

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
SEAPORT AND RAIL YARD GRANT PROGRAM CONTRACT
CONTRACT SIGNATURE PAGE

Contract Name	SEAPORT AND RAIL YARD GRANT PROGRAM
Contract Number	«CNRCT_TXT_ID»
PERFORMING PARTY Name	«LegalName»
PERFORMING PARTY I.D. Number	«GRANT_TXT_ID»
Total Contract Amount Not To Exceed	«TOTAL_AMT_1»

Contract Effective Date	Purchase Expiration Date	Request for Reimbursement Deadline	Contract Expiration Date
The Effective Date of this Contract is the date of last signature	April 30, 2022	Forty-five (45) days after Purchase Expiration Date	August 31, 2026

<p>The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas and the named PERFORMING PARTY enter this Contract for the purpose of providing financial assistance for the replacement and repowering of equipment as authorized by Texas Health and Safety Code Chapter 386.</p> <p>The Parties agree: (a) to be effective, the Contract must be signed by an authorized official of the TCEQ and the PERFORMING PARTY; (b) the PERFORMING PARTY will conduct the Grant Activities required by the Contract; and (c) the TCEQ will reimburse authorized allowable costs in accordance with the Texas Uniform Grant Management Standards and the Contract.</p>		
Authorized Official	Texas Commission on Environmental Quality (TCEQ)	«LegalName» (PERFORMING PARTY)
Printed Name:		«FullNameAO»
Title:		«TitleAO»
By (Authorized Signature):		

Date of Signature:		
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**GENERAL CONDITIONS
for
SEAPORT AND RAIL YARD PROGRAM (SPRY)**

ARTICLE 1. DEFINITIONS

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

1.1 Activity Life - the time period used to determine the emissions reductions and cost effectiveness of the activity and the period during which Monitoring Reports are required, also referred to in the Contract as the Reporting Period. The start date of the Activity Life begins on the date the Texas Commission on Environmental Quality (TCEQ) accepts verification of the disposition of the equipment or engine. The TCEQ will notify the PERFORMING PARTY in writing of the Activity Life start and end dates for each Grant Activity.

1.2 Annual Operation - the annual total of daily operation within one or more of the eligible seaports or rail yards. The Contract requires the PERFORMING PARTY to meet the Annual Operation as identified in the Scope of Work.

1.3 Application - the application for a 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 Authorized Official - the individual authorized to sign legal documents on behalf of the TCEQ and the PERFORMING PARTY, as designated in writing in the Contract.

1.5 Cargo Handling Equipment- any heavy-duty non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

1.6 Container Handling Equipment - eligible cargo handling equipment, not including non-road yard trucks, used primarily for container handling.

1.7 Drayage Activities - the transport of cargo, such as containerized bulk, or break-bulk goods.

1.8 Drayage Truck - a heavy-duty on-road or non-road vehicle used for Drayage Activities and that operates in or transgresses (i.e. passes) through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis. This term includes heavy-duty non-road, self-propelled vehicles or equipment meeting the definition of Cargo Handling Equipment.

1.9 Eligible Counties - the eligible counties applicable to this Contract are listed in the Request for Grant Applications (RFGA), the Application, and the Scope of Work.

1.10 Equipment - means any on-road or non-road vehicle or piece of equipment, or engine that is being replaced or repowered through this Contract.

1.11 Final Completion - the TCEQ determines the final completion of the Activities. This typically occurs upon the completion of the longest-running Activity Life of the Grant Activities under this Contract.

1.12 Global Positioning System (GPS) - a satellite-based, radio-positioning system that provides navigation and timing information to military and civilian users worldwide.

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

1.14 Grant - means this Contract between the TCEQ and the PERFORMING PARTY consisting of the documents listed in Article 5, Contract Documents. The term "Grant" shall be used interchangeably with "Agreement" or "Contract."

1.15 Grant Equipment - the equipment for which the cost of purchase is reimbursed by the TCEQ under the Contract. The term includes replacements for Grant Equipment which is lost, stolen, or irreparably damaged. The term "Grant Equipment" shall be used interchangeably with "equipment."

1.16 Incremental Costs - the cost of an approved activity less a baseline cost that would otherwise be incurred by the PERFORMING PARTY in the normal course of business.

- 1.17 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.
- 1.18 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.
- 1.19 NO_x - nitrogen oxides (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. NO_x 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).
- 1.20 Optimum Performance - the level of performance at which Grant Equipment functions in order to achieve the anticipated emissions reductions.
- 1.21 PERFORMING PARTY - the grant recipient indicated on the signature page of this Contract, also referred to in this Contract as the "grantee."
- 1.22 Purchase Expiration Date - time period under the Contract by which the costs for Grant Equipment must be incurred and paid.
- 1.23 Project Representative - 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, as designated in writing in the Contract.
- 1.24 Scope of Work - the Contract document detailing the requirements of the Grant Activities.
- 1.25 State - means the State of Texas.
- 1.26 Termination - means a permanent end and cessation of the Contract because: the Purchase Expiration Date has passed without completion of purchases eligible for reimbursement; all requirements of this Contract are completed within the sole discretion of the TCEQ; the PERFORMING PARTY has requested termination and repaid funds as allowed by Section 17.7; or the Contract is ended by action of the TCEQ for cause or for convenience. The Date of Termination is the Purchase Expiration Date, or the date of completion of all requirements of this Contract, or the effective date of action by the TCEQ ending the Contract for cause or for convenience, as applicable.
- 1.27 TERP GPS Monitoring Service (TGMS) - equipment and services used to aid the TCEQ and the PERFORMING PARTY in recording usage data.
- 1.28 TERP GPS Monitoring Service (TGMS) Contractor - the company, selected by the TCEQ through the competitive bid process, which furnishes equipment, installation/removal, and report services, both online and by report generation, to aid the TCEQ and the PERFORMING PARTY in recording usage data.
- 1.29 TCEQ - Texas Commission on Environmental Quality.
- 1.30 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 Contract.
- 1.31 When any period of time is referred to in the Contract 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 State of Texas or federal holiday, such day will be omitted from the computation.
- 1.32 A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.
- 1.33 The terms "include," "included," "including," and "includes," when used in this Contract shall mean "includes but not limited to."

ARTICLE 2. GOVERNING STANDARDS AND AUTHORITY

- 2.1 This Contract is entered into by TCEQ through its authority under Texas Water Code Section 5.124 (Authority to Award Grants).
- 2.2 This Contract is subject to: (1) Texas Health and Safety Code Chapter 386; (2) the Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Texas Uniform Grant Management Standards (UGMS); (3) the *Guidelines for the Seaport and Rail Yard Areas Emissions Reduction Program (RG-524)*; (4) 30 Texas Administrative Code Sections 114.680-114.682; (5) Appropriations Act of the

86th Texas Legislature pertaining to appropriation of funds to the TCEQ for grants, etc. and grants by state agencies; (6) Texas Government Code Section 556.0055 (pertaining to lobbying); 7) Texas Government Code Chapter 2261; (8) TCEQ rules and policies; and (9) other applicable Federal and State rules and statutes.

2.3 The PERFORMING PARTY assures compliance with the provisions found in UGMS III Subpart B, .14 State assurances, that are applicable to this grant.

ARTICLE 3. PURPOSE

The purpose of this Contract 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 nitrogen oxides (NO_x) in designated Eligible Counties in Texas.

ARTICLE 4. CONTRACT PERIOD

4.1 This Contract will commence on the Contract Effective Date as identified on the Signature Page.

4.2 The PERFORMING PARTY may begin the Grant Activities, at its own risk, prior to receiving a fully-executed Contract.

4.3 The Contract Period shall be the period of time from the Effective Date through the Expiration Date listed on the Signature Page of this Contract, unless the Contract is otherwise terminated or extended in accordance with its terms. The Contract may terminate earlier if the Activity Life for each Grant Equipment is met prior to the Expiration Date. The TCEQ will notify the PERFORMING PARTY in writing when the Contract has terminated.

4.4 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 5. CONTRACT DOCUMENTS

5.1 The Contract Documents which comprise the entire Contract between the TCEQ and the PERFORMING PARTY are provided in order of precedence in the event of conflicts:

- 5.1.1 Contract Signature Page
- 5.1.2 Scope of Work
- 5.1.3 Special Conditions
- 5.1.4 General Conditions
- 5.1.5 The *Guidelines for the Seaport and Rail Yard Areas Emissions Reduction Program (RG-524)*
- 5.1.6 RFGA, incorporated herein by reference.
- 5.1.7 The PERFORMING PARTY's Original Application, and any supplemental documentation submitted by the PERFORMING PARTY in support of the Application or grant award, incorporated herein by reference.
- 5.1.8 The following which may be delivered or issued after the Effective Date of the Contract and are not attached: Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

5.2 The information and data the PERFORMING PARTY submitted in the Application may have been altered after submittal to the TCEQ, to ensure that the information in the Application is accurate. The PERFORMING PARTY acknowledges that it 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.

5.3 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.

ARTICLE 6. ELIGIBLE ACTIVITIES

6.1 The PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and in accordance with the Contract.

6.2 The TCEQ may accept performance of a reduced number of the individual Grant Activities or other changes to the Scope of Work at its sole discretion and reimburse the PERFORMING PARTY for only those Grant Activities for which eligible purchases are completed.

- 6.2.1 If the changes to the Scope of Work result in lower than estimated NO_x reductions, TCEQ may reduce the grant amount to achieve the same cost-per-ton from the original application.

6.2.2 If the changes to the Scope of Work result in greater than estimated NO_x reductions, TCEQ will not reimburse more than the grant amount.

6.3 For replacement activities, the equipment being purchased under a grant may not have been acquired prior to the opening date of the grant application period, unless otherwise authorized in writing by the TCEQ.

6.4 The Grant Equipment is listed in the Scope of Work. The NO_x emissions of the engines must conform with the NO_x emissions listed in the application. The PERFORMING PARTY may substitute a newer model year replacement equipment 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.

6.5 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.

6.6 The PERFORMING PARTY understands that the TCEQ's approval of the Application does not constitute final verification that an engine meets the required certified NO_x emissions rate.

6.7 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.

ARTICLE 7. FUNDS

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

7.2 Amount Limits on Funds. The Contract Amount Not to Exceed on the Contract Signature Page is the maximum amount the TCEQ will reimburse the PERFORMING PARTY for the costs of the eligible Grant Activities. Eligibility for reimbursement is subject to a fully-executed Contract and eligible costs as determined by TCEQ. There is no guaranteed minimum amount of reimbursement.

7.3 Time Limit on Funds. Costs to be reimbursed under this Contract must be incurred and paid by the Purchase Expiration Date as identified on the Signature Page of this Contract. TCEQ's obligation to reimburse the PERFORMING PARTY's allowable costs incurred and paid under this Contract expires forty-five (45) days after this date. If no reimbursement has been requested or paid as of this date, this Contract will terminate without any further obligations to either party.

7.4 Limits on the amount of grant awards are set under Section 386.183, Texas Health and Safety Code. To ensure these limits are not exceeded, the TCEQ may reduce reimbursement amounts as necessary.

ARTICLE 8. ELIGIBILITY FOR COST REIMBURSEMENT

8.1 The TCEQ will reimburse the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all contractual requirements. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are reasonable, necessary, actual, and allowable for implementing the Grant Activities listed in the Scope of Work. Costs must be included in the Scope of Work to be eligible for reimbursement.

8.2 Amounts of costs stated in the Scope of Work are maximum amounts of reimbursement. By stating the amounts, the TCEQ does not A) guarantee payment of those amounts or B) 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 A) the costs stated in the Scope of Work or B) the actual eligible costs.

8.3 The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. A request for reimbursement, TCEQ's payment of reimbursement, or any other action will not establish an entitlement in the PERFORMING PARTY to payment from the TCEQ.

8.4 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 Contract.

Procurement

8.5 The PERFORMING PARTY agrees to follow all the requirements of 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, Section ___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://comptroller.texas.gov/purchasing/docs/ugms.pdf>

8.5.1 The PERFORMING PARTY must ensure that its procurement practices prohibit any actual or apparent conflicts of interest as described under UGMS, Part III, Subpart C, Section ___36, subsection (b)(3). PERFORMING PARTY agrees that TCEQ has sole discretion to determine whether a conflict exists, and that a conflict of interest may be considered a material breach of this Contract.

Reasonable Costs

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

- 8.6.1 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;
- 8.6.2 generally accepted sound business practices, arm's length bargaining, and federal and state laws and regulations;
- 8.6.3 the PERFORMING PARTY's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
- 8.6.4 any significant deviations from the PERFORMING PARTY's established practices.

Necessary Costs

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

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

- 8.8.1 the cost of money;
- 8.8.2 the interest charges on a purchase money loan or on a deferred payment purchase agreement; or
- 8.8.3 the cost of converting from a lease to a purchase at the end of the lease period.

Actual Costs

8.9 The criteria for actual costs include:

- 8.9.1 the direct Incremental Costs of implementing the Grant Activities, including purchasing and installing GPS equipment from the TERP GPS Monitoring Service Contractor, if applicable; or
- 8.9.2 the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.

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

- 8.10.1 amounts deducted from the true price of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds, or otherwise;
- 8.10.2 amounts which the PERFORMING PARTY owes or agrees to pay a vendor or contractor for any purpose other than the implementation of Grant Activities;
- 8.10.3 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;
- 8.10.4 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
- 8.10.5 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.

8.11 The PERFORMING PARTY must document and maintain evidence of expenses.

Allowable Costs

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

Unallowable Costs

8.13 *Consulting (Application Assistance) Fees.* 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 equipment are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this Contract. 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 equipment from that vendor is made independently and meets the other reasonableness provisions in the Contract.

8.14 *Administrative costs.* Internal costs of the grant recipient, such as personnel expenses, salaries, indirect costs, and travel are not eligible for reimbursement. 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 equipment or installation services.

8.15 *GPS Monitoring and Service.* Costs from maintaining monitoring services, maintaining GPS equipment, purchasing and installing equipment that is not from the TGMS Contractor, and monitoring service charges are not reimbursable expenses.

8.16 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 PERFORMING PARTY will indicate any financial incentives received on the Request for Reimbursement Form. The combination of this grant and other financial incentives may not exceed the incremental cost to the applicant of the Grant Equipment. During the reimbursement process, the TCEQ may reduce the amount of 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 Contract.

Preapproval of Costs

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

Purchase Agreements and Subcontracts

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

Additional Criteria for Reimbursement

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

Offsets for debts owed to the State

8.20 If the PERFORMING PARTY owes any amount(s) to the State of Texas, assigned payments will be held by the TCEQ until the debt is satisfied. The State may offset payments to the PERFORMING PARTY or its principals by any amount(s) owed to the State.

ARTICLE 9. REQUEST FOR REIMBURSEMENT

9.1 Except as provided for under Article 9.5 below, to be eligible for reimbursement under this Contract, a cost must have been incurred and paid by the PERFORMING PARTY before the Purchase Expiration Date and prior to claiming reimbursement from the 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.

9.2 All Request for Reimbursement forms must contain sufficient identification of and information concerning the costs incurred and paid or obligated under a lease or financing agreement. The TCEQ must be able to determine the eligibility of a particular cost during the initial review and any later audits. Supporting

documentation materials must be attached to the Request for Reimbursement forms where indicated to clearly show that the cost was incurred and, except where the payment is assigned to another entity, paid.

9.3 Unless otherwise approved by the TCEQ, all work on the Grant Equipment must be completed, with the Grant Equipment delivered in its final form and operational 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 complete and the Grant Equipment is operational.

9.4 The PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form. The forms shall be mailed to:

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

9.5 If the PERFORMING PARTY has paid eligible expenses that are equal to or greater than the grant amount with cash-on hand, the reimbursement may be paid directly to the PERFORMING PARTY. In the event the PERFORMING PARTY finances the Grant Equipment, TCEQ may not pay the PERFORMING PARTY directly unless the PERFORMING PARTY has paid an amount equal to or greater than the grant amount. The TCEQ may assign payment directly to the financing company. Supporting documentation must be submitted to establish that the goods or services were received, and that the payment amount is owed to the financing company indicated by the PERFORMING PARTY.

9.5.1 If a payment assignment is requested, the PERFORMING PARTY must complete the Assignment Request and Acceptance section on the Request for Reimbursement.

9.6 The final Request for Reimbursement form, indicated by selecting the final request box on the form, shall be submitted to the TCEQ by no later than forty-five (45) days after the Purchase Expiration Date, as listed on the Signature Page of this Contract.

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

Replacement and Repower Project Costs

9.8 For replacement and repower projects, the TCEQ will reimburse the PERFORMING PARTY for no more than eighty (80) percent of (A) the eligible incremental costs for the purchase of the replacement equipment or (B) the cost of the engine and any other eligible costs associated with a repower project under this Contract.

Purchase/Payment Documents

9.9 In order to receive payment for each Request for Reimbursement, the PERFORMING PARTY must submit the following supporting documents:

9.9.1 canceled checks or wire transfers;

9.9.2 written purchase and lease agreements;

9.9.3 Bill of Sale or Receipts for Delivery;

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

9.9.5 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 (finance statement) with a particular filing office.);
and

9.9.6 other documentation requested by the TCEQ to support the Request for Reimbursement.

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

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

9.12 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.

Credit for Replaced Equipment

9.13 In determining the expenses eligible for reimbursement under this Contract, 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 equipment being replaced, including, the parts from that equipment, for the sale of the scrapped equipment being replaced, trade-in of engines for remanufacture, or insurance proceeds.

9.14 For on-road 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. For activities involving the repower of heavy-duty equipment, the default scrappage value is \$250.

9.15 If TCEQ does not use the above default scrappage values, the **actual** scrappage value or other value received for the old equipment is considered a cost of performing the Grant Activities and as such must satisfy the cost guidelines of Article 8 of the General Conditions of this Contract. The value received for the equipment being replaced must be the result of arms-length bargaining with the entity disposing of the replaced equipment and must reflect actual market value.

9.16 If the default value of Section 9.13 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 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 10. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, GENERAL

10.1 All Grant Activities for which reimbursement is requested must be completed as described in the Scope of Work.

10.2 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.

Professional Quality

10.3 The PERFORMING PARTY is responsible for the professional quality, technical accuracy, timely completion, and the coordination of Grant Activities under this Contract. In performing the Grant Activities, the PERFORMING PARTY undertakes performance for its own benefit and not as agent for the TCEQ.

Supervision and Superintendence

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

Materials & Equipment

10.5 Unless otherwise specified in the Contract, the PERFORMING PARTY assumes 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.

10.6 The PERFORMING PARTY agrees to maintain the Grant Equipment in good condition and functioning at Optimum Performance during the Activity Life. All materials and equipment will be of good quality and be applied, installed, connected, erected, used, cleaned and conditioned, and maintained in accordance with the instructions from the applicable manufacturer and supplier, unless otherwise provided in the Contract.

10.7 Failure to maintain the Grant Equipment as necessary to achieve the required Annual Usage constitutes a material breach of this Contract.

11.8 The PERFORMING PARTY agrees that emissions reductions generated by each activity over the Activity Life may not be used for credit under any state or federal emissions reduction credit averaging, banking, or trading program, nor as a marketable emissions reduction credit. The emissions reductions generated may be used to demonstrate conformity with the state implementation plan. The PERFORMING PARTY agrees that any marketable credits generated by emissions reduction measures are transferred to the TCEQ, and that the reductions are permanently retired. The PERFORMING PARTY may not combine this grant funding with other incentive programs that require transfer of the emissions reductions to that other program.

ARTICLE 11. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, INSURANCE, REPAIR, AND REPLACEMENT

11.1 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 replace 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 the insurance requirement is considered a material breach of the Contract.

11.2 If there is a repairable malfunction of or damage to Grant Equipment which affects emissions reductions during the Activity Life, the PERFORMING PARTY will repair or restore the Grant Equipment to the level of Optimum Performance.

11.3 If there is loss, theft, or irreparable damage of Grant Equipment during the Activity Life, the PERFORMING PARTY will replace the lost, stolen, or damaged Grant Equipment with similar equipment which achieves the same Optimum Performance or better. The PERFORMING PARTY will replace and begin operating the Grant Equipment 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 must meet all eligibility requirements applicable to the original Grant Equipment and is subject to all the requirements applicable to Grant Equipment contained in this Contract. The TCEQ must be provided notice of any insurance claim filed by the PERFORMING PARTY as soon as available.

11.4 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 is considered a material breach of this Contract and requires the return of grant funds.

ARTICLE 12. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, GRANT ACTIVITIES

12.1 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.

12.2 The PERFORMING PARTY agrees to operate the Grant Equipment over the Activity Life no less than 50% of the Annual Usage for on-road activities and no less than 75% of the Annual Usage for non-road activities of the annual and total usage in the nonattainment areas and affected counties. Along with the Annual Usage, the PERFORMING PARTY agrees to operate the Grant Equipment at one or more of the designated seaports or rail yards for a minimum of 200 days per year (12-month period) for the duration of the Activity Life.

12.3 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.

12.3.1 The determination of whether return of funds is required will be primarily based on whether the Annual Usage of the Grant Equipment during the Activity Life occurs within the Eligible Counties for at least the percentage of Annual Usage listed in the Scope of Work.

12.3.2 If the PERFORMING PARTY is required to return grant funds, the 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 Contract (e.g. notification before sale of equipment).

Assignment

12.4 State law and TCEQ policy require that the TCEQ remain in contractual privity with the entity operating the Grant Equipment. The TCEQ must retain the ability to enforce the usage and reporting commitments contained within the Scope of Work until the termination of this Contract. 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), constitutes a material breach of this Contract and requires the return of grant funds.

12.4.1 The decision by the 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 the TCEQ, in its sole discretion, allows the assignment of this Contract, the PERFORMING PARTY and proposed assignee will be required to enter a TCEQ Consent to Assignment agreement that shall include the assignee's obligation to accept this Contract and to continue to use the Grant Equipment subject to the terms of this Contract.

12.4.2 No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by PERFORMING PARTY will be binding on the 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.

ARTICLE 13. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, DISPOSITION OF REPLACED EQUIPMENT

13.1 Unless an alternative disposition method is approved by the TCEQ, the PERFORMING PARTY agrees to dispose of the equipment being replaced by complete destruction or otherwise rendering them permanently inoperable. Standard disposition methods require completely crushing the equipment, including the engine, or cutting a 3-inch or larger hole through the engine block on both sides (or otherwise destroying it) and cutting both frame rails in half. The structural damage to the equipment must be such that repairs are not possible.

13.2 Alternative disposition methods must be approved in writing by the TCEQ and documented in the Special Conditions of this Contract. If the PERFORMING PARTY is unable to dispose of the equipment in accordance with an approved alternative disposition method, the PERFORMING PARTY agrees to dispose of the equipment 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.

13.3 The equipment 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 changing this Contract.

13.4 The PERFORMING PARTY shall submit on the TCEQ disposition forms information 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 for the equipment replaced under this Contract. The Texas Nonrepairable Vehicle Title must be submitted with the other required disposition documentation. 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.

13.5 The PERFORMING PARTY must submit photographs of the equipment being destroyed, both before and after the equipment are destroyed or rendered inoperable. 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 the TCEQ with any clarification and additional documentation as requested by the TCEQ to approve disposition.

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

ARTICLE 14. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, INSTALLATION AND USE OF IDENTIFYING MARK, TRACKING DEVICE

Identifying Mark

14.1 Upon request by the TCEQ, the PERFORMING PARTY shall install, or allow the 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 the TCEQ shall specify. The PERFORMING PARTY may remove the mark upon the expiration of the Activity Life for each Grant Equipment.

Tracking Device - Voluntary

14.2 The PERFORMING PARTY may voluntarily install a device for tracking the location and usage of the Grant Equipment during the Activity Life.

14.3 Installation of a GPS tracking unit from the designated TGMS Contractor and maintenance of monitoring service through the designated TGMS Contractor waives the requirement of submission of written Monitoring Reports required under General Conditions, Article 15, of this Contract.

14.3.1 Waiver of the written Monitoring Reports shall continue so long 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 the GPS monitoring service is restored.

14.4 The 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 will be considered a material breach of this Contract and shall reinstate requirements for submission of written Monitoring Reports.

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

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

Tracking Device - Mandatory

14.6 Under circumstances where the TCEQ determines, at its sole discretion, that the PERFORMING PARTY is not meeting its commitments under this Contract, the TCEQ may require the PERFORMING PARTY to install, or allow the 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.

14.7 If the PERFORMING PARTY is required to install a tracking device, the PERFORMING PARTY and the TCEQ shall execute a separate GPS Monitoring Contract that will specifically define the terms of usage of the tracking device and associated monitoring services.

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

GPS Data

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

ARTICLE 15. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, PROJECT STATUS, LONG-TERM MONITORING AND REPORTING

15.1 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 designated form or in a format requested by the TCEQ, within a reasonable time frame.

15.2 As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed Usage Reports to the TCEQ, on forms provided by the TCEQ, for the Activity Life. The Usage Reports shall include properly completed individual reports on the use of Grant Equipment for each activity, for the 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 Usage Reports on a less frequent schedule or to suspend the reporting requirements, based on an assessment of compliance with the usage and reporting requirements.

15.3 The PERFORMING PARTY agrees that failure to adequately monitor the annual usage of Grant Equipment, failure to submit properly completed Usage Reports during the Activity Life, and/or submitting Usage Reports with false, incorrect, or incomplete information constitutes a material breach of this Contract and shall require the return of grant funds.

ARTICLE 16. PERFORMING PARTY'S RESPONSIBILITIES, ADMINISTRATIVE REQUIREMENTS

Access to Records, Grant Equipment, and Equipment Being Replaced

16.1 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, 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 Contract. The PERFORMING PARTY will include in all subcontracts for work under this Contract a requirement that subcontractors will provide access to all relevant financial records including bank statements.

16.2 The PERFORMING PARTY shall allow access to all Grant Equipment, as well as equipment being replaced under this Contract 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.

Maintenance of Records

16.3 The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to the performance of the Grant Activities and requirements of the Contract, including any amendments. All financial records will be maintained in accordance with generally accepted accounting principles, UGMS, and this Contract. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable costs among projects. 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, 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 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.

16.4 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activities under this Contract 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.

16.5 Subject to the obligations and conditions set forth in this Contract, title to Grant Equipment acquired under this Contract by the PERFORMING PARTY will vest upon acquisition by the PERFORMING PARTY.

16.6 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:

16.6.1 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, the cost of the property, the percentage of the TCEQ's 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.

16.6.2 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 reconcile the results of such inventories 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.

PERFORMING PARTY's Representative

16.7 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.

16.8 The PERFORMING PARTY agrees 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.

16.9 Any notice issued pursuant to this Contract shall be addressed to the respective party's Project Representative or delegated authority. Such notices shall be written and hand-delivered or sent by first-class mail. Any notice or other written communication shall be considered delivered upon date of receipt.

Personnel

16.10 PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors, to implement the Grant Activities as required by the Contract.

Safety and Protection

16.11 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.

Permits

16.12 Unless otherwise provided in the Contract, the PERFORMING PARTY shall obtain and pay for all transportation, construction, and operating permits and licenses required for the performance of this Contract. 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 Contract.

Laws and Regulations

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

Data and Publicity

16.14 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 access by the Texas Public Information Act, Texas Government Code, Chapter 552. The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from public access to records under this Contract.

16.15 Upon termination of this Contract, if requested by the TCEQ, all copies of data and information developed under this Contract, including databases for which the costs of preparation are reimbursed under this Contract, shall be furnished at no charge to the TCEQ, and shall become the property of the TCEQ.

16.16 The PERFORMING PARTY agrees to notify the 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.

Lobbying Activities

16.17 The PERFORMING PARTY shall not use funds provided under this Contract to support lobbying or political activity either directly or indirectly.

Accessibility

16.18 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.

ARTICLE 17. TERMINATION

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

17.2 This Contract 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. Unless advance notice of intent to terminate will place funds of the state at increased risk, the TCEQ will provide written notice to the PERFORMING PARTY's Project Representative of its intent to terminate. The PERFORMING PARTY shall have twenty (20) calendar days from the date such notice is sent to cure performance deficiencies.

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

17.4 This Contract may be terminated in whole or in part by the TCEQ for its convenience. Circumstances when 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, at the sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days written notice of intent to terminate.

17.5 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 the TCEQ.

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

17.7 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 Contract, the PERFORMING PARTY may terminate this Contract by providing ten (10) days written notice to the TCEQ and returning any reimbursements already received.

ARTICLE 18. REMEDIES AVAILABLE TO THE TCEQ

18.1 In accordance with Texas Government Code Chapter 2261, the following Schedule of Remedies applies in the event of the PERFORMING PARTY's breach of the requirements of this Contract; including the substandard performance of Grant Activities or other failure, material or otherwise, to conform to the requirements of the Contract or applicable law:

- 18.1.1 Issue notice of substandard performance or other non-conforming act or omission;
- 18.1.2 Reject substandard performance and request corrections without charge to the TCEQ;
- 18.1.3 Request and receive return of any over payments or inappropriate payments;
- 18.1.4 Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;

- 18.1.5 Reject reimbursement request and withhold and retain all or partial payments for recovery of administrative costs;
- 18.1.6 Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;
- 18.1.7 Terminate the Contract without further obligation for pending or further payment by TCEQ and receive restitution of previous payments;
- 18.1.8 Demand restitution and recover payments where performance is subsequently determined non-conforming; or
- 18.1.9 Require payment of liquidated damages.

Liquidated Damages

18.2 The parties agree that reasonable compensation for breach of Contract will be the sum consisting of total grant funds paid or obligated by the 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 that meet the requirements of the Scope of Work prior to the breach. Determination of timely and accurate usage reporting is at the sole discretion of the TCEQ. The PERFORMING PARTY hereby promises to pay, and the TCEQ hereby agrees to accept, such sum as liquidated damages, and not as a penalty, in the event of such breach.

Cumulative Remedies

18.3 The 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.

ARTICLE 19. INDEMNIFICATION

19.1 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 ANY ACTIONS OR OMISSIONS OF THE PERFORMING PARTY, ITS SUBCONTRACTORS, AGENTS, OFFICERS AND DIRECTORS, PRINCIPALS AND EMPLOYEES IN THE PERFORMANCE OF THIS CONTRACT. THE DEFENSE OF TCEQ SHALL BE SUBJECT TO THE AUTHORITY OF THE OFFICE OF THE TEXAS ATTORNEY GENERAL TO REPRESENT TCEQ IF TCEQ IS NAMED IN ANY LAWSUIT. THE PERFORMING PARTY MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL.

19.2 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 20. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

20.1 The Contract Documents may be amended to provide for additions, deletions, and revisions in one or more of the following ways: a formal Written Amendment or a Minor Change. All requests for changes to the Contract must be submitted in writing to the TCEQ. All Contract amendments must be in writing and signed by both parties.

20.2 Either party may change its Project Representative or make corrections to non-substantial typographical errors by providing written notice to the other party's representative(s).

ARTICLE 21. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

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

- 21.1.1 Quality and Accuracy. The PERFORMING PARTY's Grant Activities conform to the requirements of this Contract.
- 21.1.2 Timeliness. The PERFORMING PARTY's Grant Activities are completed on schedule.
- 21.1.3 Reports and Administrative and Financial Operations. The PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Contract, including record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.

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

21.1.5 Other. Other factors unique to the type of project, as determined by the TCEQ.

21.2 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.

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

21.2.2 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.

21.2.3 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.

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

Contractor Evaluation

21.3 The TCEQ may prepare a written evaluation of the performance of the PERFORMING PARTY upon completion of all reimbursements under this Contract and upon the completion of the Project Life, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation may 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 the TCEQ for the evaluation.

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

ARTICLE 22. MISCELLANEOUS

22.1 In order for this Contract to be effective, an authorized principal of an unincorporated business organization or association must sign the Contract. An agent signing for a corporation must be authorized to sign by the corporation.

22.2 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.

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

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

22.5 The PERFORMING PARTY's timely performance is essential to this Contract.

22.6 Child Support. 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 Contract, 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 Contract may be terminated and payment may be withheld if this certification is inaccurate.

22.7 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, 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.

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

22.9 The parties hereby agree that this Contract 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 the TCEQ, goods or services which are not required under the Contract or any conforming amendment.

22.10 The PERFORMING PARTY acknowledges and agrees that this Contract 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 Contract will arise solely in Travis County. This provision does not waive the TCEQ's sovereign immunity.

22.11 Any provision of the Contract 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 the TCEQ and the PERFORMING PARTY, who agree that the Contract will be 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.

22.12 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)].

Bankruptcy

22.13 If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify the TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to the TCEQ Bankruptcy Program. The PERFORMING PARTY shall place the 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

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

Physical Address:

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

Telephone No.: (512) 239-4434

Facsimile No.: (512) 239-6161

PERFORMING PARTY's Authorized Official

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

Mailing Address:

«FullNameAO»
«LegalName»
«MailingAddress1AO» «MailingAddress2AO»
«MailingCityAO», «MailingStateAO» «MailingZipAO»

Physical Address

«FullNameAO»
«LegalName»
«PhysicalAddress1AO» «PhysicalAddress2AO»
«PhysicalCityAO», «PhysicalStateAO»
«PhysicalZipAO»

Telephone No.: «PrimaryPhoneNumAO»

PERFORMING PARTY's Project Representative

The individual named in the original application is the PERFORMING PARTY's 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's Project Representative or his or her designee.

Mailing Address:

«FullNameDR»
«LegalName»
«MailingAddress1DR» «MailingAddress2DR»
«MailingCityDR», «MailingStateDR» «MailingZipDR»

Physical Address

«FullNameDR»
«LegalName»
«PhysicalAddress1DR» «PhysicalAddress2DR»
«PhysicalCityDR», «PhysicalStateDR»
«PhysicalZipDR»

Telephone No.: «PrimaryPhoneNumDR»

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

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
SEAPORT AND RAIL YARD 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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