TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS NATURAL GAS VEHICLE GRANT PROGRAM (TNGVGP) CONTRACT

CONTRACT SIGNATURE PAGE

Contract Name	**TEXAS NATURAL GAS VEHICLE GRANT PROGRAM**
Contract Number	
PERFORMING PARTY Name	
PERFORMING PARTY I.D. Number	
Total Contract Amount Not to Exceed	

Contract Effective Date	**Request for Reimbursement Deadline**	**Contract Expiration Date**
The Effective Date of this Contract is the date of last signature	**April 30, 2029**	**August 31, 2033**

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas and the named PERFORMING PARTY enter this Contract for the purpose of providing financial assistance for emissions reduction projects as authorized by Texas Health and Safety Code Chapter 394.

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

Authorized Official	**Texas Commission on Environmental Quality (TCEQ)**	**Legal 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
TEXAS NATURAL GAS VEHICLE GRANT PROGRAM (TNGVGP)

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 Activity Life – the time period used to determine the emissions reductions of the activity. This is also the period during which the PERFORMING PARTY must meet the Annual Usage requirements and submit Usage Reports on an annual basis. The start date of the Activity Life begins on the date TCEQ approves disposition of the equipment. The Activity Life end date is the earlier of either the fourth anniversary of the Activity Life start date of each individual activity or the date the equipment has been in operation for 400,000 miles after the date of disposition approval for that equipment. TCEQ will notify the PERFORMING PARTY in writing of the Activity Life start and end dates for each Grant Activity.

1.2 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 Activities requirements, which pertain to the specific Grant Activities approved by TCEQ.

1.3 Annual Usage – the annual miles, gallons, or hours achieved. The percentage of Annual Usage that occurs within the Eligible Counties is material to achieving the emissions reductions benefit supporting the grant award.

1.4 Application – the Application for a TNGVGP 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 the Scope of Work, the Scope of Work will take precedence.

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 Contract Period – defined in Article 4.2.

1.7 Eligible Counties – the eligible counties listed in the Scope of Work of this Contract.

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

1.9 Grant– means this Contract between TCEQ and the PERFORMING PARTY, consisting of the documents listed in Article 5. Contract Documents. The term “Grant” may be used interchangeably with “Contract” or “grant.”

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

1.11 Grant Equipment – the vehicle or equipment for which the cost of purchase or upgrade is reimbursed in whole or in part by TCEQ under the terms of this 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,” “engine,” and “Activity.”

1.12 Heavy-duty Vehicle – A motor vehicle with a gross vehicle weight rating (GVWR) greater than 8,500 pounds and containing an engine certified to the United States Environmental Protection Agency’s (EPA) heavy-duty engine standards.

1.13 Incremental Cost – the cost of the PERFORMING PARTY’s project less a baseline cost that would otherwise be incurred by the PERFORMING PARTY in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs. For purposes of this Contract, the following apply:

1.13.1 Incremental Cost for Replacement Projects is the eligible cost associated with the purchase or lease of the replacement equipment minus the scrap value of the equipment being replaced. TCEQ uses a default scrap value of $1,000.

1.13.2 Incremental Cost for Repower Projects is the eligible cost associated with the purchase and installation of the replacement engine and associated equipment minus the scrap value of the old engine. TCEQ uses a default scrap value of $250.

1.14 Lease – a lease must have a term sufficient to extend to the end of the Activity Life or a binding commitment to purchase at the end of the term. For lease purchase agreements, an option to buy at the end of a lease term without a binding commitment is not sufficient. See Texas Business and Commerce Code Section 2A.103 for definitions of "lease" and "purchase."

1.15 Medium-duty Vehicle - a motor vehicle with a gross weight rating of more than 8,500 pounds and that: A) is certified to the EPA's light-duty emissions standard or B) has an engine certified to the EPA's light-duty emissions standard.

1.16 Minor Change – defined in Article 17.3.

1.17 Natural Gas Engine – an engine that operates: A) solely on natural gas, including compressed natural gas (CNG), liquefied natural gas (LNG), or liquefied petroleum gas (LPG); or B) on a combination of diesel fuel and natural gas, including CNG, LNG, or LPG, and is capable of achieving at least 60 percent displacement of diesel fuel with natural gas.

1.18 Natural Gas Vehicle – a motor vehicle that is powered by a Natural Gas Engine.

1.19 NO_X – nitrogen oxides (NO_X) are a class of pollutants formed when fuel is burned at a very high temperature (above 1200˚ F), such as in automobiles and power plants. For air pollution purposes, it is composed primarily of nitric oxide (NO), nitrogen dioxide (NO_2), and other oxides of nitrogen. NO_X plays a major role in the formation of ground-level ozone in the atmosphere through a complex series of reactions with volatile organic compounds (VOCs).

1.20 Optimum Performance – the level of functionality at which the Grant Equipment is expected to operate in accordance with manufacturer's specifications and industry standards to meet the expected Annual Usage and achieve the anticipated emissions reductions, if the award was based in part on those reductions.

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

1.22 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.

1.23 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. If the Grant Equipment is leased, the date the parties sign the lease agreement and the date the lease period begins must both be prior to the Request for Reimbursement Deadline.

1.24 Scope of Work – the Contract Document detailing the requirements of the Grant Activities.

1.25 State –the state of Texas.

1.26 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.

1.27 Usage Report – the Annual Usage reports that are required to be submitted by the PERFORMING PARTY throughout the Activity Life. TCEQ uses the Usage Report to verify compliance on an annual basis with the requirements specified in the Scope of Work.

1.28 Written Amendment – defined in Article 17.2.

1.29 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 394; (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 incentivize and assist the PERFORMING PARTY in implementing the Grant Activities, thereby creating verifiable emissions reductions through monitored, enforceable performance of Grant Activities described in the Scope of Work. Incentive funding is available for activities that will reduce the emissions of NO_x in designated Eligible Counties in Texas.

ARTICLE 4. CONTRACT PERIOD

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

4.2 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 has ended.

ARTICLE 5. CONTRACT DOCUMENTS

5.1 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 to the following in descending order:

- 5.1.1 Contract Signature Page
- 5.1.2 Special Terms and Conditions
- 5.1.3 Scope of Work
- 5.1.4 General Terms and Conditions
- 5.1.5 TNGVGP Request for Grant Applications (RFGA) 582-26-86181-NV, and any addenda, incorporated herein by reference.
- 5.1.6 The PERFORMING PARTY’s Application, incorporated herein by reference.
- 5.1.7 The following which may be delivered or issued after the Contract Effective Date and are not attached: Written Amendments, Minor Changes, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Terms and Conditions.

5.2 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 6. ELIGIBLE ACTIVITIES

6.1 The activities eligible for reimbursement are those contained in the Scope of Work.

6.2 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.

6.2.1 The PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and in accordance with the Contract. TCEQ may accept performance of a reduced number of the individual Grant Activities or other changes to the Scope of Work at its sole discretion.

6.2.2 The Grant Equipment is listed in the Scope of Work. The PERFORMING PARTY may substitute different equipment for the unit listed in the Scope of Work only if both of the following are true: (A) TCEQ's Project Representative or designee gives written approval, and (B) the substitute unit meets all eligibility and other requirements.

6.2.3 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.

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

6.2.5 The PERFORMING PARTY agrees to continuously own, lease, or otherwise commercially finance the Grant Equipment; continuously maintain registration of the Grant Equipment in Texas; and operate the Grant Equipment in Texas for the specified Activity Life, regardless of the financing arrangements used for the purchase of the Grant Equipment.

6.3 Lease Requirements

6.3.1 TCEQ may accept PERFORMING PARTY's lease of Grant Equipment if, in the sole determination of TCEQ, the following conditions are met and maintained through the Contract Period:

6.3.1.1 For a lease of Grant Equipment without an option to purchase at the end of the lease term, the lease must extend for a term at least as long as the Activity Life; or

6.3.1.2 For a lease of Grant Equipment with an option to purchase at the end of the lease term, the lease must extend for a term at least as long as the Activity Life; or

6.3.1.3 The lease must contain a binding commitment to purchase the Grant Equipment at the end of the lease term.

6.3.2 Failure to have an active lease agreement is a material breach of the Contract.

6.3.3 See Texas Business and Commerce Code Section 2A.103 for definitions of "lease" and "purchase."

ARTICLE 7. FUNDS

7.1 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.

7.2 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 a fully executed Contract and eligible costs as determined by TCEQ. There is no guaranteed minimum amount of reimbursement.

7.3 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 8. ELIGIBILITY FOR COST REIMBURSEMENT

8.1 TCEQ will reimburse the PERFORMING PARTY for those costs that are eligible for reimbursement in accordance with Section 3.4 of the TNGVGP 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 Scope of Work to be eligible for reimbursement.

8.2 The Activity Grant Amounts stated in the Scope of Work are maximum amounts of reimbursement for each Grant Activity. 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.

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

8.4 The PERFORMING PARTY must ensure that its procurement practices 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.

8.5 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.

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

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

8.6 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 $350,000), 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.

8.7 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

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

8.8.1 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;

8.8.2 generally accepted sound business practices, arm's length bargaining, and federal and state laws and regulations;

8.8.3 the PERFORMING PARTY's responsibilities to TCEQ, other customers, the owners of the business, employees, and the public at large; and

8.8.4 any significant deviations from the PERFORMING PARTY's established practices.

Necessary Costs

8.9 Necessary costs include costs that are directly attributable to the implementation of the Grant Activities and that are included in the Scope of Work.

8.10 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

8.11 The criteria for actual costs include:

8.11.1 the direct Incremental Costs of implementing the Grant Activities, or

8.11.2 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.

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

8.12.1 amounts deducted from the invoice cost of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds, or otherwise;

8.12.2 amounts that the PERFORMING PARTY owes or agrees to pay a vendor or contractor for any purpose other than the implementation of Grant Activities;

8.12.3 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

8.12.4 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

8.13 In order to be allowable, costs must be directly related to implementing the Scope of Work and must satisfy the requirements of this Contract, TxGMS, state agency rules, and all applicable state and federal laws.

Unallowable Costs

8.14 TCEQ will not reimburse the PERFORMING PARTY for those costs that are listed as ineligible for reimbursement in accordance with Section 3.5 of the TNGVGP RFGA, including, but not limited to:

8.14.1 *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.

8.14.2 *Administrative Costs:* internal costs of the grant recipient, such as personnel expenses, salaries, indirect costs, insurance premiums, and travel are not eligible for reimbursement. This provision does not limit the ability of an equipment vendor or installer who is not the PERFORMING PARTY to include ordinary, reasonable, and necessary operational costs in the price of the equipment or installation services.

8.14.3 *Conflicts of Interest:* costs that do not involve an arm's-length transaction, such as the use of existing inventory without a proof of purchase, equipment manufactured by the grantee, or a transaction between affiliated companies. Transactions between related businesses (subsidiary, sister, or parent businesses or any businesses with common ownership and/or management) are not considered arm's length transactions and indicate a potential conflict of interest. TCEQ will consider costs between business affiliates as ineligible unless sufficient documentation is provided demonstrating that procedures are in place to mitigate any conflict of interest. Grantees should seek approval from TCEQ prior to incurring and paying expenses of this nature.

8.15 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 Incremental 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

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

8.17 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

8.18 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

8.19 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 such debt or delinquency.

Outstanding Invoice to TCEQ

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

ARTICLE 9. REQUEST FOR REIMBURSEMENT

9.1 Except as provided for under Article 9.4 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.

9.2 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.

9.3 The PERFORMING PARTY must submit a completed TCEQ Request for Reimbursement form. The form can be submitted online through TCEQ's secure site https://send.tceq.texas.gov/filedrop/terp-fiscal or mailed to:

Air Grants Division, MC-204
TCEQ
ATTN: Reimbursement
P.O. Box 13087
Austin, TX 78711-3087

9.4 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. The PERFORMING PARTY may assign its payment directly to the financing company. Supporting documentation must be submitted to establish that the goods or services were received, and that the payment amount is owed to the financing company indicated by the PERFORMING PARTY.

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

9.4.2 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.

9.5 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.

9.6 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.

9.6.1 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 sixty (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.

9.7 If the Request for Reimbursement form 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.

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

Replacement Project Reimbursement

9.9 Subject to any associated General Terms and Conditions requirements, for replacement projects, TCEQ will reimburse the PERFORMING PARTY for the Grant Activities listed in the Scope of Work at the lesser of either (A) the Activity Grant Amount in the Scope of Work for the Grant Equipment, or (B) ninety percent (90%) of the eligible Incremental Cost for the replacement equipment under this Contract.

Repower Project Reimbursement

9.10 Subject to any associated General Terms and Conditions requirements, for repower projects, TCEQ will reimburse the PERFORMING PARTY for the Grant Activities listed in the Scope of Work at the lesser of either A) the Activity Grant Amount in the Scope of Work for the Grant Equipment, or B) ninety percent (90%) of the eligible Incremental Cost for Repower Projects.

Required Documentation

9.11 Documentation for a reimbursable cost must:

9.11.1 be legible;

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

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

9.11.4 confirm the reimbursable amount listed on the form; and

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

9.12 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.

9.13 Canceled checks and bank confirmation of electronic fund 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.

9.14 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.

9.15 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.

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

ARTICLE 10. PERFORMING PARTY'S RESPONSIBILITIES TO TCEQ

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

10.2 The PERFORMING PARTY 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.

10.3 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.

10.3.1 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.

10.4 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 constitute a material breach of this Contract.

Professional Quality

10.5 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

10.6 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.

Materials & Equipment

10.7 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

10.8 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 Scope of Work. Any purchases made prior to receiving a fully signed Contract is made at the PERFORMING PARTY's own risk.

10.9 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.

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

Maintenance, Repair, and Replacement

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

10.12 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment during the Activity Life, 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.

10.13 Upon the occurrence of loss, theft, or irreparable damage of the Grant Equipment during the Activity Life, 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

10.14 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.

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

10.16 The PERFORMING PARTY must obtain and maintain a policy of commercial automobile liability and workers' compensation or accidental insurance coverage insurance that meets the minimum requirements of 43 Texas Administrative Code, Section 218.16 and Texas Labor Code Title 5. These insurance policies must be maintained for the duration of the Activity Life.

10.17 Commercial Insurer Requirements. The PERFORMING PARTY will obtain all required policies from insurers licensed, eligible, or authorized under Texas law to issue insurance policies for the limits and coverage required.

10.18 If requested by TCEQ, the PERFORMING PARTY will provide proof of insurance coverage, including any deductible or self-insurance retention amounts. Failure to provide proof of requested insurance or failure to maintain required insurance during the Activity Life is considered a material breach of the Contract.

10.19 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.

10.20 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.

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

Assignment

10.22 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 the 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.

10.23 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.

10.24 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.

10.25 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

10.26 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.

10.27 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.

10.28 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

10.29 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. The PERFORMING PARTY will document and maintain records of usage and location for the Grant Equipment. 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.

10.30 Records under this Article must be maintained by the PERFORMING PARTY during performance of each Grant Activity under this Contract and for four (4) years after the Termination of this Contract. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the four-year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular four-year period,

whichever is later. The PERFORMING PARTY must maintain these records in a way that ensures business continuity if the primary records are destroyed, such as establishing a back-up copy of such records.

PERFORMING PARTY's Representative

10.31 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.

10.32 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.

10.33 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

10.34 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

10.35 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

10.36 Unless otherwise provided in the Contract, the PERFORMING PARTY must obtain and pay for all applicable permits and licenses required for the 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

10.37 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

10.38 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.

10.38.1 If the PERFORMING PARTY is claiming that data and information it submits to TCEQ contains confidential or proprietary information, that information MUST be clearly marked, **"Confidential/Proprietary: inform grantee & seek Attorney General Opinion before releasing"** on each page the PERFORMING PARTY considers confidential, proprietary, or otherwise exempt from the PIA. 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.

10.38.2 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 Section 552.1101(b) of the Texas Government Code regardless of whether the PERFORMING PARTY identifies such information as being confidential.

10.39 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.

10.40 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 Texas Natural Gas Vehicle Grant Program.

Lobbying Activities

10.41 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

10.42 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

10.43 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

10.44 If the PERFORMING PARTY is a governmental entity, the PERFORMING PARTY represents and warrants its compliance with Texas Government Code Chapter 551, 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

10.45 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 of the Activity Life for each Grant Equipment.

ARTICLE 11. DISPOSITION OF REPLACED EQUIPMENT AND ENGINES

11.1 Unless an alternative disposition method is approved by TCEQ, the PERFORMING PARTY agrees to dispose of the equipment and engines being replaced by complete destruction or otherwise rendering the equipment permanently inoperable through standard disposition as described in General Terms and Condition 11.1.1 or permanent removal of the equipment and engines from operation in Texas as described in General Terms and Conditions 11.1.2.

11.1.1 Standard disposition requires making a 3-inch or larger diameter hole on both sides of the engine block and cutting both frame rails or other main structural components of the equipment, or by completely crushing the equipment, including the engine. The structural damage to the equipment must be such that repairs are not possible.

11.1.1.1 Any equipment or engine being replaced must be destroyed and documented on TCEQ's disposition form. The disposition form and the required supporting documentation must be submitted within ninety (90) days of the reimbursement payment being issued by TCEQ. TCEQ may grant an extension to this deadline without an amendment to this Contract.

11.1.1.2 The PERFORMING PARTY must submit a copy of a Texas Nonrepairable Vehicle Title issued by the Texas Department of Motor Vehicles for any on-road vehicles replaced under this Contract. The Texas Nonrepairable Vehicle Title must be submitted as supporting documentation with the TCEQ disposition form.

11.1.1.3 The PERFORMING PARTY must submit photographs of the equipment being destroyed, both before and after the equipment is destroyed or rendered inoperable. Photographs must be submitted as supporting documentation with the TCEQ disposition form.

11.1.2 If approved and noted in the Special Terms and Conditions of this Contract, equipment and engines being replaced may be permanently removed from Texas. Permanent removal requires the export of replaced equipment and engines to a destination outside of the United States, Canada, and the United Mexican States.

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

11.3 If TCEQ approves disposition by remanufacturing, the engine must be sent to a remanufacturing facility operated or authorized by the original engine manufacturer. The remanufacture of the engine must include removing all parts and using the old block to build a remanufactured engine with a new serial number.

11.4 The PERFORMING PARTY agrees that failure to properly destroy or dispose of equipment replaced under this Contract in accordance with the destruction requirements or the provisions of a TCEQ-approved alternative disposition plan is a material breach of this Contract.

11.5 TCEQ must approve the forms and supporting documentation submitted by the PERFORMING PARTY to meet the disposition requirement. Such approval is at the sole discretion of TCEQ. The PERFORMING PARTY will provide TCEQ with any clarification and additional documentation as requested by TCEQ to approve disposition. Failure to provide properly completed forms and supporting documentation as required by this Contract within ninety (90) days of the reimbursement payment is considered a material breach of this Contract.

11.6 The PERFORMING PARTY must maintain records of the disposition, including copies of forms, documentation, and photos submitted to TCEQ. The PERFORMING PARTY is responsible for maintaining access to the disposed equipment and engine, keeping records regarding who completed the disposition, the dates the disposition was completed, and any chain-of-custody tracking the disposed equipment from the PERFORMING PARTY to the final disposition site through the time of TCEQ's approval of the disposition requirement.

ARTICLE 12. LONG-TERM MONITORING AND REPORTING

12.1 The emissions reduction benefit supporting the award of this grant is based upon the PERFORMING PARTY's successful performance of the Grant Activities as detailed in the Scope of Work.

12.2 The PERFORMING PARTY agrees to operate the Grant Equipment as specified in the Scope of Work and maintain records regarding the Grant Equipment's operation for the duration of the Activity Life.

12.3 The PERFORMING PARTY agrees that failing to operate the Grant Equipment as specified in the Scope of Work and maintain records regarding the Grant Equipment's operation is a material breach of this Contract.

12.4 If requested by TCEQ, the PERFORMING PARTY must provide information on the status and completion of Grant Activities. The PERFORMING PARTY will provide such information on the designated form or in a format requested by TCEQ, within a reasonable timeframe.

12.5 As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed Usage Reports to TCEQ, on forms provided by TCEQ, for the duration of the Activity Life. The Usage Reports must include properly completed individual reports on the operation of the Grant Equipment for each activity, for the duration of the Activity Life. The PERFORMING PARTY will submit the required reports by the date specified by TCEQ in the reporting instructions. Reports will be required annually unless an alternative schedule is approved by TCEQ. TCEQ may, at its discretion, authorize the PERFORMING PARTY to submit Usage Reports on a less frequent schedule or to suspend the reporting requirements, based on an assessment of compliance with the usage and reporting requirements.

12.6 The PERFORMING PARTY agrees that failure to adequately monitor the Annual Usage of Grant Equipment, failure to submit properly completed Usage Reports for the duration of the Activity Life, and/or submitting Usage Reports with false, incorrect, or incomplete 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-cancellable 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 the PERFORMING PARTY would be unable 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 failed to comply with 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 The PERFORMING PARTY acknowledges that certain requirements of this Contract, including but not limited to, 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. TCEQ's determination will depend on factors including, but not limited to, the Annual Usage of the Grant Equipment in a manner that maintained overall program eligibility, full completion of reimbursement and equipment disposition requirements, the PERFORMING PARTY's good-faith efforts to perform the Grant Activities and achieve a reduction of emissions during the Activity Life, and the PERFORMING PARTY's compliance with notification requirements of this Contract (e.g., notification before sale of equipment). TCEQ's determination of the return of a pro-rated share of the reimbursed grant funds per Activity is based on the following:

14.1.1.1 Actual tons of NO_x reduced per Activity is calculated according to the formula below.

$$Actual\ Tons\ of\ NO_X\ Reduced = Contract\ Tons\ of\ NO_X\ Reduced \times A \times B \times C$$

Where,

$$A = \frac{Actual\ Activity\ Life\ for\ the\ Activity}{Contract\ Activity\ Life\ for\ the\ Activity}$$

$$B = \frac{Actual\ Annual\ Usage\ for\ the\ Activity}{Contract\ Annual\ Usage\ for\ the\ Activity}$$

$$C = \frac{Actual\ Percent\ in\ Area\ for\ the\ Activity}{Contract\ Percent\ in\ Area\ for\ the\ Activity}$$

14.1.1.2 If the PERFORMING PARTY fails to meet the Annual Usage requirement of an Activity or the Percent in Area requirement of an Activity, the PERFORMING PARTY will be required to return a pro-rated share calculated per Activity according to the following formulas:

$$Pro\text{-}rated\ Amount = Activity\ Grant\ Amount - (Actual\ Tons\ of\ NO_X\ Reduced \times Overall\ CPT)$$

Where,

$$Overall\ CPT = \frac{Total\ Grant\ Amount\ for\ all\ Activities}{Total\ Contract\ Tons\ of\ NOx\ Reduced\ by\ all\ Activities}$$

14.1.1.3 If the PERFORMING PARTY fails to maintain possession of the Grant Equipment of an Activity or fails to submit any Usage Report, the PERFORMING PARTY will be required to return a pro-rated share calculated per Activity according to the following formulas:

$$Pro\text{-}rated\ Amount = Activity\ Grant\ Amount - Earned\ Grant\ Amount$$

Where,

$$Earned\ Grant\ Amount = (Activity\ Grant\ Amount\ \times A \times B \times C)$$

Where,

$$A = \frac{Actual\ Activity\ Life\ for\ the\ Activity}{Contract\ Activity\ Life\ for\ the\ Activity}$$

$$B = \frac{Actual\ Annual\ Usage\ for\ the\ Activity}{Contract\ Annual\ Usage\ for\ the\ Activity}$$

$$C = \frac{Actual\ Percent\ in\ Area\ for\ the\ Activity}{Contract\ Percent\ in\ Area\ for\ the\ Activity}$$

If the ratios of Contract to Actual within the formulas contained in Article 14.1.1.3 are more than 1, TCEQ caps the calculation and deems that particular ratio to be 1.

14.1.1.4 TCEQ calculates the Activity Life ratio in the formulas contained in Article 14.1 by dividing the number of months in which the Annual Usage Requirement was met by the total number of months in the Activity Life. TCEQ maintains the discretion to determine the amount of significant figures it decides to use when using the formulas contained in Article 14.1.

14.1.1.5 TCEQ may calculate the prorated amount of any breach not contained in Article 14.1.1.2-14.1.1.3 using any method it deems necessary.

14.2 In the event of the PERFORMING PARTY's breach of or substandard adherence to the requirements of this Contract or applicable law, 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 withhold all or partial payments;

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 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 any 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 system, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY is not in place or is not used properly, the *State Property Accounting Process User's Guide* 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, and the cost of the property, percentage of state participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

16.3.2 A physical inventory of all equipment acquired or replaced under this Contract must be conducted no less frequently than once every two years during the Contract Period, and the results of such inventories must be 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 must be submitted in writing to TCEQ.

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.

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 the Authorized Official possesses 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 does 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 Texas Family Code, Section 231.006, 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 (25%) 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, 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 10, 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 PERFORMING PARTY and 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 the 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.

— 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 the 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)
Email Address: TERP@tceq.texas.gov

PERFORMING PARTY's *Authorized Official*

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

Mailing Address:
«FullNameAO»
«Legal_Name»
«Mailingaddress1ao» «Mailingaddress2ao»
«Mailingcityao», «MAILINGSTATEAO» «MAILINGZIPAO»

Telephone No.: «PRIMARYPHONENUMAO» «PRIPHONEEXTAO»

PERFORMING PARTY's Project Representative

The individual named in the original Application is the PERFORMING PARTY Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY Project Representative or his or her designee.

Mailing Address:
«FULLNAMEDR»
«Legal_Name»
«Mailingaddress1ao» «Mailingaddress2ao»
«Mailingcityao», «MAILINGSTATEAO»
«MAILINGZIPAO»

Telephone No.: «PRIMARYPHONENUMDR»
«PRIPHONEEXTDR»

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
TEXAS NATURAL GAS VEHICLE GRANT PROGRAM (TNGVGP)

ARTICLE 1. SPECIAL CONDITIONS

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
TEXAS NATURAL GAS VEHICLE GRANT PROGRAM (TNGVGP)

Replacement Project

The following Scope of Work contains information on the Grant Activities to be conducted and the expenses that will be reimbursed under this Contract. The information and data provided in the original Application submitted by the PERFORMING PARTY may have been altered after submittal to TCEQ, to ensure that the information in the Contract is accurate. The PERFORMING PARTY has reviewed the Scope of Work and, by signing this Contract, ratifies, adopts, and agrees to all such alterations.

ARTICLE 1. ACTIVITY NUMBER

1.1 The Project under this Contract is assigned the following project number; «Grant_Number». Each Activity under this Contract is assigned the Activity Number(s) listed in the table below and identified by the last 4 digits of the Vehicle Identification Number (VIN). The PERFORMING PARTY must use the assigned Activity Number(s) when tracking and reporting to TCEQ.

Activity Number	Description

ARTICLE 2. ACTIVITY LIFE

2.1 The duration of the Activity Life for each Grant Activity performed under the Contract may be the earlier of four (4) years or 400,000 miles of usage after the date TCEQ approves disposition.

2.2 The start and end date of the Activity Life for each Grant Activity will be established by TCEQ in accordance with Article 1.1, General Terms and Conditions of this Contract.

ARTICLE 3. AREAS OF USE

3.1 The PERFORMING PARTY agrees to operate the Grant Equipment for the percentage of total Annual Usage in the Clean Transportation Zone (CTZ) as listed below.

Activity Number	Percentage of Total Annual Usage in the CTZ	Contract Tons of NO_x Reduced

3.2 The Eligible Counties included in the Clean Transportation Zone (CTZ) are listed below.

Clean Transportation Zone (CTZ): Anderson, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Chambers, Collin, Colorado, Comal, Dallas, Denton, DeWitt, Duval, Ellis, El Paso, Falls, Fayette, Fort Bend, Freestone, Frio, Galveston, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hood, Howard, Hunt, Hutchison, Jackson, Jefferson, Jim Wells, Johnson, Karnes, Kaufman, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Madison, Matagorda, McLennan, McMullen, Medina, Milam, Montgomery, Navarro, Nueces, Orange, Parker, Refugio, Robertson, Rockwall, Rusk, San Patricio, Smith, Tarrant, Titus, Travis, Upshur, Victoria, Walker, Waller, Washington, Webb, Wharton, Williamson, Wilson, and Wise Counties

3.3 If the Percentage of Total Annual Usage in the CTZ shown above is not met, TCEQ will require a return of grant funds. If the Grant Equipment does not have a mechanism for tracking miles, annual usage may be calculated and monitored on a fuel usage basis or as a percentage of total annual hours of operation.

ARTICLE 4. EQUIPMENT BEING REPLACED

4.1 The PERFORMING PARTY agrees to replace the following equipment and complete the disposition of the equipment being replaced in accordance with Article 11 of the General Terms and Conditions:

Activity Number	Equipment Description	Equipment Year	GVWR	VIN	Engine Year	Engine ID	NO_x Rate

ARTICLE 5. GRANT EQUIPMENT

5.1 The PERFORMING PARTY will acquire the Grant Equipment listed in the table below.

Activity Number	Equipment Description	GVWR	Fuel Type	NO_x Rate

5.2 The PERFORMING PARTY must also meet the requirements below when acquiring the Grant Equipment, unless otherwise authorized by TCEQ in writing.

5.2.1 The Grant Equipment must be the same Equipment Description as stated in the table above.

5.2.2 The Grant Equipment must be used for the same primary function as the equipment being replaced.

5.2.3 The Grant Equipment must be:

a) new and may not have been subject to a first sale or lease prior to the purchase or lease; or
b) if used, a model year that is no more than six (6) years older than the current model year at the time of the application signature date.

5.2.4 The Grant Equipment GVWR must be within the same GVWR (or for a combination truck and trailer, gross combined weight rating (GCWR) category) as stated in the table above:

a) Class 2b – 8,501 to 10,000 GVWR
b) Class 3 – 10,001 to 14,000 GVWR
c) Class 4 – 14,001 to 16,000 GVWR
d) Class 5 – 16,001 to 19,500 GVWR
e) Class 6 – 19,501 to 26,000 GVWR
f) Class 7 – 26,001 to 33,000 GVWR
g) Class 8 – over 33,000 GVWR or GCWR

5.2.5 The Grant Equipment engine must have the same fuel type as stated in the table above.

5.2.6 The Grant Equipment must emit NO_x at a rate that is at least 25% less than the emissions rate of the engine on the equipment being replaced. The Grant Equipment engine must be certified to the same or better NO_x emission standard or family emission limit (FEL) as stated in the table above.

5.2.7 The Grant Equipment may not have received a:

a) Grant under a previous TNGVGP or other TERP grant (unless all previous contractual obligations have been met); or
b) similar grant or tax credit in another jurisdiction if that grant or tax credit is relied on for credit in the Texas state implementation plan.

5.3 TCEQ must approve any changes to the Grant Equipment that are different from the criteria shown in the table above, as well as the criteria in Scope of Work 5.2. If it is unclear whether the Grant Equipment is different from the criteria above, TCEQ will make the final determination.

5.3.1 The PERFORMING PARTY must submit any changes in writing to TCEQ. TCEQ provides a Contract Change Request Form for this purpose.
5.3.2 TCEQ's approval of a change to the Grant Equipment will be documented in an Amendment or Minor Change.
5.3.3 TCEQ will not process or pay a Request for Reimbursement prior to approving and documenting any Grant Equipment changes.

5.4 The PERFORMING PARTY remains responsible for acquiring Grant Equipment that meets all eligibility requirements. TCEQ is not obligated to accept the change in Grant Equipment if TCEQ determines that the change does not meet all eligibility requirements. In addition, TCEQ's acceptance and payment of a request for reimbursement that includes changes to the Grant Equipment does not remove the ability

of TCEQ to require return of any grant funds paid in reimbursement for the acquisition of equipment that is later determined to be ineligible.

ARTICLE 6. ACTIVITY GRANT AMOUNT

6.1 The maximum Activity Grant Amount that may be reimbursed for each Grant Activity is listed below.

Activity Number	Activity Grant Amount

6.2 Regardless of the maximum Activity Grant Amount, reimbursement is subject to the requirements of Article 9.9, General Terms and Conditions of this Contract, establishing a reimbursement limit of the lesser of either A) the Activity Grant Amount in the Scope of Work for the Grant Equipment or B) 90% of the eligible Incremental Cost for Replacement Projects.

6.3 The maximum Activity Grant Amount and the percentage of Incremental Cost may be adjusted downward in accordance with the Contract.

— End of Scope of Work—