the descending order of the list, subject to provisions in the Special Terms and Conditions, if any. All Contract provisions, however, are subject to control by the latest amendment and most specific provision and by the applicable state and federal laws, rules and regulations.

- Contract Signature Page
- Contract Documents List (this page)
- Special Terms and Conditions
- Scope of Work
- General Terms and Conditions
- Notices, Project Representatives and Records Locations
- Attachment A - Release of Claims
- Request for Grant Activities for GAFF (incorporated by reference and not attached herein)
- Performing Party's Completed Application for GAFF (incorporated by reference and not attached herein)

SPECIAL TERMS AND CONDITIONS

1. **Article 4. Reimbursement** of the General Terms and Conditions now reads **Article 4. Advance of Funds**.
2. **Article 4.1** of the General Terms and Conditions is replaced as follows:

- 4.1. **Advance Payment.** The TCEQ will advance the Maximum Authorized Reimbursement to the Performing Party. This advance payment is for work to be performed in accordance with the Scope of Work and must be requested by the Performing Party after receiving the executed Contract. Requests must be submitted after September 1, 2021 but no later than April 1, 2023. Requests may be submitted by electronic mail to TERP@tceq.texas.gov, or by mail to one of the addresses below:

Regular Mail:

Texas Commission on Environmental Quality
Air Grants Division
GAFF, MC-204
P.O. Box 13087 Austin, TX 78711-3087

Express Mail:

Texas Commission on Environmental Quality
Air Grants Division
GAFF, MC-204
12100 Park 35 Circle Austin, TX 78753

4.1.1 Proof of Purchase. The Performing Party will submit documentation showing that eligible costs were incurred and paid, and showing the balance used or remaining from the advance payment. The Performing Party will complete and return the Proof of Purchase form found at www.terpgrants.org no later than April 22, 2023.

4.1.2 Eligible Costs. TCEQ will review the Proof of Purchase form to ensure that the expenses are fully documented and were eligible for the use of grant funds in accordance with all contractual requirements. Costs are considered eligible when the TCEQ determines that the costs were as described in the Scope of Work and reasonable, necessary, actual, and allowable based on the Grant Vehicle and Equipment described therein.

4.1.3 Required Documentation of Costs. The Proof of Purchase form must contain sufficient information concerning the costs incurred and paid or obligated under a financing agreement. The TCEQ must be able to determine the eligibility of a particular cost based on the provided documentation. Documentation must show that the cost was incurred and paid; that the grant vehicle and equipment have been received and accepted by the Performing Party; and that the vehicle, equipment, and any refueling infrastructure are fully operational.

4.1.3.1 The source documentation for a cost shall:

- be legible;
- identify the specific piece of equipment received or the services provided;
- clearly identify the vendor or subcontractor who provided the equipment or services
- confirm the amount listed on the Proof of Purchase form; and
- provide proof of payment for all costs paid with advanced GAFF funding.

4.1.3.2 The documentation shall consist of an itemized and dated invoice that shows the amount billed to the PERFORMING PARTY, any "past due" amount from previous invoices, and explanation of services provided.

4.1.3.3 Any contracted services that extend past the Contract Expiration Date will be pro-rated based upon the active period during this Contract's term.

4.1.3.4. Documentation for payment may include:

- canceled checks or wire transfers;
- written purchase or lease agreements;
- bills of sale or receipts for delivery;
- for deferred payment purchases, statements of account status showing the account is in good standing and the equipment is in possession of the Performing Party; and
- any other documentation requested by the TCEQ. Although canceled checks represent the preferred types of documentation for purposes of this section, the PERFORMING PARTY or subcontractor may substitute/attach other records or documents that provide the same type of information, such as issued purchase orders and/or invoices marked "received/paid," or other evidence of payment.

4.1.4 Determination of Amounts. The amounts of costs shown in the Scope of Work are maximum amounts of grant expenditures. These amounts are subject to TCEQ's review and approval of documentation regarding final, actual costs and the Performing Party's implementation of the Scope of Work.

4.1.4.1. The Performing Party must provide documented, allowable expenses showing the total cost of the grant activities. The Performing Party must also disclose any additional financial incentives such as tax credits or deductions, other grants, or other public financial assistance that was received by the Performing Party and used toward the grant vehicle, equipment, or refueling activities under this Contract. Regardless of the Maximum Authorized Reimbursement or Project Grant Amount in the Scope of Work, grant funds under this Contract, when compared with final expenses incurred and when combined with any other funding source, may not exceed the total cost to the Performing Party. If final, eligible costs are less than the Maximum Authorized Reimbursement that was advanced, those funds will be returned pursuant to 4.1.6 Return of Balance. This does not limit or waive any other TCEQ remedy.

4.1.4.2 TCEQ may, in its discretion, request additional evidence concerning costs, and may audit the records of the Performing Party.

4.1.5 Conditional Advance. Funds are advanced on the condition of the Scope of Work being performed in compliance with the Contract. Performing Party shall return payment to TCEQ for either funds unspent, expenses that are determined to be non-compliant with the Contract, or based on the TCEQ's Determination of Amounts pursuant to 4.1.4.

4.1.6 Return of Balance. In accordance with the Uniform Grant Management Standards (UGMS) Part III _50 Closeout (d)(2), any remaining advanced funds that have not been spent or approved to be spent by TCEQ as of the Expiration Date of the Contract must be immediately returned. No additional use or retention of these funds is authorized. The unspent or unapproved balance must be returned to TCEQ no later than 90 days after the Expiration Date.

3. Disposition of Replaced Vehicles.

3.1 The Performing Party agrees to dispose of the vehicle(s) shown in Article 4 of the Scope of Work by complete destruction, rendering the vehicle permanently inoperable. The standard disposition method is to crush the equipment and engine or drill a 3-inch or larger hole through the engine block on both sides and cutting both frame rails in half. The Performing Party may perform other structural damage to the vehicle or equipment so that repairs are not possible, otherwise destroying the equipment.

3.2 The Performing Party must submit photographs of the equipment being destroyed, both before and after the equipment is destroyed or rendered inoperable. The TCEQ must approve the forms and supplemental documentation submitted by the Performing Party to meet the disposition requirement. Such approval is at the sole discretion of the TCEQ. The Performing Party shall provide to the TCEQ any clarification and additional documentation as requested by the TCEQ to approve disposition.

4. **The Performing Party certifies** compliance with the provisions found in UGMS III Subpart B, ..14 State assurances, that are applicable to this grant and to the type of entity entering this agreement, including the following:

PERFORMING PARTY'S CERTIFICATIONS

By signing this Contract, the Performing Party certifies that the following are true and acknowledges that the Contract may be terminated and payment may be withheld if these certifications are inaccurate.

- 4.1 DEBT TO STATE. The Performing Party is not indebted to the state and does not have an outstanding tax delinquency. The Performing Party understands that the Texas Comptroller is precluded by state law from paying any person who is indebted to the state or has a tax delinquency. The Performing Party must comply with all state and federal tax laws and fee requirements and is solely responsible for filing all required state and federal tax and fee forms.
- 4.2 CHILD SUPPORT PAYMENTS. The Performing Party is neither an individual nor a business organization with an ownership interest of at least 25% by an individual who is in arrears on child support payments. Under Texas Family Code Section 231.006 (relating to child support), the Performing Party certifies that the individual or business entity named in this contract is not ineligible to receive the specified grant and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. If the Performing Party is subject to § 231.006, prior to signing this Contract, Performing Party must provide TCEQ the names and Social Security numbers of each person with at least 25% ownership of the Performing Party.
- 4.3 EMPLOYMENT LAWS. The Performing Party will comply with all state and federal statutes relating to nondiscrimination. The Performing Party will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.
- 4.4 GRANT ADMINISTRATION. The Performing Party will maintain an appropriate grant management administration system to ensure that all terms, conditions, and specifications of the Contract, including these certifications and assurances, are met.
- 4.5 CONTRACTING WITH A CURRENT OR FORMER EXECUTIVE HEAD OF A STATE AGENCY. The Performing Party certifies that it complies with Texas Government Code Section 669.003, relating to contracting with a current or former executive head of a state agency. Performing Party represents that no person who is serving or in the past four years served as an executive head of the TCEQ or any other state agency was involved with or has any interest in this Contract, including being an employee of the Performing Party. If the Performing Party employs or has used the services of a current or former executive head of TCEQ or other state agency, the Performing Party will provide the following information to TCEQ prior to executing this Contract: Name of Former Executive, Name of State Agency, Date of Separation from State Agency, Position with Performing Party, and Date of Employment with Performing Party.
- 4.6 SUSPENSION, DEBARMENT, AND TERRORISM. The Performing Party certifies that it and its principals are eligible to participate in this Contract and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity, and that the Performing Party is in compliance with the State of Texas statutes and rules relating to procurement, and that the Performing Party is not listed on the federal government's terrorism watch list under Executive Order 13224.

- 4.7 HURRICANE KATRINA AND OTHER NATURAL DISASTERS. Under Section 2155.006(b) of the Texas Government Code, a state agency may not award a grant that includes proposed financial participation by a person who, during the five-year period preceding the date of the award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Texas Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section [2155.006](#), Government Code, the Performing Party is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.
- 4.8 TEXAS GOVERNMENT CODE CHAPTER 573. Performing Party must comply with Texas Government Code Chapter 573, by ensuring that no officer, employee, or member of the Performing Party's governing body or of the Performing Party's contractor shall vote or confirm the employment of any person related within the second degree of affinity or the third degree of consanguinity to any member of the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years, or such other period stipulated by local law, prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.
- 4.9 Performing Party will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protections Agency's (EPA) or TCEQ's list of Violating Facilities and that it will notify TCEQ of any communication indicating that a facility to be used in the project is under consideration for such listing.
- 4.10 Performing Party will comply with environmental standards, including the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- 4.11 Performing Party will assist in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.)
- 4.12 Performing Party represents and warrants that payments under this contract are not prohibited by Sections 403.1067 or 556.0055 of the Texas Government Code which restrict lobbying expenditures.

5. SUCCESSOR GUIDANCE. The Texas Uniform Grant Management Standards (UGMS) is defined to include its successor guidance, Texas Grant Management Standards, the terms of which shall control for purposes of this Contract effective January 1, 2022.

6. General Term and Condition 4.3 Level-of-Effort Certification is inapplicable to this Contract as personnel costs such as salaries and wages are ineligible expenses under the GAFF program.

GENERAL TERMS AND CONDITIONS

1. CONTRACT PERIOD

- 1.1. **Contract Period.** The Contract begins on the Effective Date and ends on the Expiration Date as provided on the Contract Signature Page. If no Effective Date is provided, the Effective Date of the Contract is the date of last signature. If no Expiration Date is provided, the Expiration Date is August 31 of the same Fiscal Year in which the Contract is signed.
- 1.2. **Amendments.** This Contract is not subject to competitive selection requirements and may be amended by mutual agreement. Except as specifically allowed by the Contract, all changes to the Contract require a written amendment that is signed by both parties.
 - 1.2.1. **Material Changes.** Material changes to the contract require a written amendment signed by both parties. These Amendments take effect when signed by the Contractor and TCEQ, unless otherwise designated in the Amendment. Material changes include the following:
 - 1.2.1.1. Changes in the total amount of funds in the Budget or the Contract;
 - 1.2.1.2. Changes to the Contract's Expiration Date;
 - 1.2.1.3. Changes to the Scope of Work that affect TCEQ's obligations to the entity providing funding, such as the United States Environmental Protection Agency (EPA), another state or federal agency, or the Texas Legislature; and
 - 1.2.1.4. Changes that affect the material obligations of the Performing Party in this Contract.
 - 1.2.2. **Unilateral Amendments.** As specifically allowed by the Contract, TCEQ may issue unilateral amendments. Unilateral amendments take effect when issued by TCEQ.
 - 1.2.3. **Minor Changes.** The TCEQ Contract Manager and/or the TCEQ Project Manager has the authority, without a formal Amendment, to correct typographical errors; make written Contract interpretations; and make minor, non-material changes to the requirements in the Scope of Work, the Procedures for Work Orders, or the Work Orders (Work Orders include Proposals for Grant Activities); or as agreed to elsewhere in the Contract. Contractor must provide TCEQ with a written objection to any Notice of Interpretation no later than five (5) business days from the effective date of the Notice. A copy of the agreed change must be retained in the appropriate file by both the Performing Party and TCEQ.
 - 1.2.3.1. **Minor, non-material changes include:**
 - 1.2.3.1.1. Changes to the schedule in the Scope of Work including an extension of a deliverable due date, not to exceed the expiration date of the Contract;
 - 1.2.3.1.2. Changes to the schedule in the Work Order including an extension of a deliverable due date, not to exceed the expiration date of the Work Order;
 - 1.2.3.1.3. Changes to the individual tasks/activities in the Scope of Work or Work Order, if applicable, that do not substantially change the obligations of the Parties relative to those tasks/activities;

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

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

2. FUNDS

2.1 **Availability of Funds.** This Contract and all claims, suits or obligations arising under or related to this Contract are subject to the receipt and availability of funds appropriated by the Texas Legislature for the purposes of this Contract or the respective claim, suit or obligation, as applicable. Performing Party will ensure that this article is included in any subcontract it awards.

2.2 **Maximum Authorized Reimbursement.** The total amount of funds provided by TCEQ for the Contract will not exceed the amount of the Maximum Authorized Reimbursement as shown on the Contract Signature Page.

2.3 **Fiscal Year Restrictions.** In order to be reimbursed under this Contract, costs must be incurred during the Contract Period and within the time limits applicable to the funds from which the Contract is being paid. TCEQ is under no obligation to offer deadline extensions which extend to the maximum availability of the contract funding source.

2.4 **Grants.** If this Contract was entered under the TCEQ's authority to award grants, TCEQ is providing financial assistance to the recipient to undertake its own project.

2.5 **No Debt against the State.** This Contract is contingent on the continuing appropriation of funds. This Contract shall not be construed to create debt against the State of Texas.

2.6 **Abortion Funding Limitation.** Performing Party represents and warrants that payments made by TCEQ to Performing Party and Performing Party's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act, 86th Legislative Session (2019), nor by Texas Government Code Chapter 2272 *Prohibited Transactions* [Senate Bill 22, 86th Legislative Session (2019)].

2.7 **Excluded Parties.** Performing Party represents and warrants that it is not listed in the prohibited vendors lists authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control. Performing Party will notify TCEQ if it can no longer make this representation.

3. ALLOWABLE COSTS

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

3.2 **UGMS.** Allowable Costs are restricted to costs that comply with the Texas Uniform Grant Management Standards (UGMS) and applicable state and federal rules and law. The parties agree that all the requirements of the UGMS apply to this Contract, including the criteria for Allowable Costs. Additional federal

requirements apply if this Contract is funded, in whole or in part, with federal funds.

4. REIMBURSEMENT

- 4.1. **Reimbursement Requests.** Performing Party shall invoice TCEQ to request reimbursement for its Allowable Costs for performing the Scope of Work. Performing Party's invoice shall conform to all reimbursement requirements specified by TCEQ.
- 4.2. **Personnel Eligibility List (PEL).** Performing Party must submit a completed Personnel Eligibility List (PEL) prior to starting activities under this Contract and an updated PEL with any invoice following changes to the information provided in the most recent PEL. If a Contract amendment is necessary due to changes reflected on the PEL, Performing Party must immediately submit an updated PEL with a request to amend the Contract.
- 4.3. **Level-of-Effort Certification (LEC).** Performing Party must complete the attached Level-of-Effort Certification (LEC) for salaried employees performing work under this Contract. LEC must be completed monthly and LEC(s) must be submitted with each invoice, except for nonexempt employees, for which the Performing Party must submit time sheets. Performing Party may develop and use its own LEC method, which must be reviewed and approved by TCEQ prior to implementation. The LEC method must meet the following requirements and all other federal and state requirements regarding documentation for personnel expenses:
 - a. Reflect an after-the-fact distribution of the actual activity of each employee;
 - b. Account for the total activity for which each employee is compensated, including activities not performed under this Contract;
 - c. Be prepared at least monthly and must coincide with one or more pay periods; and
 - d. Be signed, physically or electronically, by the employee and the supervisory official having first-hand knowledge of the work performed by the employee. The employee's signature is not required in the event the employee cannot be reached due to termination of employment, lack of forwarding address, death or other documented reason.
- 4.4. **Conditional Payments.** Reimbursements are conditioned on the Scope of Work being performed in compliance with the Contract. Performing Party shall return payment to TCEQ for either overpayment or activities undertaken that are not compliant with the Scope of Work. This does not limit or waive any other TCEQ remedy.
- 4.5. **No Interest for Delayed Payment.** Because the Performing Party is not a vendor of goods and services within the meaning of Texas Government Code Chapter 2251, no interest is applicable in the case of late payments.
- 4.6. **Release of Claims.** As a condition to final payment or settlement, or both, the Performing Party shall execute and deliver to the TCEQ a release of all claims against the TCEQ for payment under this Contract.
- 4.7. **State Agencies/Institutions of Higher Education.** If the Contractor is a State agency or institution of higher education payments must be made via interagency transaction voucher (ITV), please provide a Recurring Transaction Index (RTI) number on the face of the invoice OR if payments are to be deposited into a local bank account, the following statement must be placed on the face of

the invoice: "Funds to be deposited into local bank account." For additional information, please refer to the Texas Comptroller's Accounting Policy Statement (APS) 014.

5. FINANCIAL RECORDS, ACCESS AND AUDITS

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

6. PERFORMING PARTY'S RESPONSIBILITIES

- 6.1 **Performing Party's Responsibility for the Scope of Work.** Performing Party undertakes performance of the Scope of Work as its own project and does not act in any capacity on behalf of the TCEQ nor as a TCEQ agent or employee. Performing Party agrees that the Scope of Work is furnished and performed at Performing Party's sole risk as to the means, methods, design, processes, procedures and performance.
- 6.2 **Standard Assurances.** Performing Party assures compliance with the provisions found in UGMS III Subpart B, .14 State assurances, that are applicable to this Contract.
- 6.3 **Independent Contractor.** The parties agree that the Performing Party is an independent contractor. Nothing in this Contract shall create an employee-employer relationship between Performing Party and TCEQ. Nothing in this Contract shall create a joint venture between TCEQ and the Performing Party.
- 6.4 **Performing Party's Responsibilities for Subcontractors.** All acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the Scope of Work under a direct or indirect contract with Performing Party shall be considered to be the acts and omissions of Performing Party.
- 6.5 **No Third Party Beneficiary.** TCEQ does not assume any duty to exercise any of its rights and powers under the Contract for the benefit of third parties. Nothing in this Contract shall create a contractual relationship between TCEQ and any of the Performing Party's subcontractors, suppliers or other persons or organizations with a contractual relationship with the Performing Party.
- 6.6 **Cybersecurity Training.** Performing Party shall ensure that any Performing Party representative (employee, officer, or subcontractor personnel) who has Access to a TCEQ Computer System or Database completes a cybersecurity training program certified by the Texas Department of Information Resources

(DIR) under § 2054.519 of the Texas Government Code, during the term of the Contract and each renewal.

- 6.6.1. “Access to TCEQ Computer System or Database” means having a TCEQ network user account or the authorization to maintain, modify, or allow access control to any TCEQ web page, TCEQ computer system or TCEQ database.
- 6.6.2. Within seven (7) days after the execution of the Contract and any renewals, Performing Party shall provide a list of persons requiring training to the TCEQ Contract Manager, and thereafter provide an updated list by the first workday of any additional person who becomes subject to the training requirements. For applicable umbrella contracts, Contractor shall provide a list of any persons requiring training within seven (7) days of issuance of Notice to Proceed/Commence for any Work Order/Proposal for Grant Activities that requires Access to a TCEQ Computer System or Database.
- 6.6.3. If a Performing Party representative has previously completed a DIR-certified cybersecurity training during the term of the Contract or renewal, Contractor shall provide evidence that the Performing Party representative completed the required training to the TCEQ Contract Manager within seven (7) days after the execution of the Contract or as applicable, the issuance of Notice to Proceed/Commence for any Work Order/Proposal for Grant Activities that requires Access to a TCEQ Computer System or Database.
- 6.6.4. For the term of the Contract and each renewal, all Performing Party representatives subject to the training requirement must complete DIR-certified training within seven (7) calendar days after TCEQ provides access to the training, unless the Performing Party provides evidence to TCEQ that the Performing Party representative previously completed the required training. Performing Party shall retain in their records, and upon request, provide the TCEQ Contract Manager evidence that the training was successfully completed.
- 6.6.5. Performing Party shall notify the TCEQ Contract Manager within two (2) business days when a person with Access to a TCEQ Computer System or Database no longer needs Access to such Computer System or Database.
- 6.6.6. TCEQ may terminate the Contract for Cause if Performing Party fails to adhere to any of the above terms, including completing the required certified cybersecurity training or notifying the TCEQ Contract Manager when access is no longer needed.
- 6.6.7. TCEQ may terminate the Contract for Cause if a Performing Party’s representative misuses a TCEQ Computer System or Database, including allowing multiple individuals to utilize a single individual’s TCEQ network user account.

7. TIME

- 7.1 **Time is of the Essence.** Performing Party’s timely performance is a material term of this Contract.
- 7.2 **Delays.** Where Performing Party’s performance is delayed, except by Force Majeure or act of the TCEQ, TCEQ may withhold or suspend reimbursement, terminate the Contract for cause, or enforce any of its other rights (termination for convenience may be effected even in case of Force Majeure or act of TCEQ).

8. CONFLICT OF INTEREST

Performing Party shall have a policy governing disclosure of actual and potential conflicts of interests. Specifically, for work performed under this Contract by Performing Party or any related entity or individual, Performing Party shall promptly disclose in writing to TCEQ any actual, apparent, or potential conflicts of interest, including but not limited to disclosure of:

- i. Any consulting fees or other compensation paid to employees, officers, agents of Performing Party, or members of their immediate families, or paid by subcontractor or subrecipients; or
- ii. Any organizational conflicts of interest between Performing Party and its subcontractors or subrecipients under a subaward.

No entity or individual with any actual, apparent, or potential conflict of interest will take part in the performance of any portion of the Scope of Work, nor have access to information regarding any portion of the Scope of Work, without TCEQ's written consent in the form of a unilateral amendment. Performing Party agrees that TCEQ has sole discretion to determine whether a conflict exists, and that a conflict of interest is grounds for termination of this Contract.

9. DATA AND QUALITY

- 9.1 **Quality and Acceptance.** All work performed under this Contract must be complete and satisfactory in the reasonable judgment of the TCEQ. All materials and equipment shall be handled in accordance with instructions of the applicable supplier, except as otherwise provided in the Contract.
- 9.2 **Quality Assurance.** All work performed under this Contract that involves the acquisition of environmental data will be performed in accordance with a TCEQ-approved Quality Assurance Project Plan (QAPP) meeting all applicable TCEQ and EPA requirements. Environmental data includes any measurements or information that describe environmental processes, location, conditions, ecological or health effects and consequences. Environmental data includes information collected directly from measurements, produced from models, and compiled from other sources such as databases or literature. No data collection or other work covered by this requirement will be implemented prior to Performing Party's receipt of the QAPP signed by TCEQ and, if necessary, the EPA. Without prejudice to any other remedies available to TCEQ, TCEQ may refuse reimbursement for any environmental data acquisition performed prior to approval of a QAPP by TCEQ and, if necessary, the EPA. Also, without prejudice to any other remedies available to TCEQ, Performing Party's failure to meet the terms of the QAPP may result in TCEQ's suspension of associated activities and non-reimbursement of expenses related to the associated activities.
- 9.3 **Laboratory Accreditation.** Any laboratory data or analyses provided under this Contract must be prepared by a laboratory that is accredited by TCEQ according to 30 Texas Administrative Code Chapter 25, subchapters A and B, unless TCEQ agrees in writing to allow one of the regulatory exceptions specified in 30 Texas Administrative Code Section 25.6.

10. INTELLECTUAL PROPERTY

- 10.1. **Third Party Intellectual Property.** Unless specifically modified in an amendment or waived in a unilateral amendment, Performing Party must obtain all intellectual property licenses expressly required in the Scope of Work, or incident to the use or possession of any deliverable under the Contract. Performing Party shall obtain and furnish to TCEQ: documentation on the use of

such intellectual property, and a perpetual, irrevocable, enterprise-wide license to reproduce, publish, otherwise use, or modify such intellectual property and associated user documentation, and to authorize others to reproduce, publish, otherwise use, or modify such intellectual property for TCEQ non-commercial purposes, and other purposes of the State of Texas.

- 10.2. **Grant of License.** Performing Party grants to TCEQ a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, modify or otherwise use for any non-commercial TCEQ purpose any preexisting intellectual property belonging to the Performing Party that is incorporated into any new works created as part of the Scope of Work, intellectual property created under this Contract, and associated user documentation.

11. INSURANCE AND INDEMNIFICATION

- 11.1 **Insurance.** Unless prohibited by law, the Performing Party shall require its contractors to obtain and maintain during the Contract Period adequate insurance coverage sufficient to protect the Performing Party and the TCEQ from all claims and liability for injury to persons and for damage to property arising from the Contract. Unless specifically waived by the TCEQ, sufficient coverage shall include Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.
- 11.2 **Indemnification.** TO THE EXTENT AUTHORIZED BY LAW, THE PERFORMING PARTY SHALL REQUIRE ALL CONTRACTORS PERFORMING CONTRACT ACTIVITIES ON BEHALF OF PERFORMING PARTY TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE TCEQ AND PERFORMING PARTY AND THEIR OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL LOSSES, LIABILITIES, DAMAGES, AND OTHER CLAIMS OF ANY TYPE ARISING FROM THE PERFORMANCE OF CONTRACT ACTIVITIES BY THE CONTRACTOR OR ITS SUBCONTRACTORS, SUPPLIERS AND AGENTS, INCLUDING THOSE ARISING FROM DEFECT IN DESIGN, WORKMANSHIP, MATERIALS, OR FROM INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT; OR FROM A BREACH OF APPLICABLE LAWS, REGULATIONS, SAFETY STANDARDS OR DIRECTIVES. THE DEFENSE OF TCEQ SHALL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS TO REPRESENT TCEQ. THIS COVENANT SURVIVES THE TERMINATION OF THE CONTRACT.

12. TERMINATION

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

- 12.3 If, after termination for cause by TCEQ, it is determined that the Performing Party had not materially failed to comply with the Contract, the termination shall be deemed to have been for the convenience of TCEQ.

13. DISPUTES, CLAIMS AND REMEDIES

- 13.1 **Payment as a Release.** Neither payment by TCEQ nor any other act or omission other than an explicit written release, in the form of a unilateral amendment, constitutes a release of Performing Party from liability under this Contract.
- 13.2 **Schedule of Remedies available to the TCEQ.** In accordance with Texas Government Code Chapter 2261 the following Schedule of Remedies applies to this Contract. In the event of Performing Party's nonconformance, TCEQ may do one or more of the following:
- 13.2.1. Issue notice of nonconforming performance;
 - 13.2.2. Reject nonconforming performance and request corrections without charge to the TCEQ;
 - 13.2.3. Reject a reimbursement request or suspend further payments, or both, pending accepted revision of the nonconformity;
 - 13.2.4. Suspend all or part of the Contract Activities or payments, or both, pending accepted revision of the nonconformity;
 - 13.2.5. Demand restitution and recover previous payments where performance is subsequently determined nonconforming;
 - 13.2.6. Terminate the contract without further obligation for pending or further payment by the TCEQ and receive restitution of previous payments.
- 13.3 **Opportunity to Cure.** The Performing Party will have a reasonable opportunity to cure its nonconforming performance, if possible under the circumstances.
- 13.4 **Cumulative Remedies.** Remedies are cumulative; the exercise of any remedy under this Contract or applicable law does not preclude or limit the exercise of any other remedy available under this Contract or applicable law.

14. SOVEREIGN IMMUNITY

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

15. SURVIVAL OF OBLIGATIONS.

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

16. CONTRACT INTERPRETATION

- 16.1 **Definitions.** The word "include" and all forms such as "including" mean "including but not limited to" in the Contract and in documents issued in accordance with the Contract, such as Work Orders or Proposals for Grant Activities (PGAs).

- 16.2 **Headings.** The headings of the sections contained in this Contract are for convenience only and do not control or affect the meaning or construction of any provision of this Contract.
- 16.3 **Delivery of Notice.** Notices are deemed to be delivered three (3) working days after postmarked if sent by U.S. Postal Service certified or registered mail, return receipt requested. Notices delivered by other means are deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile transmission, email, or other commercially accepted means.
- 16.4 **Interpretation of Time.** All days are calendar days unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday or a state or federal holiday, it is omitted from the computation.
- 16.5 **State, Federal Law.** This Contract is governed by, and interpreted under the laws of the State of Texas, as well as applicable federal law.
- 16.6 **Severability.** If any provision of this Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall be deemed severable (to the extent of such illegality, invalidity or unenforceability) and the remaining part of the provision and the rest of the provisions of this Contract shall continue in full force and effect. If possible, the severed provision shall be deemed to have been replaced by a valid provision having as near an effect to that intended by the severed provision as will be legal and enforceable.
- 16.7 **Assignment.** No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by Performing Party will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge the Performing Party from any duty or responsibility under the Contract.
- 16.8 **Venue.** Performing Party agrees that the Contract is being performed in Travis County, Texas, because this Contract has been performed or administered, or both, in Travis County, Texas. The Performing Party agrees that any cause of action involving this Contract arises solely in Travis County, Texas.
- 16.9 **Publication.** Performing Party agrees to notify TCEQ five (5) days prior to the publication or advertisement of information related to this Contract. Performing Party agrees not to use the TCEQ logo or the TCEQ graphic as an advertisement or endorsement without written permission signed by the appropriate TCEQ authority.
- 16.10 **Waiver.** With the exception of an express, written waiver in the form of a unilateral amendment signed by TCEQ, no act or omission will constitute a waiver or release of Performing Party's obligation to perform conforming Contract Activities. No waiver on one occasion, whether expressed or implied, shall be construed as a waiver on any other occasion.
- 16.11 **Compliance with Laws.** TCEQ relies on Performing Party to perform all Contract Activities in conformity with all applicable laws, regulations, and rules and obtain all necessary permits and licenses.
- 16.12 **Counterparts.** This Contract may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Contract.
- 16.13 **Accessibility.** All electronic content and documents created as deliverables under this Contract must meet the accessibility standards prescribed in 1 Texas

Administrative Code sections 206.50 and 213 for state agency web pages, web content, software, and hardware, unless TCEQ agrees that exceptions or exemptions apply.

**SCOPE OF WORK
for
Governmental Alternative Fuel Fleet Program**

The following Scope of Work contains information on the grant activities to be conducted and the expenses that will be reimbursed under this Contract. 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 Contract is accurate. The Performing Party has reviewed the Scope of Work and, by signing this Contract, ratifies, adopts, and agrees to all such alterations.

ARTICLE 1. ACTIVITY NUMBER

1.1 The Project under this Contract is assigned the following project number and description.

Project Number	Description
2021-01-XXXX	

ARTICLE 2. ACTIVITY LIFE

2.1 The Performing Party will operate and maintain the Grant Vehicle(s) and any Refueling Equipment for a minimum of three years after the Proof of Purchase approval date under Article 5, below.

ARTICLE 3. PRIMARY AREA OF USE

3.1 The designated primary areas of use and percentage of annual use for the Grant Vehicles and any Refueling Equipment are listed below.

Austin Area	BPA Area	Corpus Christi Area	DFW Area	El Paso Area	HGB Area	San Antonio Area (Bexar County)	San Antonio Area (Other Counties)	Tyler-Longview Area	Other

3.2 Regardless of the usage percentages stated above for the project, the Grant Vehicle and any Refueling Equipment must be operated at least 51% of the time each year in the designated areas. Performing Party is responsible for tracking usage, and must make it available to the TCEQ upon request.

3.3 The eligible counties included in the areas identified in Section 3.1 of this Article are listed below.

- 3.3.1 Austin Area: Bastrop, Caldwell, Hays, Travis, and Williamson Counties
- 3.3.2 Beaumont-Port Arthur (BPA) Area: Hardin, Jefferson, and Orange Counties
- 3.3.3 Corpus Christi Area: Nueces and San Patricio Counties
- 3.3.4 Dallas-Fort Worth (DFW) Area: Collin, Dallas, Denton, Ellis, Henderson, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties
- 3.3.5 El Paso Area: El Paso County
- 3.3.6 Houston-Galveston-Brazoria (HGB) Area: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties
- 3.3.7 San Antonio Area: Bexar, Comal, Guadalupe, and Wilson Counties
- 3.3.8 Tyler Longview Area: Gregg, Harrison, Rusk, Smith, and Upshur Counties
- 3.3.9 Other Areas: Other Texas Counties

ARTICLE 4. VEHICLE BEING REPLACED

4.1 The Performing Party will replace and dispose of the following vehicle(s). Disposition requires complete destruction, rendering the vehicle permanently inoperable, in accordance with the Special Terms and Conditions. If this table is empty, the Performing Party is not replacing any vehicle(s).

Vehicle Description	Fuel Type

4.2 Any vehicle(s) replaced must be disposed of 90 days after receiving the Proof of Purchase Approval.

4.3 The PERFORMING PARTY shall submit information on the TCEQ disposition forms to verify the final disposition of the equipment replaced under this Contract. The 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 Contract. The Texas Nonrepairable Vehicle Title must be submitted at the same time that the required disposition documentation is submitted to the TCEQ. The PERFORMING PARTY must submit final disposition information forms within 30 days after completion of the disposition.

ARTICLE 5. GRANT VEHICLE AND EQUIPMENT

5.1 The Performing Party will acquire the Grant Vehicle and Refueling Equipment listed below no later than April 22, 2023.

Vehicle and Equipment Description	Fuel Type

5.2 The Performing Party may only purchase a Grant Vehicle that meets the following requirements:

5.2.1 The Performing Party may purchase or lease a new motor vehicle that is originally manufactured to operate using one or more alternative fuels or is converted to operate using one or more alternative fuels before the first retail sale of the vehicle, and that:

- has a dedicated system, dual-fuel system, or bi-fuel system; and
- if the motor vehicle is a fully electric motor vehicle or plug-in hybrid motor vehicle, has a United States Environmental Protection Agency (EPA) rating of at least 75 miles per gallon equivalent or a 75-mile combined city and highway range.

5.2.2 The vehicle and engine must be new, and not subject to a prior first sale.

5.2.3 If a vehicle and/or engine must be converted to operate on one or more alternative fuels, the conversion process must take place as part of the original sale or lease of the vehicle.

5.2.4 The vehicle may not have been purchased prior to September 1, 2020. The vehicle may have been ordered, but no expenses yet paid to finalize the purchase prior to this date.

5.2.5 The vehicle and/or engine must be legally imported, if applicable, and certified by the EPA to the current federal emissions standards or a lower family emissions limit (FEL).

5.3 The PERFORMING PARTY may only purchase refueling infrastructure, equipment, or services as shown in the table above, and only in conjunction with the purchase of a Grant Vehicle.

5.4 The Performing Party will provide the Proof of Purchase Documentation to TCEQ within 45 days of purchase and receipt and installation (if applicable) of any refueling infrastructure or equipment.

ARTICLE 6. PROJECT GRANT AMOUNT

6.1 The Maximum Grant Amount that may be expended for the Grant Vehicle and Refueling Equipment is listed below.

Project Grant Amount

6.2 Maximum Grant Amounts are subject to the requirements of the Request for Grant Applications.

ARTICLE 7. SCHEDULE SUMMARY

Request Advance Payment	Between September 1, 2021 and April 1, 2023
Purchase and Possess Grant Funded Vehicles, Purchase, Install, and Operate Refueling Infrastructure or Equipment, or enter into Refueling Service Agreement	April 22, 2023
Submit Proof of Purchase Documentation to TCEQ	45 days after acquisition
Receive Approval of Proof of Purchase Documentation from TCEQ	
Complete disposition of Vehicles being Replaced (if applicable)	90 days after Approval of Proof of Purchase Documentation
Provide disposition documentation to TCEQ (if applicable)	10 days after disposition completed
Use and Operation of Grant Vehicles and Refueling Equipment within Designated Area(s)	For 3 years after Approval of Proof of Purchase

— End of Scope of Work—

NOTICES, PROJECT REPRESENTATIVES AND RECORDS LOCATION

**CONTRACT NO. 582- PROJECT TITLE:
(IF APPLICABLE, WORK ORDER OR PGA NO. 582-)**

- 1. **Representatives.** The individual(s) named below are the representatives of TCEQ and Performing Party. They are authorized to give and receive communications and directions on behalf of the TCEQ and the Performing Party as indicated below. All communications including official contract notices must be addressed to the appropriate representative or his or her designee.
- 2. **Changes in Information.** Either party may change its information in this *Notices, Project Representatives and Records Location* document by providing notice to the other party's representative for contractual matters.
- 3. **TCEQ Representatives**

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

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

Title
Texas Commission on Environmental
Quality
P.O. Box 13087
MC-
Austin, Texas 78711-3087
Telephone No. (512) 239-
Facsimile No. (512) 239-
Email Address:

Title
Texas Commission on Environmental
Quality
P.O. Box 13087
MC-
Austin, Texas 78711-3087
Telephone No. (512) 239-
Facsimile No. (512) 239-
Email Address:

- 4. **Performing Party Representatives.**

For Contractual Matters

For Technical Matters

Title

Telephone No.
Facsimile No.
Email Address:

Title

Telephone No.
Facsimile No.
Email Address:

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

TCEQ Project Manager / TCEQ Disbursements Section / Other:

- 6. **Designated Location for Records Access and Review.** The Performing Party designates the physical location indicated below for record access and review pursuant to any applicable provision of this Contract:

(City / State ZIP)

Attachment A- Release of Claims

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Conditional Final Waiver and Release of Claims

Upon receipt and clearance of payment from the Texas Commission on Environmental Quality (TCEQ) in the sum of \$_____, which constitutes final payment to [*Performing Party's Name*](hereinafter referred to as "Performing Party"), Performing Party and its successors and assigns, release, discharge and relinquish the TCEQ, its officers, agents, and employees from all claims, known or unknown, arising out of or relating to TCEQ Contract Number _____ (Contract).

It is expressly agreed and understood that this conditional FINAL waiver and release of all claims is effective, without any further action of any party, only upon clearance of final payment to Performing Party in the above-mentioned amount. Performing Party warrants that it has completed all activities described in the Contract.

Executed on this _____ day of _____, 20_____.

By:_____

(signature)

(name)

(title)