

**NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS  
NORTH TEXAS EMISSIONS REDUCTION GRANTS PROGRAM AGREEMENT**

**THIS AGREEMENT** is entered by and between the North Central Texas Council of Governments (NCTCOG) and \_\_\_\_\_ (PERFORMING PARTY). NCTCOG enters into this Agreement with PERFORMING PARTY pursuant to and as authorized by the Texas Emission Reduction Plan Grant Contract Number 582-5-64592-0003, for the administration of certain Texas Emission Reduction Plan (TERP) grant funds.

NCTCOG 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, PERFORMING PARTY agrees to complete all Grant Activities as described in the Scope of Work (Appendix A), Application Summary (Appendix C), and Approved Application in accordance with the Agreement Documents listed in Article 11.

1.2. NCTCOG may accept partial performance, at its discretion, and reimburse the PERFORMING PARTY for only those Grant Activities that are completed.

1.3. NCTCOG must approve any changes to the Grant Activities.

1.4. If the changes to the Grant Activities result in an overall project cost-effectiveness that is different than was originally approved for the project, NCTCOG is not obligated to reimburse the PERFORMING PARTY at the amount originally authorized for each Grant Activity.

1.4.1. NCTCOG may reimburse authorized expenses at a lesser amount in order to achieve the same cost-effectiveness as was originally approved for the project.

1.4.2. NCTCOG may accept a higher cost-effectiveness for the project as long as the cost per ton of Oxides of Nitrogen (NO<sub>x</sub>) emissions estimated to be reduced does not exceed \$5,500.

1.5. PERFORMING PARTY agrees that each Grant Activity must result in a minimum percent NO<sub>x</sub> emissions reduction as specified in the TERP North Texas Emissions Reduction Grant Guidelines (Revised – June 27, 2006).

1.6. PERFORMING PARTY agrees that usage of the vehicles or equipment purchased under this Agreement will take place in one or more of the eligible counties as specified in the TERP North Texas Emissions Reduction Grant Guidelines (Revised – June 27, 2006). Upon request, PERFORMING PARTY agrees to provide NCTCOG sufficient verification that not less than 75 percent of annual usage is taking place in one or more eligible counties. Sufficient verification will be determined by NCTCOG, in its sole discretion. Examples of sufficient verification include sworn affidavits from PERFORMING PARTY, data from global positioning system, or similar devices, or other reliable information sources.

1.7. PERFORMING PARTY agrees to provide to NCTCOG semi-annual Monitoring or Usage Reports on forms provided by NCTCOG during the Activity Life of the Grant Activities, as specified in the Application Summary. Monitoring or Usage Reports will include, at a minimum,

information related to activity use by fuel consumption and location(s) of operations.

1.8. If 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 funding to assist the PERFORMING PARTY in implementing the Grant Activities.

## ARTICLE 3. MAXIMUM AMOUNT OF REIMBURSEMENT

3.1. NCTCOG will reimburse PERFORMING PARTY's eligible costs of implementing the Grant Activities under the conditions in the Agreement Documents, not to exceed the maximum amount of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_), unless the parties amend this amount in accordance with the Agreement Documents.

3.2. Reimbursement is limited to costs determined by NCTCOG and TCEQ in their sole discretion as eligible costs under the conditions in the Agreement 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 Agreement Documents.

3.4. Any reimbursement under this Agreement shall be payable only after eligible costs are approved by NCTCOG and TCEQ and receipt of grant funds by NCTCOG from TCEQ. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of NCTCOG, other than grant funds received by NCTCOG from TCEQ for the purposes of reimbursement under this Agreement.

3.5. All eligible expenses for Grant Activities funded under this Agreement must be expended by **May 31, 2007** and submitted to NCTCOG for reimbursement no later than June 1, 2007.

3.6. PERFORMING PARTY agrees that funds under this Agreement may only be used to pay for the Grant Activities specified in the Scope of Work and Approved Application.

## ARTICLE 4. CONTRACT TIMES

4.1. This Agreement will commence upon execution of this Agreement by the last of the parties to sign and shall terminate on August 31, 2007, or upon completion of all requirements, whichever is earlier, unless otherwise terminated by an act performed in accordance with the Agreement Documents. However, certain reporting and other requirements as identified in the Agreement Documents shall survive the termination of this Agreement. 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. This agreement shall also immediately terminate in the event that the Texas Emission Reduction Plan Grant Contract Number 582-5-64592-0003 between TCEQ and NCTCOG regarding the administration of certain TERP grant funds terminates.

4.2. For repower or retrofit activities, eligible costs submitted for reimbursement may not

have been incurred prior to one year before the application deadline of the Call for Projects.

4.3. For replacement activities, eligible costs submitted for reimbursement may not have been incurred prior to August 14, 2006.

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

5.1. The PERFORMING PARTY is not authorized to incur costs associated with the Grant Activities, unless and until NCTCOG issues a written Notice to Proceed.

#### **ARTICLE 6. REIMBURSEMENT PROCEDURES**

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

6.2. NCTCOG 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 Agreement Documents.

6.3. The PERFORMING PARTY agrees to return funds received from NCTCOG for reimbursement of Grant Activities where PERFORMING PARTY has failed to comply with the requirements set forth in the Agreement Documents.

6.4. The PERFORMING PARTY is not a “vendor” of goods and services within the meaning of Texas Government Code, Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this 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 Agreement Documents, unless otherwise expressly agreed in writing by NCTCOG.

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 NCTCOG.

7.3. At the discretion of NCTCOG, the PERFORMING PARTY will return to NCTCOG 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 therefore. Any notice or other written communication shall be considered delivered upon date of receipt.

7.5. In order for the Agreement to be effective, all authorized principals of an unincorporated business organization or association must sign the Agreement. An Agent signing the Agreement for a corporation must be authorized 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 1) the subject of the Texas Emission Reduction Plan Grant Contract Number 582-5-64592-0003 regarding the administration of certain TERP grant funds, and 2) actually received from TCEQ by NCTCOG dedicated for the purposes of this Agreement.

8.2. This Agreement is entered into by and between NCTCOG and the PERFORMING PARTY as authorized by the TCEQ Texas Emission Reduction Plan Grant Contract Number 582-5-64592-0003 regarding the administration of certain TERP grants funds.

## **ARTICLE 9. REPRESENTATIONS**

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

9.2. The PERFORMING PARTY represents that the activities funded under this Agreement are not required by any state or federal law, rule, regulation, memorandum of agreement, or other legally binding document.

## **ARTICLE 10. MISCELLANEOUS**

10.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions, included in Appendix B, will have the meanings indicated in the General Conditions, unless defined more specifically elsewhere.

10.2. The PERFORMING PARTY agrees to and authorizes NCTCOG, TCEQ, or their designees to inspect, with or without notice, vehicles or equipment purchased by PERFORMING PARTY with funds provided for under this Agreement to determine compliance with the Agreement Documents. The PERFORMING PARTY further agrees to cooperate fully with NCTCOG, TCEQ, or their designees in the conduct of any such inspection of vehicles or equipment.

10.3. The PERFORMING PARTY understands that acceptance of funds under this Agreement acts as acceptance of the authority of NCTCOG, TCEQ, or their designees to conduct an audit or investigation in connection with those funds. The PERFORMING PARTY further agrees to cooperate fully with NCTCOG, TCEQ, or their designees in the conduct of an 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.

10.4. The PERFORMING PARTY agrees that the TERP funded portion of emissions reductions generated by each activity over the Activity Life are transferred to TCEQ for the State Implementation Plan (SIP) and those reductions permanently retired. PERFORMING PARTY further agrees that NCTCOG may elect to use any remaining emissions reductions for SIP

purposes or to meet other air quality requirements, with the exception that no emission reductions may be used for emissions trading purposes.

**ARTICLE 11. AGREEMENT DOCUMENTS**

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

- 11.1.1. The NCTCOG North Texas Emissions Reduction Grants Program Agreement
- 11.1.2. The Scope of Work, included as Appendix A
- 11.1.3. The General Conditions for North Texas Emissions Reduction Grants Program Agreement, included in Appendix B
- 11.1.4. The Special Conditions for North Texas Emissions Reduction Grants Program Agreement, included in Appendix B
- 11.1.5. The Application Summary , included as Appendix C
- 11.1.6. The Texas Emissions Reduction Plan (TERP) North Texas Emissions Reduction Grant Guidelines (Revised – June 27, 2006), incorporated herein by reference
- 11.1.7. The Approved Application, incorporated herein by reference
- 11.1.8. Other documents and correspondence amending, modifying, and/or supplementing the Agreement 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 original submittal to NCTCOG, to ensure that the information and calculations in the application are accurate. The PERFORMING PARTY hereby ratifies, adopts, and agrees to all such alterations.

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

**ARTICLE 12. AUTHORIZED REPRESENTATIVES**

***NCTCOG Project Representative***

12.1. NCTCOG agrees to identify an individual or individuals who are authorized to give and receive communications and directions on behalf of NCTCOG. All communication and correspondence shall be addressed to the NCTCOG Project Representative(s). NCTCOG may change its Project Representative(s) by providing notice to PERFORMING PARTY without amendment to this Agreement.

All communications from the PERFORMING PARTY to NCTCOG involving project implementation shall be addressed to:

**Mailing Address:**

Carrie Reese, Principal Transportation Planner  
North Central Texas Council of Governments  
Transportation Department  
P.O. Box 5888  
Arlington, Texas 76005-5888  
Telephone No.: (817) 608-2353  
Facsimile No.: (817) 640-3028

**Physical Address:**

Carrie Reese, Principal Transportation Planner  
North Central Texas Council of Governments  
Transportation Department  
616 Six Flags Drive, Suite 200  
Arlington, Texas 76011

All communications from the PERFORMING PARTY to NCTCOG involving reimbursement payments must be addressed to:

**Mailing Address:**

TERP Grants Coordinator  
North Central Texas Council of Governments  
Transportation Department  
P.O. Box 5888  
Arlington, Texas 76005-5888  
Telephone No.: (817) 608-2319  
Facsimile No.: (817) 640-3028

**Physical Address:**

TERP Grants Coordinator  
North Central Texas Council of Governments  
Transportation Department  
616 Six Flags Drive, Suite 200  
Arlington, Texas 76011

***PERFORMING PARTY Project Representative***

12.2. All communications, including communication regarding payment requests submitted, will be addressed to the respective Performing Party's Project Representative named in the Approved Application, or his or her designee. PERFORMING PARTY may change its Project Representatives by providing written notice to NCTCOG.

**Designated Location for Records Access and Review**

12.3. The PERFORMING PARTY designates the physical locations identified in the Approved Application for record access and review pursuant to any applicable provision of this Agreement.

IN WITNESS WHEREOF, NCTCOG 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 NCTCOG.

Signed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS**

\_\_\_\_\_  
R. Michael Eastland  
Executive Director, NCTCOG

Approved as to Form:

\_\_\_\_\_  
Jerry Gilmore  
General Counsel

**PERFORMING PARTY**

\_\_\_\_\_  
NAME  
TITLE  
(NAME OF PERFORMING PARTY)