

**TCEQ GRANT AGREEMENT  
for Emissions Reduction Incentive Grant**

**THIS AGREEMENT** is entered by and between the Texas Commission on Environmental Quality (hereinafter called TCEQ) and «Legal Name of Applicant» (hereinafter called PERFORMING PARTY and includes all such parties, whether one or more).

The TCEQ and the PERFORMING PARTY, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. GRANT ACTIVITIES**

1.1. Subject to the provisions of this Article, the PERFORMING PARTY agrees to complete all Grant Activities as described in the Approved Application and Approved Application Summary and in accordance with the Contract Documents.

1.2. The TCEQ may accept partial performance, at its sole discretion, and reimburse the PERFORMING PARTY for only those Grant Activities that are completed. For projects where a cost-effectiveness determination is required, if the changes to the Grant Activities result in an overall project cost-effectiveness that is higher than was originally approved for the project, the TCEQ is not obligated to reimburse the PERFORMING PARTY at the amount originally authorized for each Grant Activity. The TCEQ may reimburse authorized expenses at a lesser amount in order to achieve the same cost-effectiveness as was originally approved for the project, or may accept a higher cost-effectiveness for the project, as long as the cost-effectiveness does not exceed \$13,000 per ton of Oxides of Nitrogen (NO<sub>x</sub>) emissions estimated to be reduced.

1.3. If the PERFORMING PARTY does not complete any of the Grant Activities prior to the termination date of this Agreement, and no reimbursement of expenses has been provided to the PERFORMING PARTY, this Agreement will terminate with no obligation to either party.

**ARTICLE 2. PURPOSE**

The purpose of this Agreement is to provide a grant to financially assist the PERFORMING PARTY in implementing the Grant Activities.

**ARTICLE 3. MAXIMUM AMOUNT OF REIMBURSEMENT**

3.1. The TCEQ will reimburse PERFORMING PARTY's eligible costs of implementing the Grant Activities under the conditions in the Contract Documents, not to exceed the maximum amount of «Grant Amount Spelled Out» («Calculated Grant Amount»), unless the parties amend this amount in accordance with the Contract Documents.

3.2. Reimbursement is limited to costs determined by the TCEQ in its sole discretion as eligible costs under the conditions in the Contract Documents.

3.3. The maximum amount of reimbursement is not a guarantee of payment. The actual amount of reimbursement may be less than the maximum and will be determined under the conditions of the Contract Documents.

#### **ARTICLE 4. CONTRACT TIMES**

4.1. This Agreement will commence on the Effective Date of the Agreement. For purposes of availability of funding and completion of TCEQ's obligations to reimburse the PERFORMING PARTY for authorized expenses, this Agreement shall terminate on August 31, 2008, or upon payment of reimbursement for completion of all grant activities, whichever is earlier, unless otherwise terminated by an act performed in accordance with the Contract Documents.

4.2. As provided for in the Contract Documents, the PERFORMING PARTY agrees and obligates to performance in accordance with the Contract Documents beyond the termination date of this Agreement and through the end of the Activity Life of each Activity included in the Approved Application.

4.3. For repower activities, eligible costs submitted for reimbursement under a grant may not have been incurred prior to February 28, 2006 and must be approved by the TCEQ.

4.4. For replacement projects, the vehicle or piece of equipment being purchased under a grant may not have been acquired prior to December 15, 2006, unless otherwise approved by the TCEQ.

4.5. This Agreement shall immediately terminate at the end of any state fiscal year for which the Texas Legislature fails to appropriate and/or to provide sufficient funds in the subsequent fiscal year necessary to perform this Agreement.

#### **ARTICLE 5. NOTICE TO PROCEED**

5.1. The Performing Party understands, and agrees to, the provisions of this Article.

5.1.1. The TCEQ's funding for the reimbursement grants described in this Agreement may currently be unavailable or uncertain and the amount of funding may be unknown. Efficient use of public funds may be achieved by entering into agreements with potential grantees in which reimbursements are contingent on availability of funds and a subsequent selection by the TCEQ. If funding for a reimbursement grant becomes available, the TCEQ, in its sole discretion, will select which of the contingent agreements will receive reimbursement and will issue a Notice to Proceed for any selected project.

5.1.2. The PERFORMING PARTY may begin the Grant Activities, at its own risk, prior to receiving a Notice to Proceed. However, regardless of the availability of funding, if this Agreement is not selected and a Notice to Proceed is not issued, the TCEQ will not provide reimbursement for the cost of the Grant Activities. Either party may terminate this Agreement prior to issuance of a Notice to Proceed, with no further obligation under this Agreement. If this

Agreement is selected, the TCEQ will issue to the PERFORMING PARTY a Notice to Proceed, after which all other obligations and provisions of this Agreement shall apply.

5.1.3. Regardless of selection of this Agreement and the issuance of the Notice to Proceed, the reimbursement of the costs of the Grant Activities is subject to all other requirements of this Agreement. This Agreement does not create an entitlement to receive state funds and all payments are solely within the discretion of the TCEQ.

5.2. This Agreement may be entered into before the completion of the Approved Application. The TCEQ reserves the right to withhold issuance of the Notice to Proceed until the Approved Application is completed and incorporated into this Agreement. Completion and incorporation of the Approved Application in no way obligates TCEQ to issue the Notice to Proceed.

## **ARTICLE 6. REIMBURSEMENT PROCEDURES**

6.1. The PERFORMING PARTY will submit requests for reimbursement in accordance with the conditions in the Contract Documents.

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

6.3. 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 Agreement.

## **ARTICLE 7. LEGAL REQUIREMENTS**

7.1. The PERFORMING PARTY must maintain sufficient property insurance for the repair or replacement of any Grant Equipment for the Activity Life as required by the Contract Documents, unless otherwise expressly agreed by the TCEQ.

7.2. Any insurance proceeds received by or on behalf of the PERFORMING PARTY under an insurance policy due to the damage or destruction of a low emissions engine or other Grant Equipment must be utilized to acquire an equivalent or better low emissions engine or other Grant Equipment or be paid to the TCEQ.

7.3. At the sole discretion of the TCEQ, the PERFORMING PARTY will return to the TCEQ any reimbursement in proportion to any loss of emission reductions compared with the volume of emission reductions that was projected in awarding the grant.

7.4. Any notice issued pursuant to this Agreement shall be addressed to the respective party's Authorized Project Representative, or at such other address as they have theretofore specified by written notice. Such notices shall be sent by certified mail, return receipt requested, or shall be delivered in hand

and a receipt provided thereof. Any notice or other written communication shall be considered delivered upon date of receipt.

7.5. In order for this Agreement to be effective, all authorized principals of an unincorporated business organization or association must sign the Agreement. An agent signing for a corporation must be authorized to sign by the corporation.

## **ARTICLE 8. FUNDING, LEGAL AUTHORITY AND LIABILITY**

8.1. This Agreement and all claims, suits or obligations arising under or related to this Agreement are subject to and limited to those funds which are both: 1) appropriated by the Texas Legislature for the purposes of this Agreement and 2) actually received and deposited into an account of the treasury dedicated to the TCEQ for the purposes of this Agreement.

8.2. Any state funds provided are appropriated to TCEQ under the Appropriations Act (House Bill 1) of the 79th Texas Legislature and expenditure is authorized by Chapter 386, Texas Health and Safety Code.

8.3. This contract is entered into by and between the TCEQ and the PERFORMING PARTY pursuant to Chapter 386, Texas Health and Safety Code. Further authority is contained in the Texas Water Code, Chapter 5, Subchapter D, Section 5.124 (Authority to Award Grants) and Texas Water Code, Section 5.229, pertaining to the TCEQ's general authority to enter contracts.

## **ARTICLE 9. REPRESENTATIONS**

The PERFORMING PARTY hereby ratifies and attests to all representations in the Approved Application and deliverables it has provided to the TCEQ during the proposal process and agrees to give prompt written notice to the TCEQ if there is any material change in these certifications or deliverables.

## **ARTICLE 10. MISCELLANEOUS**

Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

## **ARTICLE 11. CONTRACT DOCUMENTS**

11.1. The Contract Documents which comprise the entire Agreement between TCEQ and PERFORMING PARTY are (in order of precedence in the event of conflicts):

- 11.1.1. The TCEQ Grant Agreement for Emissions Reduction Incentive Grants
- 11.1.2. The General Conditions for Emissions Reduction Incentive Grants
- 11.1.3. The Guidelines for Emissions Reduction Incentive Grants (RG-388)
- 11.1.4. The Special Conditions for Emissions Reduction Incentive Grants
- 11.1.5. The Approved Application Summary
- 11.1.6. The Approved Application

11.1.7. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: all written Notices to Proceed, Amendments, and other documents amending, modifying or supplementing the Contract Documents pursuant to the General Conditions.

11.2. The information and data provided in the original application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Approved Application (a Contract Document) and hereby ratifies, adopts, and agrees to all such alterations.

11.3. There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified, or supplemented only as provided in the General Conditions.

## **ARTICLE 12. AUTHORIZED REPRESENTATIVES**

### ***TCEQ Project Representative***

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

**Mailing Address:**

Ms. Lynne Haase  
Texas Commission on Environmental Quality  
Air Quality Division  
MC-204  
P.O. Box 13087  
Austin, TX 78711-3087  
Telephone No.: 512/239-4900  
Facsimile No.: 512/239-0077

**Physical Address:**

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

### ***PERFORMING PARTY Project Representative***

12.2. The individual named in the Approved 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, original contracts and related documents, and written correspondence to the PERFORMING PARTY will be addressed and delivered to the PERFORMING PARTY Project Representative or his or her designee.

### ***Designated Location for Records Access and Review***

12.3. The PERFORMING PARTY designates the physical location identified in the Approved Application for record access and review pursuant to any applicable provision of this contract. IN WITNESS WHEREOF, TCEQ and PERFORMING PARTY have signed three (3) originals of this Agreement. One original has been delivered to PERFORMING PARTY and two originals have been delivered to TCEQ.

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The Effective Date of this Agreement is the date on which the Agreement is signed by the last of the parties to sign.

|   |
|---|
| <b>Texas Commission on Environmental Quality<br/>(TCEQ)</b> |
| By:<br><br>Authorized Signature                             |
| Susana M. Hildebrand, P.E.<br>Printed name                  |
| Director, Air Quality Division<br>Title                     |
| <br><br>Date of Signature                                   |

|   |
|---|
| <b>«Legal_Name_of_Applicant»<br/>(PERFORMING PARTY)</b> |
| By:<br><br>Authorized Signature                         |
| <br><br>Printed name                                    |
| <br><br>Title   |
| <br><br>Date of Signature                               |

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**GENERAL CONDITIONS**  
**for**  
**Emissions Reduction Incentive Grant**

**ARTICLE 1. DEFINITIONS**

Unless defined herein, terms in this Agreement and Contract Documents will have the meanings provided in the *Uniform Grant Management Standards (UGMS)*. The following terms have the meanings indicated.

1.1. *Activity Life* - the period established by the TCEQ and designated in the Approved Application, that is used to determine the emissions reductions and cost effectiveness of the activity. The start date for the Activity Life will be established by the TCEQ. The TCEQ will notify the PERFORMING PARTY of the Activity Life start and end dates for each activity upon completion of all reimbursements under this Agreement and submission by the PERFORMING PARTY and acceptance by TCEQ of the final disposition verification forms, if required. For replacement and repower activities, the TCEQ will normally set the start date of the Activity Life on the date the TCEQ receives notification that the vehicle, equipment, and/or engine being replaced was disposed of. For other types of activities, the start date will normally be set as the date on which the grant-funded purchases are completed and the reduced-emission vehicle, equipment, engine, retrofit device, and/or infrastructure were placed into service. Where applicable under the provisions of this Agreement, references to the Activity Life for a Demonstration of New Technology Project will be considered the same as the term of the Grant Activities and this Agreement.

1.2. *Administrative Requirements* - means those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from Grant Activities requirements, which concern matters that pertain to the specific Grant Activities approved by TCEQ

1.3. *Annual Usage* - the use factor designated by the TCEQ in the Approved Application, based on either the hours of operation, miles traveled, or fuel consumption.

1.4. *Approved Application* - the application for emissions reduction incentive grant submitted by the PERFORMING PARTY and approved by the TCEQ, including any amendments or supplemental conditions added to the application in order for it to be approved. An Approved Application may include one or more Supplemental Activity Application Forms, which pertain to the individual activities to be conducted under the grant.

1.5. *Baseline Cost* - a specific amount designated by the TCEQ in the Approved Application to reflect the costs that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the provisions of the *Guidelines for the Emissions Reduction Incentive Grants (RG-388)*.

1.6. *Contract Documents* - the contract documents are composed of the TCEQ Grant Agreement for Emissions Reduction Incentive Grants, the General Conditions for Emissions Reduction Incentive Grants, the *Guidelines for Emissions Reduction Incentive Grants*, the Special Conditions for Emissions Reduction Incentive Grant, the Approved Application Summary, the completed Approved Application, and any amendments to those documents. Together, the Contract Documents form the contractual agreement between the parties.

1.7. *Contract Amount* - the maximum amount of funds which may be reimbursed by the TCEQ to the PERFORMING PARTY for completion of the Grant Activities in accordance with the Contract Documents.

1.8. *Contract Period* - the number of days or dates stated in the Agreement to complete the Grant Activities so that final payment is appropriate.

1.9. *Effective Date of the Agreement* - the date indicated in the Agreement on which the Agreement becomes effective; but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.10. *Eligible Counties* - the counties designated as affected counties in §386.001(2), Texas Health and Safety Code, and the additional counties included in a non-attainment area designated by the TCEQ. The eligible counties are listed in the *Guidelines for the Emissions Reduction Incentive Grants* (RG-388).

1.11. *Final Completion* - the Grant Activities are completed in the judgment of TCEQ.

1.12. *Grant Activity/Activities* - each separate lease, purchase, replacement, repower, retrofit, add-on, purchases of qualifying fuel, purchase and installation of infrastructure, process and technology development and utilization, and related goods and services described in the Approved Application, including each separate Supplemental Activity Application Form that may be attached to the application.

1.13. *Grant Equipment* - the equipment, real property, vehicles, qualifying fuel, infrastructure, processes and technology and the related goods and services in a Grant Activity for which the cost of purchase, lease, or utilization is reimbursed by the TCEQ under the Agreement. The term includes replacements for the Grant Equipment which is lost, stolen, or irreparably damaged.

1.14. *Incremental Costs* - the cost of an approved activity less a baseline cost that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the provisions of the *Guidelines for the Emissions Reduction Incentive Grants*.

1.15. *Intellectual Property* - (1) any and all inventions, discoveries, improvements, or creations for which copyright, trade secret, patent or other proprietary rights may be acquired, (2) any photographs, graphic designs, plans, drawings, specifications, computer programs, computer files, documentation, technical reports, operating manuals, or other materials, and (3) any other work fixed in any tangible medium of expression which can be perceived, reproduced, or otherwise communicated for which copyright, trade secret, patent or other proprietary rights may be acquired.

1.16. *Intellectual Property Rights* - patent, trademarks, trade secret rights, confidential information rights or any other proprietary rights to which a person may be entitled or may actually possess. Intellectual Property Rights include all rights of ownership and original authorship throughout the world.

1.17. *Intracoastal Waterway* - The intracoastal waterway of Texas, as designated by official maps and charts published by the State of Texas.

1.18. *Minor Change* - a written document which provides for minor changes in the work in accordance with these General Conditions, but which does not involve a change in the Contract Amount or the Contract Period.

1.19. *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, and it plays a major role in the formation of ground-level ozone in the atmosphere through a complex series of reactions with volatile organic compounds (VOCs).

1.20 *Notice to Proceed* - A written notice given by the TCEQ to the PERFORMING PARTY that confirms that adequate funding is available to support the Agreement.

1.21. *Optimum Performance* - The level of performance at which Grant Equipment functions in order to achieve the anticipated emissions reductions.

1.22. *Project Life* - the period established by the TCEQ, based on the longest-running Activity Life of the Grant Activities under this Agreement, and used to determine the combined emissions reductions and cost-effectiveness for all of the activities funded under this Agreement. However, for Demonstration of New Technology Projects, the Project Life is the Contract Period.

1.23. *Project Representative* - the Project Representative of the TCEQ and the PERFORMING PARTY, as designated in writing elsewhere in the Agreement. All communications, original contracts and related documents, and written correspondence to the PERFORMING PARTY will be addressed and delivered to the PERFORMING PARTY Project Representative or his or her designee.

1.24. *Repower* - replacement of an existing diesel engine with a different engine, according to the criteria of the *Guidelines for the Emissions Reduction Incentive Grants*.

1.25. *State* - means the State of Texas.

1.26. *Termination* - means a permanent end and cessation of the Agreement either because the Contract Period has expired or because all requirements of this Agreement are completed within the sole discretion of the TCEQ or finally because the Agreement is ended by action of the TCEQ for cause or for convenience. The *Date of Termination* is the date of expiration of the Contract Period, or the date of

completion all requirements of this Agreement, or the effective date of action by the TCEQ ending the Agreement for cause or for convenience.

1.27. *TCEQ* - the Texas Commission on Environmental Quality.

1.28. *Written Amendment* - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an addition, deletion or revision in the work, or an adjustment in the Contract Amount or the Contract Period, issued on or after the Effective Date of the Agreement.

## **ARTICLE 2. GOVERNING STANDARDS**

This Agreement is subject to: (1) Chapter 386, Texas Health and Safety Code, (2) the Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Uniform Grant and Contract Management Standards for State Agencies, 1 Texas Administrative Code, Section 5.141 et seq., (3) the *Guidelines for the Emissions Reduction Incentive Grants* (RG-388) and (4) Appropriations Act of the 79th Texas Legislature pertaining to appropriation of funds to TCEQ for grants, etc. and grants by state agencies; (5) Texas Government Code Chapter 2261 (pertaining to cost reimbursement contracts); (6) Local Government Code Chapter 391 and implementation rules and of the Governors office of Budget and Planning (pertaining to costs for entities defined as Councils of Government, etc); (7) (Texas Government Code Section 556.0055 (pertaining to lobbying); (8) *TCEQ Allowable Expenditure Guidelines* (pertaining to allowable costs for cost reimbursement contracts and grants); (9) Rules and guidelines of the office of the Governor of Texas (implementing Local Government Code Chapter 391); (10) TCEQ rules and policies (pertaining to TCEQ contracts and grants); and other applicable Federal and State rules and statutes.

## **ARTICLE 3. ELIGIBILITY FOR COST REIMBURSEMENT**

3.1. The TCEQ will reimburse the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all requirements. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are the reasonable, necessary, actual, and allowable costs of implementing the Grant Activities approved by the TCEQ in the Approved Application. Costs must be included in the Approved Application to be eligible for reimbursement. Determinations of eligibility for reimbursement are solely within the discretion of the TCEQ.

### ***Procurement***

3.2. The Performing Party agrees to follow all the requirements of the Uniform Grant Management Standards (UGMS) just as if Performing Party were a covered local government grantee (except that the applicable cost principles are those listed as corresponding to Performing Party's classification in UGMS, Part III State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart C, \_\_\_.22 Allowable Costs, e.g., for-profit organization, private non-profit, etc.). The UGMS document is located on the internet at the following address:

<http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>

### ***Reasonable Costs***

3.3. To be reimbursable, a cost must be reasonable. Reasonableness of costs depends upon a variety of considerations and circumstances, including:

- 3.3.1. whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- 3.3.2. generally accepted sound business practices, arm's length bargaining, and Federal and State laws and regulations;
- 3.3.3. the contractor's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
- 3.3.4. any significant deviations from the contractor's established practices.

3.4. As evidence that costs are reasonable, the PERFORMING PARTY may submit, if requested, three separate written bids or quotes from uninterested parties.

### ***Necessary Costs***

3.5. Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and must be included in the Approved Application.

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

- 3.6.1. the cost of money;
- 3.6.2. the interest charges on a purchase money loan, or on a deferred payment purchase agreement; or
- 3.6.3. the cost of converting from a lease to a purchase at the end of the lease period.

### ***Actual Costs***

3.7. The criteria for actual costs include:

- 3.7.1. the direct incremental costs of implementing the Grant Activities; or
- 3.7.2. the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.

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

- 3.8.1. amounts deducted from the true price of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds or otherwise;
- 3.8.2. amounts which the PERFORMING PARTY owes or agrees to pay the vendor or contractor for any purpose other than the implementation of Grant Activities;
- 3.8.3. amounts in the charges which the vendor/contractor intends to return to PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value;
- 3.8.4. baseline Costs as defined in the Contract Documents and the *Guidelines for Emissions Reduction Incentive Grants*, and identified in the Approved Application; or
- 3.8.5. amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are received by the PERFORMING PARTY.

3.9. The PERFORMING PARTY'S documentation of expenses is required under Article 7 of these General Conditions.

***Allowable Costs***

3.10. In order to be allowable, costs must be included in the Approved Application, and must satisfy the requirements of: this Agreement, the UGMS, the TCEQ *Allowable Expenditure Guidelines*, state agency rules, and all applicable state and federal laws.

3.11. If travel costs are authorized in the Approved Application, reimbursement of travel costs may not exceed the amounts explained in this section.

3.11.1. Reimbursement for lodging and meals within the State of Texas is to be based on actual expenses but may not exceed the reimbursements allowed for state employees under the State of Texas Travel Allowance Guide.

3.11.2. Reimbursement for lodging and meals when traveling outside of the State of Texas is to be based on actual expenses but may not exceed the maximum established in the federal General Services Administration travel regulations.

3.11.3. Mileage reimbursement rates are also established in the State of Texas Travel Allowance Guide.

3.12. If indirect costs are authorized in the Approved Application, the PERFORMING PARTY shall comply with the UGMS requirements pertaining to Indirect Cost Rates.

***Consulting (Application Assistance) Fees***

3.13. Any fees charged by a consultant for preparation of a grant application, either directly or as an addition to the cost basis of the grant-funded vehicle, equipment, or engine, are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this Agreement. All purchase decisions must be based on sound business practices and arm's length bargaining. It is generally considered acceptable for an applicant to accept assistance from a vendor or an agent of a vendor in preparing an application, as long as any decision by the applicant to purchase the grant-funded vehicle or equipment from that vendor is made independently and meets the other reasonableness provisions in the grant contract. However, if the consultant is paid directly by the applicant to complete the application documents and to act as the PERFORMING PARTY's agent for the grant process, purchases of grant-funded vehicles or equipment from an entity in which the consultant has an interest will not normally be considered appropriate by the TCEQ under the reasonableness requirements of the grant contract.

***Preapproval of Costs***

3.14. The TCEQ may request additional details regarding costs listed in the Approved Application and may require that the PERFORMING PARTY obtain preapproval of specific costs from the TCEQ prior to incurring those costs.

3.15. Prior to executing a subcontract to be funded under this Agreement, and if requested by the TCEQ, the PERFORMING PARTY must submit the subcontract scope of work to the TCEQ for review and must receive approval from the TCEQ before proceeding with the contract.

***Additional Evidence***

3.16. The TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs.

***Additional Criteria for Reimbursement***

3.17. The TCEQ may at any time, in its sole discretion, in the best interests of the state establish additional criteria and requirements for reimbursement of costs.

***Costs in Approved Application are Maximum Amounts, Not a Guarantee***

3.18. Amounts of costs stated in the Approved Application are maximum amounts of reimbursement. By stating the amounts, TCEQ does not 1) guarantee payment of those amounts or 2) waive the requirements for reimbursement which must subsequently and continually be satisfied by the PERFORMING PARTY. The amount of costs for which reimbursement may be requested is the lesser of 1) the costs stated in the Approved Application or 2) the actual eligible costs.

***No Entitlement to Funds***

3.19. The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. Neither a request for reimbursement nor TCEQ's payment of reimbursement nor any other action will establish an entitlement in the PERFORMING PARTY to payment from the TCEQ.

3.20. By paying a request for reimbursement, the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may at any time before or after reimbursement, in its sole discretion, request additional evidence concerning costs. The TCEQ may audit the records of the PERFORMING PARTY and may also audit the PERFORMING PARTY'S performance as to the Grant Activities, and the administrative requirements.

***Offsets for debts owed to the State***

3.21. The TCEQ may offset against reimbursement payments, any amounts owed by the PERFORMING PARTY or its principals to the TCEQ or the State of Texas, whether owed under this program or otherwise.

3.22. The PERFORMING PARTY shall notify the TCEQ, in its Request for Reimbursement, of any financial incentive received by the PERFORMING PARTY which was not included in the Approved Application, if that incentive will offset the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance. The TCEQ, in reimbursing the PERFORMING PARTY, may reduce the amount of authorized incremental costs eligible for reimbursement, by the value of any additional financial incentive received by the PERFORMING PARTY, without an Amendment to this Agreement.

***Leases and lease-purchase agreements***

3.23. For any grant activity where the Grant Equipment will be acquired and used under a lease or lease-purchase agreement, the period of the lease agreement must extend for at least the Activity Life or, if the lease terminates before the end of the Activity Life, the lease agreement must include a binding commitment for the PERFORMING PARTY to pay any remaining costs and to take ownership of and title to the Grant Equipment. An option to buy at the end of the lease term, without a binding commitment on the part of the PERFORMING PARTY, shall not be sufficient to satisfy this provision.

***Child Support***

3.24. Under Section 231.006 of the Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state-funded grant or loan. By executing this Grant Agreement, 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 Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**ARTICLE 4. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ - GRANT ACTIVITIES**

4.1. All Grant Activities for which reimbursement is requested must be completed as set forth in the Approved Application, including any supplemental conditions attached thereto.

***Annual Usage for Activity Life***

4.2. With the exception of Demonstration of New Technology Projects, and as a condition of receiving reimbursement grant funds, the PERFORMING PARTY agrees to fully implement the Grant Activities and utilize the Grant Equipment during the entire Activity Life according to the standards set forth in this Agreement and as required under the Guidelines.

***Professional Quality***

4.3. The PERFORMING PARTY shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all Grant Activities under this Agreement.

***Supervision and Superintendence:***

4.4. The PERFORMING PARTY is responsible for the supervision, inspection and direction of the Grant Activities in a competent and efficient manner, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Grant Activities in accordance with the Contract Documents. 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 to see that the completed implementation of the Grant Activities complies accurately with the Contract Documents.



### ***Materials & Equipment***

4.5. Unless otherwise specified in the Contract Documents, the PERFORMING PARTY will assume 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.

4.6. Unless otherwise expressly agreed by the TCEQ, all Grant Equipment will be of good quality and as provided in the Contract Documents. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier, except as otherwise provided in the Contract Documents.

4.7. 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.

4.8. Unless otherwise expressly agreed by the TCEQ, the PERFORMING PARTY must obtain and maintain a policy of insurance for the Activity Life which is sufficient to provide for replacement of Grant Equipment which is lost, stolen, or irreparably damaged. Governmental entities may use an established self-insurance program to satisfy this requirement. For Demonstration of New Technology Projects, this insurance must be maintained for the Contract Period. If requested by the TCEQ, the PERFORMING PARTY shall provide proof of insurance coverage. The TCEQ may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. The TCEQ may also waive this requirement, at its sole discretion, for certain types of entities. Previously submitted certificates of insurance coverage may be amended to reflect newly extended coverage. A failure to comply with this requirement is considered a material breach of the Agreement. By stating at any place in this Agreement that any particular non-compliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.

4.9. Upon the occurrence of a repairable malfunction of or damage to Grant Equipment which affects emissions reductions during the Activity Life, the PERFORMING PARTY will cause the Grant Equipment to be repaired and restored to the level of optimum performance.

4.10. Upon the occurrence of loss, theft, or irreparable damage of Grant Equipment during the Activity Life, the PERFORMING PARTY will cause the lost, stolen, or damaged Grant Equipment to be replaced with similar equipment which achieves the same optimum performance or better. The PERFORMING PARTY will cause the replacement Grant Equipment to be in operation no later than 60 consecutive days from the occurrence of loss, theft or damage, unless the TCEQ expressly agrees to a longer period. Replacement Grant Equipment is subject to all the requirements of the applicable to Grant Equipment contained in this Agreement.

## **ARTICLE 5. PERFORMING PARTY'S RESPONSIBILITIES - ADMINISTRATIVE REQUIREMENTS**

### ***Access to Records, Grant Equipment, and Vehicles, Equipment, and Engines Being Replaced***

5.1 State Auditor's Office. The PERFORMING PARTY understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit on 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's Office 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 is included in any subcontract it awards under this Agreement. The PERFORMING PARTY will include in all subcontracts for work under this Agreement a requirement that subcontractors will provide access to all relevant financial records including bank statements.

5.2. The PERFORMING PARTY shall allow access to all Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under this Agreement, by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. In addition, the PERFORMING PARTY shall allow access to all vehicles, equipment, and engines being replaced under this Agreement.

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

5.3. The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the Grant Activities and requirements of the Agreement, including the Agreement or amendments thereto. All financial records will be maintained in accordance with generally accepted accounting principles, the UGMS, and this Agreement. The PERFORMING PARTY shall also maintain the financial information and data used in the preparation or support of any request for reimbursement (direct and indirect), price or profit analysis for this Agreement, and a copy of any cost information or analysis submitted to the TCEQ. The PERFORMING PARTY shall allow access to all the material including bank statements and records by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.

5.4. The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from access to records under this Agreement.

5.5. Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity under this Agreement, for the Project Life as set forth in this Agreement, and for three (3) years after the ending date of the Project Life. 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 three 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 three year period, whichever is later.

5.6. Subject to the obligations and conditions set forth in this Agreement, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under this Agreement by the PERFORMING PARTY will vest upon acquisition in the PERFORMING PARTY.

5.7. The PERFORMING PARTY may develop and use its own property management system, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the PERFORMING PARTY must meet the requirements set forth in this section.

5.7.1. Property records of Grant Equipment must be maintained that include a description of the property, a serial number or other identification number, the source of property, usage and mileage (separated by location of usage and mileage), 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.

5.7.2. The PERFORMING PARTY will conduct a physical inventory of all Grant Equipment no less frequently than once every two years during the Activity Life and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY must include adequate safeguards to prevent loss, damage, or theft of the Grant Equipment.

#### ***Accounting Systems***

5.8. The PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies in all material respects with applicable State law, regulations, and policies relating to accounting standards or principles. The PERFORMING PARTY must account for costs in a manner consistent with such standards or principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

#### ***PERFORMING PARTY'S Representative***

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

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

***Personnel***

5.11. PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Contract Documents. PERFORMING PARTY must at all times maintain good discipline and order on the location of Grant Activities.

***Intellectual Property Requirements***

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

***Permits***

5.13. Unless otherwise provided in the Contract Documents, the PERFORMING PARTY shall obtain and pay for all transportation, construction, and operating permits and licenses required for this performance of this Agreement. Failure to comply with a permit or administrative order issued by the TCEQ or other state agency may result in a determination, within the sole discretion of the TCEQ, that the best interests of the state are served by withholding reimbursement or by the application of other remedies under this Agreement

***Laws and Regulations***

5.14. 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 PERFORMING PARTY's compliance with any Laws or Regulations.

***Data and Publicity***

5.15. All data and other information developed under this Agreement shall be furnished, upon request, to the TCEQ and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code, Chapter 552. Upon termination of this Agreement, if requested by the TCEQ, all copies of data and information developed under this Agreement shall be furnished, at no charge to the TCEQ, to include databases for which the costs of preparation are reimbursed under this Agreement, and become the property of the TCEQ.

5.16. The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities.

***Safety and Protection***

5.17. 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 safety precautions.

5.18. In performing the Grant Activities hereunder, the PERFORMING PARTY undertakes performance for its own benefit and not as agent for the TCEQ.

### ***Lobbying Activities***

5.19. As set forth in these Contract Documents, and in accordance with the UGMS and State law, the PERFORMING PARTY shall not use funds provided under this Agreement to support lobbying or political activity either directly or indirectly.

5.20. The PERFORMING PARTY will acknowledge the financial support of the TCEQ whenever a Grant Activity reimbursed, in whole or part, is publicized or reported in news media or publications.

## **ARTICLE 6. TCEQ'S RESPONSIBILITIES**

6.1. The Executive Director of the TCEQ will identify a person authorized to give direction to the PERFORMING PARTY and act on behalf of the TCEQ.

6.2. The 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 work. TCEQ will not be responsible for PERFORMING PARTY's failure to perform or furnish the work in accordance with the Agreement.

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

## **ARTICLE 7. REQUEST FOR REIMBURSEMENT**

7.1. Eligible expenses must have been incurred by the PERFORMING PARTY prior to the termination date of this Agreement. In order to receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form, to be made available to the PERFORMING PARTY by the TCEQ. The request and forms shall be mailed or delivered to:

Texas Commission on Environmental Quality  
TERP Emissions Reduction Incentive Grants  
Air Quality Division, MC-204  
Implementation Grants Section  
PO Box 13087  
Austin, TX 78711-3087

7.2. The Request for Reimbursement Form shall include all required supplemental forms and shall list, for each activity, the total expenses obligated under a lease or financing agreement, the total activity expenses incurred to date, the baseline cost, and the incremental costs incurred to date. The report shall also list and explain any additional financial incentive received by the PERFORMING PARTY that

directly offsets the activity costs reported by the PERFORMING PARTY, including tax credits or deductions, other grants, or any other public financial assistance.

7.3. Except as provided for under Section 7.5. below, to be eligible for reimbursement under this Agreement, a cost must have been incurred and paid by the PERFORMING PARTY prior to claiming reimbursement from TCEQ. A cost may not be considered incurred until the Grant Equipment and/or goods and services included under the cost have been received and accepted by the PERFORMING PARTY. The cost must have been paid by the PERFORMING PARTY prior to claiming reimbursement.

***Replacement Projects Costs***

7.4. For replacement projects, the TCEQ will reimburse the PERFORMING PARTY for no more than eighty (80) percent of the eligible incremental costs for the purchase of the replacement vehicle or equipment under this Agreement.

7.5. Subject to approval by the TCEQ, the PERFORMING PARTY may assign the payments due from the TCEQ directly to the supplier, subcontractor, financing or leasing company, or other entity from which the goods or services were procured, leased, or financed by the PERFORMING PARTY. A properly completed Texas Application for Payee Identification Number and Notice of Assignment must be completed and submitted with, or prior to submission of, the Request for Reimbursement form. Under this option, the Grant Equipment and/or goods and services included under a cost must have been received and accepted by the PERFORMING PARTY, and the PERFORMING PARTY must have an obligation to pay the expense. Sufficient supporting documentation must be submitted, as outlined in the form instructions, to document that the goods or services were received and that the payment amount is owed to the entity designated to receive the payment from the state.

7.6. For new purchase or lease category activities where a baseline cost applies, and unless otherwise approved by TCEQ, the costs incurred or otherwise obligated under a lease or financing agreement must exceed the value of the baseline costs before the TCEQ will reimburse eligible incremental costs. In addition, if financial incentives are received by the PERFORMING PARTY that directly offset the activity costs being reported, including tax credits or deductions, other grants, or any other public financial assistance, reimbursement of eligible incremental costs will be made only after the costs incurred or obligated under a lease or financing agreement exceed both the value of any baseline costs that apply and the value of the financial assistance received.

7.7. A final Request for Reimbursement form, indicating in the appropriate box that it is the final request, shall be submitted to the TCEQ by no later than forty-five (45) days after the termination date of this Agreement. The TCEQ, in its sole discretion, may accept and pay a reimbursement request submitted after this deadline.

7.8. All Request for Reimbursement forms shall contain sufficient identification of and information concerning the costs incurred or obligated under a lease or financing agreement and paid so as to enable the TCEQ to ascertain the eligibility of a particular cost and to enable subsequent audit thereof. Supporting documentation materials, as directed by the TCEQ in the instructions accompanying the

forms, shall be attached to the report forms to clearly show that the cost was incurred and, except where the payment is assigned to another entity, paid.

***Purchase/Payment Documents***

7.9. In accordance with the terms of the Contract, for any purchase, lease, lease-purchase, and deferred payment purchase, the PERFORMING PARTY must submit any supporting documentation required or requested by TCEQ. In order to receive payment for each Request for Reimbursement, the PERFORMING PARTY is specifically required to submit the following supporting documents:

7.9.1. canceled checks or wire transfers;

7.9.2. written purchase and lease agreements;

7.9.3. Bills of Sale or Receipts for Delivery;

7.9.4. for deferred payment purchases and lease agreements, statements of account status showing the account in good standing and the equipment is in possession of the PERFORMING PARTY;

7.9.5. Uniform Commercial Code (UCC) Financing Statement (Form UCC1) filing, if applicable. (The UCC allows a creditor to notify other creditors about a debtor's assets used as collateral for a secured transaction by filing a public notice (financing statement) with a particular filing office.); and

7.9.6. other documentation requested by TCEQ in order to support the assertions in the request for reimbursement.

7.10. The TCEQ may waive the requirement for submission of any supporting documents that are not applicable to the PERFORMING PARTY.

7.11. If the requests for reimbursement do not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and incurred costs, the TCEQ may reject the request, until such time as the deficiencies have been corrected. Satisfactory accomplishment of a task is within the judgment of the TCEQ; however, such judgment must be reasonable.

7.12. The TCEQ is not obligated to make payment until the request for reimbursement is approved by the TCEQ. Further, the TCEQ reserves the right to suspend or withhold all or part of a payment or all payments as authorized by the Contract Documents.

## **ARTICLE 8. PROJECT STATUS AND COMPLETION**

If requested by the TCEQ, the PERFORMING PARTY shall provide information on the status and completion of grant activities. The PERFORMING PARTY shall provide such information on the form or in a format requested by the TCEQ, and within a reasonable time frame as may be requested by the TCEQ.

## **ARTICLE 9. GRANT EQUIPMENT**

9.1. The Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under this Agreement, are listed in the Approved Application. For on-road vehicle replacement or repower projects only, the PERFORMING PARTY may substitute a different replacement vehicle and/or engine for the unit listed in the Approved Application, as long as the substitute unit meets all eligibility and other requirements, is of the same weight category, has the same or better certified NO<sub>x</sub> emission rate, and will result in the same or better NO<sub>x</sub> emission reductions as the unit listed. For other project types and categories, the PERFORMING PARTY may not substitute different Grant Equipment for the units listed in the Approved Application without approval from the TCEQ. This provision includes conformance with the NO<sub>x</sub> emissions of the engines as listed in the Approved Application. 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> emission standards, and that the TCEQ's approval of the application does not constitute final verification that an engine meets the required certified NO<sub>x</sub> emission rate.

9.2. The TCEQ may accept and approve an application for funding that does not include all of the information asked for in the application forms, including identifying information for equipment, vehicles, or engines. The TCEQ may withhold issuance of a Notice to Proceed, pending the PERFORMING PARTY providing additional information needed to make the Approved Application complete. Additional identifying information provided by the PERFORMING PARTY and accepted by the TCEQ will apply to the PERFORMING PARTY's compliance with the provisions of Section 9.1. of this Article.

### ***New Purchase or Lease Category***

9.3. The engine installed on Grant Equipment purchased or leased under the New Purchase or Lease category must be certified to a NO<sub>x</sub> emission level that is at least 25 percent below the federal emission standard for that category of engine, at the time that the Grant Equipment is purchased or leased and delivered to the PERFORMING PARTY. The PERFORMING PARTY understands that the federal emission standards change on specific dates and that delivery of the Grant Equipment after the date of the change may result in the engine not meeting this requirement and being ineligible for reimbursement from the TCEQ.

### ***Trade-In of Equipment or Engines***

9.4. Unless approved in writing by the TCEQ prior to the PERFORMING PARTY requesting reimbursement, the trade-in of equipment, vehicles, or engines to satisfy part of the PERFORMING PARTY's financial obligation for the purchase of the new equipment may not be considered a payment



under the General Conditions, Article 7.3, of this Agreement, for purposes of receiving reimbursement of qualifying expenses.

***Activity Life***

9.5. The PERFORMING PARTY agrees to keep and use the Grant Equipment purchased or leased under this Agreement for the Activity Life as set forth in the Approved Application, regardless of the financing or leasing arrangements used for the purchase or lease of the Grant Equipment, and subject to the more specific provisions contained in the General Conditions, Article 15, of this Agreement.

**ARTICLE 10. USE OF VEHICLES, EQUIPMENT, AND ENGINES BEING REPLACED**

10.1. Unless otherwise accepted by the TCEQ in accordance with Section 10.2. of this Article, the PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced by destroying or otherwise rendering them permanently inoperable by drilling a hole through the engine block and cutting the frame rails or other structural components of the vehicle or equipment.

10.1.1. Destruction of the engine may include sending the engine to a remanufacture 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.

10.1.2. Unless otherwise approved and accepted by the TCEQ, the vehicle or piece of equipment being replaced under a replacement activity must be in operating condition at the time the application is signed and submitted to the TCEQ by the PERFORMING PARTY.

10.2. The TCEQ may, but is not obligated to, approve an alternative to scrapping the vehicle, equipment, or engine being replaced under this Agreement to deal with special circumstances and to best further the goals to the TERP program. The TCEQ is not obligated to offer, consider, or approve such an arrangement.

10.3. The vehicles, equipment, and/or engines being replaced shall be destroyed within 90 days of the reimbursement payment being issued by the TCEQ for the replacement expenses. The TCEQ may grant an extension to this deadline without a change to this Agreement.

10.4. The PERFORMING PARTY shall submit on forms to be made available by the TCEQ information to verify the final disposition of the vehicles, equipment, and engines replaced under this Agreement. The final disposition information forms shall be submitted with the request for reimbursement or within 30 days after completion of the disposition, whichever occurs later. Unless otherwise agreed to by the TCEQ, the PERFORMING PARTY must submit photographs of the vehicles, equipment and/or engines being destroyed, both before and after the vehicles, equipment and/or engines are destroyed or rendered inoperable.

10.5. Failure of the PERFORMING PARTY to comply with the provisions of Sections 10.1, 10.2, 10.3, or 10.4 of this Article will constitute a material failure to conform to the requirements of this Agreement. The remedies available under Article 19, General Conditions of this Agreement, may be invoked by the TCEQ for noncompliance with the provisions of this Article.

***Credit For Replaced Vehicles Or Equipment***

10.6. In determining the expenses eligible for reimbursement under this Agreement, the cost of replacement or repower activities shall be reduced by the value of any credit or other financial compensation received by the PERFORMING PARTY for the sale or trade-in of the destroyed vehicles, equipment, or engines being replaced, including the parts from those vehicles, equipment, or engines. for the sale of the scrapped vehicles, equipment, engines being replaced, or trade-in of engines for remanufacture.

10.7. The scrappage value or other value received for the old vehicle, equipment, or engine is considered a cost of performing the Grant Activities and as such must satisfy the cost guidelines of Article 3 of the General Conditions of this Agreement. The value received for the vehicle or equipment being replaced must be the result of arms-length bargaining with the entity disposing of the replaced vehicle or equipment.

10.7.1. For on-road vehicle and non-road equipment replacement activities, the TCEQ may use a default scrappage value of \$1,000 in lieu of the actual value and in lieu of the PERFORMING PARTY reporting the value to the TCEQ.

10.8. Unless a default value is used by the TCEQ under Section 10.7.1. of this Article, the PERFORMING PARTY must list on the financial reporting forms any financial remuneration or other items or services of value received in exchange for the replaced vehicle or equipment including, but not limited to, cash, goods, services (including the services provided by a consultant to assist in preparing and/or submitting a grant application), gifts, intangibles, discounts, or any other items of value.

***Purchase Agreements And Subcontracts***

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

**ARTICLE 11. INSTALLATION AND USE OF IDENTIFYING MARK OR TRACKING DEVICE**

11.1. If this Agreement (or a prior Agreement of which this Agreement is a continuation) requires that equipment purchased with TERP grant funds be used in a particular geographic area for a period of time, then, upon request by TCEQ, PERFORMING PARTY shall install, or permit TCEQ or its contractor to install, a prominently placed identifying mark on the equipment, identifying it as TERP-funded equipment and containing such other information as TCEQ shall specify, and/or a device for tracking the location of that equipment during that period of time.

11.2. TCEQ shall remove the mark or device within a reasonable time upon the expiration of the required use period.

11.3. Prior to installing or requiring the installation of a tracking device, TCEQ shall notify PERFORMING PARTY and shall specify the nature of the device and the information which will be recorded and maintained by TCEQ using the device.

11.4. PERFORMING PARTY may inspect the information recorded and maintained by the tracking device, upon request with reasonable notice to TCEQ.

11.5. TCEQ recognizes that PERFORMING PARTY may consider the information recorded and maintained by the tracking device to contain confidential trade secret information. Therefore, TCEQ shall not release any of the information collected by the tracking device to any party outside TCEQ, except as required under the Public Information Act or other applicable law. TCEQ shall inform PERFORMING PARTY of any Public Information Act request for the information and refer the request to the Office of the Attorney General for a ruling on whether the information contains protected trade secret information. TCEQ is not responsible for making arguments regarding trade secret status to the Attorney General, but PERFORMING PARTY may do so.

11.6. If PERFORMING PARTY does not install the device within a reasonable time of the TCEQ request or refuses to permit access to its equipment for the installation of the device, PERFORMING PARTY shall promptly return all TERP grant funds used to purchase the equipment.

## **ARTICLE 12. TERMINATION**

12.1. For purposes of availability of funding and completion of TCEQ's obligations to reimburse the PERFORMING PARTY for authorized expenses, this Agreement shall terminate upon the expiration of the contract period or upon payment of reimbursement for completion of all grant activities, whichever is earlier, unless otherwise terminated by an act performed in accordance with the Contract Documents.

12.2. This Agreement may be terminated in whole or in part by the TCEQ for cause by the PERFORMING PARTY, which may include without limitation a material failure to comply with the requirements of the Contract Documents. Unless advance notice of intent to terminate will place funds of the state at increased risk, the TCEQ will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and a reasonable opportunity for the PERFORMING PARTY to correct such non-compliance prior to termination.

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

12.4. This Agreement may be terminated in whole or in part by the TCEQ for its convenience. Circumstances in which this may occur include without limitation the Texas Legislature's withdrawal of the appropriation for this project or the depletion of the Texas Emissions Reduction Plan Fund, which

results in the unavailability of funds to complete this project. To the extent feasible, in the sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

12.5. If after termination for the PERFORMING PARTY'S material failure to comply with the requirements of the Contract Documents, it is determined that the PERFORMING PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the TCEQ.

12.6. The PERFORMING PARTY acknowledges that certain requirements of this Agreement shall survive an event of termination. The PERFORMING PARTY agrees and obligates to performance of grant activities in accordance with the Contract Documents beyond the termination of this Agreement and through the end of the Activity Life of each Activity included in the Approved Application 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.

12.7. In accordance with this Agreement, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under this Agreement. Therefore, PERFORMING PARTY waives any claim for damages arising from or resulting from TCEQ's termination of this Agreement for any reason.

12.8. If, during the Contract Period, the PERFORMING PARTY chooses to not complete the Grant Activities and withdraw from the obligations under this Agreement, the PERFORMING PARTY may terminate this Agreement by providing ten (10) days written notice to the TCEQ and returning any reimbursements already received.

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

13.1. As a condition of receiving grant funds, the PERFORMING PARTY agrees to monitor the use of Grant Equipment, including the use of Qualifying Fuel, for the Activity Life. However, this requirement does not apply to a Demonstration of New Technology Project, where the obligation to report ends with the termination of the Agreement.

13.2. As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed Monitoring Reports to the TCEQ, on forms provided by TCEQ, for the Project Life. The Monitoring Reports shall have attached properly completed individual reports on the use of Grant Equipment, including Qualifying Fuel, for each activity, for the life of that activity (Activity Life). The PERFORMING PARTY will submit the required reports on the date specified by the TCEQ in the reporting instructions.

## **ARTICLE 14. INDEMNIFICATION**

To the extent permitted by law, the PERFORMING PARTY agrees to indemnify and hold harmless the State of Texas and the TCEQ, including its employees and officers, against and from any and all liability, loss, or damage arising out of actions of the PERFORMING PARTY in the performance of this Agreement.

## **ARTICLE 15. ACHIEVING EMISSION REDUCTIONS**

15.1. The provisions of Section 386.055, Texas Health and Safety Code, apply to the emission reductions generated over the Activity Life of each activity funded under this Agreement. The PERFORMING PARTY agrees that the emission reductions generated by each activity over the Activity Life are transferred to the state implementation plan, or to the PERFORMING PARTY as provided under Section 386.056, Texas Health and Safety Code, and those reductions are permanently retired.

15.2. The PERFORMING PARTY agrees that if, during the Activity Life, the annual and total NO<sub>x</sub> emission reductions achieved within the Eligible Counties by the Grant Activities do not meet the amounts calculated by the TCEQ and listed in the Approved Application Summary of this Agreement, the TCEQ will be entitled to a return of a pro rata share of the reimbursement funds, based on the failure to achieve expected emissions reductions. Unless an alternative method is approved by the TCEQ, the determination of whether the NO<sub>x</sub> emission reduction requirements have been met will be based on the total annual usage and the percentage of annual usage of the Grant Equipment (including qualifying fuel) within the eligible counties marked in the Approved Application or, for marine vessels, within the Texas Intracoastal Waterway and bays adjacent to the eligible counties marked in the Approved Application. The decision on whether a return of funds is necessary will be at the sole discretion of the TCEQ.

15.3. The PERFORMING PARTY agrees that failure to adequately monitor the annual usage of Grant Equipment and/or failure to submit properly completed Monitoring Reports during the Project Life may be considered evidence that the expected emissions reductions have not been achieved. In such instances, and after being provided written notice and a reasonable opportunity to provide the required monitoring information, the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of a pro rata share of the reimbursement grant funds, based on the failure to achieve expected emissions reductions within the Eligible Counties. The decision on whether a return of funds is necessary will be at the sole discretion of the TCEQ.

15.4. The PERFORMING PARTY agrees that failure to properly destroy or dispose of a vehicle, piece of equipment, marine vessel, locomotive, or engine replaced under this Agreement, in accordance with the destruction requirements or the provisions of an alternative disposition plan approved by the TCEQ may be considered evidence that the expected emissions reductions have not been achieved. In such instances, and after being provided written notice, the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of a pro rata share of the reimbursement grant funds, based on the failure to achieve expected emissions reductions within the Eligible Counties. The decision on whether a return of funds is necessary will be at the sole discretion of the TCEQ.

15.5. The PERFORMING PARTY agrees to operate the Grant Equipment over the Activity Life no less than 75 percent of the annual usage within the eligible counties marked in the Approved Application and approved by the TCEQ. The TCEQ may authorize changes to the designated eligible counties of use. Annual usage shall be determined according to the usage factor listed in the Approved Application and used to calculate the emission reductions for the grant including: annual miles of operation for on-road vehicles, except in some cases where annual fuel may be used; annual hours of operation for non-road equipment, stationary equipment, on-vehicle electrification and idle reduction infrastructure, marine vessels and engines; and annual fuel use for locomotives. The usage factor for on-site infrastructure will be the factor normally used for the type of vehicle or equipment using the infrastructure. The PERFORMING PARTY agrees that failure to meet this requirement may be considered evidence that the terms of this Agreement have not been met.

15.6. The PERFORMING PARTY agrees that during the Activity Life, prior to selling, trading, or transferring ownership of Grant Equipment (excluding qualifying fuel) or related property, or transferring operation of Grant Equipment outside of an Eligible County, the PERFORMING PARTY will notify the TCEQ in writing of its intentions.

15.7. The PERFORMING PARTY agrees that if, during the Activity Life, Grant Equipment (excluding qualifying fuel) is sold, traded, transferred to another owner, or transferred to another operational location outside of the eligible counties, the TCEQ will be entitled to a return of a pro rata share of the reimbursement funds provided to the PERFORMING PARTY. The decision on whether a return of funds is necessary will be at the sole discretion of the TCEQ. The decision by TCEQ on whether to require return of a share of the reimbursement funds may include consideration of whether the Grant Equipment will continue to be used within the eligible counties, or in the case of marine equipment, within the Texas Intracoastal Waterway and bays adjacent to the eligible counties. In lieu of a return of a share of the grant funds, one alternative that may be authorized by the TCEQ would be for the PERFORMING PARTY to obtain a binding agreement from a new owner of the Grant Equipment to continue to use the equipment subject to the terms of this Agreement related to use within the eligible counties for the percentage of use and total annual usage originally agreed to by the PERFORMING PARTY and to monitor and report on the annual usage.

15.8. In accordance with the requirements of UGMS, during the term of this Agreement, the PERFORMING PARTY will not dispose of the equipment acquired with grant funds under this Agreement without written consent from the TCEQ.

15.9. The provisions of this Article do not apply to Demonstration of New Technology Projects.

## **ARTICLE 16. DISPOSITION OF EQUIPMENT OR REAL PROPERTY - DEMONSTRATION PROJECTS**

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

## **ARTICLE 17. RELEASE OF CLAIMS**

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

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

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Grant Activities or to modify the General Conditions thereof in one or more of the following ways: a formal Written Amendment or a Minor Change.

## **ARTICLE 19. REMEDIES AVAILABLE TO THE TCEQ**

19.1. In accordance with Chapter 2261 Texas Government Code, the following Schedule of Remedies applies to this contract in the event of the substandard performance of Grant Activities or other material failure to conform to the requirements of the contract or applicable law:

19.1.1. Reject substandard performance and request corrections without charge to the TCEQ;

19.1.2. Issue notice of substandard performance or other non-conforming act or omission;

19.1.3. Request and receive return of any over payments or inappropriate payments;

19.1.4. Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;

19.1.5. Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;

19.1.6. Reject reimbursement request and withhold and retain all or partial payments for recovery of administrative costs or to be returned to the TERP fund as authorized by state law; and/or

19.1.7. Terminate the contract, demand and receive: return of all equipment purchased with contract funds, return of all unexpended funds, and repayment of improperly expended funds.

### ***Cumulative Remedies***

19.2. TCEQ may avail itself of any remedy or sanction provided in this contract or in law to recover any losses rising 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.

## ARTICLE 20. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

20.1. In accordance with Texas Government Code Chapter 2261, the TCEQ is required to monitor the PERFORMING PARTY's performance under this Agreement. The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Agreement.

20.1.1. **Quality and Accuracy.** Standard: PERFORMING PARTY'S Grant Activities conform to the requirements of this Agreement.

20.1.2. **Timeliness.** Standard: PERFORMING PARTY'S Grant Activities are completed on schedule.

20.1.3. **Reports and Administrative and Financial Operations.** Standard: PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Agreement, including, but not limited to, record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.

20.1.4. **Communication.** Standard: PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ; and including the PERFORMING PARTY's demonstrated relationship with subcontractors.

20.1.5. **Other.** Standard: Other factors unique to the type of project, as determined by the TCEQ.

20.2. The TCEQ will monitor the PERFORMING PARTY's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.

20.2.1. **Exceeds Expectations.** PERFORMING PARTY fully complied with all the standards on a consistent basis.

20.2.2. **Satisfactory Performance.** PERFORMING PARTY's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.

20.2.3. **Marginal Performance.** PERFORMING PARTY's performance was acceptable, although a significant number of deficiencies had to be corrected before the contract requirements could be considered met.

20.2.4. **Unsatisfactory Performance.** PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.



### ***Contractor Evaluation***

20.3. The TCEQ will prepare a written evaluation of the performance of the PERFORMING PARTY upon completion of all reimbursements under this Agreement and upon the completion of the Project Life, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation will be provided to the PERFORMING PARTY and a copy retained in the TCEQ's contract files. The content of the evaluation shall be wholly within the sole discretion of the TCEQ. The PERFORMING PARTY may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against TCEQ for the evaluation.

20.4 The performance rating on the contractor evaluations may be considered by the TCEQ in evaluating an application from the PERFORMING PARTY for additional funding under this program. The PERFORMING PARTY understands that a rating of marginal or unsatisfactory performance may have a negative impact on decisions regarding funding for additional projects applied for by the PERFORMING PARTY.

## **ARTICLE 21. MISCELLANEOUS**

### ***Computation of Times***

21.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a federal holiday, such day will be omitted from the computation.

21.2. A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

### ***Notice of Claim***

21.3. Should the TCEQ or the PERFORMING PARTY suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is 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.

### ***Survival of Obligations***

21.4. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Grant Activities and termination or completion of the Agreement.

21.5. Notwithstanding any provisions relating to assignment in the Uniform Commercial Code, no delegation by a party hereto of any duties or obligations nor assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to an extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This Agreement is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of the TCEQ and any attempted transfer without such consent is void.

21.6. Subject to the provisions of Article 12, General Conditions, the TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party hereto, successors, assigns and representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

21.7. The parties hereby agree that this Agreement does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. No TCEQ personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of TCEQ, goods or services which are not required under the Contract Documents or any conforming amendment. The parties further agree that all claims, suits or obligations arising under or related to this Agreement are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

21.8. The PERFORMING PARTY acknowledges and agrees that this Agreement 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 Agreement will arise solely in Travis County. If a legal action related to this claim is permissible and there are two (2) or more counties of proper venue under the rules of mandatory, general, or permissive venue, and one such county is Travis County, the PERFORMING PARTY hereby agrees to venue in Travis County. This provision does not waive the TCEQ's sovereign immunity.

21.9. Any provision of the Contract Documents 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 PERFORMING PARTY, who agree that Contract Documents are 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.

### ***Bankruptcy***

21.10 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 TCEQ Bankruptcy Program. The PERFORMING PARTY'S notice to the bankruptcy program must include the appropriate contract number(s).

— End of General Conditions —

**SPECIAL CONDITIONS  
for  
Emissions Reduction Incentive Grant**

**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 —**

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**APPROVED APPLICATION SUMMARY**  
**for**  
**Emissions Reduction Incentive Grant**

**ARTICLE 1. APPROVED APPLICATION**

The attached Approved Application contains information on the activities to be conducted and the expenses that will be reimbursed under this Agreement. The information and data provided in the original application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Approved Application (a Contract Document) and, by signing this Agreement, ratifies, adopts, and agrees to all such alterations.

**ARTICLE 2. ACTIVITY NUMBERS**

**ARTICLE 3. EMISSION REDUCTIONS AND COST-EFFECTIVENESS**

**— End of Approved Application Summary —**



# **APPROVED APPLICATION**