

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS VOLKSWAGEN ENVIRONMENTAL MITIGATION PROGRAM CONTRACT

CONTRACT SIGNATURE PAGE

Contract Name:	Texas Volkswagen Environmental Mitigation Program (TxVEMP)
Contract Number:	«CNTRCT_TXT_ID»
PERFORMING PARTY Name:	«LegalName»
Total Contract Amount Not To Exceed:	«TOTAL_AMT_1»
Contract Effective Date:	Date of last signature
Contract Expiration Date & Purchase Expiration Date:	24 months after Contract Effective Date
Activity Life Expiration Date:	Five years from final reimbursement date

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 emissions reduction projects as authorized under Texas Water Code Section 5.124, the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust), and the Beneficiary Mitigation Plan for Texas. The Parties agree the PERFORMING PARTY will conduct the Grant Activities required by the Contract and will be reimbursed from the State Trust for authorized Allowable Costs in accordance with the Texas Uniform Grant Management Standards and the Contract.

Authorized Official	Texas Commission on Environmental Quality (TCEQ)	«LegalName» (PERFORMING PARTY)
Printed name:		
Title:		
By (Authorized Signature):		
Date of Signature:		

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GENERAL CONDITIONS
for
Texas Volkswagen Environmental Mitigation Program
Replacement and Repower Activities

ARTICLE 1. DEFINITIONS

Unless defined herein, terms in this Contract and Contract Documents will have the meanings provided in the Texas Uniform Grant Management Standards (UGMS) or the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust) and Beneficiary Mitigation Plan for Texas (Mitigation Plan). The following terms have the meanings indicated.

1.1 Activity Life - the time period established by the TCEQ that is used to determine the emissions reductions of the activity. The Activity Life begins on the date the final reimbursement payment is made under the grant, continuing for five (5) years afterwards. Upon acceptance by TCEQ of the final disposition verification and completion of all reimbursements, the TCEQ will notify the PERFORMING PARTY in writing of the Activity Life start and end dates for each activity.

1.2 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. In case of conflict between the Application and Scope of Work, the Scope of Work will take precedence.

1.3 Authorized Official - the individual authorized to sign legal documents on behalf of the TCEQ and the PERFORMING PARTY. Authorized Officials of the TCEQ and the PERFORMING PARTY are designated in writing in the Contract.

1.4 Contract Period - term of the Contract from the Contract Effective Date through final reimbursement payment. This Contract will administratively terminate at the end of the Contract Period with the final reimbursement payment and release of claims; however, the PERFORMING PARTY remains obligated for the Activity Life of the Contract.

1.5 Final Completion - when the Grant Activities are completed in the judgment of the TCEQ. This will usually occur upon the successful completion of the Activity Life of all the Grant Activities under this Contract.

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

1.7 Grant - means the Contract between TCEQ and the PERFORMING PARTY consisting of the documents listed in Article 8, Contract Documents. The term "Grant" shall be used interchangeably as "Agreement" or "Contract."

1.8 Grant Equipment - the equipment, real property, vehicles, qualifying fuel, infrastructure, processes and technology, and the related goods and services in a Grant Activity for which the cost of purchase or utilization is reimbursed, in whole or in part, under this Contract. The term includes replacements for the Grant Equipment which is lost, stolen, or irreparably damaged.

1.9 Incremental Costs - the cost of an approved activity less a baseline cost that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the RFGA.

1.10 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.

1.11 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, and it plays a major role in the formation of ground-level ozone in the atmosphere through a complex series of reactions with volatile organic compounds (VOCs).

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

1.13 PERFORMING PARTY - the grant recipient indicated on the signature page of this Contract, also referred to in this agreement as the “grantee.”

1.14 Purchase Expiration Date - the date specified in the Contract when all costs for Grant Equipment must be incurred and paid.

1.15 Priority Areas - the eligible areas and counties where the PERFORMING PARTY must use the grant-funded equipment a minimum of 51% of the annual use during the Activity Life. The applicable Priority Areas are listed in the TxVEMP RFGA, TxVEMP Application, and the Scope of Work of this Contract.

1.16 Project Representative - individual identified by each party and designated in this Contract to whom all communications, signed contracts and related documents, and written correspondence will be addressed and delivered.

1.17 Scope of Work - the contract document detailing the requirements of the Grant Activities.

1.18 State - means the State of Texas.

1.19 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 19.7; or the Contract is ended by action of the TCEQ for cause or for convenience. The Date of Termination is the Purchase Expiration Date, Final Completion, or the effective date of action by the TCEQ ending the Contract for cause or for convenience, as applicable.

1.20 Written Amendment - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an adjustment in the Contract Amount or the Contract Period, or substantive changes to the Grant Activities affecting obligations between the parties issued on or after the Effective Date of the Contract.

ARTICLE 2. GOVERNING STANDARDS AND LEGAL AUTHORITY

This Contract is subject to: (1) Texas Water Code Section 5.124 (TCEQ’s authority to award grants) and Section 5.229 (TCEQ’s general authority to enter into contracts); (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) TCEQ rules and policies (pertaining to TCEQ contracts and grants); (4) the State Trust Agreement and the Mitigation Plan; (5) the RFGA; and (6) other applicable Federal and State rules and statutes.

ARTICLE 3. PURPOSE

This grant program implements a portion of the Texas Volkswagen (VW) Environmental Mitigation Program (TxVEMP) established and administered by the TCEQ. Visit the TxVEMP website, www.TexasVWFund.org, for more information on the background and purpose of the TxVEMP.

ARTICLE 4. FUNDS

4.1 Amount Limits on Funds. The PERFORMING PARTY will receive reimbursement for the costs of the conforming Grant Activities. The Total Contract Amount Not to Exceed is shown on the Signature Page.

4.2 TCEQ in its sole discretion will determine whether costs are eligible and conform to the Grant Activities. The actual amount of reimbursement authorized may be less than the Total Contract Amount Not to Exceed. The Total Contract Amount Not to Exceed is not a guarantee of payment, nor does the Contract guarantee a minimum amount of reimbursement.

4.3 Time Limits on Funds (Purchase Expiration Date). 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.

ARTICLE 5. CONTRACT PERIOD

5.1 This Contract will commence on the Effective Date of the Contract and will expire 24 months after that date (Contract Expiration Date). The Contract Expiration Date may be extended through a Written Amendment. Extensions are subject to TCEQ’s sole discretion.

5.2 The PERFORMING PARTY agrees to perform in accordance with the Contract Documents beyond any event of termination and through the end of the Activity Life of any Grant Activity for which the PERFORMING PARTY has been reimbursed. The PERFORMING PARTY acknowledges that certain contractual requirements, such as record retention and audit survive the Expiration Date or termination of the Contract.

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

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 Documents.

6.2 The TCEQ may accept performance of a reduced number of the individual Grant Activities listed in the Scope of Work, at its sole discretion. The PERFORMING PARTY will only be reimbursed for those Grant Activities for which eligible purchases are completed.

6.3 The vehicle or piece of equipment being acquired under a grant may not have been acquired prior to the opening of the grant application period, unless otherwise approved by the TCEQ.

ARTICLE 7. REPRESENTATIONS

The PERFORMING PARTY hereby ratifies and attests to all representations and certifications in the Application and agrees to give prompt written notice to the TCEQ if there is any material change in these representations or certifications.

ARTICLE 8. CONTRACT DOCUMENTS

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

- 8.1.1 Contract Signature Page.
- 8.1.2 Scope of Work.
- 8.1.3 Special Conditions.
- 8.1.4 General Conditions.
- 8.1.5 The TCEQ Request for Grant Applications, incorporated herein by reference.
- 8.1.6 Beneficiary Mitigation Plan for Texas, incorporated herein by reference.
- 8.1.7 Environmental Mitigation Trust Agreement for State Beneficiaries ("State Trust"), incorporated herein by reference.
- 8.1.8 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.
- 8.1.9 The following which may be delivered or issued after the Effective Date of the Contract and are not attached: all written Amendments, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

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

8.3 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 9. ELIGIBILITY FOR COST REIMBURSEMENT

9.1 The TCEQ will direct the Trustee of the State Trust to act as Disburser to issue payment to the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all requirements. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are the reasonable, necessary, actual, and allowable costs of implementing the Grant Activities listed in the Scope of Work. Costs must be included in the Scope of Work to be eligible for reimbursement.

9.2 The Grant Equipment must be acquired, with costs incurred and paid to be eligible for reimbursement. If the PERFORMING PARTY is obligated under a commercial financing agreement resulting in PERFORMING PARTY's purchase and ownership of the equipment (such as a capital lease or finance lease), this is also eligible. Leases that do not meet this criterion are ineligible.

- 9.2.1 If the Contract includes Infrastructure projects, a standard lease agreement of the infrastructure equipment without a binding commitment to purchase is eligible for these projects. The lease must extend to the end of the Activity Life for the Infrastructure equipment.

Procurement

9.3 The PERFORMING PARTY agrees to follow all the requirements of the Texas Uniform Grant Management Standards (UGMS). The PERFORMING PARTY must ensure its procurement practices prohibit any actual or apparent conflicts of interest as described under UGMS __.36 Procurement (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. Additionally, PERFORMING PARTY will adhere to the applicable cost principles under __.22 Allowable Costs. The UGMS document is located at:

<https://comptroller.texas.gov/purchasing/docs/ugms.pdf>

Reasonable Costs

- 9.4 Reasonableness of costs depends upon a variety of considerations and circumstances, including:
- 9.4.1 whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the PERFORMING PARTY's business or the contract performance;
 - 9.4.2 generally accepted sound business practices, arm's length bargaining, and federal and state laws and regulations;
 - 9.4.3 the PERFORMING PARTY's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
 - 9.4.4 any significant deviations from the accepted industry established practices.

Necessary Costs

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

- 9.6 Unless expressly authorized by the TCEQ, necessary costs do not include:
- 9.6.1 the cost of money;
 - 9.6.2 the interest charges on a purchase money loan or on a deferred payment purchase agreement; or
 - 9.6.3 the cost of converting from a lease to a purchase at the end of the lease period.

Actual Costs

- 9.7 The criteria for actual costs include:
- 9.7.1 the direct Incremental Costs of implementing the Grant Activities; or
 - 9.7.2 the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.
- 9.8 Unless expressly authorized by the TCEQ, actual costs do not include:
- 9.8.1 amounts deducted from the true price of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds or otherwise;
 - 9.8.2 amounts which the PERFORMING PARTY owes or agrees to pay a vendor or contractor for any purpose other than the implementation of Grant Activities;
 - 9.8.3 amounts in the charges which a vendor/contractor intends to return to PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value;
 - 9.8.4 baseline costs designated by the TCEQ in the Application reflecting the costs that would otherwise be incurred by the PERFORMING PARTY in the normal course of business; or
 - 9.8.5 amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are or will be received by the PERFORMING PARTY.

9.9 The PERFORMING PARTY's documentation of expenses is required under Article 17 of these General Conditions.

Allowable Costs

9.10 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.

Consulting (Application Assistance) Fees

9.11 Any fees charged by a consultant for preparation of the Application, either directly or as an addition to the cost basis of the grant-funded vehicle, equipment, or engine, are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this 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, so long as any decision by the applicant to purchase the grant-funded vehicle or equipment from that vendor is made independently and meets the other reasonableness provisions in the grant contract. However, if the consultant is paid directly by the applicant to complete the Application or to act as the PERFORMING PARTY's agent for the grant process, purchases of Grant Equipment from an entity in which the consultant has an interest will be considered a conflict of interest under Subsection 9.3 of this Contract.

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

Preapproval of Costs

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

Purchase Agreements and Subcontracts

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

Additional Evidence

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

Additional Criteria for Reimbursement

9.16 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.

Costs in Scope of Work are Maximum Amounts, Not a Guarantee

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

No Entitlement to Funds

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

9.19 By directing the Disburser to issue a check for payment, the TCEQ does not waive any requirements for the reimbursement of 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 to the State Trust for any reimbursed expenses that are later determined to be unallowable under the terms of this Contract.

Debts owed to the State

9.20 If the PERFORMING PARTY owes any amount(s) to the State of Texas TCEQ may not authorize reimbursement until the debt is satisfied.

Child Support

9.21 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 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 eligible 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.

Required Waiver

9.22 Any checks to the PERFORMING PARTY will be issued on behalf of TCEQ by Wilmington Trust, N.A., acting as Disburser. Checks will include the following waiver language below the endorsement signature line of each check: "By endorsing and cashing this check the Payee hereof agrees and acknowledges that: (i) Wilmington Trust N.A. ("WT") is acting merely as an agent of the TCEQ solely to assist it in making payments and that such payees agrees to waive any and all claims whatsoever, in law and/or in equity, against WT, and agrees not to initiate a suit against WT in respect of, and agrees that WT will not be liable for, any actions that WT takes, or abstains from taking, in either case, arising out of or in connection with the performance of its duties on behalf and as directed by TCEQ and (ii) WT shall not be liable for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever or force majeure events or Acts of God in connection with making this payment for TCEQ."

9.22.1 The PERFORMING PARTY acknowledges that the Disburser is a third-party beneficiary of this acknowledgement.

ARTICLE 10. REQUEST FOR REIMBURSEMENT

10.1 Eligible expenses must have been incurred by the PERFORMING PARTY prior to the Purchase Expiration Date. To receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form, to be made available to the PERFORMING PARTY by the TCEQ. The request and forms shall be mailed or delivered to:

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

10.2 The PERFORMING PARTY is responsible for fully and accurately completing the Request for Reimbursement form. The PERFORMING PARTY will receive its reimbursement payment in the form of a check sent by Wilmington Trust, N.A., as Disburser. All payments will be sent to the PERFORMING PARTY by the Wilmington Trust, N.A, at the direction of TCEQ. Neither TCEQ nor Wilmington Trust, N.A. is liable for any inaccurate or incomplete information provided by the PERFORMING PARTY. The PERFORMING PARTY is responsible for any additional costs or fees related to correcting any inaccurate information provided by the PERFORMING PARTY, including any tax penalties or fees resulting from inaccurate information.

10.3 The PERFORMING PARTY will indicate on the Request for Reimbursement whether any additional financial incentives have been received, or are expected to be received, by the PERFORMING PARTY that offsets the grant activity costs, including tax credits or deductions, other grants, or any other public financial assistance.

10.4 Except as provided for under Subsection 10.6 below, to be eligible for reimbursement under this Contract, a cost must have been incurred and paid by the Purchase Expiration Date and prior to claiming reimbursement from TCEQ. A cost may not be considered incurred until the Grant Equipment and/or goods and services included under the cost have been received and accepted by the PERFORMING PARTY. The cost must have been paid by the PERFORMING PARTY prior to claiming reimbursement.

Project Costs

10.5 The TCEQ will direct the Disburser to reimburse the PERFORMING PARTY for no more than the amount specified for each Activity in the Scope of Work. This amount may be adjusted downward in accordance with the Contract.

10.6 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; however, the payment may be assigned 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.

10.6.1. If an assignment is requested, the PERFORMING PARTY must complete the Assignment Request and Acceptance section of the Request for Reimbursement.

10.7 A final Request for Reimbursement Form, indicating in the appropriate box that it is the final request, must be submitted to the TCEQ by no later than forty-five (45) days after the Purchase Expiration Date.

10.8 All Request for Reimbursement forms must clearly detail and document the costs incurred (or obligated under a financing agreement) and paid. TCEQ will review the Request for Reimbursement form and supporting documentation to determine the eligibility of a particular cost. Supporting documentation materials, as directed by the TCEQ in the instructions accompanying the forms, shall be attached to the report forms to clearly show that the cost was incurred and, except where the payment is assigned to another entity, paid.

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

Replacement, Repower, and On-Site Infrastructure Project Costs

10.10 For replacement, repower, and on-site infrastructure projects, the TCEQ will reimburse the PERFORMING PARTY for no more than the eligible amount for the purchase of the replacement vehicle or equipment as specified in the RFGA.

Purchase/Payment Documents

10.11 In accordance with the terms of this Contract, for any purchase, deferred payment purchase, or other commercial financing arrangement, the PERFORMING PARTY must submit any supporting documentation required or requested by TCEQ. To receive payment for each Request for Reimbursement, and allow for any subsequent audit, the PERFORMING PARTY is specifically required to submit the following supporting documents:

- 10.11.1 canceled checks or wire transfers;
- 10.11.2 written purchase and commercial financing agreements;
- 10.11.3 Bills of Sale or Receipts for Delivery;
- 10.11.4 for deferred payment purchases, statements of account status showing the account in good standing and the equipment is in possession of the PERFORMING PARTY;
- 10.11.5 Uniform Commercial Code (UCC) Financing Statement (Form UCC1) filing, if applicable. (The UCC allows a creditor to notify other creditors about a debtor's assets used as collateral for a secured transaction by filing a public notice (financing statement) with a particular filing office.); and
- 10.11.6 other documentation requested by TCEQ to support the Request for Reimbursement.

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

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

10.14 The TCEQ is not obligated to direct the Disburser to make payment until the Request for Reimbursement is approved by the TCEQ. Payments may be suspended or withheld in all or part as authorized by the Contract.

ARTICLE 11. RELEASE OF CLAIMS

The final Request for Reimbursement must include a signed Release of Claims. The Release of Claims will be for the benefit of TCEQ and the Disburser, and the PERFORMING PARTY will release all claims for payment of any funds due and payable, pending PERFORMING PARTY'S receipt of the funds from the Disburser for the final Request for Reimbursement.

ARTICLE 12. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: GENERAL

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

12.2 The Grant Equipment is listed in the Scope of Work. For on-road vehicle and non-road equipment replacement projects only, PERFORMING PARTY may substitute a replacement vehicle and/or engine for the unit listed in the Scope of Work; provided that the substitute unit meets all eligibility and other requirements, is certified to the same or better NO_x emission standard or family emission limit (FEL) and will result in the same or better NO_x emissions reductions as the unit listed. Any substitution is subject to review and approval by TCEQ. For other project types and categories, PERFORMING PARTY may not substitute different Grant Equipment for the units listed in the approved Application without approval from the TCEQ.

12.3 The PERFORMING PARTY agrees to continuously own, or otherwise commercially finance the Grant Equipment; continuously maintain registration of the Grant Equipment in Texas; and operate the Grant Equipment in Texas for the specified Activity Life, regardless of the financing arrangements used for the purchase of the Grant Equipment, and subject to the more specific provisions contained in Article 14 of the General Conditions of this Contract.

Professional Quality

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

Supervision and Superintendence

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

Materials & Equipment

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

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

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

12.9 The PERFORMING PARTY agrees that the 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. Emissions reductions generated may not be used as a marketable emissions reduction credit and may be used to demonstrate conformity with the state implementation plan.

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 with this grant funding from other incentive programs that require transfer of the emissions reductions to that other program.

ARTICLE 13. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: INSURANCE, REPAIR, AND REPLACEMENT

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

13.2 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment which affects emissions reductions during the Activity Life, the PERFORMING PARTY will repair and restore the Grant Equipment to the level of Optimum Performance.

13.3 Upon the occurrence of 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 replacement Grant Equipment must be in operation no later than 60 consecutive days from the occurrence of loss, theft, or damage, unless the TCEQ expressly agrees to a longer period. Replacement Grant Equipment 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.

13.4 The PERFORMING PARTY shall fully comply with all requirements of any agreements with third parties that have a security interest or similar interest in the Grant Equipment. Repossession, seizure, or any other event where the PERFORMING PARTY loses possession of the Grant Equipment shall be considered a material breach of this Contract and shall require the return of grant funds.

ARTICLE 14. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: GRANT ACTIVITIES

14.1 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.

14.2 The PERFORMING PARTY agrees that if the usage of the Grant Equipment does not meet the requirements listed in the Scope of Work, the PERFORMING PARTY will return the grant funds to the State Trust.

14.2.1 The determination of whether return of funds is required will be primarily based on whether the Grant Equipment is used and maintained in the manner and area specified in the Scope of Work during the Activity Life.

14.3 State law and TCEQ policy require that TCEQ remain in contractual privity with the entity operating the Grant Equipment. TCEQ must retain the ability to enforce until after the Activity Life of this Contract. Any act by the PERFORMING PARTY that impairs the TCEQ's ability to enforce the Contract, including sale of the Grant Equipment, transfer of the Grant Equipment, loss of the Grant Equipment, sale of the PERFORMING PARTY's business interests, or liquidation of the PERFORMING PARTY's assets (including the Grant Equipment), shall constitute a material breach of this Contract and shall require the return of grant funds.

14.3.1 The decision by TCEQ on whether to require return of grant funds may include consideration of whether the Grant Equipment will continue to be used in a manner consistent with the Scope of Work. If TCEQ, in its sole discretion, allows the assignment of this 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.

14.4 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 (i.e., notification before sale of equipment).

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

15.1 As a condition of receiving grant funds, the PERFORMING PARTY agrees to maintain and operate the Grant Equipment as specified in the Scope of Work for the Activity Life of this Contract.

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

15.3 The PERFORMING PARTY agrees that failure to comply with the Scope of Work during the Activity Life and/or submitting documents with false, incorrect, or incomplete information constitutes a material breach of this Contract and may require a return of the reimbursement grant funds.

ARTICLE 16. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ: DISPOSITION OF REPLACED VEHICLES AND ENGINES

16.1 The PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced by complete destruction or otherwise rendering them permanently inoperable. This may be performed by complete crushing of the vehicle and engine or putting 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 vehicle or equipment must be such that repairs are not possible.

16.2 The PERFORMING PARTY shall verify the final disposition of the vehicles and engines replaced under this Contract on the TCEQ-provided form. The PERFORMING PARTY must submit a copy of a Texas Nonrepairable Vehicle Title issued by the Texas Department of Motor Vehicles (TxDMV) for the on-road vehicle(s) replaced under this Contract. The Texas Nonrepairable Vehicle Title must be submitted to the TCEQ simultaneously with the required disposition documentation. The final disposition forms shall be submitted prior to or with the Request for Reimbursement.

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

16.4 The PERFORMING PARTY agrees that failure to properly destroy and render permanently inoperable a vehicle or engine replaced under this Contract will result in non-payment of the grant funds. This Article shall also apply to a failure to provide properly completed documentation of final disposition of equipment as required by this Contract.

Credit for Replaced Vehicles Or Equipment

16.5 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 vehicles, equipment, or engines being replaced, including, the parts from those vehicles, equipment, or engines, for the sale of the scrapped vehicles, equipment, engines being replaced, trade-in of engines for remanufacture, or insurance proceeds.

16.6 For on-road vehicle and non-road equipment replacement activities, the TCEQ may use a default scrapage 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 scrapage value is \$250.

16.7 If TCEQ does not use the above default scrapage values, the **actual** scrapage value or other value received for the old vehicle, equipment, or engine is considered a cost of performing the Grant Activities and as such must satisfy the cost guidelines of this Contract. The value received for the vehicle or equipment

being replaced must be the result of arms-length bargaining with the entity disposing of the replaced vehicle or equipment and must reflect actual market value.

ARTICLE 17. PERFORMING PARTY'S RESPONSIBILITIES: ADMINISTRATIVE REQUIREMENTS

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

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

17.2 The PERFORMING PARTY shall allow access to all Grant Equipment by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. In addition, the PERFORMING PARTY shall allow access to all vehicles, equipment, and engines being replaced under this Contract.

Maintenance of Records

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

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

17.5 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 Activity Life of equipment under 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.

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

17.7 The PERFORMING PARTY may develop and use its own property management system, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY is not in place or is not used properly, the *State Property Accounting Process User's Guide* (<https://fmx.cpa.state.tx.us/fmx/pubs/spaproc/index.php>) issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the PERFORMING PARTY must meet the requirements set forth in this Article.

17.7.1 Property records of Grant Equipment must be maintained that include a description of the property, a serial number or other identification number, the source of property, usage and

mileage (separated by location of usage and mileage), who holds title, the acquisition date, and the cost of the property, percentage of TCEQ participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

- 17.7.2 The PERFORMING PARTY will conduct a physical inventory of all Grant Equipment no less frequently than once every two years during the Activity Life and 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.

Accounting Systems

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

PERFORMING PARTY's Representative

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

17.10 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.

Personnel

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

Permits

17.12 Unless otherwise provided in the Contract Documents, the PERFORMING PARTY shall obtain and pay for all transportation, construction, and operating permits and licenses required for 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

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

Data and Publicity

17.14 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. 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.

17.15 The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities. The PERFORMING PARTY will acknowledge the financial support of the TCEQ whenever a Grant Activity reimbursed, in whole or part, is publicized or reported in news media or publications.

Safety and Protection

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

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

Lobbying Activities

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

ARTICLE 18. TCEQ'S RESPONSIBILITIES

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

18.2 The TCEQ will not supervise, direct or have control or authority over, nor be responsible for, PERFORMING PARTY's means, methods, techniques, sequences or procedures relating to the implementation project or the Safety precautions and programs incident thereto, or for any failure of PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the Scope of Work. TCEQ will not be responsible for PERFORMING PARTY's failure to perform or furnish the Scope of Work in accordance with the Contract.

18.3 The TCEQ shall authorize the payment of reimbursement funds from the State Trust for Grant Activities specified in the Scope of Work and performed in accordance with the requirements of this Contract.

ARTICLE 19. TERMINATION

19.1 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.

19.2 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 Documents. The TCEQ will provide written notice (delivered by certified mail, return receipt requested) of intent to terminate. The PERFORMING PARTY shall have twenty (20) calendar days from the date such notice is sent to cure performance deficiencies.

19.3 This Contract may be terminated in whole or part by the TCEQ if any delay or failure of performance of the Grant Activities occurs by either PERFORMING PARTY or by the TCEQ due to a force majeure event. Neither PERFORMING PARTY nor TCEQ shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided that the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Force majeure does not include ordinary delays that are common to the industry or location. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

19.4 This Contract may be terminated in whole or in part by the TCEQ for its convenience. This includes without limitation the Trustee's denial of a request for funds, which results in the unavailability of funds to complete this project. To the extent feasible, in the sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

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

19.6 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, PERFORMING PARTY waives any claim for damages arising from or resulting from TCEQ's termination of this Contract for any reason.

19.7 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 to the Trustee of the State Trust.

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

ARTICLE 20. REMEDIES AVAILABLE TO THE TCEQ

20.1. The following Schedule of Remedies applies in the event of any 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:

- 20.1.1 Issue notice of substandard performance or other non-conforming act or omission;
- 20.1.2 Reject substandard performance and request corrections without charge to the TCEQ;
- 20.1.3 Request and receive return to State Trust of any over payments or inappropriate payments;
- 20.1.4 Reject reimbursement request and suspend all or part of any payment, pending accepted revision of substandard performance or non-conformity;
- 20.1.6 Suspend all or part of the Scope of Work and/or payments pending accepted revision of substandard performance or non-conformity;
- 20.1.7 Terminate the contract and demand and receive return to State Trust of all unexpended funds and any improperly expended funds;
- 20.1.8 Demand restitution and return to State Trust of any payments where performance is subsequently determined non-conforming; or
- 20.1.9 Require payment of liquidated damages to the State Trust.

20.2. **Liquidated Damages.** The parties agree that the actual damages that may be sustained by TCEQ or the State Trust due to the PERFORMING PARTY breaching its obligations under this Contract are uncertain and difficult to ascertain. Therefore, the parties agree that reasonable compensation for such breach will be the sum of the total of grant funds paid from the State Trust, reduced by the percentage of the total Activity Life that the PERFORMING PARTY met prior to the breach. Determination of timely and accurate documentation supporting the PERFORMING PARTY's activity is in the sole discretion of TCEQ. The PERFORMING PARTY hereby promises to pay to the State Trust, such sum as liquidated damages, and not as a penalty, in the event of such breach.

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

ARTICLE 21. INDEMNIFICATION

21.1 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 actions of the PERFORMING PARTY, its subcontractors, agents, officers and directors, principals and employees in the performance of this Contract.

21.2 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 22. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

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

ARTICLE 23. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

23.1 The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Contract.

- 23.1.1 Quality and Accuracy. Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Contract.
- 23.1.2 Timeliness. Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.
- 23.1.3 Reports and Administrative and Financial Operations. Standard: The PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Contract, including record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.
- 23.1.4 Communication. Standard: The PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ; and including the PERFORMING PARTY's demonstrated relationship with subcontractors.
- 23.1.5 Other. Standard: Other factors unique to the type of project, as determined by the TCEQ.

23.2 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.

- 23.2.1 Exceeds Expectations. The PERFORMING PARTY fully complied with all the standards on a consistent basis.
- 23.2.2 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.
- 23.2.3 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.
- 23.2.4 Unsatisfactory Performance. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

Performance Evaluation

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

23.4 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 24. MISCELLANEOUS

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

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

24.3 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.

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

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

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

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

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

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

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

24.11 All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Grant Activities and termination or completion of the Contract until such time as enforcement of such representations, indemnifications, warranties and guarantees is barred by the applicable statute of limitations.

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

24.13 Subject to the provisions of Article 14, General Conditions PERFORMING PARTY’S RESPONSIBILITIES TO THE TCEQ: GRANT ACTIVITIES, Subsection 14.3, the TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party hereto, successors, assigns and representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

24.14 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 TCEQ, goods or services which are not required under the Contract Documents or any conforming amendment. The parties further agree that all claims, suits, or obligations arising under or related to this Contract are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

24.15 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.

24.16 Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and PERFORMING PARTY. The parties agree that the Contract Documents will be reformed to replace a 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.

24.17 Bankruptcy. If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to TCEQ Bankruptcy Program. The PERFORMING PARTY shall place TCEQ on the 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
Air Grants Division, MC-204
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Physical Address:

Mr. Nate Hickman
Air Grants Division, MC-204
Texas Commission on Environmental Quality
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 Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY Project Representative or his or her designee.

Mailing Address:

«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 during business hours 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
Texas Volkswagen Environmental Mitigation Program
Replacement and Repower Activities

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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