

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ALTERNATIVE FUELING FACILITIES PROGRAM CONTRACT
CONTRACT SIGNATURE PAGE

Contract Name	Alternative Fueling Facilities Program
Contract Number	
PERFORMING PARTY Name	
PERFORMING PARTY I.D. Number	
Total Contract Amount Not To Exceed	

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

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 grants for eligible alternative fuel fueling facility projects in the Clean Transportation Zone as authorized by Texas Health and Safety Code Chapter 393.

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.

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

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**GENERAL CONDITIONS
FOR
ALTERNATIVE FUELING FACILITIES PROGRAM (AFFP)**

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 Administrative Requirements - means those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from Grant Activities requirements, which concern matters that pertain to the specific Grant Activities approved by the TCEQ.
- 1.2 Alternative Fuels - a fuel other than gasoline or diesel fuel, including electricity, compressed natural gas, liquefied natural gas, biodiesel, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume. To be eligible for AFFP funding, biodiesel and biodiesel blends must meet the following criteria: (1) biodiesel must meet the definition for biodiesel as specified in Title 34 Texas Administrative Code (34 TAC) §3.443; and (2) biodiesel blends, as defined in 34 TAC §3.443, must be comprised of at least 20% biodiesel by volume (B20), at a minimum. B20 biodiesel blends must meet the ASTM D-7467 standards.
- 1.3 Approved Grant Budget - the total amount of costs approved by the TCEQ for the Grant Activities.
- 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 Contract Amount - the maximum amount of funds which may be reimbursed by the TCEQ to the PERFORMING PARTY for completion of the Grant Activities in accordance with the Contract.
- 1.6 Contract Documents - the Contract Documents are composed of those documents identified in Article 6. The terms "Contract", "Grant", and "Agreement" include all the Contract Documents.
- 1.7 Contract Period - the period of time from the Effective Date of the Contract through the completion of the Reporting Period, unless the Contract is otherwise terminated in accordance with its terms.
- 1.8 Grant Activity/Activities - activities the PERFORMING PARTY has agreed to perform under this Contract that are detailed in the Scope of Work.
- 1.9 Grant Equipment - the equipment, property, vehicles, processes and technology and the related goods and services in a Grant Activity for which part of the cost of purchase, lease, or utilization is reimbursed by the TCEQ under the Contract, or which is necessary for utilization of grant funded equipment. The term includes replacements for Grant Equipment that is lost, stolen, or irreparably damaged.
- 1.10 Implementation Period - The period during which Grant Equipment is purchased and placed into service. The Implementation Period will end upon payment of final reimbursement and the PERFORMING PARTY's release of claims.
- 1.11 Intellectual Property - (1) any and all inventions, discoveries, improvements, or creations for which copyright, trade secret, patent or other proprietary rights may be acquired, (2) any photographs, graphic designs, plans, drawings, specifications, computer programs, computer files, documentation, technical reports, operating manuals, or other materials, and (3) any other work fixed in any tangible medium of expression which can be perceived, reproduced, or otherwise communicated for which copyright, trade secret, patent or other proprietary rights may be acquired.
- 1.12 Intellectual Property Rights - patents, trademarks, trade secret rights, confidential information rights, or any other proprietary rights to which a person may be entitled or may actually possess. Intellectual Property Rights include all rights of ownership and original authorship throughout the world.
- 1.13 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 Contract Period.
- 1.14 Notice to Proceed - a written notice given by the TCEQ to the PERFORMING PARTY that the PERFORMING PARTY may commence with the Grant Activities.

1.15 Operations Period – the period designated in the Scope of Work for required operation and reporting of the grant funded facility. The start date will normally be set as the date on which the Implementation Period is completed.

1.16 PERFORMING PARTY – the grant recipient indicated on the Contract Signature Page, also referred to in this Contract as the “grantee.”

1.17 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.

1.18 State – means the State of Texas.

1.19 Termination – means a permanent end and cessation of the Contract either 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 15.7; or the Contract is ended by action of the TCEQ for cause or for convenience. The Date of Termination is the date of expiration of the Contract Period or the date of completion all requirements of this Contract, or the effective date of action by the TCEQ ending the Contract for cause or for convenience.

1.20 TCEQ – the Texas Commission on Environmental Quality.

1.21 UGMS – Texas Uniform Grant Management Standards as adopted June 2004, available at: <https://comptroller.texas.gov/purchasing/docs/ugms.pdf>

1.22 Written Amendment - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an addition, deletion, or revision in the Grant Activities, modification or revision of the Contract general or special conditions, or an adjustment in the Contract Amount or Contract Period, issued on or after the Effective Date of the Contract.

1.23 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.

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

1.25 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 the 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 393; (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) Appropriations Act of the 86th Texas Legislature pertaining to appropriation of funds to the TCEQ for grants, etc. and grants by state agencies; (4) Texas Government Code Chapter 2261; (5) Texas Government Code Section 556.0055, pertaining to lobbying; (6) TCEQ rules and policies; and (7) other applicable Federal and State rules and statutes.

Local Governments

2.3 If the PERFORMING PARTY is a Local Government, this Contract is also subject to Local Government Code Chapter 391 and implementation rules and guidelines of the Governor’s Office of Budget and Planning (pertaining to costs for entities defined as Councils of Government, etc.).

2.4 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 detailed in the Scope of Work.

ARTICLE 4. NOTICE TO PROCEED

4.1 The PERFORMING PARTY may begin the Grant Activities, at its own risk, prior to receiving a Notice to Proceed. However, regardless of the availability of funding, if this Contract is not selected and a Notice to Proceed is not issued, the TCEQ will not provide reimbursement for the cost of the Grant Activities. If this Contract is selected, the TCEQ will issue to the PERFORMING PARTY a Notice to Proceed, after which all other obligations and provisions of this Contract shall apply. Either party may terminate this Contract prior to issuance of a Notice to Proceed, with no further obligation under this Contract.

4.2 Any cost incurred prior to the issuance of the Request for Grant Applications (RFGA) will not be considered as eligible for reimbursement.

4.3 Regardless of selection of this Contract and the issuance of the Notice to Proceed, the reimbursement of the costs of the Grant Activities is subject to all other requirements of this Contract. This Contract does not create an entitlement to receive state funds and all payments are solely within the discretion of the TCEQ.

ARTICLE 5. CONTRACT PERIOD

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

5.2 The Contract Period shall be the period of time from the Contract Effective Date through the Contract Expiration Date listed on the Contract Signature Page, unless the Contract is otherwise terminated or extended in accordance with its terms.

5.3 This Contract shall immediately terminate at the end of any state fiscal year for which the Texas Legislature fails to appropriate and/or to provide sufficient funds in the subsequent fiscal year necessary to perform this Contract.

ARTICLE 6. CONTRACT DOCUMENTS

6.1 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:

- 6.1.1 Contract Signature Page
- 6.1.2 Scope of Work
- 6.1.3 Special Conditions
- 6.1.4 Approved Grant Budget
- 6.1.5 Insurance Section
- 6.1.6 General Conditions
- 6.1.7 RFGA, incorporated herein by reference.
- 6.1.8 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.
- 6.1.9 The following which may be delivered or issued after the Contract Effective Date and are not attached: Notices to Proceed, Amendments, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

6.2 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.

6.3 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 7. ELIGIBLE ACTIVITIES

7.1 The activities eligible for reimbursement are those contained in the Scope of Work and Approved Grant Budget.

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

7.3 The PERFORMING PARTY understands that the TCEQ's approval of the Application does not constitute final verification of the Grant Equipment.

7.4 The PERFORMING PARTY agrees to continuously own and operate the Grant Equipment for the specified Operations Period.

ARTICLE 8. FUNDS

8.1 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. This Contract shall not be construed to create debt against the State of Texas.

8.2 Amount Limits on Funds. The Total 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 issuance by the TCEQ of a Notice to Proceed. Eligible costs are determined by the TCEQ. There is no guaranteed minimum amount of reimbursement.

8.3 Time Limits on Funds. Costs to be reimbursed under this Contract must be incurred and paid by Purchase Expiration Date as identified on the Contract Signature Page. 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.

8.4 Limits on the amount of grant awards are set under Texas Health and Safety Code Section 393.006. To ensure these limits are not exceeded, the TCEQ may reduce reimbursement amounts as necessary.

ARTICLE 9. ELIGIBILITY FOR COST REIMBURSEMENT

9.1 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 Approved Grant Budget to be eligible for reimbursement. Determinations of eligibility for reimbursement are solely within the discretion of the TCEQ.

9.2 Amounts of costs stated in the Approved Grant Budget 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 Approved Grant Budget, or B) the actual eligible costs.

9.3 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.

9.4 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

9.5 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>

- 9.5.1 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

- 9.6 Reasonableness of costs depends upon a variety of considerations and circumstances, including:
- 9.6.1 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;
 - 9.6.2 generally accepted sound business practices, competitive procurement, arm's length bargaining, and federal and state laws and regulations;
 - 9.6.3 the PERFORMING PARTY's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
 - 9.6.4 any significant deviations from accepted industry-established practices.

Necessary Costs

9.7 Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and must be included in the original application and the Approved Grant Budget.

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

Actual Costs

- 9.9 The criteria for actual costs include:
- 9.9.1 the direct costs paid for implementing the Grant Activities; or
 - 9.9.2 the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.
- 9.10 Unless expressly authorized by the TCEQ, actual costs do not include:
- 9.10.1 amounts deducted from the true price of the purchase or lease of Grant Equipment whether as discounts, rebates, refunds or otherwise;
 - 9.10.2 amounts which the PERFORMING PARTY owes or agrees to pay the vendor or contractor for any purpose other than the implementation of Grant Activities;
 - 9.10.3 amounts in the charges which the vendor/contractor intends to return to the PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value; and
 - 9.10.4 amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are received by the PERFORMING PARTY.
- 9.11 The PERFORMING PARTY's and its subcontractors must document and maintain evidence of expenses.

Allowable Costs

9.12 In order to be allowable, costs must be included in the Approved Grant Budget, and must satisfy the requirements of: this Contract, the UGMS, state agency rules, and all applicable state and federal laws.

9.13 If travel costs are expressly authorized in the Approved Grant Budget, reimbursement of travel costs may not exceed the amounts explained in this section.

- 9.13.1 Reimbursement for lodging and meals within the State of Texas is to be equal to the rates allowed for state employees under the [State Travel Management Program](http://comptroller.texas.gov) detailed on the State Comptroller's website, <http://comptroller.texas.gov>.
- 9.13.2 Reimbursement for lodging and meals when traveling outside of the State of Texas is to be equal to the rates allowed for state employees under the State Travel Management Program and

may not exceed the maximum established in the federal General Services Administration travel regulations.

9.13.3 Mileage reimbursement rates are also established in the State Travel Management Program.

9.13.4 Expenses for lodging and meals are limited to only actual expenses and must be supported by receipts to be reimbursable.

Indirect Costs

9.14 Indirect costs are not reimbursable under the terms of this Contract unless included in the project budget and approved in advance by the TCEQ as a specific budget line item.

Preapproval of Costs

9.15 If the specific details of costs to be incurred under the "Travel," "Equipment," "Contractual," "Construction," or "Other" costs categories are not already explained in the Approved Grant Budget, including any Supplemental Activity Application Forms, then prior to incurring those costs, the PERFORMING PARTY must submit revised forms to show those details and receive authorization from the TCEQ for those expenses.

9.16 Upon TCEQ request, prior to signing a subcontract to be funded under this Contract, the PERFORMING PARTY must submit the subcontract with itemized expenses to the TCEQ for review and must receive approval from the TCEQ before entering into the subcontract.

Additional Evidence

9.17 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

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

Costs in Approved Grant Budget are Maximum Amounts, Not a Guarantee

9.19 Amounts of costs stated in the Approved Grant Budget are maximum amounts of reimbursement. By stating the amounts, the 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 Approved Grant Budget, or 2) the actual eligible costs.

No Entitlement to Funds

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

9.21 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.

Offsets for debts owed to the State

9.22 The TCEQ may offset against reimbursement payments, any amounts owed by the PERFORMING PARTY or its principals to the TCEQ or the State of Texas, or for child support.

Tax Credits and Other Incentives

9.23 The PERFORMING PARTY shall notify the TCEQ, in its request for reimbursement, of any financial incentive received by the PERFORMING PARTY which was not included in the Approved Grant Budget, if that incentive will offset the cost of the proposed project, including tax credits or deductions, or other grants, or any other public financial assistance, provided such grant or other public financial assistance is paid to the PERFORMING PARTY for the effort identified in the Scope of Work under this Contract. The TCEQ, in reimbursing the PERFORMING PARTY, may reduce the amount of authorized incremental costs eligible for

reimbursement, by the value of any additional financial incentive received by the PERFORMING PARTY, without a Written Amendment to this Contract.

ARTICLE 10. REQUEST FOR REIMBURSEMENT

10.1 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.

10.2 All Request for Reimbursement forms must contain sufficient identification of and information concerning the costs incurred and paid or obligated under a financing agreement. The TCEQ must be able to determine the eligibility of a particular cost 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.

10.3 In order to receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form. The forms shall be mailed to:

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

10.4 The Request for Reimbursement shall be completed on forms provided by the TCEQ. The report, including all required supplemental forms, shall list the total expenses obligated under a financing agreement and the total activity expenses incurred to date. The report shall also list and explain any additional financial incentive received by the PERFORMING PARTY that directly offsets the costs reported by the PERFORMING PARTY, including tax credits or deductions, other grants, or any other public financial assistance.

10.5 If financial incentives, including tax credits or deductions, other grants, or any other public financial assistance are received by the PERFORMING PARTY and used to pay or offset costs subject to reimbursement, the reimbursement available under this Contract will be reduced accordingly.

Retained Funds

10.6 The TCEQ may retain up to 25% of the total reimbursement funds pending the successful completion of the Implementation Period of the Grant Activities. The total of Retained Funds withheld will be released based upon the submission of the "Request for Reimbursement of Retained Funds" form that will be provided to the Grantee for their signature once the final implementation report has been submitted and approved. The TCEQ may, at its discretion, release the final reimbursement funds prior to the completion of the Implementation Period, subject to a determination that the project will be completed.

10.7 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 Contract Signature Page.

10.8 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.

10.9 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.

10.10 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.

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

10.12 The reimbursement of funds is contingent upon the PERFORMING PARTY's satisfactory adherence to the terms of this Contract. Failure to adhere to the terms of this Contract, in particular those requirements

concerning progress and financial reporting or the documentation of reported expenditures, shall be grounds for the TCEQ to: suspend payments pending the PERFORMING PARTY's satisfactory completion, revision, or correction of services or reports; or for termination of this Contract in accordance with the General Conditions and for such other remedies as are allowed by law.

Required Forms

10.13 The PERFORMING PARTY, and any subcontractor or sub-recipient, in order to obtain reimbursement for those expenditures authorized under this Contract, shall submit, pursuant to the Grant Activities, a fully completed and legible:

- 10.13.1 Request for Reimbursement Form;
- 10.13.2 Supplemental Request for Reimbursement Form(s) for those budget categories with expenses;
- 10.13.3 Release of Claims (the PERFORMING PARTY only, and only with the Request for Reimbursement of Retained Funds); and
- 10.13.4 provide proof of payment for all costs for which reimbursement is requested.

10.14 Each filed TCEQ Request for Reimbursement shall contain sufficient identification of, and information concerning, the costs incurred so as to enable the TCEQ to ascertain the eligibility of a particular expenditure and to enable subsequent audit thereof. Each Request for Reimbursement shall indicate, for each budget category the PERFORMING PARTY's project expenditures for the period in question, the cumulative expenditures with respect to each budget category, and the balance remaining in each budget category following reimbursement of the amount being requested.

Historically Underutilized Business (HUB)

10.15 The PERFORMING PARTY will use its best efforts to provide opportunities for HUBs to participate in subcontracting under this Contract. The PERFORMING PARTY must notify the TCEQ of the steps it has taken to provide opportunities for HUBs to participate, and the extent to which HUBs are being utilized as subcontractors under this Contract.

Required Documentation

10.16 When the PERFORMING PARTY is required to attach source documentation for a reimbursable cost that documentation shall:

- 10.16.1 be legible;
- 10.16.2 identify the specific piece of equipment received or the services provided;
- 10.16.3 clearly identify the vendor or subcontractor who provided the equipment or services (the PERFORMING PARTY shall require all subcontractors to use the Financial Status Report forms and Request for Reimbursement forms to file for reimbursement of services and equipment);
- 10.16.4 confirm the reimbursable amount listed on the form; and.
- 10.16.5 provide proof of payment for all costs for which reimbursement if requested.

10.17 The documentation shall consist of an itemized and dated invoice that shows the amount billed to the PERFORMING PARTY, any "past due" amount from previous invoices, and explanation of services provided. The PERFORMING PARTY or subcontractor must provide any other documentation requested by the TCEQ. Although canceled checks represent the preferred types of documentation for purposes of this section, the PERFORMING PARTY or subcontractor may substitute/attach other records or documents that provide the same type of information, such as issued purchase orders and/or invoices marked "received/paid," or other evidence of payment.

Vendor or Sub-grantee Services Not Procured Using Price Competition

10.18 Information detailing the expenses incurred, as outlined in the AFFP Reimbursement Forms shall be submitted along with an explanation of the services provided. For any expenses (goods or services) which are not procured using price competition, the PERFORMING PARTY must perform a price or cost analysis to determine the reasonableness of the price and maintain documentation of such analysis which shall be produced to the TCEQ upon request.

Personnel/Salary or Fringe

10.19 All requests for reimbursement of expenditures that fall within either the Personnel/Salary or Fringe categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the AFFP Reimbursement Forms.

- 10.19.1 **Personnel/Salary.** No supporting documentation is required to be attached to the AFFP Reimbursement Forms with respect to reported "Personnel/Salary" expenditures in order to receive reimbursement. The PERFORMING PARTY or subcontractor is expected to maintain signed time sheets that can serve to verify the total, overall hours of staff time being directly billed to this Contract.
- 10.19.2 **Fringe.** No supporting documentation is required to be attached to the AFFP Reimbursement Forms with respect to reported "Fringe" expenditures in order to receive reimbursement. The PERFORMING PARTY or subcontractor is expected to maintain signed time sheets that can serve to verify the fringe rate and the total, overall hours of staff time being directly billed to this Contract.

Travel

10.20 With respect to employee travel, all costs listed in the AFFP Reimbursement Forms must be documented with information that identifies the name of the traveler(s), dates of travel, purpose/location of travel, costs for meals, transportation, and lodging to substantiate the reported reimbursable costs. Documentation which must be maintained by the PERFORMING PARTY or subcontractor and made available during an on-site audit/monitoring visit, or upon request, for the purpose of substantiating travel-related costs, includes the following: (1) legible copies of the PERFORMING PARTY or subcontractor-approved travel vouchers, or other equivalent documentation, signed by the employees who traveled; and (2) any travel-related expenses under this Contract borne directly by the PERFORMING PARTY or subcontractor (and for which reimbursement by the PERFORMING PARTY to the traveler was not required). Provide separate receipts showing, at a minimum, the traveler's name, the travel location, and the travel date(s). Travel by volunteers will not be reimbursed.

Equipment

10.21 All requests for reimbursement of expenditures that fall within the Equipment categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the AFFP Reimbursement Forms. In addition, the PERFORMING PARTY or subcontractor shall attach, for each reimbursable cost listed in the AFFP Reimbursement Forms, documentation as specified in the *Required Documentation* paragraph in this section. An updated equipment inventory shall be attached to reimbursement requests with equipment purchases.

Contractual and Construction

10.22 All requests for reimbursement of expenditures that fall within the Contractual and Construction categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the AFFP Reimbursement Forms. In addition, the PERFORMING PARTY or subcontractor shall attach, for each reimbursable cost listed in the AFFP Reimbursement Forms, documentation as specified in the *Required Documentation* paragraph in this section.

Supplies

10.23 All requests for the reimbursement of expenditures that fall within the Supplies & Materials category of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the AFFP Reimbursement Forms.

Other

10.24 All requests for the reimbursement of expenditures that fall within the Other categories of the Approved Grant Budget shall be itemized by the PERFORMING PARTY or subcontractor in the AFFP Reimbursement Forms.

10.25 The TCEQ may reject requests for reimbursement that fail to demonstrate that costs are eligible for reimbursement or which fail to conform to the requirements of the Contract.

10.26 In determining the amount of the final payment, the TCEQ may withhold from reimbursement the amount of any over payment and any reasonable amount until the TCEQ is satisfied that all conditions and requirements are completed and accepted.

10.27 All requests for reimbursement must be signed by an authorized representative of the PERFORMING PARTY.

Documentation of Project Expenses

10.28 The PERFORMING PARTY shall maintain accurate and detailed documentation to evidence the payment of expenses. The PERFORMING PARTY shall provide such documentation upon request and for any audit purposes. This documentation shall be maintained for at least three (3) years after the end of this Contract.

ARTICLE 11. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ, GENERAL

11.1 All Grant Activities for which reimbursement is requested must be completed as described in the Scope of Work and Approved Grant Budget.

11.2 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.

11.3 The PERFORMING PARTY must maintain sufficient property insurance for the repair or replacement of any Grant Equipment for the Reporting Period as required by the Contract, unless otherwise expressly agreed by the TCEQ. Failure to do so shall constitute a material breach of this Contract.

11.4 Any insurance proceeds received by or on behalf of the PERFORMING PARTY under an insurance policy due to the damage or destruction of Grant Equipment must be utilized to acquire equivalent or better Grant Equipment or be paid to the TCEQ. Failure to do so shall constitute a material breach of this Contract.

Professional Quality

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

Supervision and Superintendence

11.6 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 shall be responsible for seeing that the completed implementation of the Grant Activities complies accurately with the Contract.

Concerning Subcontractors, Suppliers, and Others

11.7 The PERFORMING PARTY shall be responsible for ensuring that all work under this Contract, whether by the PERFORMING PARTY, subcontractors or others, is performed in accordance with the terms and conditions of this Contract, including requiring that applicable terms and conditions of this Contract be incorporated into subcontracts.

Materials and Equipment

11.8 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.

The PERFORMING PARTY's Responsibility for Purchases

11.9 Any purchase made by the PERFORMING PARTY, especially any purchase not proposed/scheduled for reimbursement by the TCEQ, is made at its own risk.

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

11.11 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 Reporting Period.

Proof of Insurance

11.12 During the Implementation Period, the PERFORMING PARTY shall supply proof that it is insured for project completion/replacement and liability. Project completion/replacement insurance shall be sufficient to cover lost equipment and time/effort in case of a disaster. Unless specifically waived by the TCEQ, sufficient coverage shall include Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance as set out in the Insurance Section of this Contract. The TCEQ may request proof of insurance upon award or anytime during the Implementation Period. Governmental entities may use an established self-insurance program to satisfy this requirement. If requested by the TCEQ, the PERFORMING PARTY shall provide additional proof of insurance coverage, including declaration pages and copies of policies. 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 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.

- 11.12.1 In addition to the requirements of the Insurance Section, the PERFORMING PARTY shall require its contractors and suppliers to obtain and maintain insurance during the Implementation Period with adequate insurance coverage (see Insurance Section for minimum limits) sufficient to protect the PERFORMING PARTY from all claims and liability for injury to persons and for damage to property arising from the Contract, whether caused by the PERFORMING PARTY or by the contractor(s) or by anyone directly or indirectly employed by either. Unless specifically waived by the TCEQ, sufficient coverage shall include but are not limited to Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance.
- 11.12.2 The PERFORMING PARTY shall be responsible for ensuring that all required insurance has been issued and continues in force throughout the Implementation Period of this grant.
- 11.12.3 The TCEQ reserves the right to require additional insurance coverage during the term of this Contract.

11.13 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment during the Reporting Period, the PERFORMING PARTY will cause the Grant Equipment to be repaired and restored to the level of optimum performance.

11.14 Upon the occurrence of loss, theft, or irreparable damage of Grant Equipment during the Reporting Period, the PERFORMING PARTY will cause the lost, stolen, or damaged Grant Equipment to be replaced with similar equipment which achieves the same optimum performance or better. The PERFORMING PARTY will cause the replacement Grant Equipment to be in operation no later than 60 consecutive days from the occurrence of loss, theft, or damage, unless the TCEQ expressly agrees to a longer period. Replacement Grant Equipment is subject to all the requirements applicable to Grant Equipment contained in this Contract.

11.15 The PERFORMING PARTY shall make every effort to meet the terms of the approved project plan and time line and must submit a written plan to the TCEQ describing any revisions to the plan and time line.

Assignment

11.16 No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by the 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 12. THE PERFORMING PARTY'S RESPONSIBILITIES - ADMINISTRATIVE REQUIREMENTS

Access to Records and Grant Equipment

12.1 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.

12.2 The PERFORMING PARTY shall allow access to all Grant Equipment as described in 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

12.3 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 any Contract 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.

12.4 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity 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. The PERFORMING PARTY must maintain a second back-up copy of such records which are maintained off-site (in a different physical location than the primary back-up) in a secure location.

PERFORMING PARTY's Representative

12.5 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.

12.6 The PERFORMING PARTY agrees to make arrangements necessary to ensure that its authorized Project Representative, or someone to whom that person has delegated his or her authority, is available during regular business hours for consultation with the TCEQ. Written notice of any such delegation will be provided to the TCEQ.

12.7 Any notice issued pursuant to this Contract shall be addressed to the respective party's Authorized 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

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

Safety and Protection

12.9 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 precautions to protect the health and safety of the public during performance of the Grant Activities.

Permits

12.10 Unless otherwise provided in the Contract, the PERFORMING PARTY shall obtain and pay for all applicable permits and licenses required for this performance of this Contract. Failure to comply with a permit 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

12.11 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, the TCEQ shall not be responsible for monitoring the PERFORMING PARTY's compliance with any Laws or Regulations.

Data and Publicity

12.12 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.

12.12.1 If the PERFORMING PARTY is claiming that data and information submitted to the TCEQ contains confidential or proprietary information, that information **MUST** be clearly marked **"Confidential/Proprietary: inform applicant & seek AG opinion before releasing"** on every page and must be submitted separately from all other material. Any information that is so marked, if requested under the PIA, will be sent by the TCEQ to the Texas Attorney General (AG) for a decision on whether it may be withheld. Note that the AG may determine that the information is not confidential and therefore must be released. The TCEQ will inform the PERFORMING PARTY of the request for the AG's decision but will make no arguments in support of the request. It is the responsibility of the PERFORMING PARTY to explain the basis for its claim that the information is confidential

12.13 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.

12.14 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. Reports and other documents, including news releases or public announcements, prepared as a part of this Contract, or referencing the Grant Activities under this Contract, shall carry the following or similar notation on the front cover or title page:

This project is funded in part by the State of Texas through an Alternative Fueling Facilities Program Grant from the Texas Commission on Environmental Quality.

12.14.1 The PERFORMING PARTY must display the TCEQ logo on any signage posted at the worksite during the Implementation Phase of the Grant Activities in a manner that informs the public that the project is part of the Alternative Fueling Facilities Program. The TCEQ logo may be obtained from the TCEQ. The TCEQ logo must not be displayed in a manner that implies that TCEQ itself is conducting the project. Instead, the TCEQ logo must be accompanied with a statement indicating that the PERFORMING PARTY received financial assistance from the TCEQ for the project.

Lobbying Activities

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

Accessibility

12.16 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 13. TCEQ'S RESPONSIBILITIES

13.1 The TCEQ will not supervise, direct, or have control or authority over, nor be responsible for, the 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 the PERFORMING PARTY to comply with laws and regulations applicable to the furnishing or performance of the work. The TCEQ will not be responsible for the PERFORMING PARTY's failure to perform or furnish the work in accordance with the Contract.

13.2 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.

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

ARTICLE 14. PROGRESS REPORT; LONG TERM MONITORING AND REPORTING

14.1 During the Implementation Period, the PERFORMING PARTY shall submit to the TCEQ within ten (10) days following the end of each calendar quarter (March 31, June 30, September 30, and December 31) a properly completed Progress Report describing the Grant Activities completed during the previous quarter.

14.2 A Final Implementation Phase report shall be submitted to the TCEQ after implementation of all Grant Activities has been completed in accordance with the Scope of Work.

14.3 As a condition of receiving grant funds, the PERFORMING PARTY agrees to operate the Grant Equipment for the Operations Period, as detailed in the Scope of Work.

14.4 As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed operational reports to the TCEQ, on forms provided by the TCEQ, for the Operations Period. The PERFORMING PARTY will submit the required reports on the date specified by the TCEQ in the SOW.

14.5 The PERFORMING PARTY's timely submission of accurate operational reports is material to performance under this Contract. Failure to submit the required operational reports or submission of operational reports containing false or inaccurate information shall constitute a material breach of this Contract.

ARTICLE 15. TERMINATION

15.1 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.

15.2 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.

15.2.1 If the PERFORMING PARTY's acts or omissions cause or create an increase of pollutants to an unacceptable level or an increase of health and safety risks, such acts or emissions shall constitute a material failure to comply with the requirements of the Contract.

15.2.2 In the event the PERFORMING PARTY sells, transfers, destroys or otherwise loses title, ownership, possession or control of Grant Equipment during the Contract Period, without prior approval from the TCEQ, the PERFORMING PARTY shall, upon request by the TCEQ, promptly return the full amount of funds reimbursed to the PERFORMING PARTY for the purchase of the Grant Equipment.

15.3 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.

15.4 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.

15.4.1 The PERFORMING PARTY may not incur new obligations for the terminated portion after the effective date and must cancel as many outstanding obligations as possible. The TCEQ evaluates each obligation to determine its eligibility for inclusion in project costs. The TCEQ allows full credit to the recipient for the state share of the non-cancelable obligations properly incurred by the grantee prior to termination, subject to the availability of funds appropriated for such obligations.

15.5 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.

15.6 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.

15.7 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.

15.7.1 If after payment of final reimbursement and completion of the implementation phase of the Grant Activities, the PERFORMING PARTY decides to cease performing the Grant Activities, the PERFORMING PARTY may request that the TCEQ terminate the Contract. This termination shall be contingent upon the PERFORMING PARTY returning a prorated portion of grant funds already received. The amount of prorated reduction, if any, shall be calculated by the TCEQ as the percentage of the Operations Period of the Grant Activities actually completed in terms of days from the beginning of the Operations Period of the Scope of Work through the date that such request is made or the date which Grant Activities actually ceased, whichever is earlier

15.8 For purposes of availability of funding and completion of the TCEQ's obligations to reimburse the PERFORMING PARTY for authorized expenses; this Contract will terminate upon the earlier of expiration of the Contract Period, or upon full performance of all requirements contained herein, unless termination occurs by action taken by the TCEQ or the PERFORMING PARTY under this Article.

15.9 The PERFORMING PARTY acknowledges that certain requirements of this Contract shall survive an event of termination.

15.10 Stop Grant Activities. The TCEQ may stop the Grant Activities if, in the reasonable opinion of the TCEQ, the PERFORMING PARTY fails to perform the Grant Activities in such a way which conforms to the Contract. The TCEQ may order the PERFORMING PARTY to stop the Grant Activities, or any portion thereof, until the cause for such order has been eliminated; however, this right of the TCEQ to stop the Grant Activities shall not give rise to any duty on the part of the TCEQ to exercise this right for the benefit of the PERFORMING PARTY or any surety or other party.

15.11 The PERFORMING PARTY shall carry on the Grant Activities and adhere to the progress schedule at all times, including any disputes or disagreements with the TCEQ. No Grant Activities shall be delayed or postponed pending resolution of any disputes or disagreements, except as the TCEQ and the PERFORMING PARTY may otherwise agree in writing. If, through no act or fault of the PERFORMING PARTY, the Grant Activities are suspended for a period of more than ninety days by the TCEQ or under an order of court or other public authority, then the PERFORMING PARTY's sole and exclusive remedy is to extend the Grant Activities time line.

15.12 The TCEQ May Suspend Grant Activities. At any time and without cause, the TCEQ may suspend the Grant Activities or any portion thereof by notice in writing to the PERFORMING PARTY which will fix the date on which Grant Activities will be resumed. The PERFORMING PARTY shall resume the Grant Activities on the date so fixed. The PERFORMING PARTY shall be allowed an extension of the Grant Activities time line directly

attributable to any such suspension, but only to the extent that the PERFORMING PARTY requests such extensions in writing within fifteen (15) days of the TCEQ's notice.

ARTICLE 16. REMEDIES AVAILABLE TO THE TCEQ

16.1 In accordance with Chapter 2261 of the Texas Government Code, the following Schedule of Remedies 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:

- 16.1.1 Issue notice of substandard performance or other non-conforming act or omission;
- 16.1.2 Reject substandard performance and request corrections without charge to the TCEQ;
- 16.1.3 Request and receive return of any over payments or inappropriate payments;
- 16.1.4 Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;
- 16.1.5 Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;
- 16.1.6 Reject reimbursement request and withhold all or partial payments. Funds may be retained by the TCEQ for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by state or federal law;
- 16.1.7 Terminate the Contract, demand and receive: return of all equipment purchased with contract funds, return of all unexpended funds, and repayment of improperly expended funds; or
- 16.1.8 Demand restitution and recover payments where performance is subsequently determined non-conforming.

Cumulative Remedies

16.2 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 17. INDEMNIFICATION

17.1 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.

17.2 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 18. TITLE TO AND MANAGEMENT OF PROPERTY AND EQUIPMENT

18.1 Subject to the obligations and conditions set forth in this Contract, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under this Contract by the PERFORMING PARTY or a sub-grant recipient will vest upon acquisition or construction in the PERFORMING PARTY or the sub-grant recipient respectively.

18.2 Subject to the provisions of this Contract and as otherwise provided by state statutes, property acquired or replaced under this Contract or a sub-grant contract shall be used for the duration of its normally expected useful life to support the purposes of this Contract whether or not the original projects or programs continue to be supported by state funds.

18.3 The PERFORMING PARTY and sub-grant recipients may develop and use their own property management systems, 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 or the sub-grant recipient is not in place or is not used properly, the Property Accounting System Manual 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 and sub-grant recipients must meet the requirements set forth in this Section.

- 18.3.1 Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, and the cost of the property, percentage of state 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.
- 18.3.2 A physical inventory of all equipment acquired or replaced under this Contract shall be conducted no less frequently than once every two years during the Project Life and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY and the sub-grant recipients shall include adequate safeguards for replacement value and to prevent loss, damage, or theft of the acquired property. Any loss, damage, or theft shall be investigated. The PERFORMING PARTY and the sub-grant recipients shall develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property in good condition, and to utilize proper sales procedures to ensure the highest possible return, in the event such property is sold.
- 18.3.3 Certain types of equipment are classified as “controlled assets” and are subject to annual revision. In accordance with the UGMS, the PERFORMING PARTY and sub-grant recipients should contact the Texas Comptroller of Public Accounts’ property accounting staff or review the Comptroller’s state Property Accounting User Manual available on the Internet, for the most current listing.

18.4 The PERFORMING PARTY or the sub-grant recipient, respectively, may for the purpose of replacing property acquired under this Contract, either trade in or sell the property and use the proceeds of such trade-in or sale to offset the cost of acquiring needed replacement property.

18.5 Items of property with a current per-unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of by the PERFORMING PARTY with no further obligation to the TCEQ. Methods used to determine per-unit fair market value must be documented, kept on file, and made available to the TCEQ upon request.

18.6 Real property must be maintained on an Inventory and is subject to the requirements of UGMS, Part III, Subpart C, _31. Subject to the obligations and conditions set forth in this Contract, title to real property acquired under this Contract by the PERFORMING PARTY will vest upon acquisition or construction in the PERFORMING PARTY respectively.

ARTICLE 19. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

19.1 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.

19.2 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 20. STANDARDS FOR THE PERFORMING PARTY’S PERFORMANCE

20.1 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.

- 20.1.1 Quality and Accuracy. Standard: The PERFORMING PARTY’s Grant Activities conform to the requirements of this Contract.
- 20.1.2 Timeliness. Standard: The PERFORMING PARTY’s Grant Activities are completed on schedule.
- 20.1.3 Reports and Administrative & Financial Operations. Standard: The PERFORMING PARTY’s administrative and financial operations comply with all obligations in law and in this Contract, including, but not limited to, record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.
- 20.1.4 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.
- 20.1.5 Other. Standard: Other factors unique to the type of project, as determined by the TCEQ.

20.2 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.

- 20.2.1 Exceeds Expectations. The PERFORMING PARTY fully complied with all the standards on a consistent basis.
- 20.2.2 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.
- 20.2.3 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.
- 20.2.4 Unsatisfactory Performance. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

Contractor Evaluation

20.3 The TCEQ may prepare a written evaluation of the performance of the PERFORMING PARTY upon completion of the terms of the Contract, 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 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.

ARTICLE 21. MISCELLANEOUS

21.1 In order for this Contract to be effective, all authorized principals 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.

21.2 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.

21.3 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.

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

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

21.6 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.

21.7 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.

21.8 Subject to the provisions of Article 11, 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.

21.9 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.

21.10 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, Texas. This provision does not waive the TCEQ's sovereign immunity.

21.11 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.

21.12 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 may be 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.

21.13 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

21.14 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).

ARTICLE 22. INTELLECTUAL PROPERTY

22.1 No intent to create intellectual property. The TCEQ does not intend to fund Grant Activities that require the creation of intellectual property. Accordingly, Sections 22.2 through 22.4 should not apply to the Grant Activities. If the PERFORMING PARTY at any time determines that any portion of the Grant Activities funded by the TCEQ will require creation of intellectual property, including new works incorporating preexisting intellectual property, the PERFORMING PARTY must immediately notify the TCEQ and will not undertake such activity unless the TCEQ provides written authority to proceed.

22.2 Disclosure of Intellectual Property Produced during the Grant Activities. The PERFORMING PARTY shall promptly notify the TCEQ of all Intellectual Property which the PERFORMING PARTY or the PERFORMING PARTY's employees, subcontractors, or subcontractor's employees may produce, either solely or jointly with others, during the course and directly arising from the Grant Activities. In addition, the PERFORMING PARTY shall promptly notify the TCEQ of all Intellectual Property to which the PERFORMING PARTY may acquire rights in connection with the Grant Activities. Any notification under this paragraph shall contain sufficient technical detail to convey a clear understanding of the Intellectual Property, and shall identify any publication, sale, public use, or impending publication. Promptly upon request, the PERFORMING PARTY shall supply such additional information as the TCEQ may request.

22.3 Grant of License. With respect to such Intellectual Property as is developed by the PERFORMING PARTY or the PERFORMING PARTY's employees, subcontractors, or subcontractor's employees, either solely or jointly with others, during the course of performing portions of and directly arising from the Grant Activities for which reimbursement is requested from the TCEQ; the PERFORMING PARTY hereby grants to the TCEQ (1) a nonexclusive, perpetual, irrevocable, enterprise-wide license to reproduce, publish, or otherwise use such Intellectual Property and associated use documentation, and (2) a nonexclusive, perpetual, irrevocable, enterprise-wide license to authorize others to reproduce, publish, or otherwise use such Intellectual Property for the TCEQ'S purposes. For such Intellectual Property that is developed in the course of the Grant Activities and not subject to this license requirement, the PERFORMING PARTY shall ensure that the development expenses are clearly documented on financial reports submitted to the TCEQ and that requests for reimbursement do not include these expenses.

22.4 Modification; Derivative Works. The TCEQ shall have the right, in its own discretion, to independently modify any Intellectual Property to which license is granted herein for The TCEQ's own purposes and use, through the services of its own employees or independent contractors. The TCEQ and the PERFORMING PARTY shall jointly own all Intellectual Property Rights to such modifications. The PERFORMING PARTY shall not be responsible for or liable for any modifications by the TCEQ or the TCEQ's employees or independent contractors of Intellectual Property licensed to the TCEQ by the PERFORMING PARTY.

22.5 The PERFORMING PARTY shall comply with all laws and regulations relating to Intellectual Property. The PERFORMING PARTY represents and warrants to the TCEQ that the PERFORMING PARTY will not infringe any Intellectual Property Right of any third party. The PERFORMING PARTY further represents and warrants to the TCEQ that in the course of performing the Grant Activities it will not use or possess any Intellectual Property owned by a third party without paying any required royalty or patent fees. The PERFORMING PARTY warrants that it has full title in and ownership of the Intellectual Property and any enhancements, updates or other modifications, or that it has full power and authority to grant all licenses granted herein, and that such license use by the TCEQ will in no way constitute an infringement or other violation of any Intellectual Property right of any third party. The PERFORMING PARTY warrants that it shall have, throughout any applicable license term hereunder, free and clear title to, or the right to possess, use, sell, transfer, assign, license, or sublicense, products that are licensed or provided hereunder to the TCEQ by the PERFORMING PARTY. Except as permitted in the Contract, the PERFORMING PARTY shall not create or permit the creation of any lien, encumbrance, or security interest in the Grant Technology or any part thereof, or any product licensed or provided hereunder to the TCEQ for which title has not yet passed to the TCEQ, without the prior written consent of the TCEQ. The PERFORMING PARTY represents and warrants to the TCEQ that neither it nor any other company or individual performing the Grant Activities is under any obligation to assign or give to any third party any Intellectual Property rights granted or assigned to the TCEQ, or reserved by the TCEQ, pursuant to the Contract.

22.6 The PERFORMING PARTY shall include provisions adequate to effectuate the purposes of Section 22.5 in all subcontracts and sub-grants under this Contract in the course of which Intellectual Property may be produced or acquired.

— End of General Conditions —

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 7875

Telephone No.: (512) 239-4143

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:

Authorized Official's Name
PERFORMING PARTY's Name
Address
City, State Zip Code

Physical Address:

Authorized Official's Name
PERFORMING PARTY's Name
Address
City, State Zip Code

Telephone No.: ()

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:

Designated Project Representative's Name
PERFORMING PARTY's Name
Address
City, State Zip Code

Physical Address:

Designated Project Representative's Name
PERFORMING PARTY's Name
Address
City, State Zip Code

Telephone No.: ()

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
ALTERNATIVE FUELING FACILITIES PROGRAM (AFFP)**

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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APPROVED GRANT BUDGET

ARTICLE 1. BUDGET

1.1 Authorized budgeted expenditures under this Contract are as follows:

**Alternative Fueling Facilities Program
Contract Budget Form**

Approved Grant Budget for:	
Contract Number:	
Application Number:	
Project Type:	
BUDGET CATEGORIES	ELIGIBLE PROJECT COSTS
A. EQUIPMENT	
DESCRIPTION	
TOTAL EQUIPMENT COST	
B. SUPPLIES and MATERIALS	
DESCRIPTION	
TOTAL SUPPLIES AND MATERIALS COST	
C. CONSTRUCTION	
DESCRIPTION	
TOTAL CONSTRUCTION COST	
D. CONTRACT SERVICES (Consultants and Subcontractors)	
DESCRIPTION	
TOTAL CONTRACT SERVICES COST	
E. OTHER EXPENSES	
DESCRIPTION	
TOTAL OTHER EXPENSES COST	
F. TOTAL ELIGIBLE PROJECT COSTS	
G. TOTAL GRANT AMOUNT	

1.2 PERFORMING PARTY shall obtain prior written approval from TCEQ when cumulative transfers among identified reimbursement categories exceed or are expected to exceed 10% of the total approved grant amount.

1.3 PERFORMING PARTY shall obtain prior written approval from TCEQ to transfer reimbursement from an identified reimbursement category to a category where reimbursement has not been approved in the Contract budget.

— End of Approved Grant Budget —

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INSURANCE

ARTICLE 1. INSURANCE

1.1 COVERAGES REQUIRED. PERFORMING PARTY shall obtain and maintain throughout the Contract term the insurance coverages listed below:

1.1.1 Worker's Compensation and Employer's Liability Insurance. Coverage for Worker's Compensation which complies with Texas statutory requirements as to amounts, coverage's and terms. Elective exemptions or coverage's through an employee leasing arrangement will not satisfy this requirement.

1.1.2 Commercial Automobile Liability Insurance. Coverage in the following minimum amounts for owned, hired, and non-owned vehicles for claims of automobile bodily injury and property damage which may arise in the performance of the Contract:

- \$500,000.00 per person;
- \$500,000.00 per occurrence for bodily injury; and
- \$1,000,000.00 per occurrence for property damage; or
- \$1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.

1.1.3 Commercial General Liability Insurance. Coverage for claims of personal injury and bodily injury, including accidental death, and property damage which may arise from the performance of the Contract. The types of coverage required are: Blanket, Broad Form Property Damage, Premises and Operations Hazards, Products and Completed Operations Hazards, Independent Contractor's, and Contractual Liability in the minimum amounts of:

- \$1,000,000.00 per occurrence for bodily injury; and
- \$1,000,000.00 per occurrence for property damage; or
- \$2,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined.

1.1.4 Property Insurance. The PERFORMING PARTY must maintain sufficient Property Insurance for the repair or replacement of any Grant Equipment for the Reporting Period as required by the Contract, unless otherwise expressly agreed by the TCEQ.

1.2 MINIMUM INSURER RATING. The PERFORMING PARTY shall use insurers licensed, eligible, or registered under Texas law with a rating of A- or better in a financial size category of IV or higher according to A.M. Best Company.

1.3 NOTICES OF CHANGE. The PERFORMING PARTY's insurance policies must require the insurer or the insurer's authorized agent to notify TCEQ of any cancellation, or material change, other than for non-payment, at least 30 days in advance. The PERFORMING PARTY's insurance policy must require the insurer or the insurer's authorized agent to notify TCEQ of any cancellation or material change due to non-payment at least 10 days in advance. These notices of changes must reference the TCEQ contract number and be made in writing by certified mail to the TCEQ Project Representative at the address shown in the Contract Documents.

1.4 INSURANCE CERTIFICATE. PERFORMING PARTY shall provide TCEQ with evidence of the insurance coverage required under this Contract. The evidence of the coverage shall be a certificate of insurance on a form approved by the Texas Department of Insurance or an Acord® form. PERFORMING PARTY will submit the certificate to the TCEQ as a condition precedent to the issuance of a Notice to Proceed. Certificates must bear the contract number of this Contract. If PERFORMING PARTY changes insurers, PERFORMING PARTY shall give TCEQ a new certificate of insurance within ten days. The certificate of insurance shall set out any deductible or self-insured retention amounts for each coverage required.

1.5 REQUIRED ADDITIONAL PROVISIONS. All policies of insurance shall include the following provisions:

1.5.1 TCEQ and its officers and employees are named additional insureds to *Commercial General Liability Insurance, Excess Liability Insurance (Umbrella),* and Excess Liability Insurance (other than Umbrella);

1.5.2 Waiver of subrogation in favor of TCEQ, its officers and employees for bodily injury (including death), property damage, or any other loss arising from this Contract, except for Professional Liability Insurance; and

1.5.3 The PERFORMING PARTY's insurance is primary insurance with respect to the TCEQ and its officers and employees.

— End of Insurance Section —

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