

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

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

<b>Contract Effective Date</b>	<b>Request for Reimbursement Deadline</b>	<b>Contract Expiration Date</b>
<b>The Effective Date of this Contract is the date of last signature</b>	<b>April 30, 2024</b>	<b>August 31, 2028</b>

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 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 and Administrative Requirements required by the Contract; and (c) the TCEQ will reimburse authorized allowable costs in accordance with the Texas Grant Management Standards and this Contract.

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

Este es el contrato de subvención entre usted y la Comisión de Calidad Ambiental de Texas (TCEQ por sus siglas en inglés). Al firmar este documento, usted está aceptando los términos y condiciones legalmente vinculantes. Comuníquese al 800-919-TERP (8377) para obtener ayuda con la interpretación de este contrato.

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

**ARTICLE 1. DEFINITIONS**

Unless defined herein, terms in this Contract and Contract Documents have the meanings provided in the Texas Grant Management Standards (TxGMS). TxGMS is available at: <https://comptroller.texas.gov/purchasing/grant-management/>.

The following terms have the meanings indicated.

- 1.1 Administrative Requirements - activities which track contract progress and management, including financial management, reporting, and retention of records. These are distinguished from Grant Activities requirements, which 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. See Texas Health and Safety Code Section 393.001(1).
- 1.3 Application - the application for a grant submitted by the PERFORMING PARTY including all sections and attachments included with the application.
- 1.4 Approved Grant Budget - the total amount of costs approved by the TCEQ for the Grant Activities.
- 1.5 Authorized Official - the individual authorized to sign legal documents on behalf of the TCEQ or the PERFORMING PARTY, as designated in the Contract.
- 1.6 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.
- 1.7 Contract Documents - the Contract Documents are those documents identified in Article 6. The terms "Contract" or "Grant" include all the Contract Documents.
- 1.8 Contract Period - the period of time from the Effective Date of the Contract through the Contract Expiration Date, unless the Contract is otherwise terminated in accordance with its terms.
- 1.9 Grant Activity/Activities - activities the PERFORMING PARTY has included in its Application and that are incorporated in the Scope of Work.
- 1.10 Grant Equipment - the items described as eligible in the Approved Grant Budget for which part of the cost of purchase, lease, or utilization is reimbursed by the TCEQ under the Contract. The term also includes insurance-funded replacements for Grant Equipment that is lost, stolen, or irreparably damaged.
- 1.11 Implementation Period - the period during which Grant Equipment is purchased and placed into service. The Implementation Period will end upon the later of either the payment of the final request for reimbursement and release of claims or the TCEQ's written approval of the final implementation report.
- 1.12 Incurred - the point at which the Grant Equipment is both paid for and received by the PERFORMING PARTY.
- 1.13 Notice to Proceed - a written notice given by the TCEQ to the PERFORMING PARTY that the PERFORMING PARTY may commence with the Grant Activities.
- 1.14 Operation Period - the period following the completion of the Implementation Period. The Operation Period is the three-year period during which the grantee must ensure the operation and maintenance of the Grant Equipment. Grantees will report on the amount of natural gas and/or other alternative fuels dispensed.
- 1.15 PERFORMING PARTY - the grant recipient indicated on the signature page of this Contract. The term PERFORMING PARTY may be used interchangeably with "grantee" in the Contract Documents.
- 1.16 Project Representative - the individual authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY's Project Representative or his or her designee.
- 1.17 Request for Reimbursement Deadline - the date specified in the Contract when all requests for reimbursement must be received by TCEQ from the PERFORMING PARTY.

- 1.18 Scope of Work - the Contract document describing the Grant Activity requirements.
- 1.19 State - means the State of Texas.
- 1.20 Termination - means a permanent end and cessation of the Contract.
- 1.21 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.
- 1.22 A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.
- 1.23 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 Grant Management Standards (TxGMS); (3) Texas Government Code Chapter 2261; (4) TCEQ rules and policies; and (5) other applicable Federal and State rules and statutes.

### ***Local Governments***

- 2.3 PERFORMING PARTY acknowledges and agrees that appropriated funds may not be expended in the form of a grant to, or contract with, a unit of local government unless the terms of the grant or contract require that the funds received under the grant or contract will be expended subject to the limitations and reporting requirements similar to those provided by the following: (a) Parts 2 and 3 of the Texas General Appropriations Act, Art. IX, except there is no requirement for increased salaries for local government employees; (b) Sections 556.004, 556.005, and 556.006 of the Texas Government Code; and (c) Sections 2113.012 and 2113.101 of the Texas Government Code.

## **ARTICLE 3. PURPOSE**

The purpose of this Contract is to provide a grant to financially assist the PERFORMING PARTY in implementing the Grant Activities described 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. TCEQ will issue a Notice to Proceed upon its review and approval of all required documentation as specified in the Scope of Work.
- 4.2 After TCEQ issues a Notice to Proceed, eligible costs may be submitted for reimbursement. Any cost incurred prior to the date of issuance of the Request for Grant Applications (RFGA) will not be considered as eligible for reimbursement.
- 4.3 Regardless of 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 Signature Page.
- 5.2 The Contract Period shall be the period of time from the Effective Date through the Expiration Date listed on the Signature Page of this Contract, unless the Contract is otherwise terminated or extended in accordance with its terms.

## **ARTICLE 6. CONTRACT DOCUMENTS**

- 6.1 The entire Contract between TCEQ and the PERFORMING PARTY consists of the documents listed below. The Contract Documents are intended to be interpreted in harmony with each other. Any inconsistency between the Contract Documents shall be resolved by giving precedence in the following descending order:

- 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, and any addenda, 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, Written Amendments, Minor Changes, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

6.2 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 information and data the PERFORMING PARTY submitted in the Application may have been revised after submittal to the TCEQ, to ensure that the information in the Application is accurate. By signing this Contract, the PERFORMING PARTY acknowledges that it has reviewed the Scope of Work and agrees to all representations contained within the Scope of Work. 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 for cost reimbursement purposes.

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

#### **ARTICLE 8. FUNDS**

8.1 This Contract shall not be construed as creating a debt on behalf of TCEQ in violation of Article III, Section 49a of the Texas Constitution. All claims, suits, or obligations arising under or related to this Contract are subject to the availability of grant funds which are actually received and deposited into the Texas Emissions Reduction Plan Fund for the purposes of this Contract.

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 (Request for Reimbursement Deadline). Costs to be reimbursed under this Contract must be incurred by the Request for Reimbursement Deadline as identified on the Contract Signature Page. If no reimbursement has been requested or paid as of this date, this Contract will terminate without any further obligations to either party.

#### **ARTICLE 9. ELIGIBILITY FOR COST REIMBURSEMENT**

9.1 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.

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.

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 must ensure that its procurement practices will be based on sound business decisions and arms' length bargaining. Purchases must be made without any actual or apparent personal or organizational conflicts of interest as described in TxGMS. If the PERFORMING PARTY is a local government, it must comply with Chapter 176 of the Texas Local Government Code. The PERFORMING PARTY agrees that TCEQ has sole discretion to determine whether a conflict of interest exists, and that a conflict of interest may be considered a material breach of this Contract.

9.6 The PERFORMING PARTY's procurement practices must allow for and encourage fair and open competition for vendors and subcontractors providing goods and services under this Contract. For any expenses (goods or services) which are not procured using price competition, and which exceed the Texas Acquisition Threshold or federal Simplified Acquisition Threshold (currently \$250,000), the PERFORMING PARTY must perform a price or cost analysis (for example, independent estimates) to determine the reasonableness of the price and maintain documentation of such analysis. All documentation regarding procurement and price or cost analysis must be provided to TCEQ upon request.

***Historically Underutilized Business (HUB)***

9.7 The PERFORMING PARTY is encouraged to provide opportunities for HUBs to participate in subcontracting under this Contract.

***Reasonable Costs***

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

- 9.8.1 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;
- 9.8.2 generally accepted sound business practices, competitive procurement, arm's length bargaining, and federal and state laws and regulations;
- 9.8.3 the PERFORMING PARTY's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
- 9.8.4 any significant deviations from accepted industry-established practices.

***Necessary Costs***

9.9 Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and which are included in the Approved Grant Budget.

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

- 9.10.1 the cost of money, in particular, or the interest charges on a purchase money loan or on a deferred payment purchase agreement.

***Actual Costs***

9.11 The criteria for actual costs include:

- 9.11.1 the direct costs paid for implementing the Grant Activities; or
- 9.11.2 the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.

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

- 9.12.1 amounts deducted from the true price of the purchase of Grant Equipment whether as discounts, rebates, refunds or otherwise;

- 9.12.2 amounts which the PERFORMING PARTY owes or agrees to pay the vendor or contractor for any purpose other than the implementation of Grant Activities;
- 9.12.3 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
- 9.12.4 amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are received by the PERFORMING PARTY.

9.13 The PERFORMING PARTY's and its subcontractors must document and maintain evidence of expenses.

***Allowable Costs***

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

***Indirect Costs***

9.15 Indirect costs are not reimbursable under the terms of this Contract.

***Preapproval of Costs***

9.16 If the costs to be incurred are not already represented in the Approved Grant Budget, then prior to incurring those costs, the PERFORMING PARTY must provide details and receive written approval from TCEQ for those costs.

9.17 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 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.

***Final Reimbursement Amount***

9.19 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.

***Debts Owed to the State***

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

***Outstanding Invoice to TCEQ***

9.21 If the PERFORMING PARTY has an outstanding invoice from TCEQ, TCEQ may not authorize reimbursement until the invoice is resolved.

**ARTICLE 10. REQUEST FOR REIMBURSEMENT**

10.1 To receive grant funds, all Grant Equipment costs must have been incurred by the PERFORMING PARTY prior to the Request for Reimbursement Deadline.

10.2 All Request for Reimbursement forms must contain sufficient identification of and information concerning the total 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 or financed and, except where the payment is assigned to another entity, paid.

10.3 The PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form. The forms shall be emailed to [TERP-Fiscal@tceq.texas.gov](mailto:TERP-Fiscal@tceq.texas.gov) or mailed to:

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

Contract Number

10.4 The Request for Reimbursement shall be completed on forms provided by the TCEQ. The Request for Reimbursement, including all required supplemental forms, shall list the total expenses obligated under a financing agreement and the total activity expenses incurred to date.

10.5 The PERFORMING PARTY shall notify the TCEQ, in its Request for Reimbursement, of any financial incentive received by the PERFORMING PARTY, such as tax credits or deductions, other grants, or any other public financial assistance, that will offset the eligible costs incurred by the grant recipient for the project. The grant reimbursement must not exceed the sum of the actual eligible costs incurred by the grant recipient plus any other financial incentives received by the PERFORMING PARTY for the project.

#### ***Retained Funds***

10.6 The TCEQ may retain up to 10% 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 the Request for Reimbursement Deadline. Unless otherwise approved in writing by TCEQ, all work on the Grant Equipment must be completed, with the Grant Equipment fully operational, before final reimbursement will be made.

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, 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 reimbursement of funds is contingent upon the PERFORMING PARTY's satisfactory adherence to the terms of this Contract.

#### ***Required Forms***

10.11 In order to seek reimbursement, the PERFORMING PARTY, must submit fully completed and legible:

- 10.11.1 Request for Reimbursement Form;
- 10.11.2 Supplemental Request for Reimbursement Form(s) for those budget categories with expenses;
- 10.11.3 Release of Claims (only with the Request for Reimbursement of Retained Funds); and
- 10.11.4 documentation of payment for all costs for which reimbursement is requested.

#### ***Required Documentation***

10.12 Documentation for a reimbursable cost shall:

- 10.12.1 be legible;
- 10.12.2 identify the specific piece of equipment received or the services provided;
- 10.12.3 clearly identify the vendor or subcontractor who provided the equipment or services;
- 10.12.4 confirm the reimbursable amount listed on the form; and
- 10.12.5 provide proof of payment for all costs for which reimbursement if requested.

10.13 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 must provide any other documentation requested by the TCEQ.

10.14 Canceled checks and bank confirmation of electronic funds transfers represent the preferred types of documentation for purposes of this section; however, at TCEQ's discretion, the PERFORMING PARTY may substitute/attach other records or documents that provide sufficient evidence of payment.

10.15 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.

10.16 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.

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

#### **ARTICLE 11. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ**

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 within three (3) business days if there is any material change in these representations or certifications.

##### ***Professional Quality***

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

##### ***Oversight and Monitoring***

11.4 The PERFORMING PARTY is responsible for the supervision, inspection, and direction of its employees, contractors, or subgrantees to ensure the Grant Activities are performed in a competent and efficient manner. 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 implementation of the Grant Activities complies 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***

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

##### ***The PERFORMING PARTY's Responsibility for Purchases***

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

11.7 All Grant Equipment will be of good quality and as described in the Scope of Work. 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.

11.8 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 Operation Period.

##### ***Proof of Insurance***

11.9 The PERFORMING PARTY must maintain sufficient commercial property insurance to cover the repair or full replacement of any Grant Equipment during the Contract Period.

11.10 During the Contract Period, the PERFORMING PARTY must also maintain Workers Compensation and Employer's Liability Insurance, Commercial Automobile Liability Insurance, and Commercial General Liability Insurance at coverage levels set out in the Insurance Section of this Contract.

11.11 The PERFORMING PARTY must provide proof of the required insurance coverages prior to receiving the Notice to Proceed. If requested by the TCEQ, the PERFORMING PARTY shall provide additional proof of insurance coverage, including declaration pages and copies of policies.

11.12 Failure to provide proof of required insurance or failure to maintain required insurance during the Contract Period shall constitute a material breach of this Contract.

11.13 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.

11.14 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment during the Contract Period, the PERFORMING PARTY will repair and restore the Grant Equipment to the level of optimum performance.

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

11.16 Governmental entities may use an established self-insurance program to satisfy any insurance requirements.

11.17 The TCEQ reserves the right to require additional insurance coverage during the term of this Contract.

#### ***Assignment***

11.18 TCEQ must remain in contractual privity with the entity owning and operating the Grant Equipment in order to enforce the Contract's Grant Activities and Administrative Requirements until the termination of this Contract. Any act by the PERFORMING PARTY that impairs TCEQ's ability to enforce this 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), constitutes a material breach of this Contract and requires the return of grant funds.

11.19 TCEQ may allow the assignment of this Contract. The PERFORMING PARTY and proposed assignee will be required to execute a TCEQ-drafted assignment agreement stating the assignee's obligation to accept this Contract and to continue to use the Grant Equipment subject to the terms of this Contract.

11.20 If TCEQ does not allow assignment of the Contract, or if the proposed assignee refuses to enter into an assignment agreement, TCEQ will deem the PERFORMING PARTY in breach of the contract and may utilize any remedy under Article 13, including the return of grant funding.

11.21 No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by PERFORMING PARTY will be binding on the TCEQ without its written consent, except as restricted by law.

#### ***Access to Records and Grant Equipment***

11.22 State Auditor's Office. The PERFORMING PARTY understands that the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, 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 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 with the audit or investigation is included in any subcontract it awards under this Contract.

11.23 The PERFORMING PARTY shall cooperate with and 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. Failure to respond to or cooperate with any authorized review, inspection, or audit of the Grant Activities constitutes a material breach of this Contract.

#### ***Maintenance of Records***

11.24 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 and this Contract. The PERFORMING PARTY's record retention 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.

11.25 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity under this Contract and for four (4) 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 four-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 four-year period, whichever is later. The PERFORMING PARTY must maintain these records in a way that ensures business continuity if the primary records are destroyed such as establishing a back-up copy of such records.

#### ***PERFORMING PARTY's Representative***

11.26 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.

11.27 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, or change in delegation, will be provided to the TCEQ.

11.28 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 emailed, hand-delivered, or sent by first-class mail. Any notice or other written communication shall be considered delivered upon date of receipt.

#### ***Personnel***

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

#### ***Safety and Protection***

11.30 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***

11.31 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***

11.32 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***

11.33 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.

11.34 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.

11.35 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.**

#### ***Lobbying Activities***

11.36 The PERFORMING PARTY shall not use funds provided under this Contract to support lobbying or political activity either directly or indirectly in accordance with Sections 403.1067 and 556.0055 of the Texas Government Code.

#### ***Accessibility***

11.37 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 12. PROGRESS REPORT; LONG TERM MONITORING AND REPORTING**

12.1 During the Implementation Period, the PERFORMING PARTY shall submit biannual progress reports describing the Grant Activities completed. Completed progress reports are due to the TCEQ within ten (10) days following June 30 and December 31.

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

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

12.4 As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed annual operational reports to the TCEQ, on forms provided by the TCEQ, for the Operation Period. The PERFORMING PARTY will submit the required reports annually as specified by the TCEQ.

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

### **ARTICLE 13. TERMINATION**

13.1 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.

13.2 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 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.

13.2.1 The PERFORMING PARTY may not incur new obligations after receiving notice of termination 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 PERFORMING PARTY for the state share of the non-cancelable obligations properly incurred by the grantee prior to termination, subject to the availability of funds.

13.3 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.

13.3.1 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.

13.3.2 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.

13.4 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.

13.5 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.

13.6 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.

13.7 If, during the Contract Period, the PERFORMING PARTY does not complete the Grant Activities, the Contract may be terminated, and the PERFORMING PARTY will return any reimbursements already received.

13.7.1 If after TCEQ's payment of final reimbursement upon the completion of the Implementation Phase of the Grant Activities, the PERFORMING PARTY ceases performing the Grant Activities or Administrative Requirements, the PERFORMING PARTY is in breach of contract and must return the grant funds already received. TCEQ may reduce the amount of grant funds to be returned by the percentage of the Operation Period of the Grant Activities actually completed in terms of days from the beginning of the Operation Period through the date the Grant Activities ceased, as calculated by TCEQ.

13.8 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.

13.9 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 timeline.

13.10 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 timeline 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.

13.11 The PERFORMING PARTY acknowledges that certain requirements of this Contract, including maintenance of records, shall survive an event of termination.

#### **ARTICLE 14. REMEDIES AVAILABLE TO THE TCEQ**

14.1 In accordance with Chapter 2261 of the Texas Government Code, the following Schedule of Remedies applies in the event of the PERFORMING PARTY's breach of the requirements of this Contract; including the

substandard performance or lack of reasonable progress of Grant Activities or other failure, material or otherwise, to conform to the requirements of the Contract or applicable law:

- 14.1.1 Issue notice of substandard performance or other non-conforming act or omission;
- 14.1.2 Reject substandard performance and request corrections without charge to the TCEQ;
- 14.1.3 Request and receive return of any over payments or inappropriate payments;
- 14.1.4 Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;
- 14.1.5 Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;
- 14.1.6 Reject reimbursement request and withhold all or partial payments;
- 14.1.7 Terminate the Contract without further obligation for payment; or
- 14.1.8 Demand restitution and recover payments for nonconforming performance, including the return of all unexpended funds, repayment of improperly expended funds, and/or all grant funds paid by TCEQ. TCEQ may reduce the amount of grant funds required to be returned by a percentage reflecting the proportion of the total Grant Activities which were properly conducted prior to the breach, as determined by TCEQ.

### ***Cumulative Remedies***

14.2 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.

14.3 The dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the Contract.

### **ARTICLE 15. INDEMNIFICATION**

15.1 TO THE EXTENT PERMITTED BY LAW, PERFORMING PARTY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND TCEQ, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE PERFORMING PARTY OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY THE PERFORMING PARTY WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND THE PERFORMING PARTY MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. THE PERFORMING PARTY AND TCEQ AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

15.2 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 16. TITLE TO AND MANAGEMENT OF PROPERTY AND EQUIPMENT**

16.1 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.

16.2 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.

16.3 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 *State Property Accounting Process User's Guide* 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.

- 16.3.1 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.
- 16.3.2 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 Contract Period 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.

#### **ARTICLE 17. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS**

17.1 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. TCEQ will not amend the Contract if such changes would reduce the total project score.

17.2 Written Amendment. A Written Amendment allows for material changes to the Contract such as changes to the total Contract Amount, changes to the Request for Reimbursement Deadline or Contract Expiration Date, or other changes that affect the material obligations of the PERFORMING PARTY in this Contract. All Written Amendments must be in writing and signed by both parties.

17.3 Minor Change. The TCEQ has authority, without a Written Amendment, to correct any typographical errors, make changes to the Project Representative, make written Contract interpretations, and make minor non-material changes to the requirements in the Scope of Work. Minor changes must be made in writing, including via email, and provided to the PERFORMING PARTY's Project Representative. The PERFORMING PARTY must provide TCEQ with a written objection to any Minor Change no later than five (5) business days from the effective date of the Minor Change.

#### **ARTICLE 18. STANDARDS FOR THE PERFORMING PARTY'S PERFORMANCE**

18.1 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.

- 18.1.1 Quality and Accuracy. Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Contract.
- 18.1.2 Timeliness. Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.
- 18.1.3 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.
- 18.1.4 Communication. Standard: The PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any Contract-related concerns communicated by the TCEQ. The PERFORMING PARTY must ensure that its subcontractors also comply with this standard.
- 18.1.5 Other. Standard: Other factors unique to the type of project, as determined by the TCEQ.

18.2 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.

- 18.2.1 Exceeds Expectations. The PERFORMING PARTY fully complied with all the standards on a consistent basis.
- 18.2.2 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.

- 18.2.3 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.
- 18.2.4 Unsatisfactory Performance. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

### ***Performance Evaluation***

18.3 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 19. MISCELLANEOUS**

19.1 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.

19.2 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.

19.3 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.

19.4 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.

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

19.6 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.

19.7 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.

19.8 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.

19.9 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.

19.10 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.

19.11 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.

19.12 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.

19.13 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 6.24 of the General Appropriations Act, nor by Texas Government Code Chapter 2273, *Prohibited Transactions*.

19.14 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).

19.15 PERFORMING PARTY represents and warrants that it will comply with Section 321.022 of the Texas Government Code which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

— End of General Conditions —

**AUTHORIZED REPRESENTATIVES**

**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:**

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

**Physical Address:**

Ms. Jody Ibarguen  
Texas Commission on Environmental Quality  
Air Grants Division, MC-204  
12100 Park 35 Circle, Bldg. F  
Austin, TX 7875

Telephone No.: (800) 919-TERP (8377)

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.

**- End of Authorized Representatives-**

**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 —**

**SCOPE OF WORK  
FOR  
ALTERNATIVE FUELING FACILITIES PROGRAM (AFFP)  
Public Use Facility**

**Project Overview**

The PERFORMING PARTY will construct, maintain, publicly operate, and report on the following facility at the location below. The continuation of this Contract and associated grant funding is dependent upon the successful and timely completion of each Task and Subtasks.

- FACILITY: «Fuel\_Type\_ID»
- SITE LOCATION: «Station\_Address», «StationAddressCity», «StationAddressState» «StationAddressZip»

**Tasks**

**Task 1: Required Documentation.** Provide the following documentation to TCEQ within one year of the Contract Effective Date. TCEQ will review the documents provided, and TCEQ has sole discretion to determine whether the documents meet Contract requirements. Once all subtasks have been approved, TCEQ will issue a written Notice to Proceed stating that the PERFORMING PARTY may proceed with further Tasks.

**Subtask 1.1 Proof of Insurance**

**Deliverable 1.1:** Provide documentation of commercial insurance coverage for the types and in the amounts indicated in the Insurance Section. Governmental entities may provide proof of self-insurance in lieu of purchasing commercial insurance.

**Deliverable 1.1 Due Date:** One year after Contract Effective Date

**Subtask 1.2 Site Host Agreement/Site Ownership**

**Deliverable 1.2:** Provide one of the following:

- Documentation of the PERFORMING PARTY's ownership of the SITE LOCATION.
- A binding legal agreement demonstrating that the PERFORMING PARTY has secured the right to construct and operate a FACILITY at the SITE LOCATION. The legal agreement must extend for at least three years from the date of the anticipated end of FACILITY construction.

**Deliverable 1.2 Due Date:** One year after Contract Effective Date

**Subtask 1.3 Fuel/Electricity Agreement or Arrangement**

**Deliverable 1.3:** Submit documentation that fuel or electricity will be provided to the FACILITY at the SITE LOCATION. Examples of this documentation include contractual agreements with a fuel or electrical provider, letters of guarantee that demonstrate the infrastructure could be installed at the SITE LOCATION, or other documentation that guarantees the delivery of the fuel or electricity is possible to the SITE LOCATION.

**Deliverable 1.3 Due Date:** One year after Contract Effective Date

**Task 2: Implementation Period.** The PERFORMING PARTY will complete all necessary work to construct, install, and establish a publicly available FACILITY at the SITE LOCATION.

**Subtask 2.1 Perform the following Implementation Period activities:**

- Prepare and finalize all facility and station engineering and architectural designs and secure all necessary permits, regulatory authorizations, and approvals.
- Order and purchase all necessary charging/fueling equipment for the facility.
- Complete any necessary construction in preparation for charging/fueling equipment installation.
- Install all necessary charging/fueling equipment at the facility.
- Complete all final construction post-charging/fueling equipment installation.
- Obtain all necessary licenses to legally operate in the State of Texas.
- Ensure compliance with all State of Texas laws and regulations regarding the collection of applicable fuel taxes.
- Coordinate all project resources to ensure compliance with AFFP requirements while providing deliverables on-schedule and on-budget.

**Deliverable 2.1:** Open the completed FACILITY for public charging/fueling.

**Deliverable 2.1 Due Date:** April 30, 2024

**Subtask 2.2 Biannual Implementation Period Project Reports**

**Deliverable 2.2:** The PERFORMING PARTY will prepare and submit detailed project reports demonstrating reasonable progress on Subtask 2.1.

**Deliverable 2.2 Due Date:** Ten (10) days following June 30 and December 31 of each year until the final Implementation Period report.

**Subtask 2.3 Final Implementation Period Report**

**Deliverable 2.3:** Prepare and submit a report verifying final completion and operation of the facility. The final report must include a statement indicating whether or not the PERFORMING PARTY will be able to complete the required three-year Operation Period prior to the Contract Expiration Date. TCEQ may grant a Contract Extension through a Written Amendment.

**Deliverable 2.3 Due Date:** April 30, 2024.

**Task 3: Operation Period.** The PERFORMING PARTY will perform the Subtasks below and operate the FACILITY at the SITE LOCATION for at least a three-year period, starting from the later of either the payment of the final request for reimbursement and release of claims or TCEQ's written approval of the final implementation report. The PERFORMING PARTY will annually report to TCEQ on the status of FACILITY operation.

**Subtask 3.1 Public Usage.** Ensure that the station is operating and available for public use for a minimum of at least eight hours per day between the hours of 8:00 a.m. and 6:00

p.m., for at least five days a week. Post accurate and current information on-site reflecting the days and hours that the FACILITY is available for public access.

**Deliverable 3.1:** Provide TCEQ with written information on the days and hours the FACILITY is available for public access.

**Deliverable 3.1 Due Date:** Update the agency within seven days of any changes to the hours of operation.

### **Subtask 3.2 Maintenance and Operation**

**Deliverable 3.2:** Conduct proper maintenance, repair or replace any Grant Equipment to keep FACILITY functioning at optimum performance.

**Deliverable 3.2 Due Date:** Notify TCEQ within three (3) business days in the event of any material problems with facility operation. Replace any non-repairable or lost Grant Equipment within 60 days of non-operation.

**Subtask 3.3 Annual Operation Period Reports.** Report annually on the status of the FACILITY operation and usage, including fuel throughput and vehicle and/or equipment counts. All reports will be completed on TCEQ-supplied forms.

**Deliverable 3.3:** Annual Operation Period Reports

**Deliverable 3.3 Due Date:** January 31<sup>st</sup> for the previous calendar year

### **Subtask 3.4 Final Operation Period Report**

**Deliverable 3.4:** Prepare and submit a Final Operation Period Report including information outlined in Subtask 3.3.

**Deliverable 3.4 Due Date:** Within 30 days after the end of the Operation Period.

— End of Scope of Work—

**APPROVED GRANT BUDGET**

**ARTICLE 1. BUDGET**

1.1 Authorized budgeted expenditures under this Contract are as follows:

**Alternative Fueling Facilities Program  
Contract Budget Form**

<b>Approved Grant Budget for:</b>	
<b>Project Type:</b>	
<b>Budget Categories</b>	
<b>A. ELIGIBLE EXPENSES</b>	
DESCRIPTION (Equipment, Supplies and Materials, Construction, Contract Services)	
<b>TOTAL ELIGIBLE EXPENSES</b>	<b>\$0.00</b>
<b>B. TOTAL GRANT AMOUNT (A. x 0.5 for fuel types other than natural gas)</b>	

— End of Approved Grant Budget —

## INSURANCE

### ARTICLE 1. INSURANCE

**1.1 COVERAGES REQUIRED.** PERFORMING PARTY shall purchase and maintain sufficient insurance as appropriate for the Work being performed and furnished, and for protection from any and all claims that may arise out of or result from PERFORMING PARTY's performance and furnishing of the Grant Activities and PERFORMING PARTY's other obligations under the Contract Documents. PERFORMING PARTY's insurance shall meet or exceed the requirements set forth in this section or elsewhere in the Contract Documents.

**1.1.1 Worker's Compensation and Employer's Liability Insurance.** Coverage to secure the payment of compensation to injured employees as defined in the Texas Worker's Compensation Act.

**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 in an amount no less than the Contract Amount.

**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 email or 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 —