

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
TEXAS VOLKSWAGEN ENVIRONMENTAL MITIGATION PROGRAM CONTRACT**

**CONTRACT SIGNATURE PAGE**

Contract Name	<b>Texas Volkswagen Environmental Mitigation Program (TxVEMP)</b>
Contract Number	
PERFORMING PARTY Name:	
PERFORMING PARTY I.D. Number	
Total Contract Amount Not To Exceed	

<b>Contract Effective Date</b>	<b>The Effective Date of this Contract is the date of last signature</b>
<b>Request for Reimbursement Deadline &amp; Contract Expiration Date</b>	<b>October 31, 2026</b>
<b>Activity Life Expiration Date</b>	<b>Five years from final reimbursement date</b>

The Texas Commission on Environmental Quality (TCEQ), an agency of the State of Texas and the named PERFORMING PARTY enter this Contract for the purpose of providing financial assistance for emissions reduction projects as authorized under Texas Water Code Section 5.124, the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust), and the Beneficiary Mitigation Plan for Texas. The Parties agree: (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 required by the Contract, and (c) TCEQ will reimburse from the State Trust for authorized allowable costs in accordance with the Texas Uniform Grant Management Standards and the Contract.

**Authorized Official**

Printed Name:	
Title:	
By (Authorized Signature):	
Date of Signature:	

**Texas Commission on Environmental Quality (TCEQ)**

Printed Name:	
Title:	
By (Authorized Signature):	
Date of Signature:	

**Performing Party (Legal Name)**

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 833-215-TXVW (8989) para obtener ayuda con la interpretación de este contrato.

**GENERAL CONDITIONS  
for  
TEXAS VOLKSWAGEN ENVIRONMENTAL MITIGATION PROGRAM**

**ARTICLE 1. DEFINITIONS**

Unless defined herein, terms in this Contract and Contract Documents have the meanings provided in the Volkswagen Environmental Mitigation Trust Agreement for State Beneficiaries (State Trust), the Beneficiary Mitigation Plan for Texas (Mitigation Plan), and 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 Activity Life begins on the date the final reimbursement payment is issued under the grant, continuing for five (5) years afterwards. Upon completion of final reimbursement, 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 which track contract progress and management, including financial management, reporting, and retention of records. These are distinguished from Grant Activities requirements, which pertain to the specific Grant Activities approved by TCEQ.
- 1.3 Application - the Application for a grant submitted by the PERFORMING PARTY including any attachments or documents the PERFORMING PARTY provides with the Application, provides in response to a request from TCEQ staff, or provides to otherwise support the individual activities proposed to be conducted under the grant.
- 1.4 Authorized Official - the individual authorized to sign legal documents on behalf of TCEQ and the PERFORMING PARTY, as designated in writing in the Contract.
- 1.5 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.
- 1.6 Grant Activity/Activities - activities the PERFORMING PARTY has agreed to perform under this Contract that are detailed in the Scope of Work.
- 1.7 Grant - means this Contract between TCEQ and the PERFORMING PARTY, consisting of the documents listed in Article 5, Contract Documents. The term "Grant" shall be used interchangeably with "Agreement," "Contract," or "grant."
- 1.8 Grant Equipment - the equipment for which some or all of the cost of purchase is reimbursed by TCEQ under this Contract. The term includes replacements for Grant Equipment which is lost, stolen, or irreparably damaged. The term "Grant Equipment" shall be used interchangeably with "equipment."
- 1.9 Incremental Costs - the eligible cost of an approved Grant Activity less TCEQ's default scrappage value that would otherwise be paid by the PERFORMING PARTY in the normal course of business.
- 1.10 Maximum Reimbursement Rate - the maximum rate for which the PERFORMING PARTY may be reimbursed based on entity type. Governmental entities may request up to one hundred (100) percent of the incremental cost of a project. Governmental entities include a state or local government agency (including school district, municipality, city, county, special district, joint powers authority, or port authority owning fleets purchased with government funds), and a tribal government or native village. A privately-owned school bus under contract with a public school district is also eligible for this reimbursement amount. A federal government agency or entity is not included in this definition and will be considered a private entity for this grant program. Non-governmental entities may request up to seventy-five (75) percent of the incremental cost of a project.
- 1.11 NO<sub>x</sub> - oxides of nitrogen (NO<sub>x</sub>) 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<sub>2</sub>), and other oxides of nitrogen. NO<sub>x</sub> plays a major role in the formation of ground-level ozone in the atmosphere through a complex series of reactions with volatile organic compounds (VOCs).
- 1.12 Optimum Performance - the level of performance at which Grant Equipment functions in order to achieve the anticipated emissions reductions.

- 1.13 PERFORMING PARTY - the grant recipient indicated on the signature page of this Contract, also referred to in this Contract as the "grantee".
- 1.14 Priority Areas - the eligible areas and counties where the PERFORMING PARTY must use the grant-funded equipment a minimum of 51% of the annual use during the Activity Life. The applicable Priority Areas are listed in the TxVEMP Request for Grant Applications (RFGA), TxVEMP Application, and the Scope of Work of this Contract.
- 1.15 Project Representative - the individual to whom all communications, contracts and related documents, and written correspondence to either party will be addressed and delivered, as designated in writing in the Contract.
- 1.16 Repower - replacement of an existing diesel engine with a new, rebuilt, or remanufactured engine, according to the criteria of the Beneficiary Mitigation Plan for Texas.
- 1.17 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.
- 1.18 Scope of Work - the Contract document detailing the requirements of the Grant Activities.
- 1.19 State - means the State of Texas.
- 1.20 Termination - means 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 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.
- 1.21 TCEQ - the Texas Commission on Environmental Quality
- 1.22 When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a State of Texas or federal holiday, such day will be omitted from the computation.
- 1.23 A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

**ARTICLE 2. GOVERNING STANDARDS AND AUTHORITY**

- 2.1 This Contract shall be 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) the Uniform Grant and Contract Management Act, Texas Government Code Section 783.001 et seq., and the Texas Grant Management Standards (TxGMS); (2) TCEQ rules and policies (pertaining to TCEQ contracts and grants); (3) the State Trust Agreement and the Mitigation Plan; (4) the RFGA; and (5) other applicable Federal and State rules and statutes.

**ARTICLE 3. PURPOSE**

This grant program implements a portion of the Texas Volkswagen (VW) Environmental Mitigation Program (TxVEMP) established and administered by TCEQ.

**ARTICLE 4. CONTRACT PERIOD**

- 4.1 This Contract will commence on the Contract Effective Date as identified on the Signature Page.
- 4.2 The PERFORMING PARTY may begin the Grant Activities at its own risk, prior to receiving a fully executed Contract.
- 4.3 The Contract Period shall be the period of time from the Effective Date through the Expiration Date listed on the Signature Page of this Contract unless the Contract is otherwise terminated or extended in accordance with its terms.

- 4.4 The PERFORMING PARTY agrees to perform through the end of the Activity Life of any Grant Activity for which the PERFORMING PARTY has been reimbursed. The PERFORMING PARTY acknowledges that certain contractual requirements, such as Activity Life performance and Administrative Requirements, survive the Contract Expiration Date, and that record retention and audit survive the Final Completion of the Contract.

#### **ARTICLE 5. CONTRACT DOCUMENTS**

- 5.1 The Contract Documents which comprise the entire Contract between TCEQ and the PERFORMING PARTY are provided in order of precedence in the event of conflicts:
- 5.1.1 Contract Signature Page
  - 5.1.2 Scope of Work
  - 5.1.3 Special Conditions
  - 5.1.4 General Conditions
  - 5.1.5 RFGA, incorporated herein by reference.
  - 5.1.6 Beneficiary Mitigation Plan for Texas, incorporated herein by reference.
  - 5.1.7 Environmental Mitigation Trust Agreement for State Beneficiaries (“State Trust”), incorporated herein by reference.
  - 5.1.8 The PERFORMING PARTY’s Application, incorporated herein by reference.
  - 5.1.9 The following which may be delivered or issued after the Effective Date of the Contract and are not attached: Written Amendments, Minor Changes, and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General 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 Conditions.

#### **ARTICLE 6. ELIGIBLE ACTIVITIES**

- 6.1 The PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and in accordance with the Contract.
- 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.
- 6.3 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 and reimburse the PERFORMING PARTY for only those Grant Activities for which eligible purchases are completed.
- 6.4 Any costs associated with the grant equipment may not have been paid prior to the opening date of the RFGA.
- 6.5 The Grant Equipment is listed in the Scope of Work. The NO<sub>x</sub> emissions of the engine must conform with the NO<sub>x</sub> emissions listed in the Application. The PERFORMING PARTY, with written approval from TCEQ’s Project Representative or designee, may substitute a newer model year replacement equipment for the unit listed in the Scope of Work provided that the substitute unit meets all eligibility and other requirements, is of the same weight category, has the same or better certified NO<sub>x</sub> emissions rate, and will result in the same or better NO<sub>x</sub> emissions reductions as the unit listed.
- 6.6 The PERFORMING PARTY understands that TCEQ’s approval of the Application does not constitute final verification that an engine meets the required certified NO<sub>x</sub> emissions rate.
- 6.7 The PERFORMING PARTY agrees to continuously own or otherwise commercially finance the Grant Equipment; continuously maintain registration of the Grant Equipment in Texas; and operate the Grant Equipment in Texas for the specified Activity Life, regardless of the financing arrangements used for the purchase of the Grant Equipment.

#### **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 which 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 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 amount of reimbursement.
- 7.3 Request for Reimbursement Deadline. If the request for reimbursement has not been received by TCEQ by the Request for Reimbursement Deadline, TCEQ may terminate this Contract without any further obligation to the PERFORMING PARTY.

#### **ARTICLE 8. ELIGIBILITY FOR COST REIMBURSEMENT**

- 8.1 TCEQ will direct the Trustee of the State of Texas to act as Disburser to issue payment to the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with 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 amount of costs for which reimbursement may be requested is the lesser of A) the costs stated in the Scope of Work or B) the actual eligible costs.
- 8.3 Grant funds must be spent consistent with all applicable cost principles from Title 30 Texas Administrative Code (TAC) Chapter 14.10 and TxGMS.
- 8.4 The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. A request for reimbursement, TCEQ's payment of reimbursement, or any other action will not establish an entitlement in the PERFORMING PARTY to payment from TCEQ.
- 8.4.1 By directing the Disburser to issue a check for reimbursement, TCEQ does not waive any requirements for the reimbursement of costs. TCEQ may at any time before or after reimbursement, in its sole discretion, request additional evidence concerning costs. TCEQ may audit the records of the PERFORMING PARTY and may also audit the PERFORMING PARTY's performance as to the Grant Activities and the Administrative Requirements. The PERFORMING PARTY shall return grant funding to the State Trust for reimbursed expenses that are later determined to be unallowable under the terms of this Contract.

#### ***Procurement***

- 8.5 The PERFORMING PARTY must ensure that its procurement practices will be based on sound business decisions and arms' length bargaining. 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 Purchases must be made without any actual or apparent personal or organizational conflicts of interest as described in TxGMS. Transactions between affiliated companies are considered organizational conflicts of interest. The PERFORMING PARTY agrees that if any actual or potential conflict of interest arises, it will make a full disclosure in writing to the TCEQ Project Representative. This disclosure must include a description of actions the PERFORMING PARTY has taken or proposes to take to avoid or mitigate the actual or potential conflict.
- 8.5.2 The PERFORMING PARTY agrees that TCEQ has sole discretion to determine (1) whether a conflict of interest exists, (2) whether the conflict of interest is such that it calls into question the eligibility of an expense for reimbursement, and (3) whether the conflict of interest may be considered a material breach of this Contract.
- 8.5.3 If the PERFORMING PARTY is a local government, it must comply with Texas Local Government Code Chapter 176.
- 8.6 For any expenses (goods or services) which are not procured using price competition, and which exceed the Texas Acquisition Threshold or federal Simplified Acquisition Threshold (currently \$250,000), the PERFORMING PARTY must perform a price or cost analysis (for example, independent estimates) to determine the reasonableness of the price and maintain documentation of such analysis. All documentation regarding procurement and price or cost analysis must be provided to TCEQ upon request.

8.7 The PERFORMING PARTY is encouraged to provide opportunities for Historically Underutilized Businesses (HUBs) to participate in any procurement and subcontracting under this Contract.

**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 which are directly attributable to the implementation of the Grant Activities, and which are included in the Scope of Work.
- 8.10 Unless expressly authorized by TCEQ, necessary costs do not include:
- 8.10.1 the cost of money, in particular, or the interest charges on a purchase money loan or on a deferred payment purchase agreement.

**Actual Costs**

- 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 financing of Grant Equipment whether as discounts, rebates, refunds, or otherwise;
  - 8.12.2 amounts which the PERFORMING PARTY owes or agrees to pay a vendor or contractor for any purpose other than the implementation of Grant Activities;
  - 8.12.3 amounts in the charges which 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;
  - 8.12.4 Baseline Costs designated by TCEQ in the Application reflecting the costs that would otherwise be incurred by the PERFORMING PARTY in the normal course of business; or
  - 8.12.5 Amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are or will be received by the PERFORMING PARTY.
- 8.13 The PERFORMING PARTY must document and maintain evidence of expenses.

**Allowable Costs**

8.14 In order to be allowable, costs must be included in the Scope of Work and must satisfy the requirements of this Contract, the TxGMS, state agency rules, and all applicable state and federal laws.

**Unallowable Costs**

- 8.15 *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.
- 8.16 *Administrative Costs.* Internal costs of the grant recipient, such as 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.

- 8.17 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***

- 8.18 TCEQ may request additional details regarding costs of Grant Equipment listed in the Scope of Work and may require the PERFORMING PARTY obtain preapproval of specific costs from TCEQ prior to incurring those costs.
- 8.19 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***

- 8.20 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***

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

#### ***Outstanding Invoice to TCEQ***

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

#### ***Required Waiver***

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

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

### **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 prior to the Request for Reimbursement Deadline.
- 9.2 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 shall submit a completed TCEQ Request for Reimbursement form. The forms shall be emailed to [VWSettle@tceq.texas.gov](mailto:VWSettle@tceq.texas.gov) or mailed to:

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

- 9.4 The PERFORMING PARTY will receive its reimbursement payment in the form of a check sent by Wilmington Trust, N.A., as Disburser. All payments will be sent to the PERFORMING PARTY by the Wilmington Trust, N.A., at the direction of TCEQ. Neither TCEQ or Wilmington Trust, N.A. is liable for any inaccurate or incomplete information provided by the PERFORMING PARTY. The PERFORMING PARTY is responsible for any additional costs or fees related to correcting any inaccurate information provided by the PERFORMING PARTY, including any tax penalties or fees resulting from inaccurate information.
- 9.5 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.
- 9.5.1 If an assignment is requested, the PERFORMING PARTY must complete the Assignment Request and Acceptance section on the Request for Reimbursement.
- 9.6 The final Request for Reimbursement Form, indicated by selecting the final request box on the form, shall 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 90 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 will depend on factors such as the availability of grant funds.
- 9.7 The final Request for Reimbursement shall include a completed and signed Release of Claims. The Release of Claims will be for the benefit of TCEQ and the Disburser, and the PERFORMING PARTY will release all claims for payment of any funds due and payable, pending PERFORMING PARTY's receipt of the funds from the Disburser for the Request for Reimbursement.
- 9.8 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 is within the judgment of TCEQ; however, such judgment must be reasonable.
- 9.9 The reimbursement of funds is contingent upon the PERFORMING PARTY's satisfactory adherence to the terms of this Contract.

#### ***Scrappage Value***

- 9.10 For equipment replacement activities, TCEQ will use a default scrappage value of \$1,000. For activities involving the repower of equipment the default scrappage value is \$250. The default scrappage value will be subtracted from the eligible cost.

#### ***Replacement and Repower Project Costs***

- 9.11 For replacement and repower projects, regardless of the Activity Grant Amount shown in the Scope of Work, TCEQ will reimburse the PERFORMING PARTY for no more than the maximum reimbursement rate by entity type of a) the eligible incremental costs for the purchase of the replacement equipment or b) the cost of the engine and any other eligible costs associated with a repower project under this Contract.

### ***Refueling Infrastructure Costs***

9.12 For refueling infrastructure associated with replacement or repower projects, regardless of the Activity Grant Amount shown in the Scope of Work, TCEQ will reimburse the PERFORMING PARTY for no more than the maximum reimbursement rate by entity type of the eligible incremental costs of the refueling infrastructure project.

### ***Required Forms***

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

- 9.13.1 Request for Reimbursement Form;
- 9.13.2 Release of Claims (only with the final Request for Reimbursement); and
- 9.13.3 documentation of payment for all costs for which reimbursement is requested.

### ***Required Documentation***

9.14 Documentation for a reimbursable cost shall:

- 9.14.1 be legible;
- 9.14.2 identify the specific piece of equipment received or the services provided;
- 9.14.3 clearly identify the vendor or subcontractor who provided the equipment or services;
- 9.14.4 confirm the reimbursable amount listed on the form; and
- 9.14.5 provide proof of payment for all costs for which reimbursement if requested.

9.15 The documentation shall consist of an itemized and dated invoice that shows the amount billed to the PERFORMING PARTY, any “past due” amount from previous invoices, and explanation of services provided. The PERFORMING PARTY must provide any other documentation requested by TCEQ.

9.16 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.

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

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

9.19 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.

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

### ***Professional Quality***

10.3 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***

10.4 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 shall be solely responsible for the means, methods, techniques, sequences, and procedures of the Grant Activities.

## ***Materials & Equipment***

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

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

- 10.6 Any purchase made by the PERFORMING PARTY, especially any purchase not proposed/scheduled for reimbursement by TCEQ, is made at its own risk.
- 10.7 All Grant Equipment will be of good quality and as described in the Scope of Work. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier.
- 10.8 The PERFORMING PARTY agrees to maintain the Grant Equipment as necessary to keep the Grant Equipment in good condition and functioning at optimum performance during the Activity Life.
- 10.9 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.

### ***Required Insurance***

- 10.10 Unless otherwise expressly agreed by TCEQ, the PERFORMING PARTY must obtain and maintain a commercial policy of property insurance which is sufficient to replace Grant Equipment if it is lost, stolen, or irreparably damaged. This insurance policy must be maintained for the Activity Life.
- 10.11 The PERFORMING PARTY must obtain and maintain policies of commercial automobile liability insurance and workers' compensation or accidental insurance coverage that are no less than the minimum levels set under Title 43 Texas Administrative Code Section 218.16, Insurance Requirements. These insurance policies must be maintained for the Activity Life.
- 10.12 If the PERFORMING PARTY will be purchasing and installing refueling infrastructure under this Contract, the PERFORMING PARTY must obtain and maintain a commercial general liability insurance policy for claims of personal injury and bodily injury, including accidental death, and property damage which may arise from the performance of the Contract. This insurance policy must provide a minimum coverage amount of \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage, or \$2,000,000 if the policy is issued for bodily injury and property damage combined.
- 10.13 If requested by TCEQ, the PERFORMING PARTY shall provide proof of insurance coverage. 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.
- 10.14 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 shall constitute a material breach of this Contract.
- 10.15 Upon the occurrence of a repairable malfunction of or damage to Grant Equipment during the Contract Period, the PERFORMING PARTY will repair and restore the Grant Equipment to the level of optimum performance.
- 10.16 Upon the occurrence of loss, theft, or irreparable damage of the Grant Equipment during the Activity Life, the PERFORMING PARTY will replace the lost, stolen, or damaged Grant Equipment with similar equipment which achieves the same optimum performance or better. The PERFORMING PARTY must replace the Grant Equipment no later than 60 consecutive days from the occurrence of loss, theft, or damage, unless TCEQ expressly agrees to a longer period. Replacement Grant Equipment is subject to all the requirements applicable to Grant Equipment contained in this Contract.

- 10.17 The PERFORMING PARTY shall fully comply with all requirements of any agreements with third parties that have a security interest or similar interest in the Grant Equipment. Repossession, seizure, or any other event where the PERFORMING PARTY loses possession of the Grant Equipment is considered a material breach of this Contract and requires the return of grant funds to the State Trust.
- 10.18 Governmental entities may use an established self-insurance program to satisfy any insurance requirements.
- 10.19 TCEQ reserves the right to require additional insurance coverage during the term of this Contract.

#### ***Assignment***

- 10.20 TCEQ must remain in contractual privity with the entity owning and operating the Grant Equipment in order to enforce the Contract's Grant Activities and Administrative Requirements until the termination of this Contract. Any act by the PERFORMING PARTY that impairs TCEQ's ability to enforce this Contract, including sale of the Grant Equipment, transfer of the Grant Equipment, loss of the Grant Equipment, sale of the PERFORMING PARTY's business interests, or liquidation of the PERFORMING PARTY's assets (including the Grant Equipment), constitutes a material breach of this Contract and requires the return of grant funds to the State Trust.
- 10.21 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.
- 10.22 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 15, including the return of grant funding to the State Trust.
- 10.23 No delegation of the obligations, rights, or interests in the Contract, and no assignment of payments by PERFORMING PARTY will be binding on TCEQ without its written consent, except as restricted by law.

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

- 10.24 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.
- 10.25 The PERFORMING PARTY shall 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.

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

- 10.26 The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the Grant Activities and requirements of the Contract, including any Contract Amendments. The PERFORMING PARTY will document and maintain mileage and location records 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 shall provide for the identification, accumulation, and segregation of allowable and unallowable costs among projects. The PERFORMING PARTY shall also maintain the financial information and data used in the preparation or support of any Request for Reimbursement (direct and indirect), price or profit analysis, and a copy of any cost information or analysis submitted to TCEQ. The PERFORMING PARTY shall 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 shall provide appropriate facilities and equipment for such access and inspection.

10.27 Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity under this Contract and for four (4) years after the Activity Life of equipment under this Contract. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the 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***

10.28 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.

10.29 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.

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

***Personnel***

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

***Safety and Protection***

10.32 Where applicable, the PERFORMING PARTY shall be responsible for requiring employees, contractors, and subcontractors to maintain and supervise all necessary safety precautions and programs in connection with the Grant Activities. The PERFORMING PARTY shall take all necessary precautions to protect the health and safety of the public during performance of the Grant Activities.

***Permits***

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

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

***Data and Publicity***

10.35 All data and other information developed under this Contract may be subject to public disclosure pursuant to the Texas Public Information Act, Texas Government Code Chapter 552. Except to the extent that it is exempted from public access by the Texas Public Information Act, 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.

10.35.1 If the PERFORMING PARTY is claiming that data and information submitted to the TCEQ contains confidential or proprietary information, that information MUST be clearly marked

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

- 10.36 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, shall be furnished at no charge to TCEQ, and shall become the property of TCEQ.
- 10.37 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, shall carry the following or similar notation on the front cover or title page:

**This project is funded in part by the Texas Volkswagen Environmental Mitigation Program Grant from the Texas Commission on Environmental Quality.**

***Accessibility***

- 10.38 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***

- 10.39 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, 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, PERFORMING PARTY shall promptly notify TCEQ.

***Open Meetings***

- 10.40 If the PERFORMING PARTY is a governmental entity, 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***

- 10.41 Upon request by TCEQ, the PERFORMING PARTY shall install, or allow TCEQ or its contractor to install, a prominently placed identifying mark on the Grant Equipment, identifying it as TxVEMP-funded equipment, and containing such other information as TCEQ shall specify. The PERFORMING PARTY may remove the mark upon the expiration of the Activity Life for each Grant Equipment.

**ARTICLE 11. TCEQ’S RESPONSIBILITIES**

- 11.1 The Executive Director of TCEQ will identify a person authorized to give direction to the PERFORMING PARTY and act on behalf of TCEQ.
- 11.2 TCEQ will not supervise, direct or have control or authority over, nor be responsible for, PERFORMING PARTY’s means, methods, techniques, sequences or procedures relating to the implementation project or the Safety precautions and programs incident thereto, or for any failure of PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the Scope of Work. TCEQ will not be responsible for PERFORMING PARTY’s failure to perform or furnish the Scope of Work in accordance with the Contract.
- 11.3 TCEQ shall authorize the payment of reimbursement funds from the State Trust for Grant Activities specified in the Scope of Work and performed in accordance with the requirements of this Contract.

## **ARTICLE 12. DISPOSITION OF REPLACED VEHICLES AND ENGINES**

- 12.1 Unless an alternative disposition method is approved by TCEQ, the PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced by complete destruction or otherwise rendering them permanently inoperable. Standard disposition methods require completely crushing the equipment, including the engine; cutting a 3-inch or larger hole through the engine block on both sides (or otherwise destroying it) and cutting both frame rails in half; or, for airport ground support equipment like pushback tractors only, cutting a 3-inch or larger hole through the engine block on both sides (or otherwise destroying it) and destroying the equipment via a professional metal recycler in such a manner that the equipment cannot be recovered, repurposed, or reused. The structural damage to the equipment must be such that repairs are not possible.
- 12.2 Alternative disposition methods must be approved in writing by TCEQ and documented in the Special 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. 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.
- 12.3 The PERFORMING PARTY shall submit information on TCEQ disposition forms to verify the final disposition of the equipment replaced under this Contract. The PERFORMING PARTY must submit a copy of a Texas Nonrepairable Vehicle Title issued by the Texas Department of Motor Vehicles for the equipment replaced under this Contract. The Texas Nonrepairable Vehicle Title must be submitted with the other required disposition documentation. The final disposition forms shall be submitted prior to or with the Request for Reimbursement.
- 12.4 The PERFORMING PARTY must submit photographs of the equipment being destroyed, both before and after the equipment is destroyed or rendered inoperable. TCEQ must approve the forms and supplemental documentation submitted by the PERFORMING PARTY to meet the disposition requirement. Such approval is at the sole discretion of TCEQ. The PERFORMING PARTY shall provide TCEQ with any clarification and additional documentation as requested by TCEQ to approve disposition.
- 12.5 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 will result in non-payment of the grant funds. This Article also applies to failure to provide properly completed final disposition documentation as required by this Contract.
- 12.6 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 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.
- 12.7 This Article does not apply to refueling infrastructure projects.

## **ARTICLE 13. LONG-TERM MONITORING AND REPORTING**

- 13.1 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.
- 13.2 As a condition of receiving grant funds, the PERFORMING PARTY agrees to operate the Grant Equipment over the Activity Life as specified in the Scope of Work, and to maintain records regarding the Grant Equipment's mileage or hours and location(s) of operation.
- 13.3 If requested by TCEQ during a periodic review, the PERFORMING PARTY shall provide information on the status and completion of grant activities. The PERFORMING PARTY shall provide such information on the designated form or in a format requested by TCEQ, within a reasonable timeframe.
- 13.4 The PERFORMING PARTY agrees that failure to comply with the Scope of Work during the Activity Life and/or submitting documents with false, incorrect, or incomplete information constitutes a material breach of this Contract and shall require the return of the grant funds to the State Trust.

## ARTICLE 14. TERMINATION

- 14.1 Termination of this Contract under any circumstances shall not constitute a waiver of any rights or remedies that TCEQ may exercise under this Contract or otherwise as provided by law.
- 14.2 This Contract may be terminated in whole or in part by TCEQ for its convenience. Circumstances when this may occur include the Trustee's denial of a request for funds, 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.
- 14.2.1 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.
- 14.3 This Contract may be terminated in whole or in part by TCEQ for cause, including a material failure to comply with the requirements of the Contract. TCEQ will provide written notice to the PERFORMING PARTY's Project Representative of its intent to terminate. The PERFORMING PARTY shall have twenty (20) calendar days from the date such notice is sent to cure performance deficiencies.
- 14.3.1 If the PERFORMING PARTY's acts or omissions cause or create an increase of pollutants to an unacceptable level or an increase of health and safety risks, such acts or emissions shall constitute a material failure to comply with the requirements of the Contract.
- 14.3.2 In the event the PERFORMING PARTY sells, transfers, destroys or otherwise loses title, ownership, possession, or control of Grant Equipment during the Contract Period, without prior approval from TCEQ, the Contract may be terminated, and the PERFORMING PARTY will return any grant funds reimbursed for that Grant Equipment to the State Trust.
- 14.4 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. Neither PERFORMING PARTY nor TCEQ shall be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party, could not reasonably be foreseen, and by the exercise of all reasonable due diligence, is unable to be overcome by either party. Force majeure does not include ordinary delays that are common to the industry or location. Upon timely notice by the non-performing party, the time for performance shall 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 such force majeure resulting in impossibility to perform.
- 14.5 If, after termination for cause by TCEQ, it is determined that the PERFORMING PARTY had not materially failed to comply with the Contract, the termination shall be deemed to have been for the convenience of TCEQ.
- 14.6 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.
- 14.7 If, during the performance of the Grant Activities, the PERFORMING PARTY chooses not to complete the Grant Activities and withdraw from the obligations under this Contract, the PERFORMING PARTY may terminate this Contract by providing ten (10) days written notice to TCEQ and returning any reimbursements already received to the Trustee of the State Trust.
- 14.8 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 shall 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.

- 14.9 The PERFORMING PARTY shall carry on the Grant Activities and adhere to the progress schedule at all times, including any disputes or disagreements with TCEQ. No Grant Activities shall 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 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.
- 14.10 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 shall resume the Grant Activities on the date so fixed. The PERFORMING PARTY shall be allowed an extension of the Grant Activities timeline directly attributable to any such suspension, but only to the extent that the PERFORMING PARTY requests such extensions in writing within fifteen (15) days of TCEQ's notice.
- 14.11 The PERFORMING PARTY acknowledges that certain requirements of this Contract shall survive an event of termination. The PERFORMING PARTY agrees to performance of Grant Activities in accordance with the Contract beyond the Contract Period and through the end of the Activity Life of each Grant Activity included in the Scope of Work for which reimbursement has been requested. TCEQ reserves the right to assert any remedies available by law and under this Contract for PERFORMING PARTY's performance of the Grant Activities for the length of the Activity Life of all Grant Activities.

#### **ARTICLE 15. REMEDIES AVAILABLE TO TCEQ**

- 15.1 In accordance with Chapter 2261 of the Texas Government Code, the following Schedule of Remedies applies in the event of the PERFORMING PARTY's breach of the requirements of this Contract; including the substandard performance of Grant Activities or other failure, material or otherwise, to conform to the requirements of the Contract or applicable law:
- 15.1.1 Issue notice of substandard performance or other non-conforming act or omission;
  - 15.1.2 Reject substandard performance and request corrections without charge to TCEQ;
  - 15.1.3 Request and receive return to State Trust of any over payments or inappropriate payments;
  - 15.1.4 Reject reimbursement request and suspend all or part of any payment, pending accepted revision of substandard performance or non-conformity;
  - 15.1.5 Suspend all or part of the Scope of Work and/or payments pending accepted revision of substandard performance or non-conformity;
  - 15.1.6 Terminate the Contract and demand and receive return to State Trust of all unexpended funds and any improperly expended funds;
  - 15.1.7 Demand restitution and return to State Trust of any payments where performance is subsequently determined non-conforming. TCEQ may reduce the amount of grant funds required to be returned by a percentage reflecting the proportion of the total Grant Activities which were properly conducted prior to the breach, as determined by TCEQ.

#### ***Cumulative Remedies***

- 15.2 TCEQ may avail itself of any remedy or sanction provided in this Contract or in law to recover any losses arising from or caused by the PERFORMING PARTY's substandard performance or any material non-conformity with the Contract or the law. The remedies and sanctions available to either party in this Contract shall not limit the remedies available to the parties under law.
- 15.3 The dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the Contract.

#### **ARTICLE 16. INDEMNIFICATION**

- 16.1 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.

- 16.2 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 17. TITLE TO AND MANAGEMENT OF PROPERTY AND EQUIPMENT**

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

#### **ARTICLE 18. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS**

- 18.1 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.
- 18.2 Written Amendment. A Written Amendment allows for material changes to the Contract such as changes to the total Contract Amount, changes to the Request for Reimbursement Deadline and 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.
- 18.3 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 19. STANDARDS FOR THE PERFORMING PARTY'S PERFORMANCE**

- 19.1 In accordance with Texas Government Code Chapter 2261, 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.
- 19.1.1 Quality and Accuracy. Standard: The PERFORMING PARTY's Grant Activities conform to the requirements of this Contract.
- 19.1.2 Timeliness. Standard: The PERFORMING PARTY's Grant Activities are completed on schedule.
- 19.1.3 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.
- 19.1.4 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.
- 19.1.5 Other. Standard: Other factors unique to the type of project, as determined by TCEQ.
- 19.2 TCEQ will monitor the PERFORMING PARTY's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.
- 19.2.1 Exceeds Expectations. The PERFORMING PARTY fully complied with all the standards on a consistent basis.
- 19.2.2 Satisfactory Performance. The PERFORMING PARTY's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.
- 19.2.3 Marginal Performance. The PERFORMING PARTY's performance was acceptable, although a significant number of deficiencies had to be corrected before the Contract requirements could be considered met.
- 19.2.4 Unsatisfactory Performance. The PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

- 19.3 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 shall be wholly within the discretion of TCEQ. The PERFORMING PARTY may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against TCEQ for the evaluation.

## ARTICLE 20. MISCELLANEOUS

- 20.1 In order for this Contract to be effective, all authorized principals of an unincorporated business organization or association must sign the Contract. An agent signing for a corporation must be authorized to sign by the corporation.
- 20.2 Unless authorized in writing by TCEQ in accordance with this Contract, no waiver of any obligation of the PERFORMING PARTY shall bind TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.
- 20.3 The PERFORMING PARTY is not a "vendor" of goods and services within the meaning of Texas Government Code Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this Contract.
- 20.4 By stating at any place in this Contract that any particular noncompliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.
- 20.5 The PERFORMING PARTY's timely performance is essential to this Contract.
- 20.6 Child Support. Under Section 231.006 of the Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state-funded grant or loan. By executing this Contract, the PERFORMING PARTY certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated, and payment may be withheld if this certification is inaccurate.
- 20.7 All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion and acceptance of the Grant Activities, and termination or completion of the Contract until such time as enforcement of such representations, indemnifications, warranties, and guarantees is barred by the applicable statute of limitations.
- 20.8 Subject to the provisions of the *Assignment* subsection under Article 10, General 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.
- 20.9 The parties hereby agree that this Contract does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. No TCEQ personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of TCEQ, goods or services which are not required under the Contract or any conforming amendment.
- 20.10 The PERFORMING PARTY acknowledges and agrees that this Contract has been executed, and will be administered in Travis County, Texas. The PERFORMING PARTY also acknowledges and agrees that any permissible cause of action involving this Contract will arise solely in Travis County, Texas. This provision does not waive the TCEQ's sovereign immunity.
- 20.11 Any provision of the Contract held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon 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.
- 20.12 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 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose or sovereign immunity.

- 20.13 Abortion Funding Limitation - PERFORMING PARTY represents and warrants that payments made by TCEQ to PERFORMING PARTY and PERFORMING PARTY's receipt of appropriated funds under the Contract are not prohibited by Texas Government Code Chapter 2273, *Prohibited Transactions*.
- 20.14 If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to the TCEQ Bankruptcy Program. The PERFORMING PARTY shall 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).
- 20.15 PERFORMING PARTY represents and warrants that it will comply with Section 321.022 of the Texas Government Code which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

— End of General Conditions —

**AUTHORIZED REPRESENTATIVES**

***TCEQ Project Representative***

The individual named below is the TCEQ Project Representative, who is authorized to give and receive communications and directions on behalf of TCEQ. All communications including all payment requests must be addressed to the TCEQ Project Representative or his or her designee.

**Mailing Address:**

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

**Physical Address:**

Ms. Jody Ibarguen  
Texas Commission on Environmental Quality  
Air Grants Division, MC-204  
12100 Park 35 Circle, Bldg. F  
Austin, TX 78753

Telephone No.: (833) 215-TXVW (8989)

Facsimile No.: (512) 239-6161

**PERFORMING PARTY's *Authorized Official***

The individual authorized to sign legal documents on behalf of the PERFORMING PARTY.

**Address:**

Representative's Name  
PERFORMING PARTY's Name  
Address  
(City) (State) (Zip Code)

Telephone No.: ( )

**PERFORMING PARTY's *Project Representative***

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

**Address:**

Representative's Name  
PERFORMING PARTY's Name  
Address  
(City) (State) (Zip Code)

Telephone No.: ( )

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

**— End of Authorized Representatives—**

**SPECIAL CONDITIONS**  
**for**  
**TEXAS VOLKSWAGEN ENVIRONMENTAL MITIGATION PROGRAM**

**ARTICLE 1. SPECIAL CONDITIONS**

The PERFORMING PARTY agrees to these Special Conditions.

*{This Article is not applicable to this project. The Article number is retained for numbering continuity.}*

**— End of Special Conditions —**