

Texas Emissions Reduction Plan
Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP) Grant
TERMS AND CONDITIONS

ARTICLE 1. STATEMENT OF CONTRACT

1.1. Statement of Contract: This Contract is entered into by the parties listed on Form 1: Application, Contract & Payment Approval (“Form 1”) for the purpose of awarding a rebate to incentivize the purchase or lease of a LDPLIP-eligible vehicle. The purchaser or lessee (“Applicant” or “PERFORMING PARTY”) agrees to operate and register the eligible vehicle purchased or leased under this Contract in Texas for a minimum of one calendar year (12 months) from the date of purchase or lease. If the LDPLIP application is approved and funds are available, the Texas Commission on Environmental Quality (TCEQ) will issue the Applicant the appropriate LDPLIP rebate. All incentives are subject to the Texas Uniform Grant Management Standards and this Contract.

1.2. Contract Period: The Effective Date of this Contract is the date of TCEQ’s signature on Form 1. This Contract will commence on the Effective Date and shall terminate one calendar year (12 months) from the date of purchase or lease of the vehicle or 45 days from the Effective Date, whichever occurs later.

1.3. 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, and termination or completion of this Contract.

1.4. Remedies Available to the TCEQ: In accordance with Texas Government Code Chapter 2261, TCEQ may implement any of the following Schedule of Remedies in the event of any breach of the requirements of this Contract, including failure to conform to the LDPLIP requirements or applicable law:

- 1.4.1. reject substandard performance and request corrections without charge to the TCEQ;
- 1.4.2. issue notice of substandard performance or other non-conforming act or omission;
- 1.4.3. request and receive return of any over payments or unallowable payments; and
- 1.4.4. reject LDPLIP request and suspend payment pending accepted revision of substandard performance or non-conformity.

1.5. Cumulative Remedies: TCEQ may avail itself of any remedy 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 available to either party in this Contract shall not limit the remedies available to the parties under law.

1.6. Amounts of costs stated in this Contract are maximum amounts of the LDPLIP. By stating the amounts, TCEQ does not 1) guarantee payment of those amounts or 2) waive the requirements for the LDPLIP which must be satisfied by the PERFORMING PARTY.

ARTICLE 2. FUNDING AND LEGAL AUTHORITY

2.1. This Contract and all claims, suits or obligations arising under or related to this Contract are subject to and limited to those funds which are both:

2.1.1. appropriated by the Texas Legislature for the purposes of this Contract; and

2.1.2. actually received and deposited into an account of the Treasury dedicated to the TCEQ for the purposes of this Contract.

2.2. Any state funds provided are appropriated to TCEQ under the Appropriations Act (House Bill 1) of the 86th Texas Legislature and expenditure is authorized by Texas Health and Safety Code Chapter 386.

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

ARTICLE 3. INCENTIVE

3.1. If the LDPLIP application is approved and signed by both parties, and funds are available, the TCEQ will issue the PERFORMING PARTY up to \$5,000 for the purchase or lease of an eligible LDPLIP vehicle. Leases will be prorated based on a one to four-year lease term. The approved amount is marked by TCEQ on Form 1 of the application.

3.2. For any purchase or lease, the PERFORMING PARTY must submit any supporting documentation required or requested by TCEQ.

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

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

3.5. The TCEQ is not obligated to make payment until the LDPLIP application is approved by the TCEQ.

3.6. No entitlement. The PERFORMING PARTY does not have an expectation or entitlement to any financial assistance under this Contract. Therefore, the PERFORMING PARTY waives any claim for damages arising or resulting from TCEQ's termination of this Contract for any reason.

3.7. 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.

ARTICLE 4. ADDITIONAL TERMS AND CONDITIONS

4.1. Laws. This Contract is subject to: (1) Texas Health and Safety Code Chapter 386; (2) the Uniform Grant and Contract Management Act, Texas Government Code, Chapter 783, and the Uniform Grant and Contract Management Standards for State Agencies; (3) Appropriations Act of the 86th Texas Legislature, pertaining to appropriation of funds to TCEQ for grants and grants by state agencies; (4) Texas Government Code Chapter 2261, pertaining to cost reimbursement contracts; (5) Texas Government Code Section 556.0055, pertaining to lobbying; (6) TCEQ rules and policies, pertaining to TCEQ contracts and grants; (7) 30 Texas

Administrative Code Sections 114.610 – 114.612; and (8) other applicable Federal and State rules and statutes.

4.2. Notice of Rebates. This Contract is subject to the criteria established in the Notice of Rebates issued by the TCEQ and under which the LDPLIP application was submitted, including any subsequent amendments.

4.3. Child Support. Under Texas Family Code Section 231.006, 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 Contract, the PERFORMING PARTY certifies that the individual or business entity named in this Contract is eligible to receive the specified rebate and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

4.4. State Auditor's Office. 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. Under the direction of the Legislative Audit Committee, a person or 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 agrees to cooperate fully with the State Auditor's Office in the course of the audit or investigation, including providing all records requested.

4.5. Compliance with Laws. The PERFORMING PARTY shall give all notices and comply in all material respects with all laws and regulations applicable to the award and performance of the LDPLIP. Except where otherwise expressly required by applicable laws and regulations, TCEQ shall not be responsible for monitoring the PERFORMING PARTY's compliance with any laws or regulations.

4.6. Sovereign Immunity. The parties hereby agree that this Contract does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages.

4.7. Governing Law and Venue. This Contract shall be construed and interpreted in accordance with the laws of the State of Texas, excluding any choice of law rules which may direct the application of laws of another jurisdiction. Any action at law or in equity to enforce the terms and conditions of this Contract shall be brought in Travis County, Texas. This provision does not waive the TCEQ's sovereign immunity.

4.8. Severability. If any provision of these Contract Documents 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 these Contract Documents 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.

4.9. 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 damages arising out of actions of the PERFORMING PARTY in the performance of this Contract.

4.10. 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.

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

4.12. Offsets for debts owed to the State. The TCEQ may offset against 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.

4.13. Maintenance of Records.

4.13.1. The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to requirements of the Contract, including the Contract Documents or subsequent amendments. All financial records will be maintained in accordance with generally accepted accounting principles, the Uniform Grant Management Standards, and this Contract. The PERFORMING PARTY shall allow access to all the materials, including bank statements and records, to 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.

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

4.13.3. Records under this Article shall be maintained by the PERFORMING PARTY while participating in the LDPLIP and for three (3) years after the termination of this Contract. 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.

4.14. Data and Publicity.

4.14.1. All data and other information developed under this Contract 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 disclosure by the Texas Public Information Act, Texas Government Code Chapter 552.

4.14.2. 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 is publicized or reported in news media or publications.

4.15. TCEQ retains the discretion to determine what actions constitute a material breach, whether or not the non-compliance is specified as a material breach in this Contract.

4.16. The parties to this Contract expressly agree that time is of the essence for this contract.

4.17. The terms include, included, including, and includes when used in this Contract shall mean "includes but not limited to".

4.18. Unless authorized in writing by the TCEQ in accordance with this Contract, 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.

4.19 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.

4.20. TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party's, successors, assigns and representatives in respect to all covenants and obligations contained in the Contract Documents.

ARTICLE 5. TERMINATION

5.1. This Contract may be terminated in whole or in part by the TCEQ for cause, including a material failure to comply with the Contract Documents.

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

5.3. This Contract may be terminated in whole or in part by the TCEQ for its convenience. Circumstances in which this may occur include 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.

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

– End of Terms and Conditions –