

**Texas Commission on Environmental Quality**

**Texas Volkswagen Environmental Mitigation Program (TxVEMP) Contract**

**Contract Signature Page**

<b>Contract Name</b>	<b>Texas Volkswagen Environmental Mitigation Program (TxVEMP)</b>
<b>Contract Number</b>	
<b>PERFORMING PARTY Name:</b>	
<b>PERFORMING PARTY I.D. Number</b>	
<b>Total Contract Amount Not to Exceed</b>	
<b>Contract Effective Date</b>	The Effective Date of this Contract is the date of last signature
<b>Request for Reimbursement Deadline &amp; Contract Expiration Date</b>	April 30, 2027
<b>Activity Life Expiration Date</b>	Five years from final reimbursement date

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.

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

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 (TxVEMP)**

**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 reimbursement payment is issued for each Grant Activity under the grant, continuing for five (5) years afterwards. Upon completion of the 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 that track contract progress and management, including, but not limited to, financial management, reporting, and retention of records. These are distinguished from Grant Activity requirements, which pertain to the specific Grant Activities approved by TCEQ.
- 1.3 Application – the Application for a TxVEMP 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.
- 1.4 Authorized Official – the individual authorized to sign legal documents and requests for reimbursements on behalf of TCEQ or the PERFORMING PARTY, as designated 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 – 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.”
- 1.7 Grant Activity/Activities – activities the PERFORMING PARTY has agreed to perform under this Contract that are detailed in the Scope of Work.
- 1.8 Grant Equipment – the 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 includes insurance-funded replacements for Grant Equipment, which is lost, stolen, or irreparably damaged. The term “Grant Equipment” shall be used interchangeably with “equipment,” “engine,” and “Activity.”
- 1.9 Incremental Costs – defined by Project:
  - 1.9.1 Incremental Costs for Replacement Projects are the eligible costs to purchase the replacement equipment minus the documented scrap value of the equipment being replaced.
  - 1.9.2 Incremental Costs for Repower Projects are the eligible costs to purchase and install the replacement engine and associated equipment minus the documented scrap value of the old engine.
  - 1.9.3 Incremental Costs for Charging Infrastructure are the eligible costs to purchase and install the charging infrastructure and associated equipment.
- 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

federal government agency or entity is not included in this definition and will be treated as a non-governmental entity when determining the maximum reimbursement rate. 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 Contract Signature Page of this Contract. The term PERFORMING PARTY may also be used interchangeably with “grantee” in the Contract Documents.
- 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 Scope of Work of this Contract.
- 1.15 Project Representative – the individual authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications to the PERFORMING PARTY will be addressed to the PERFORMING PARTY’s Project Representative or his or her designee.
- 1.16 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 describing 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 to the Trustee of the State Trust 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 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. A day is considered a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

## **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 TxGMS; (2) TCEQ rules and policies (pertaining to TCEQ contracts and grants); (3) the State Trust Agreement and the Mitigation Plan; (4) the TxVEMP RFGA; and (5) 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 activities described in the Scope of Work. 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 Contract Signature Page.
- 4.2 The Contract Period shall be the period of time from the Contract Effective Date through the Contract Expiration Date listed on the Contract Signature Page of this Contract unless the Contract is otherwise terminated or extended in accordance with its terms.
- 4.3 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 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 shall be resolved by giving precedence to the following in descending order:
  - 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 TxVEMP RFGA (582-25-70256-VW), and any addenda, 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 Contract Effective Date at the sole discretion of TCEQ 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 at the sole discretion of TCEQ.

### **Article 6. Eligible Activities**

- 6.1 The Grant 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. The PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work and in accordance with the Contract. The PERFORMING PARTY acknowledges that failure to complete all Grant Activities may require a return of grant funds to the Trustee of the State Trust.
- 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.

- 6.3.1 If the changes to the Scope of Work result in lower than estimated NO<sub>x</sub> reductions, TCEQ may reduce the grant amount to achieve the same cost per ton from the original Application.
- 6.3.2 If the changes to the Scope of Work result in greater than estimated NO<sub>x</sub> reductions, TCEQ will not reimburse more than the grant amount.
- 6.4 Any costs associated with the Grant Equipment may not have been paid prior to the program opening date as shown on the TxVEMP 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 may substitute a newer model year replacement equipment for the equipment listed in the Scope of Work provided that the substitute equipment meets all eligibility and other requirements, is of the same weight category, is certified to the same or better NO<sub>x</sub> emissions rate, and will result in the same or better NO<sub>x</sub> emissions reductions as the equipment listed. The PERFORMING PARTY must seek written approval from TCEQ for any substitutions in accordance with the process described in the Scope of Work.
- 6.6 The PERFORMING PARTY understands that, in some cases, engines of the same make, model, and model year may be certified to different NO<sub>x</sub> emissions standards.
- 6.7 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 of the Grant Equipment for cost reimbursement purposes.
- 6.8 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. The PERFORMING PARTY understands that all obligations of TCEQ under the Contract are subject to the availability of grant funds from the State Trust and approval of the Trustee.
- 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 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 direct the Trustee of the State Trust to act as Disburser to issue payment to the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with the 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.
- 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 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 Trustee of 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 arm's 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.
- 8.5.4 If the PERFORMING PARTY is a state agency, it must comply with Texas Government Code, Chapter 572.
- 8.5.5 The PERFORMING PARTY is encouraged to provide opportunities for Historically Underutilized Businesses (HUBs) to participate in any procurement and subcontracting under this Contract.
- 8.6 For any goods or services that 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 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 financing 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, the 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 10.3 of the RFGA, including, but not limited to:

8.14.1 *Consulting or Third-Party Preparer (Application Assistance) Fees.* Any fees charged by a person who is not an employee of the PERFORMING PARTY for preparing 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. An equipment vendor or installer who is not the PERFORMING PARTY may include its ordinary, reasonable, and necessary operational costs in its invoice price of the equipment or installation services.

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, TCEQ may not authorize, and the Texas Comptroller may not pay a reimbursement until the debt is satisfied.

#### ***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.

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

- 8.21 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 TCEQ solely to assist it in making payments and that such payee 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."
- 8.21.1 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 9.5 below, to receive grant funds, the following must occur prior to the Request for Reimbursement Deadline:
- 9.1.1 all Grant Equipment costs must have been paid in full by the PERFORMING PARTY with either cash-on-hand or financing;
- 9.1.2 all Grant Equipment must have been received by the PERFORMING PARTY, any work on the Grant Equipment must be completed, and the Grant Equipment must be operational and in final form; and
- 9.1.3 the PERFORMING PARTY must submit and receive approval from TCEQ for the disposition of the replaced equipment or engines as outlined in Article 12.
- 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 or mailed to:
- Texas Commission on Environmental Quality  
Air Grants Division  
MC-204, ATTN: Reimbursement  
PO 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 form.
- 9.5.2 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.
- 9.6 The final Request for Reimbursement form, indicated by signing the Release of Claims section 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 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 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 and sufficient documentation to verify costs are 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.

***Replacement and Repower Project Costs***

- 9.10 Subject to any associated General Condition requirements, for replacement and repower projects, TCEQ will reimburse the PERFORMING PARTY for the Grant Activities listed in the Scope of Work 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.

### ***Charging Infrastructure Costs***

- 9.11 Subject to any associated General Condition requirements, for charging infrastructure associated with replacement or repower projects, TCEQ will reimburse the PERFORMING PARTY for no more than the Maximum Reimbursement Rate by entity type of the eligible Incremental Costs for Charging Infrastructure.

### ***Required Forms***

- 9.12 In order to seek reimbursement, the PERFORMING PARTY, must submit fully completed and legible:
- 9.12.1 Request for Reimbursement Form;
  - 9.12.2 Release of Claims (only with the final Request for Reimbursement); and
  - 9.12.3 documentation of payment for all costs for which reimbursement is requested.

### ***Required Documentation***

- 9.13 Documentation for a reimbursable cost shall:
- 9.13.1 be legible;
  - 9.13.2 identify the specific piece of equipment received or the services provided;
  - 9.13.3 clearly identify the vendor or subcontractor who provided the equipment or services;
  - 9.13.4 confirm the reimbursable amount listed on the form; and
  - 9.13.5 provide proof of payment for all costs for which reimbursement is requested.
- 9.14 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.
- 9.15 Canceled checks and bank confirmation of electronic funds transfers represent the preferred types of documentation for purposes of this section; however, at TCEQ's discretion, the PERFORMING PARTY may substitute/attach other records or documents that provide sufficient evidence of payment.
- 9.16 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.
- 9.17 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.
- 9.18 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.
- 9.19 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 written notice to TCEQ within three (3) business days if there is any material change in these representations or certifications.
- 10.2.1 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.

### ***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. The PERFORMING PARTY shall be responsible for ensuring that the implementation of the Grant Activities complies with the terms and conditions of this Contract, including requiring that applicable terms and conditions of this Contract be incorporated into subcontracts, and for following industry-standard practices for any infrastructure construction, such as requiring subcontractor bonds and sufficient insurance.

#### ***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 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 are made at the PERFORMING PARTY's 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, 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 the 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 The PERFORMING PARTY must obtain and maintain a commercial policy of property insurance that is sufficient in coverage amounts to fully replace Grant Equipment if it is lost, stolen, or irreparably damaged. This insurance policy must be maintained for the Activity Life.
- 10.11 For any vehicles listed in the Scope of Work, or any other owned, hired, and non-owned vehicles used in performing this Contract, the PERFORMING PARTY must obtain and maintain a policy of commercial automobile liability insurance that is no less than the minimum levels set under Title 43 Texas Administrative Code, Section 218.16, Insurance Requirements. This insurance policy must be maintained for the Activity Life.
- 10.12 The PERFORMING PARTY must obtain and maintain coverage to secure the payment of compensation to injured employees as defined in the Texas Worker's Compensation Act.
- 10.13 If the PERFORMING PARTY will be purchasing and installing charging 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 this 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. TCEQ and its officers and employees must be included as named additional insureds with a waiver of subrogation in favor of TCEQ, its officers, and employees.

- 10.14 Commercial of 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.
- 10.15 If requested by TCEQ, the PERFORMING PARTY shall 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.
- 10.16 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.
- 10.17 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.
- 10.18 Upon the occurrence of loss, theft, or irreparable damage of the Grant Equipment during the Activity Life, the PERFORMING PARTY will provide prompt notice to TCEQ and will replace the lost, stolen, or damaged Grant Equipment with similar equipment that achieves the same Optimum Performance or better. The PERFORMING PARTY must replace the Grant Equipment no later than sixty (60) consecutive days from the occurrence of loss, theft, or damage. Failure to timely replace the Grant Equipment may be considered a material breach of this Contract. Replacement Grant Equipment is subject to all the requirements applicable to Grant Equipment contained in this Contract.
- 10.19 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 Trustee of the State Trust.
- 10.20 Governmental entities may use an established self-insurance program to satisfy any insurance requirements.
- 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 and requires the return of grant funds to the Trustee of the State Trust.
- 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 15, including the return of grant funding to the Trustee of the State Trust.

- 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 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.
- 10.28 If the PERFORMING PARTY expends more than \$750,000 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 accounting standards (GAGAS). 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 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 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 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, 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.
- 10.30 Records under this Article shall 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 Project 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 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***

- 10.34 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***

- 10.35 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***

- 10.36 Unless otherwise provided in the Contract, the PERFORMING PARTY shall 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 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***

- 10.38 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 (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 submitted 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. Information contained in this Contract and vouchers, communications, and other information sent between TCEQ and the PERFORMING PARTY related to the performance of this Contract or work performed on behalf of TCEQ is considered public information under § 552.1101(b) of the

Texas Government Code regardless of whether the PERFORMING PARTY identifies such information 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, shall be furnished at no charge to TCEQ, and shall 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, shall carry the following or similar notation on the front cover or title page:

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

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

- 10.41 The PERFORMING PARTY shall not use funds provided under this Contract to support lobbying or political activity in accordance with Texas Government Code, Sections 403.1067 and 556.0055.

#### ***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 shall promptly notify TCEQ.

#### ***Open Meetings***

- 10.44 If the PERFORMING PARTY is a governmental entity, 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 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 Equipment and Engines**

- 12.1 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. Standard disposition requires making a 3-inch or larger hole in the engine block and cutting both frame rails other main structural components of the equipment in half, or by completely crushing the equipment, including the engine. The structural damage to the equipment must be such that repairs are not possible.
- 12.1.2 If applicable, locomotive replacement projects may maintain the frame rails and wheels of the original locomotive as part of the standard disposition method.
- 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 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 of 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 charging 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, 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 time frame.
- 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 Trustee of 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 omissions 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 Trustee of the State Trust.
- 14.4 This Contract may be terminated in whole or part by TCEQ if any delay or failure 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.
- 14.4.1 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 Contract Period, 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 all or a pro-rated share of the 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 (90) days by TCEQ or under an order of court or other public authority, then the PERFORMING PARTY's sole and exclusive remedy is to extend the Grant Activities timeline.
- 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 including, but not limited to, maintenance of records, 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 Texas Government Code, Chapter 2261, 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 the Trustee of the State Trust 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 Grant Activities and/or payments pending accepted revision of substandard performance or non-conformity;
  - 15.1.6 Reject reimbursement request and withhold all or partial payments;
  - 15.1.7 Terminate the Contract and demand and receive return to the Trustee of the State Trust all unexpended funds and any improperly expended funds;
  - 15.1.8 Demand restitution and return to the Trustee of the State Trust 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 that 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 Texas Government Code, Chapter 2009, 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.
- 17.2 The PERFORMING PARTY may develop and use its own property management systems. The property management system used by the PERFORMING PARTY must meet the requirements set forth in this Section.
- 17.2.1 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 TCEQ 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.
- 17.2.2 A physical inventory of all equipment acquired or replaced under this Contract shall be conducted no less frequently than once every two years during the Contract Period and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY shall include adequate safeguards for replacement value and to prevent loss, damage, or theft of the Grant Equipment.

#### **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. TCEQ will not allow amendment to the Contract if such changes would reduce the total project score.
- 18.2 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 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 Texas Family Code, Section 231.006, 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 of the 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 contract or conduct.
- 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 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. The PERFORMING PARTY represents and warrants that payments made by TCEQ to the PERFORMING PARTY and the PERFORMING PARTY's receipt of funds under the Contract are not prohibited by Texas Government Code, Chapter 2273, *Prohibited Transactions*.
- 20.14 If the PERFORMING PARTY is a local entity, it certifies that it has not received a final judgment determination finding it intentionally adopted or enforced a policy that prohibited or discouraged the enforcement of a public camping ban in an action brought by the attorney general under Local Government Code, Section 364.003. If the PERFORMING PARTY is currently being sued under the provisions of Local Government Code, Section 364.003, or is sued under this section at any point during the duration of this grant, the PERFORMING PARTY must immediately disclose the lawsuit and its current posture to TCEQ.
- 20.15 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 the distribution list for bankruptcy court documents. The PERFORMING PARTY's notice to the bankruptcy program must include the appropriate contract number(s).

20.16 The PERFORMING PARTY represents and warrants that it will comply with Texas Government Code, Section 321.022, 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 regarding contractual matters must be addressed to the TCEQ Project Representative or his or her designee.

#### **Mailing Address:**

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

#### **Physical Address:**

Ms. Jody Ibargüen  
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)

Email Address: VWSettle@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.

#### **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 (TxVEMP)**

**Article 1. Special Conditions**

The PERFORMING PARTY agrees to these Special Conditions.

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

**— End of Special Conditions —**

**Scope Of Work  
For  
Texas Volkswagen Environmental Mitigation Program (TxVEMP)**

**Freight Switcher Replacement with Charging Infrastructure Project**

The following Scope of Work contains information on each Grant Activity 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 Numbers**

- 1.1 The project under this Contract is assigned the following project number 2025-xx-xxxx-VW. Each Grant Activity under this Contract is assigned the Activity Number(s) listed in the tables below and identified by the Equipment ID number. The PERFORMING PARTY shall use the assigned Activity Number(s) when tracking and reporting to TCEQ.

Activity Number	Equipment Description

- 1.2 If the purchase and installation of charging infrastructure is included in this project, the infrastructure Grant Activity under this Contract is assigned the Activity Number(s) in the table below. The PERFORMING PARTY shall use the assigned Activity Number(s) when tracking and reporting to TCEQ.

Activity Number	Infrastructure Description

**Article 2. Emissions Reductions and Cost-Effectiveness**

- 2.1 For purposes of this Contract, the emissions reduction and cost per ton projections provided in this Article shall apply.

- 2.2 TCEQ has calculated the projected cost per ton of the project as:

«CALC_COST_PER_TON_AMT»	Project Cost Per Ton of NO <sub>x</sub> Reduced
-------------------------	---

- 2.3 TCEQ has calculated the projected NO<sub>x</sub> emissions reductions and cost per ton for each Activity as follows:

Activity Number	Total Tons of NO <sub>x</sub> Reduced	Annual Tons of NO <sub>x</sub> Reduced	Activity Cost Per Ton

- 2.4 TCEQ has calculated the projected NO<sub>x</sub> emissions reductions for the project as:

«CALC_TOT_NOXR_NUM»	Total Tons of NO <sub>x</sub> Reduced
---------------------	---------------------------------------

«CALC_ANN_NOXR_NUM»	Annual Tons of NO <sub>x</sub> Reduced
---------------------	--

- 2.5 The PERFORMING PARTY is responsible for performing the Grant Activities necessary to achieve the calculated reductions in NO<sub>x</sub> emissions.

### Article 3. Activity Life

- 3.1 The duration of the Activity Life for Grant Activities performed under the Contract is 5 years.
- 3.2 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 Conditions of this Contract.

### Article 4. Annual Usage

- 4.1 The PERFORMING PARTY agrees to operate the Grant Equipment for a minimum of 51% of the annual use during the Activity Life in the Priority Area and operate the Grant Equipment using the unit of measurement as listed below.

Activity Number	Priority Area	Unit of Measurement (miles, hours, gallons)

- 4.2 The Priority Areas identified in Section 4.1 of this Article are listed below.
- 4.2.1 **Dallas-Fort Worth Area:** Collin, Dallas, Denton, Ellis, Hood, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties
- 4.2.2 **Houston-Galveston-Brazoria Area:** Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties
- 4.2.3 **San Antonio Area:** Bexar, Comal, Guadalupe, and Wilson Counties
- 4.2.4 **Austin Area:** Bastrop, Caldwell, Hays, Travis, and Williamson Counties
- 4.2.5 **El Paso County Area:** El Paso County
- 4.2.6 **Bell County Area:** Bell County
- 4.2.7 **Beaumont-Port Arthur Area:** Hardin, Jefferson, and Orange Counties
- 4.3 If the purchase and installation of charging infrastructure is included in this project, the PERFORMING PARTY agrees to own and operate the infrastructure Grant Activity throughout the Activity Life at the location listed below.

Activity Number	Facility Address	Facility County

4.4 Changes to the Priority Area and/or facility location may not be made without prior approval from TCEQ.

### Article 5. Equipment Being Replaced

- 5.1 The PERFORMING PARTY agrees to replace the following equipment and complete the disposition of the equipment being replaced in accordance with Article 12 of the General Conditions:

Activity Number	Equipment Description	Equipment Year	Equipment ID	Engine Year	Engine ID	NO <sub>x</sub> Rate

### Article 6. Grant Equipment

- 6.1 The PERFORMING PARTY, as part of its responsibilities to TCEQ as stated in the General Conditions, shall acquire the Grant Equipment listed in the table below.

Activity Number	Equipment Description	Fuel Type	NO <sub>x</sub> Rate

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

- 6.2.1 The Grant Equipment must match the Equipment Description in the table above.
- 6.2.2 The Grant Equipment must have the same fuel type as stated in the table above.
- 6.2.3 The Grant Equipment must be of the same type and intended for use in the same application or vocation as the equipment being replaced.
- 6.2.4 The Grant Equipment must have an engine model year no more than one year older than the calendar year in which it was purchased.
- 6.2.5 Government-owned Equipment must be replaced with any new diesel or alternative fuel engines or all-electric (including Generator Sets) freight switcher.
- 6.2.6 Non-government-owned Equipment must be replaced with any new all-electric (including Generator Sets) freight switcher.
- 6.2.7 The Grant Equipment must be certified to meet the applicable Environmental Protection Agency (EPA) emissions standards as published in the Code of Federal Regulations (CFR) for the engine model year in which the Eligible Freight Switcher Mitigation Action occurs.
- 6.2.8 Locomotive replacement projects include maintaining the frame rails and wheels of the original locomotive.

6.3 If the purchase and installation of charging infrastructure is included in this project, the PERFORMING PARTY shall acquire the charging infrastructure listed in the table below.

Activity Number	Charging Infrastructure	Fuel Type	Number of Dispensing Units

- 6.3.1 The charging infrastructure must provide, at a minimum, charging capacity to the Grant Equipment described in 5.1 above.
  - 6.3.2 The PERFORMING PARTY may expand existing onsite charging infrastructure to accommodate the Grant Equipment described in 5.1 above in lieu of installing new service.
  - 6.3.3 The PERFORMING PARTY must be the owner of the site where the charging infrastructure will be installed or be legally authorized to install and operate the charging infrastructure at the site for the duration of the Activity Life.
  - 6.3.4 The charging infrastructure must be purchased by the PERFORMING PARTY and not leased.
- 6.4 TCEQ must approve any changes to the Grant Equipment that are different from the criteria shown in the table above. If it is unclear whether the Grant Equipment is different from the criteria above, TCEQ will make the final determination.
- 6.4.1 The PERFORMING PARTY must submit any changes in writing to TCEQ. TCEQ provides a Contract Amendment Request form for this purpose.
  - 6.4.2 TCEQ's approval of a change to the Grant Equipment will be documented in an Amendment or Minor Change.
- 6.5 Grant Equipment changes must be approved by TCEQ before the PERFORMING PARTY may submit a Request for Reimbursement. TCEQ will not process a Request for Reimbursement until such changes are approved.
- 6.6 The PERFORMING PARTY remains responsible for purchasing 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 purchase of equipment that is later determined to not be eligible.

#### **Article 7. Activity Grant Amount**

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

<b>Activity Number</b>	<b>Activity Grant Amount</b>

7.2 Regardless of the maximum Grant Amount for each Activity, reimbursement is subject to the requirements of Articles 1.10 and 9.10, General 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) no more than seventy-five percent (75%) of eligible incremental costs for the Activity if the PERFORMING PARTY is a non-governmental entity, or one-hundred percent (100%) of the eligible incremental costs for the Activity if the PERFORMING PARTY is a governmental entity.

7.3 The maximum Activity Grant Amounts and the percentage of incremental costs may be adjusted downward in accordance with the Contract.

#### **Article 8. Charging Infrastructure Activity Grant Amount**

8.1 The maximum Grant Amount that may be reimbursed for each charging infrastructure Activity is listed below.

<b>Activity Number</b>	<b>Activity Grant Amount</b>

8.2 Regardless of the maximum Grant Amount for each Activity, reimbursement is subject to the requirements of Articles 1.11 and 9.11, General 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) no more than seventy-five percent (75%) of eligible incremental costs for the Activity if the PERFORMING PARTY is a non-governmental entity, or one-hundred percent (100%) of the eligible incremental costs for the Activity if the PERFORMING PARTY is a governmental entity.

8.3 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 —**