**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**ALTERNATIVE FUELING FACILITIES PROGRAM (AFFP) CONTRACT**

**CONTRACT SIGNATURE PAGE**

| | |
|---|---|
| **Contract Name** | Alternative Fueling Facilities Program |
| **Contract Number** | «Contract_ID» |
| **PERFORMING PARTY Name** | «Applicant_Name» |
| **PERFORMING PARTY I.D. Number** | «Application_ID» |
| **Total Contract Amount Not to Exceed** | «Grant_Amount» |

| Contract Effective Date | Request for Reimbursement Deadline | Contract Expiration Date |
|---|---|---|
| **The Effective Date of this Contract is the date of last signature** | **April 30, 2028** | **August 31, 2031** |

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

| **Authorized Official** | **Texas Commission on Environmental Quality (TCEQ)** | **«Applicant_Name» (PERFORMING PARTY)** |
|---|---|---|
| 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 TERMS AND 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 that track contract progress and management, including, but not limited to, financial management, reporting, and retention of records. These are distinguished from Grant Activity requirements, which pertain to the specific Grant Activities approved by TCEQ.

1.2 Alternative Fuels – a fuel other than gasoline or diesel fuel, including electricity, compressed natural gas, liquefied natural gas, biodiesel, biodiesel blends, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

1.3 Application – the application for an AFFP grant originally submitted by the PERFORMING PARTY including all sections, supplemental forms, and attachments as well as any additional documentation submitted by the PERFORMING PARTY in support of the Application or grant award. The Application is used to develop the Scope of Work of this Contract. In case of conflict between the Application and Scope of Work, the Scope of Work will take precedence.

1.4 Approved Grant Budget - the section in this Contract that lists the authorized budgeted expenditures for the Grant Equipment approved under this grant. TCEQ may allow changes to this budget through a written amendment.

1.5 Authorized Official – the individual authorized to sign legal documents and requests for reimbursement on behalf of TCEQ or the PERFORMING PARTY, as designated in the Contract.

1.6 Clean Transportation Zone (CTZ) – has the meaning assigned by Texas Health and Safety Code Chapter 393.001(1-a). Refer to Appendix A in the AFFP Request for Grant Applications for a map and list of eligible counties.

1.7 Contract Period – defined in Article 5.2.

Grant – means this Contract between TCEQ and the PERFORMING PARTY, consisting of the documents listed in Article 6, Contract Documents. The term “Grant” may be used interchangeably with “Contract” or “grant.”

1.8 Grant Activity/Activities – activities the PERFORMING PARTY has agreed to perform under this Contract that are described in the Scope of Work.

1.9 Grant Equipment – the items described as eligible in the Approved Grant Budget for which part of the cost of purchase or utilization is reimbursed by TCEQ under the Contract. The term also includes insurance-funded replacements for Grant Equipment that is lost, stolen, or irreparably damaged. The term “Grant Equipment” may be used interchangeably with “equipment.”

1.10 Implementation Period – the period during which Grant Equipment is purchased and placed into service. The Implementation Period will end upon TCEQ issuing the final payment of grant funds.

1.11 Minor Change – defined in Article 17.3.

Notice to Proceed – a written notice given by TCEQ to the PERFORMING PARTY that the PERFORMING PARTY may commence with the Grant Activities.

1.12 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 of the grant-funded facility and maintenance of the Grant Equipment. Grantees will report on the amount of natural gas and/or other alternative fuels dispensed.

1.13 Optimum Performance – the level of functionality at which the Grant Equipment is expected to operate in accordance with manufacturer’s specifications and industry standards.

1.14 PERFORMING PARTY – the grant recipient indicated on the Contract Signature Page of this Contract. The term PERFORMING PARTY may be used interchangeably with "grantee" in the Contract Documents.

1.15 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.

1.16 Request for Reimbursement Deadline – the date specified in the Contract when all Grant Equipment must be received, all costs for Grant Equipment must be paid in full with either cash-on-hand or financing, and all requests for reimbursement must be received by TCEQ from the PERFORMING PARTY.

1.17 Scope of Work – the Contract document describing the requirements of the Grant Activities.

1.18 State – the State of Texas.

1.19 Termination – a permanent end and cessation of the Contract because (1) all requirements of this Contract are completed within the sole discretion of TCEQ; (2) the PERFORMING PARTY has requested termination and repaid funds to TCEQ as allowed by the Contract; (3) the Contract is ended by action of TCEQ for cause or for convenience; or (4) the Request for Reimbursement Deadline has passed without completion and submission of purchases eligible for reimbursement and TCEQ, in its sole discretion, has terminated the Contract.

1.20 Written Amendment– defined in Article 17.2.

1.21 A day is considered a calendar day of twenty-four (24) hours measured from midnight to the next midnight. When any period of time is referred to in the Contract by days, it will be computed to exclude the day of the event that triggers the period 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.

**ARTICLE 2. GOVERNING STANDARDS AND AUTHORITY**

2.1 This Contract is governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law provisions.

2.2 This Contract is entered into by TCEQ through its authority under Texas Water Code Section 5.124 (Authority to Award Grants).

2.3 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 TxGMS; (3) TCEQ rules and policies; and (4) other applicable Federal and State rules and statutes.

**ARTICLE 3. PURPOSE**

The purpose of this Contract is to provide a grant to financially assist the PERFORMING PARTY in its construction or reconstruction of an alternative fuel facility in the Clean Transportation Zone.

**ARTICLE 4. NOTICE TO PROCEED**

4.1 TCEQ will issue a Notice to Proceed upon TCEQ's review and approval of all required documentation as specified in the Scope of Work. The PERFORMING PARTY may begin the Grant Activities and incur expenses at its own risk, prior to receiving a Notice to Proceed. In addition to the required documentation, TCEQ may conduct a site visit prior to issuing the Notice to Proceed.

4.2 After TCEQ issues a Notice to Proceed, eligible costs may be submitted for reimbursement. Any costs paid 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 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 is the period of time from the Contract Effective Date through the Contract Expiration Date listed on the Contract Signature Page of this Contract, except in the event of Termination. TCEQ will notify the PERFORMING PARTY in writing when the Contract ends.

**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 as amended will be resolved by giving precedence in the following descending order:

6.1.1 Contract Signature Page
6.1.2 Special Terms and Conditions
6.1.3 Scope of Work
6.1.4 Approved Grant Budget
6.1.5 Insurance Section
6.1.6 General Terms and Conditions
6.1.7 AFFP Request for Grant Applications (RFGA), 582-26-85002-AF, and any addenda, incorporated herein by reference.
6.1.8 The PERFORMING PARTY's Application incorporated herein by reference.
6.1.9 The following which may be delivered or issued after the Contract Effective Date at the sole discretion of TCEQ and are not attached: Notices to Proceed, other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Terms and 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 Terms and Conditions at the sole discretion of TCEQ.

**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 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.

7.2.1 The PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and in accordance with the Contract. Any changes to the Scope of Work must adhere to Article 17.

7.2.2 The Grant Equipment is listed in the Scope of Work and Approved Grant Budget and is based on what was submitted and scored in the Application.

7.2.3 TCEQ will only reimburse the PERFORMING PARTY for those Grant Activities for which eligible purchases are completed. The PERFORMING PARTY understands that TCEQ's approval of the Application does not constitute final verification of the Grant Equipment for cost reimbursement purposes. TCEQ will not reimburse any costs associated with the Grant Equipment that are paid prior to the program opening date as shown on the RFGA.

7.2.4 The PERFORMING PARTY acknowledges that failure to complete all Contract requirements for any reimbursed Grant Activities is a material breach of this Contract.

7.5 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 that 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 TCEQ will reimburse the PERFORMING PARTY for the costs of the eligible Grant

Activities. Eligibility for reimbursement is subject to issuance by TCEQ of a Notice to Proceed. Eligible costs are determined by TCEQ. There is no guaranteed minimum amount of reimbursement.

8.3 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 may be terminated by TCEQ without any further obligations to either party.

**ARTICLE 9. ELIGIBILITY FOR COST REIMBURSEMENT**

9.1 TCEQ will reimburse the PERFORMING PARTY for those costs that are eligible for reimbursement in accordance with Sections 3.2 and 3.3 of the AFFP RFGA and all contractual requirements. Costs are considered eligible for reimbursement when 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, 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 to the PERFORMING PARTY to payment from TCEQ. The PERFORMING PARTY will return grant funding reimbursed for expenses that are later determined to be ineligible or unallowable under the terms of this Contract.

***Procurement***

9.4 The PERFORMING PARTY must ensure that its procurement processes for acquiring the Grant Equipment are based on sound business decisions and arm's length bargaining. Purchases must be made without any actual or apparent personal or organizational conflicts of interest as described in TxGMS. 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.

9.5 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.

9.5.1 If the PERFORMING PARTY is a local government, it must comply with Chapter 176 of the Texas Local Government Code.

9.5.2 If the PERFORMING PARTY is a state agency, it must comply with Chapter 572 of the Texas Government Code.

9.6 For any goods or services that are not procured using price competition, and that 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.

9.7 The PERFORMING PARTY must document and maintain evidence of expenses. TCEQ may at any time before or after reimbursement, in its sole discretion, request additional documentation concerning costs, the procurement process used, and any price or cost analysis performed. 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.

***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, arm's length bargaining, and federal and state laws and regulations;

9.8.3 the PERFORMING PARTY's responsibilities to 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 that 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 TCEQ, necessary costs do not include the cost of money, in particular, the interest charges or fees 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 invoice cost charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities including taxes and government fees, delivery and shipping fees, factory and/or extended warranties, mechanic and safety inspections, cooperative fees, and dealer processing fees not related to financing.

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

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

9.12.2 amounts that 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 that a 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; or

9.12.4 amounts that are reimbursed by other public sources or for which tax credits or other public financial incentives are or will be received by the PERFORMING PARTY.

***Allowable Costs***

9.13 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.

***Unallowable Costs***

9.14 TCEQ will not reimburse the PERFORMING PARTY for those costs that are listed as ineligible for reimbursement in accordance with Section 3.3 of the AFFP RFGA, including, but not limited to:

9.14.1 Consulting (Application Assistance) Fees. Any fees charged by a consultant for preparation of the Application, either directly or as an addition to the cost basis of the grant-funded equipment, are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this Contract. It is generally considered acceptable for an applicant to accept assistance from a vendor or an agent of a vendor in preparing the Application, as long as any decision by the applicant to purchase the grant-funded equipment from that vendor is made independently and meets the other reasonableness provisions in the Contract;

9.14.2 Administrative Costs. Internal costs of the grant recipient, such as insurance premiums, overhead, personnel expenses, salaries, indirect costs, and travel are not eligible for reimbursement. This provision does not limit the ability of an equipment vendor or installer to include ordinary, reasonable, and necessary operational costs in the price of the equipment or installation services;

9.14.3 Costs that do not involve an arm's length transaction, such as the use of existing inventory without proof of purchase, equipment manufactured by the grantee, or transactions between affiliated companies; and

9.14.4 Facility improvements and equipment not directly associated with the equipment to store, compress, or dispense the Alternative Fuels, including the purchase of an existing alternative fueling facility, land or an interest in land or structures, or permitting costs for TCEQ-issued permits.

9.15 The PERFORMING PARTY will indicate any financial incentives received on the Request for Reimbursement form. This includes tax credits or deductions, other grants, or any other public financial assistance. The combination of this grant and other financial incentives may not exceed the cost to the applicant of the Grant Equipment. During the reimbursement process, TCEQ may reduce the amount of costs eligible for reimbursement by the value of any additional financial incentive received by the PERFORMING PARTY without a Written Amendment or Minor Change to this Contract.

***Preapproval of Costs***

9.16 TCEQ may request additional details regarding costs of Grant Equipment listed in the Approved Grant Budget and may require that the PERFORMING PARTY obtain preapproval of specific costs from TCEQ prior to incurring those costs.

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

***Additional Criteria for Reimbursement***

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

***Debts Owed to the State***

9.19 If the PERFORMING PARTY owes any amount(s) to the State of Texas, any payments, or other amounts the PERFORMING PARTY is otherwise owed under the contract or grant may be applied toward any debt the PERFORMING PARTY owes the State of Texas until the debt is paid in full. These provisions are effective at any time the PERFORMING PARTY owes any such debt or delinquency.

***Outstanding Invoice to TCEQ***

9.20 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 Except as provided for under Article 10.4 below, to receive grant funds, all Grant Equipment costs must have been paid in full by the PERFORMING PARTY with either cash-on-hand or financing, and all Grant Equipment must have been received by the PERFORMING PARTY prior to the Request for Reimbursement Deadline.

10.2 In order to seek reimbursement, the PERFORMING PARTY must submit a fully completed and legible Request for Reimbursement form. All Request for Reimbursement forms must contain sufficient identification of and information concerning the total costs paid or obligated under a financing agreement. 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 paid.

10.3 The PERFORMING PARTY must submit a completed TCEQ Request for Reimbursement form. The forms can be emailed to TERP-Fiscal@tceq.texas.gov or mailed to:

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

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

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

10.4.2 If the Grant Equipment is financed, the PERFORMING PARTY must ensure that the finance agreement or finance company permits an early payment and that the grant funds are applied to principal only, not to any interest.

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

10.6 The final Request for Reimbursement form must be submitted to 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.

10.6.1 If project delays are experienced, the PERFORMING PARTY may submit a written extension request to TCEQ via email to TERP_Revise@tceq.texas.gov. Unless otherwise approved by TCEQ, an extension request must be submitted no later than 60 days prior to the Request for Reimbursement Deadline. TCEQ's decision to grant or deny an extension request will be provided in writing to the PERFORMING PARTY and may depend on the availability of grant funds.

10.7 If the Request for Reimbursement does not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and paid in full, TCEQ may reject the request, until the deficiencies have been corrected. Satisfactory accomplishment of a task and sufficient documentation to verify costs are within the judgment of TCEQ; however, such judgment must be reasonable.

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

***Retained Funds***

10.9 TCEQ may retain up to 10% of the amount of any reimbursement requests pending the successful completion of Tasks 1 and 2 in the Scope of Work and TCEQ's approval of the final implementation report. TCEQ will provide the PERFORMING PARTY with a Request for Retained Funds form to release the withheld funds once those requirements are met.

***Refueling Infrastructure Project Costs***

10.10 For refueling infrastructure projects where the dispensed fuel is compressed or liquefied natural gas, TCEQ will reimburse the PERFORMING PARTY for no more than the lesser of (a) one hundred percent (100%) of the eligible costs of the refueling infrastructure project, (b) the costs stated in the Approved Grant Budget, or (c) $400,000.

10.11 For refueling infrastructure projects where the fuel types dispensed include compressed and liquefied natural gas, TCEQ will reimburse the PERFORMING PARTY for no more than the lesser of (a) one hundred percent (100%) of the eligible costs of the refueling infrastructure project, (b) the costs stated in the Approved Grant Budget, or (c) $600,000.

10.12 For refueling infrastructure projects where the fuel dispensed is a fuel other than natural gas, TCEQ will reimburse the PERFORMING PARTY for no more than the lesser of (a) fifty percent (50%) of the eligible costs of the refueling infrastructure project, (b) the costs stated in the Approved Grant Budget, or (c) $600,000.

***Required Documentation***

10.13 Documentation for a reimbursable cost must:

10.13.1 be legible;

10.13.2 identify the specific piece of equipment received or the services provided;

10.13.3 clearly identify the vendor or subcontractor who provided the equipment or services;

10.13.4 confirm the reimbursable amount listed on the form; and

10.13.5 provide proof of payment for all costs for which reimbursement is requested.

10.14 The documentation must 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 TCEQ.

10.15 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.

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

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

10.18 All requests for reimbursement must be signed by the Authorized Official of the PERFORMING PARTY.

**ARTICLE 11. PERFORMING PARTY'S RESPONSIBILITIES TO 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 must retain ownership and operational control of the Grant Equipment. It is a material breach of this Contract if the PERFORMING PARTY sells, transfers, destroys, or otherwise loses title, ownership, possession, or control of Grant Equipment during the Contract Period.

11.3 The PERFORMING PARTY hereby ratifies and attests to all representations and certifications in the Application and agrees to give written notice to TCEQ within three (3) business days if there is any material change in these representations or certifications.

11.3.1 If applicable, the PERFORMING PARTY will maintain active registration and be in good standing with the Texas Secretary of State and Texas Comptroller of Public Accounts during the Contract Period.

11.4 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.

***Professional Quality***

11.5 The PERFORMING PARTY is solely 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 solely responsible for the supervision, inspection, and direction of the Grant Activities in a competent and efficient manner, utilizing such skills and expertise as may be necessary to perform the Grant Activities in accordance with the Contract. The PERFORMING PARTY is solely responsible for the means, methods, techniques, sequences, and procedures of the Grant Activities. The PERFORMING PARTY is responsible for ensuring 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, and industry-standard practices for construction, such as requiring subcontractor bonds and insurance.

***Materials and Equipment***

11.7 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.

***Responsibility for Purchases***

11.8 The PERFORMING PARTY is solely responsible for ensuring that any purchase it makes and seeks reimbursement for is eligible under this program and Contract, properly procured and documented, and included in the Approved Grant Budget. Any purchase made prior to receiving a fully signed Contract is made at the PERFORMING PARTY's own risk.

11.9 All Grant Equipment will be of good quality and as described in the Scope of Work. All materials and equipment must be applied, installed, connected, erected, used, cleaned, conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier.

***Maintenance, Repair, and Replacement***

11.10 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. Failure to maintain the Grant Equipment constitutes a material breach of this Contract.

11.11 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment during the Operation Period, the PERFORMING PARTY will provide written notice within ten (10) business days to TCEQ at TERP-Monitoring@tceq.texas.gov of the occurrence of such malfunction or damage. The PERFORMING PARTY will repair and restore the Grant Equipment to the level of Optimum Performance within ninety (90) days of the malfunction, unless an extension is otherwise approved by TCEQ in writing. The PERFORMING PARTY must confirm in writing and provide documentation that the Grant Equipment has been repaired and meets the level of Optimum Performance, on or before the deadline established by TCEQ. Failure to timely repair the Grant Equipment is a material breach of this Contract.

11.12 Upon the occurrence of loss, theft, or irreparable damage of the Grant Equipment during the Operation Period, the PERFORMING PARTY will provide written notice within ten (10) business days to TCEQ at TERP-Monitoring@tceq.texas.gov. The PERFORMING PARTY will replace the lost, stolen, or damaged Grant Equipment with similar, eligible equipment that achieves the same Optimum Performance or better within ninety (90) days from the occurrence of loss, theft, or damage, unless an extension is otherwise approved by TCEQ in writing. Replacement Grant Equipment is subject to all the requirements applicable to Grant Equipment contained in this Contract and must be approved by TCEQ. The PERFORMING PARTY must confirm in writing and provide documentation that the Grant Equipment has been replaced and meets the level of Optimum Performance, on or before the deadline established by TCEQ. Failure to timely replace the Grant Equipment is a material breach of this Contract.

***Required Insurance***

11.13 Only governmental entities may use an established self-insurance program to satisfy any of the following insurance requirements. No other entities may use self-insurance to meet insurance requirements.

11.14 The PERFORMING PARTY must obtain and maintain a commercial policy of property insurance that is sufficient to fully replace Grant Equipment if it is lost, stolen, or irreparably damaged. This insurance policy must be maintained for the duration of the Contract Period.

11.14.1 The PERFORMING PARTY must obtain and maintain a commercial policy of property insurance which is sufficient to repair or replace equipment necessary for the completion or operation of the Grant Activities and which is listed as an expense in the Approved Grant Budget. This insurance policy must be maintained for the duration of the Contract Period.

11.15 The PERFORMING PARTY must obtain and maintain policies of workers compensation, employer's liability insurance, commercial automobile liability insurance, commercial general liability insurance, property insurance, and umbrella liability insurance at levels set out in the Insurance Section of this Contract. These insurance policies must be maintained for the duration of the Contract Period.

11.16 The PERFORMING PARTY must provide proof of the required insurance coverages prior to receiving the Notice to Proceed. If requested by TCEQ, the PERFORMING PARTY will provide additional proof of insurance coverage, including declaration pages, deductible or self-insurance retention amounts, and copies of policies.

11.17 TCEQ may request proof of the required insurance coverages at any time during the Contract Period. Failure to provide proof of required insurance or failure to maintain required insurance during the Contract Period constitutes a material breach of this Contract.

11.18 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 TCEQ. Failure to do so constitutes a material breach of this Contract.

11.19 The PERFORMING PARTY must fully comply with all requirements of any agreements with third parties that have a security interest or similar interest in the Grant Equipment. Repossession, seizure, or any

other event where the PERFORMING PARTY loses possession of the Grant Equipment is considered a material breach of this Contract.

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

***Assignment***

11.21 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, transfer, or 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.

11.22 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.

11.23 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 14, including the return of grant funds.

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

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

11.25 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.

11.26 The PERFORMING PARTY must cooperate with and allow access to all Grant Equipment as described in this Contract by 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.

11.27 If the PERFORMING PARTY expends more than $1,000,000 in state grant awards, including this Contract, during its fiscal year, the PERFORMING PARTY must have an annual independent financial audit conducted. All audits must be conducted in accordance with generally accepted government auditing standards (GAGAS) for governmental entities or generally accepted auditing standards (GAAS) for non-governmental entities. A federal single audit may be accepted if it addresses internal controls and other grant requirements applicable to this Contract's Administrative Requirements and Grant Activities. TCEQ may allow a program-specific audit if the PERFORMING PARTY's only state award expenditures are from the Texas Emissions Reduction Plan (TERP) and/or the Texas Volkswagen Environmental Mitigation Program (TxVEMP). The PERFORMING PARTY's audit and reporting package must be provided to TCEQ as specified in TxGMS.

***Maintenance of Records***

11.28 The PERFORMING PARTY will 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 must

provide for the identification, accumulation, and segregation of allowable and unallowable costs among projects. The PERFORMING PARTY must also maintain the financial information and data used in the preparation or support of any Request for Reimbursement, price or profit analysis, and a copy of any cost information or analysis submitted to TCEQ. The PERFORMING PARTY must allow access to all the material including bank statements and records to 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 will provide appropriate facilities and equipment for such access and inspection.

11.29 Records under this Article must be maintained by the PERFORMING PARTY during performance of the 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 that 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***

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

11.31 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 TCEQ. Written notice of any such delegation, or change in delegation, will be provided to TCEQ.

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

***Personnel***

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

***Safety and Protection***

11.34 Where applicable, the PERFORMING PARTY is 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 must take all necessary precautions to protect the health and safety of the public during performance of the Grant Activities.

***Permits***

11.35 Unless otherwise provided in the Contract, the PERFORMING PARTY must obtain and pay for all applicable permits and licenses required for this performance of this Contract. Failure to comply with a permit issued by TCEQ or other state agency may result in a determination, within the sole discretion of 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***

11.36 The PERFORMING PARTY must give all notices and comply in all material respects with all laws and regulations applicable to furnishing and performance of the Grant Activities. Except where otherwise expressly required by applicable laws and regulations, TCEQ is not responsible for monitoring the PERFORMING PARTY's compliance with any laws or regulations.

***Data and Publicity***

11.37 All data and other information developed under this Contract may be subject to public disclosure pursuant to the Texas Public Information Act (PIA), Texas Government Code Chapter 552. Except to the extent that it is exempted from public access by the PIA, the PERFORMING PARTY agrees to disclose all

information and reports resulting under this Contract in a format that is accessible by the public at no additional charge to the State.

11.37.1 If the PERFORMING PARTY is claiming that data and information submitted to 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. If TCEQ receives a request for that information, the PERFORMING PARTY will be notified by TCEQ of the request. The PERFORMING PARTY may submit arguments to the Texas Office of the Attorney General if it believes the information should not be released. TCEQ will not submit arguments on behalf of the PERFORMING PARTY and will not release information unless ordered to do so by the Attorney General. Information contained in this Contract and vouchers, communications, and other information sent between TCEQ and the PERFORMING PARTY related to the performance of this Contract or work performed on behalf of TCEQ is considered public information under § 552.1101(b) of the Texas Government Code regardless of whether the PERFORMING PARTY identifies such information is as being confidential.

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

11.39 The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities. The PERFORMING PARTY will acknowledge the financial support of 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, must carry the following or similar notation on the front cover or title page:

**This project is funded in part through the Texas Commission on Environmental Quality's Alternative Fueling Facilities Program.**

***Lobbying Activities***

11.40 The PERFORMING PARTY may 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***

11.41 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.

***Conflict of Interest***

11.42 The PERFORMING PARTY represents and warrants that performance under this Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Further, the PERFORMING PARTY represents and warrants that in the administration of the grant, it will comply with all conflict-of-interest prohibitions and disclosure requirements required by applicable law, rules, and policies. If circumstances change during the course of this Contract, the PERFORMING PARTY must promptly notify TCEQ.

***Open Meetings***

11.43 If the PERFORMING PARTY is a governmental entity, the PERFORMING PARTY represents and warrants its compliance with Chapter 551 of the Texas Government Code which requires all regular, special, or called meetings of a governmental body to be open to the public, except as otherwise provided by law.

***Identifying Mark***

11.44 Upon request by TCEQ, the PERFORMING PARTY will install, or allow TCEQ or its contractor to install, a prominently placed identifying mark on the Grant Equipment, identifying it as Texas Emissions Reduction Plan (TERP)-funded equipment, and containing such other information as TCEQ specifies. The PERFORMING PARTY may remove the mark upon the expiration or Termination of the Contract.

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

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

12.2 A final Implementation Period report must be submitted to 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 operation reports to TCEQ, on forms provided by TCEQ, for the duration of the Operation Period. The PERFORMING PARTY will submit the required reports annually as specified by TCEQ.

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

**ARTICLE 13. TERMINATION**

13.1 Termination of this Contract under any circumstances does not constitute a waiver of any rights or remedies that 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 TCEQ for its convenience. TCEQ will provide written notice to the PERFORMING PARTY's Project Representative of its intent to terminate. Circumstances when this may occur include 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 TCEQ, 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. TCEQ evaluates each obligation to determine its eligibility for inclusion in project costs. 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 TCEQ for cause, including for a material breach of the Contract requirements. TCEQ will provide written notice to the PERFORMING PARTY's Project Representative of its intent to terminate. For breaches that the PERFORMING PARTY can remedy, the PERFORMING PARTY will have thirty (30) days from the date such notice is sent to cure performance deficiencies. For breaches that TCEQ determines the PERFORMING PARTY would not be able to cure within thirty (30) days, TCEQ, at its sole discretion, will only provide a notice of termination.

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

13.4.1 Force Majeure. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, or other causes that are beyond the reasonable control of either party, could not reasonably be foreseen, and by the exercise of all reasonable due diligence, is unable to be overcome by either party. Neither party will be liable to the other for any failure or delay of performance of any requirement included in the Contract caused by force majeure. Upon timely notice by the non-performing party, the time for performance will be extended for a reasonable period after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. The non-performing party must provide evidence of any failure resulting in impossibility to perform.

13.5 If, after Termination for cause by TCEQ, it is determined that the PERFORMING PARTY had not materially breached the Contract, the Termination will be deemed to have been for the convenience of 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 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 TCEQ will be entitled to a return of the grant funds.

13.8 Stop Grant Activities. TCEQ may stop the Grant Activities if, in the reasonable opinion of TCEQ, the PERFORMING PARTY fails to perform the Grant Activities in such a way which conforms to the Contract. 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 TCEQ to stop the Grant Activities will not give rise to any duty on the part of TCEQ to exercise this right for the benefit of the PERFORMING PARTY or any surety or other party.

13.9 The PERFORMING PARTY must carry on the Grant Activities and adhere to the progress schedule at all times, including any disputes or disagreements with TCEQ. No Grant Activities may be delayed or postponed pending resolution of any disputes or disagreements, except as 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 (90) days by 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 TCEQ May Suspend Grant Activities. At any time and without cause, 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 will resume the Grant Activities on the date so fixed. The PERFORMING PARTY will 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 TCEQ's notice.

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

**ARTICLE 14. REMEDIES AVAILABLE TO TCEQ**

14.1 **Any material breach of this Contract by the PERFORMING PARTY may require the return of all grant funds reimbursed.**

14.1.1 If the PERFORMING PARTY is required to return grant funds, TCEQ, at its sole discretion, may allow for the return of a pro-rated share of the reimbursed grant funds based on the percentage of the Operation Period fulfilled by the PERFORMING PARTY. This percentage will be calculated by dividing the number of months in which all the Grant Equipment functioned at Optimum Performance by the total number of months in the Operation Period. Only months in which all the Grant Equipment functioned at Optimum Performance may receive credit. TCEQ's determination will depend on factors including, but not limited to, the operation of the Grant Equipment in a manner that maintained overall program eligibility, the PERFORMING PARTY's good-faith efforts to perform the Grant Activities, and the PERFORMING PARTY's compliance with notification requirements of this Contract (e.g., notification before sale of equipment).

14.2 In the event of the PERFORMING PARTY's breach of or substandard adherence to the requirements of this Contract or applicable law, or failing to perform the Grant Activities, TCEQ may take any of the following actions:

14.2.1 issue notice of substandard performance or other non-conforming act or omission and request corrections or compliance without additional charge to TCEQ or additional grant funds;

14.2.2 request and receive return of any over payments or ineligible payments;

14.2.3 reject reimbursement request and suspend payment pending accepted revision of substandard performance, substandard or lacking documentation, or non-compliance;

14.2.4 reject reimbursement request and/or withhold all or partial payments based on the Grant Activities the PERFORMING PARTY did not perform;

14.2.5 terminate the Contract in accordance with Article 13 without further obligation for payment; or

14.2.6 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 that were properly conducted prior to the breach, as determined by TCEQ.

*Cumulative Remedies*

14.3 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 does not limit the remedies available to the parties under law.

14.4 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 TCEQ for any claims or liabilities resulting from the negligent acts or omissions of 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 will vest upon acquisition or construction in the PERFORMING PARTY.

16.2 Subject to the provisions of this Contract and as otherwise provided by state statutes, property acquired or replaced under this Contract must 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 may develop and use its 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 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 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; 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 must 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 must include adequate safeguards for replacement value and to prevent loss, damage, or theft of the acquired property. Any loss, damage, or theft must be investigated. The PERFORMING PARTY must develop and carry out a program of property maintenance as necessary to keep both originally acquired and any replaced property at Optimum Performance.

**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, including changes to the Scope of Work, must be submitted in writing and approved by TCEQ prior to the PERFORMING PARTY implementing the change.

17.2 Written Amendment. A Written Amendment allows for material changes to the Contract such as changes to the Total Contract Amount Not to Exceed, 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. 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.

17.4 Written Amendments and Minor Changes are subject to the following: Changes to the Grant Activities, Grant Equipment, or Approved Grant Budget may only be approved provided that those changes continue to meet all program eligibility requirements and would not significantly reduce the overall project score. Location changes or substitute equipment that change the quality or quantity of scored components in the Application will be rejected by TCEQ if the modified project would no longer have been competitively selected. TCEQ reserves the right to terminate the Contract for cause for failure to perform the Grant Activities. TCEQ may also reduce the overall amount of the award based on these changes in accordance with the Contract.

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

18.1 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 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 TCEQ.

18.2 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 TCEQ. A copy of the evaluation may be provided to the PERFORMING PARTY and a copy retained in TCEQ's contract files. The content of the evaluation is wholly within the discretion of TCEQ. The PERFORMING PARTY may provide a written statement that explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against TCEQ for the evaluation.

**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.

19.2 By signing this Contract, the Authorized Official represents that they possess the legal authority to enter into this grant. If the PERFORMING PARTY is a company, a resolution, motion, or similar action

has been duly adopted or passed as an official act of the PERFORMING PARTY's governing body, allowing the Authorized Official to act with regard to this Contract.

19.3 Unless authorized in writing by TCEQ in accordance with this Contract, no waiver of any obligation of the PERFORMING PARTY will bind TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

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

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

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

19.7 Child Support. Under Section 231.006 of the Texas Family Code, a child support obligor who is more than thirty (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.

19.8 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.

19.9 Subject to the provisions of the Assignment subsection under Article 11, General Terms and Conditions, 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.

19.10 The parties expressly agree that this Contract is not in any way intended to constitute a waiver by TCEQ or the State of Texas of any immunities from suit or from liability that TCEQ or the State of Texas may have by operation of law. No TCEQ personnel or agents are authorized to waive sovereign immunity by contract or conduct.

19.11 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 TCEQ's sovereign immunity.

19.12 Any provision of the Contract held to be void or unenforceable under any laws or regulations may be deemed stricken, and all remaining provisions will continue to be valid and binding upon 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.

19.13 Notice of Claim. Should 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 will not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose or sovereign immunity.

19.14 Abortion Funding Limitation. The PERFORMING PARTY represents and warrants that payments made by TCEQ to the PERFORMING PARTY and the PERFORMING PARTY's receipt of state funds under the Contract are not prohibited by Texas Government Code Chapter 2273, Prohibited Transactions.

19.15 If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY must immediately notify TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to the TCEQ Bankruptcy Program. The PERFORMING PARTY will place TCEQ on distribution list for

bankruptcy court documents. The PERFORMING PARTY's notice to the bankruptcy program must include the appropriate contract number(s).

19.16 The 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.

19.17 If the PERFORMING PARTY is a local government, it represents and warrants its compliance with Section 2054.5191 of the Texas Government Code relating to the cybersecurity training program for local government employees who have access to a local government computer system or database.

19.18 The PERFORMING PARTY represents and warrants that it will comply with Section 2252.906 of the Texas Government Code relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.

**ARTICLE 20. INTELLECTUAL PROPERTY**

20.1 No intent to create intellectual property. TCEQ does not intend to fund Grant Activities that require the creation of intellectual property. Accordingly, Sections 20.2 through 20.4 should not apply to the Grant Activities. If the PERFORMING PARTY at any time determines that any portion of the Grant Activities funded by TCEQ will require creation of intellectual property, including new works incorporating preexisting intellectual property, the PERFORMING PARTY must immediately notify TCEQ and will not undertake such activity unless TCEQ provides written authority to proceed.

20.2 Disclosure of intellectual property produced during the Grant Activities. The PERFORMING PARTY must promptly notify 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 will promptly notify TCEQ of all intellectual property to which the PERFORMING PARTY may acquire rights in connection with the Grant Activities. Any notification under this paragraph must contain sufficient technical detail to convey a clear understanding of the intellectual property, and must identify any publications, sale, public use, or impending publication. Promptly upon request, the PERFORMING PARTY must supply such additional information as TCEQ may request.

20.3 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 TCEQ; the PERFORMING PARTY hereby grants to 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 TCEQ's non-commercial 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 will ensure that the development expenses are clearly documented on financial reports submitted to TCEQ and that requests for reimbursement do not include these expenses.

20.4 Modifications. Derivative Works. TCEQ will have the right, in its own discretion, to independently modify any intellectual property to which license is granted herein for TCEQ's own non-commercial governmental purposes and use, through the services of its own employees or independent contractors. TCEQ and the PERFORMING PARTY will jointly own all intellectual property rights to such modifications. The PERFORMING PARTY is not responsible for or liable for any modifications by TCEQ or TCEQ's employees or independent contractors of intellectual property licensed to TCEQ by the PERFORMING PARTY.

20.5 The PERFORMING PARTY must comply with all laws and regulations relating to intellectual property. The PERFORMING PARTY represents and warrants to TCEQ that the PERFORMING PARTY will not infringe any intellectual property right of any third party. The PERFORMING PARTY further represents and warrants to 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 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 will 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 TCEQ by the PERFORMING PARTY.

20.6 The PERFORMING PARTY will include provisions adequate to effectuate the purposes of Section 20.5 in all subcontracts and sub-grants under this Contract during which intellectual property may be produced or acquired.

**— End of General Terms and 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 TCEQ. All communications regarding contractual matters must be addressed to TCEQ Project Representative or his or her designee.

**Mailing Address:**

Jody Ibargüen
Air Grants Division, MC-204
TCEQ
PO Box 13087
Austin, TX 78711-3087

**Physical Address:**

Jody Ibargüen
Air Grants Division, MC-204
TCEQ
12100 Park 35 Circle, Bldg. F
Austin, TX 78753

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

Facsimile No.: 512-239-6161

### PERFORMING PARTY's Authorized Official

The individual authorized to sign legal documents and requests for reimbursement on behalf of the PERFORMING PARTY.

**Mailing Address:**

«AuthorizedFirstName» «AuthorizedLastName»
«Applicant_Name»
«AuthorizedMailAddr1» «AuthorizedMailAddr2»
«AuthorizedMailCity», «AuthorizedMailState»
«AuthorizedMailZip»

Telephone No.: «AuthorizedPhone1»
«AuthorizedPhone2»

### 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:**

«DesignatedFirstName» «DesignatedLastName»
«Applicant_Name»
«DesignatedMailAddr1» «DesignatedMailAddr2»
«DesignatedMailCity», «DesignatedMailState»
«DesignatedMailZip»

Telephone No.: «DesignatedPhone1»
«DesignatedPhone2»

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 TCEQ. Written notice of any such delegation will be provided to TCEQ.

**- End of Authorized Representatives–**

**SPECIAL TERMS AND CONDITIONS**
**FOR**
**ALTERNATIVE FUELING FACILITIES PROGRAM (AFFP)**

The PERFORMING PARTY agrees these Special Terms and Conditions, if any are listed below, take precedence over any conflicting contract terms.

**— End of Special Terms and 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 Grant Equipment (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: «Proj_Type» - «Fuel_Type_ID» Number of Fueling/Charging Ports
- 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 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

**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 fueling equipment for the facility.
- Complete any necessary construction in preparation for 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, 2028

**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 and associated billing documents.

**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, 2028

**Task 3: Operation Period.** The PERFORMING PARTY will perform the Subtasks below and operate the FACILITY at the SITE LOCATION for at least the three-year Operation Period. 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 TCEQ within 7 days of any changes to hours of operation.

**Subtask 3.2 Maintenance and Operation**

**Deliverable 3.2** Conduct proper maintenance, repair, and replacement of any Grant Equipment to keep FACILITY functioning at Optimum Performance.

**Deliverable 3.2 Due Date:** Notify TCEQ within ten (10) business days in the event of any material problems with facility operation. Replace any non-repairable or lost Grant Equipment within ninety (90) days of non-operation.

**Subtask 3.3 Operation Period Annual Reports** Report annually on the status of the FACILITY operation and fuel throughput. All reports will be completed on TCEQ-supplied forms.

**Deliverable 3.3** Operation Period Annual Report

**Deliverable 3.3 Due Date**: January 31st for the previous calendar year

**Subtask 3.4 Operation Period Final Report**

**Deliverable 3.4** Prepare and submit an Operation Period Final Report including information outlined in Subtask 3.3 and identifying the report as Final.

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

**— End of Scope of Work—**

**APPROVED GRANT BUDGET**
**FOR**
**ALTERNATIVE FUELING FACILITIES PROGRAM (AFFP)**

**ARTICLE 1. BUDGET**

1.1 Authorized expenses that are eligible for reimbursement under this Contract are as follows:

| | |
|---|---|
| **Project Type:** | «Proj_Type» - «Fuel_Type_ID» |

| **A. Eligible Expenses (Equipment, Supplies and Materials, Construction, Contract Services)** |
|---|
| |

| | |
|---|---|
| **Total Eligible Expenses** | **$0.00** |
| **Total Grant Amount** | **«Grant_Amount»** |

1.2 Regardless of the Total Grant Amount, reimbursements are subject to all Contract requirements for expenses and reimbursements, including Articles 9 and 10 of the General Terms and Conditions.

1.3 The maximum Grant Amount may be adjusted downward in accordance with the Contract.

**— End of Approved Grant Budget —**

**INSURANCE**
**FOR**
**ALTERNATIVE FUELING FACILITIES PROGRAM (AFFP)**

## ARTICLE 1. INSURANCE

1.1 **COVERAGES REQUIRED.** The PERFORMING PARTY must 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 the PERFORMING PARTY's performance and furnishing of the Grant Activities and the PERFORMING PARTY's other obligations under the Contract Documents. The 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.

1.1.5 **Umbrella Liability Insurance.** Additional coverage for all liability policies required for this Contract (excluding Worker's Compensation Insurance, which is not liability insurance) in an amount not less than $1,000,000 in the aggregate.

1.2 **INSURER REQUIREMENTS.** The Contractor will obtain all required policies from insurers licensed, eligible, or registered under Texas law to issue insurance policies for the limits and coverage required and the insurers must have a rating of A- or better and a financial size capacity of IV or better according to the most recent A.M. Best Ratings Guide.

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 thirty (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 ten (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.** The 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. The

PERFORMING PARTY will submit the certificate to TCEQ as a condition precedent to the issuance of a Notice to Proceed. Prior to the expiration of any insurance coverages during the term of the Contract, Contractor will submit a certificate evidencing renewed or new insurance policies, Certificates must bear the contract number of this Contract. If the PERFORMING PARTY changes insurers, the PERFORMING PARTY shall give TCEQ a new certificate of insurance within ten (10) 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 and Umbrella Liability Insurance;

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; and

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

**— End of Insurance Section —**