



**North Central Texas  
Council of Governments**

**TEXAS EMISSIONS REDUCTION PLAN (TERP)  
NORTH TEXAS EMISSIONS REDUCTION GRANT**

**Understanding and Agreement of General and Special  
Conditions**

To expedite the contracting process, please read and sign the following. A *Scope of Work* and *Application Summary* will be included in the contract upon awarding the grant.

Include one (1) original copy of the signed contract conditions.

North Central Texas Council of Governments (NCTCOG)  
Air Quality Policy and Program Development  
P.O. Box 5888  
Arlington, TX 76005-5888  
(817) 608-2353  
(817) 608-2354  
(817) 640-3028 – fax

Revised 11-09-2006

<http://www.nctcog.org/NTERG>

**GENERAL CONDITIONS**  
for the  
**NORTH TEXAS EMISSIONS REDUCTION GRANT PROGRAM AGREEMENT**

**ARTICLE 1. DEFINITIONS**

Unless defined herein, terms in the Agreement between the North Central Texas Council of Governments (NCTCOG) and PERFORMING PARTY and Agreement 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 and designated in the Approved Application and Approved Application Summary, that is used to determine the emissions reductions and cost effectiveness of the activity. Where applicable under the provisions of the Agreement between NCTCOG and PERFORMING PARTY, 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 the Agreement between NCTCOG and PERFORMING PARTY.

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 NCTCOG.

1.3. *Agreement Documents* - the Agreement Documents are composed of the NCTCOG North Texas Emissions Reduction Grants Program Agreement, the Scope of Work, included as Appendix A, the General Conditions for North Texas Emissions Reduction Grants Program Agreement, included in Appendix B, the Special Conditions for the North Texas Emissions Reduction Grants Program Agreement, included in Appendix B, the Application Summary, included as Appendix C, the Texas Emissions Reduction Plan (TERP) North Texas Emissions Reduction Grant Guidelines (Revised – June 27, 2006), the Approved Application, other documents and correspondence amending, modifying, and/or supplementing the Agreement Documents, and any amendments to those documents. Together, the Agreement Documents form the contractual agreement between the parties.

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

1.5. *Approved Application* - the application for emissions reduction incentive grant submitted by the PERFORMING PARTY and approved by the Regional Transportation Council and 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.

1.6. *Baseline Cost* - a specific amount designated in the Approved Application and Approved Application Summary 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) and the TERP North Texas Emissions Reduction Grant Program Guidelines (Revised – June 27, 2006).

1.7. *Contract Amount* - the maximum amount of funds which may be reimbursed by NCTCOG to the PERFORMING PARTY for completion of the Grant Activities in accordance with the Agreement 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*: Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Parker, Rockwall, and Tarrant.

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

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 and Approved Application Summary, 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 NCTCOG 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 TERP North Texas Emissions Reduction Grant Program Guidelines (Revised – June 27, 2006).

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. *NCTCOG* – means the North Central Texas Council of Governments

1.21. *Notice to Proceed* – A written notice given by NCTCOG to the PERFORMING PARTY that authorizes PERFORMING PARTY to incur eligible charges in accordance with the Agreement Documents.

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

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

1.24. *Project Representative* - the Project Representative of NCTCOG and the PERFORMING PARTY, as designated in writing elsewhere in the Agreement.

1.25. *Repower* - replacement of an existing diesel engine with a different engine, according to the criteria of the TERP North Texas Emissions Reduction Grant (Revised - June 27, 2006)

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

1.27. *Termination* - means a permanent end and cessation of the Agreement either because the Contract Period has expired or because all requirements of the Agreement between NCTCOG and PERFORMING PARTY are completed within the sole discretion of NCTCOG or finally because the Agreement is ended by action of NCTCOG 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 the Agreement between NCTCOG and PERFORMING PARTY, or the effective date of action by NCTCOG ending the Agreement for cause or for convenience.

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

1.29. *Written Amendment* - a document signed by the PERFORMING PARTY and NCTCOG 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**

The Agreement between NCTCOG and PERFORMING PARTY 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) TERP North Texas Emissions Reduction Grant Guidelines (Revised –June 27, 2006); (4) Appropriations Act of the 78th Texas Legislature pertaining to appropriation of funds to TCEQ for grants, etc. and grants by State agencies; (5) Chapter 2261 Texas Government Code (pertaining to cost reimbursement contracts); (6) Chapter 391 Local Government Code 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. NCTCOG 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 NCTCOG determines that the costs are reasonable, necessary, actual, and allowable costs of implementing the Grant Activities in the Application Summary and approved by TCEQ. Costs must be included in the Approved Application to be eligible for reimbursement. Determinations of eligibility for reimbursement are made by NCTCOG, subject to approval by TCEQ as the funding agency.

### ***Procurement***

3.2. The PERFORMING PARTY agrees to follow all the applicable requirements of the Uniform Grant Management Standards (UGMS) for the purchase of items under the Agreement.

### ***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 NCTCOG, 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. Any noncompetitive procurement of goods or services, where authorized by the UGMS, must be supported by a cost or price analysis.

#### ***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 and Approved Application Summary.

3.6. Unless expressly authorized by NCTCOG, 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 NCTCOG, 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 Agreement Documents and the TERP North Texas Emissions Reduction Grant Program Guidelines (Revised - June 27, 2006) and identified in the Approved Application and Approved Application Summary; 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 Approved Application Summary, and must satisfy the requirements of: the Agreement between NCTCOG and PERFORMING PARTY, 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.

***Preapproval of Costs***

3.13. If the specific details of costs to be incurred under the “Equipment,” “Contractual,” “Construction,” or “Other” costs categories are not already explained in the Approved Application and Approved Application Summary, including any Supplemental Activity Application Forms, then prior to incurring those costs, the PERFORMING PARTY must submit revised forms to show those details and receive authorization from NCTCOG for those expenses.

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

***Additional Evidence***

3.15. NCTCOG and/or TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs. PERFORMING PARTY will provide additional evidence concerning costs if requested by NCTCOG or TCEQ.

***Additional Criteria for Reimbursement***

3.16. The NCTCOG and/or 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. Any additional criteria and requirements for reimbursement of costs established by the NCTCOG and/or TCEQ will apply to PERFORMING PARTY as applicable.

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

3.17. Amounts of costs stated in the Application Summary are maximum amounts of reimbursement. By stating the amounts, NCTCOG 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. Any reimbursable costs are subject to approval by NCTCOG and/or TCEQ.

***No Entitlement to Funds***

3.18. The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. Neither a request for reimbursement nor NCTCOG payment of reimbursement nor any other action will establish an entitlement in the PERFORMING PARTY to payment from NCTCOG and/or the TCEQ.

3.19. By paying a request for reimbursement, NCTCOG does not waive any requirements for the reimbursement of costs. NCTCOG may at any time before or after reimbursement, in its sole discretion, request additional evidence concerning costs or if requested to do so by TCEQ. NCTCOG and/or 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***

3.20. 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. If TCEQ offsets a reimbursement payment under this section, NCTCOG shall not be obligated to pay to the PERFORMING PARTY the amount of the offset.

3.21. The PERFORMING PARTY shall notify NCTCOG, 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. NCTCOG, 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 the Agreement between NCTCOG and PERFORMING PARTY.

***Child Support***

3.22. 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 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 State-funded grant or loan. By executing this Grant Agreement, the PERFORMING PARTY certifies that the individual or business entity named in the Agreement between NCTCOG and PERFORMING PARTY is not ineligible to receive the specified grant and acknowledges that the Agreement between NCTCOG and PERFORMING PARTY may be terminated and payment withheld if this certification is not accurate.

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

3.23. Any fees charged by a consultant for preparation of a grant application are the sole responsibility of the PERFORMING PARTY and are not an allowable cost under the Agreement between NCTCOG and PERFORMING PARTY. 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(s) or equipment from that vendor is made independently and meets the other reasonableness provisions in the grant Agreement. 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 NCTCOG or TCEQ under the reasonableness requirements of the grant contract.

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

3.24. For any Grant Activity where 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 of 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 binding commitment on the part of the PERFORMING PARTY shall not be sufficient to satisfy this provision.

**ARTICLE 4. PERFORMING PARTY'S RESPONSIBILITIES TO NCTCOG – GRANT ACTIVITIES**

4.1. All Grant Activities for which reimbursement is requested must be completed as set forth in the Approved Application and Approved Application Summary, 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 the Agreement between NCTCOG and PERFORMING PARTY 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 the Agreement between NCTCOG and PERFORMING PARTY.

***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 Agreement 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 Agreement Documents.

***Materials & Equipment***

4.5. Unless otherwise specified in the Agreement 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 NCTCOG, all Grant Equipment will be of good quality and as provided in the Agreement 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 Agreement 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 NCTCOG, 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 NCTCOG, the PERFORMING PARTY shall provide proof of insurance coverage. NCTCOG may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. NCTCOG may also waive this requirement, at its 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 the Agreement between NCTCOG and PERFORMING PARTY that any particular non-compliance is a material breach, NCTCOG 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 NCTCOG expressly agrees to a longer period. Replacement Grant Equipment is subject to all the requirements that are applicable to Grant Equipment contained in the Agreement between NCTCOG and PERFORMING PARTY.

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

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

5.1. State Auditor's Office. The PERFORMING PARTY understands that acceptance of funds under the Agreement between NCTCOG and PERFORMING PARTY acts as acceptance of the authority of NCTCOG, TCEQ, and/or the State Auditor's Office, or any successor agency, to conduct an audit on investigation in connection with those funds. 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 the Agreement between

NCTCOG and PERFORMING PARTY. The PERFORMING PARTY will include in all subcontracts for work under the Agreement between NCTCOG and PERFORMING PARTY 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 the Agreement, by NCTCOG, TCEQ, the State of Texas, the State Auditor's Office, and any of their 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 the 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 the Agreement between NCTCOG and PERFORMING PARTY. 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 the Agreement between NCTCOG and PERFORMING PARTY, and a copy of any cost information or analysis submitted to NCTCOG. The PERFORMING PARTY shall allow access to all the material including bank statements and records by NCTCOG, TCEQ, and/or 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 the Agreement between NCTCOG and PERFORMING PARTY.

5.5. Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity under the Agreement between NCTCOG and PERFORMING PARTY, for the Project Life as set forth in the Agreement between NCTCOG and PERFORMING PARTY, 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 the Agreement between NCTCOG and PERFORMING PARTY, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under the Agreement between NCTCOG and PERFORMING PARTY 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 conform to 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 the property cost paid by NCTCOG, 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 NCTCOG, 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 NCTCOG. Written notice of any such delegation will be provided to NCTCOG.

#### ***Personnel***

5.11. PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Agreement 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 Agreement Documents, the PERFORMING PARTY shall obtain and pay for all transportation, construction, and operating permits and licenses required for the performance of the Agreement between NCTCOG and PERFORMING PARTY. Failure to comply with a permit 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 the Agreement between NCTCOG and PERFORMING PARTY.

### ***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, NCTCOG 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 the Agreement between NCTCOG and PERFORMING PARTY shall be furnished, upon request, to the NCTCOG and/or 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 the Agreement between NCTCOG and PERFORMING PARTY, if requested by NCTCOG and/or TCEQ, all copies of data and information developed under the Agreement between NCTCOG and PERFORMING PARTY shall be furnished, at no charge to the NCTCOG or TCEQ, to include databases for which the costs of preparation are reimbursed under the Agreement between NCTCOG and PERFORMING PARTY, and become the property of the requesting agency.

5.16. The PERFORMING PARTY agrees to notify NCTCOG prior to releasing any information to the news media regarding the Grant Activities. NCTCOG agrees to notify PERFORMING PARTY in the event NCTCOG issues any press releases to the media regarding this project.

### ***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 NCTCOG.

### ***Lobbying Activities***

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

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

## **ARTICLE 6. NCTCOG RESPONSIBILITIES**

6.1. NCTCOG will designate a Project Representative authorized to give direction to the PERFORMING PARTY and act on behalf of the NCTCOG.

6.2. NCTCOG 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. Neither NCTCOG nor TCEQ will 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 NCTCOG in accordance with the Agreement between NCTCOG and PERFORMING PARTY, no waiver of any obligation of the PERFORMING PARTY shall bind NCTCOG. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

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

7.1. In order to receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed NCTCOG Request for Reimbursement form, to be made available to the PERFORMING PARTY by NCTCOG. Each request shall be accompanied by a properly completed Financial Status Report for each activity for which reimbursement is requested. The request and forms shall be mailed or delivered to:

North Central Texas Council of Governments  
Transportation Department  
C/O: TERP Grants Coordinator  
P.O. Box 5888  
Arlington, Texas 76005-5888

7.2. The Financial Status Reports submitted with a Request for Reimbursement shall be completed on forms provided by NCTCOG. The report, including all required supplemental forms, 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 7.4 below, to be eligible for reimbursement under the Agreement between NCTCOG and PERFORMING PARTY, a cost must have been incurred and paid by the PERFORMING PARTY prior to claiming reimbursement from NCTCOG. 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.

7.4. Subject to approval by NCTCOG, the PERFORMING PARTY may assign the payments due from NCTCOG 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 NCTCOG.

7.5. For activities where a baseline cost applies, and unless approved in writing by NCTCOG, the costs incurred or otherwise obligated under financing agreement must exceed the value of the baseline costs before NCTCOG 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 financing agreement exceed both the value of any baseline costs that apply and the value of the financial assistance received.

7.6. A final Request for Reimbursement form, indicating in the appropriate box that it is the final request, shall be submitted to NCTCOG by no later than forty-five (45) days after the termination date of the Agreement between NCTCOG and PERFORMING PARTY or the date specified in the NCTCOG TERP Grant Agreement, whichever is earlier.

7.7. All Request for Reimbursement forms and accompanying Financial Status Report 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 NCTCOG to ascertain the eligibility of a particular cost and to enable subsequent audit thereof. Supporting documentation materials, as directed by NCTCOG 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.

7.8. 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 NCTCOG Project Representative and Contract Manager may reject the request, until such time as the deficiencies have been corrected. Satisfactory accomplishment of a task is within the judgment of NCTCOG; however such judgment must be reasonable.

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

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

8.1. During the Contract Period, the PERFORMING PARTY shall submit a properly completed Project Status and Completion Report, on forms provided by NCTCOG, with each Request for

Reimbursement. The PERFORMING PARTY shall also submit a completed Project Status and Completion report, on forms provided by NCTCOG, when requested by the NCTCOG and/or TCEQ to provide information on the status of completion of the grant activities.

8.2. A final Project Status and Completion Report, using forms provided NCTCOG and indicating in the appropriate box that it is the final report, shall be submitted to NCTCOG after all Grant Activities are completed, and by no later than forty-five (45) days following the termination date of the Agreement between NCTCOG and PERFORMING PARTY.

## **ARTICLE 9. TERMINATION**

9.1. Unless termination occurs by action taken by NCTCOG under this Article, the Agreement between NCTCOG and PERFORMING PARTY will terminate upon expiration of the contract period or upon full performance of all requirements contained herein.

9.2. The Agreement between NCTCOG and PERFORMING PARTY may be terminated in whole or in part by NCTCOG for cause by the PERFORMING PARTY, which may include without limitation a material failure to comply with the requirements of the Agreement Documents. Unless advance notice of intent to terminate will place TERP funds at increased risk, NCTCOG 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.

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

9.4. The Agreement between NCTCOG and PERFORMING PARTY may be terminated in whole or in part by NCTCOG for its convenience. Circumstances in which this may occur include without limitation the termination of the NCTCOG/TCEQ agreement regarding the administration of certain TERP funds; 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 NCTCOG, NCTCOG will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

9.5. If after termination for the PERFORMING PARTY'S material failure to comply with the requirements of the Agreement 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 NCTCOG.

9.6. In accordance with the Agreement between NCTCOG and PERFORMING PARTY, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under the Agreement. Therefore, PERFORMING PARTY waives any claim for damages arising from or resulting from NCTCOG termination of the Agreement for any reason.

9.7. If during the Agreement Period, the PERFORMING PARTY chooses to not complete the Grant

Activities and withdraw from the obligations under the Agreement, the PERFORMING PARTY may terminate the Agreement by providing ten (10) days' written notice to NCTCOG and returning any reimbursements already received.

#### **ARTICLE 10. LONG-TERM MONITORING AND REPORTING**

10.1. 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.

10.2. As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed Monitoring Reports to NCTCOG, on forms provided by NCTCOG, 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 duration of the Activity Life. The PERFORMING PARTY will submit the required reports on or before the date specified by NCTCOG.

#### **ARTICLE 11. INDEMNIFICATION**

To the extent permitted by law, the PERFORMING PARTY agrees to indemnify and hold harmless NCTCOG, 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 the Agreement.

#### **ARTICLE 12. ACHIEVING EMISSION REDUCTIONS**

12.1. 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 the Agreement. The PERFORMING PARTY agrees that the TERP funded portion of emission reductions generated by each activity over the Activity Life are transferred to the TCEQ for the State Implementation Plan and those reductions are permanently retired. NCTCOG may elect to use any remaining emission reductions for SIP purposes or to meet other air quality requirements, with the exception that no emission reductions may be used for emission trading purposes.

12.2. The PERFORMING PARTY agrees that if, during the Activity Life, the annual and total NOx emission reductions achieved within the Eligible Counties by the Grant Activities do not meet the amounts calculated in the Application Summary of the Agreement, NCTCOG 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 NCTCOG, the determination of whether the NOx 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. The decision on whether a return of funds is necessary will be at the discretion of NCTCOG.

12.3. 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 NCTCOG 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 discretion of the NCTCOG.

12.4. The PERFORMING PARTY agrees that failure to properly destroy or dispose of a vehicle, piece of equipment, or engine replaced under the Agreement, in accordance with the destruction requirements or the provisions of an alternative disposition plan approved by NCTCOG 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 NCTCOG 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 discretion of the NCTCOG.

12.5. 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 NCTCOG in writing of its intentions.

12.6. 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, NCTCOG 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 discretion of NCTCOG. The decision by NCTCOG 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. In lieu of a return of a share of the grant funds, one alternative that may be authorized by the NCTCOG 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 the 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.

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

12.8. NCTCOG may determine in its sole discretion that the provisions of this Article do not apply to a specific Grant Activity under the Agreement.

## **ARTICLE 13. 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 14. INSTALLATION AND USE OF IDENTIFYING MARK OR TRACKING DEVICE**

14.1. Upon request by NCTCOG, the PERFORMING PARTY shall, at the cost of the PERFORMING PARTY, install a prominently placed identifying mark on the equipment, identifying it as TERP-funded equipment and containing such other information as specified by NCTCOG.

14.2. Upon request by NCTCOG, the PERFORMING PARTY shall, at the cost of the PERFORMING PARTY, install a device for tracking the location of the equipment during the Activity Life, and maintain the information recorded by the device. PERFORMING PARTY shall provide to NCTCOG the information recorded by the device upon request.

14.3. NCTCOG, TCEQ, and/or their designees may inspect the identifying mark and/or tracking device, and/or the information which is recorded by the device.

14.4. NCTCOG recognizes that the PERFORMING PARTY may consider the information recorded and maintained by the device to contain confidential trade secret information. NCTCOG shall not release any information received from the PERFORMING PARTY as recorded by the device to any party outside NCTCOG or TCEQ, except as required under the Public Information Act or other applicable law. NCTCOG shall inform PERFORMING PARTY of any Public Information Act request for information.

#### **ARTICLE 15. 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 NCTCOG, upon NCTCOG payment of the final Request for Reimbursement.

#### **ARTICLE 16. AMENDING AND SUPPLEMENTING AGREEMENT DOCUMENTS**

The Agreement 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 17. REMEDIES AVAILABLE TO NCTCOG**

17.1. 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:

17.1.1. Reject substandard performance and request corrections without charge to NCTCOG;

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

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

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

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

17.1.6. Reject reimbursement request and withhold all or partial payments. Funds may be retained by NCTCOG for recovery of administrative costs or returned to funding source as authorized by agreements with the funding source and by State or federal law; and/or

17.1.7. 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***

17.2. NCTCOG 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 18. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE**

18.1. The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Agreement.

18.1.1. **Quality and Accuracy.** Standard: PERFORMING PARTY'S Grant Activities conform to the requirements of the Agreement between NCTCOG and PERFORMING PARTY.

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

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

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

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

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

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

18.2.2. **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.

18.2.3. **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.

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

### ***Contractor Evaluation***

18.3. NCTCOG may prepare a written evaluation of the performance of the PERFORMING PARTY upon completion of the terms of the Agreement, or more frequently, as deemed necessary by NCTCOG. A copy of the evaluation, if any, will be provided to the PERFORMING PARTY and a copy retained in NCTCOG contract files. The content of the evaluation shall be wholly within the discretion of NCTCOG. 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 NCTCOG for the evaluation.

## **ARTICLE 19. MISCELLANEOUS**

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

19.1. When any period of time is referred to in the Agreement 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, Sunday, or on a federal holiday, such day will be omitted from the computation.

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

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

19.3. Should NCTCOG 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***

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

19.5. 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 Agreement 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 Agreement Documents. The Agreement between NCTCOG and PERFORMING PARTY is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of NCTCOG and any attempted transfer without such consent is void.

19.6. Subject to the provisions of Article 12, General Conditions, NCTCOG 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 Agreement Documents.

19.7. The parties hereby agree that the Agreement between NCTCOG and PERFORMING PARTY does not waive the NCTCOG sovereign immunity relating to suit, liability, and the payment of damages. No NCTCOG personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of NCTCOG, goods or services which are not required under the Agreement Documents or any conforming amendment.

19.8. The PERFORMING PARTY acknowledges and agrees that any permissible cause of action involving the Agreement will arise solely in Tarrant 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 Tarrant County, the PERFORMING PARTY hereby agrees to venue in Tarrant County. This provision does not waive the NCTCOG sovereign immunity.

19.9. Any provision of the Agreement 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 NCTCOG and PERFORMING PARTY, who agree that Agreement 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***

19.10. If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify NCTCOG in writing according to the Notice provisions AND send notification by certified mail directly to NCTCOG. The PERFORMING PARTY'S notice to the NCTCOG must include the appropriate application number(s).

— **End of General Conditions** —

**SPECIAL CONDITIONS**  
**for**  
**NORTH TEXAS EMISSIONS REDUCTION GRANT PROGRAM AGREEMENT**

**ARTICLE 1. SPECIAL CONDITIONS**

The Performing Party agrees to these Special Conditions.

**ARTICLE 2. PURCHASE/PAYMENT DOCUMENTS**

2.1. 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 NCTCOG. In order to be reimbursed for each payment, the PERFORMING PARTY is specifically required to submit the following supporting documents:

- 2.1.1. Canceled checks or wire transfers;
- 2.1.2. Written purchase and lease agreements;
- 2.1.3. Bills of Sale or Receipts for Delivery;
- 2.1.4. 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;
- 2.1.5. 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
- 2.1.6. Other documentation requested by NCTCOG in order to support the assertions in the request for reimbursement.

2.2. NCTCOG may waive the requirement for submission of any supporting documents that are not applicable to the PERFORMING PARTY.

**ARTICLE 3. GRANT EQUIPMENT**

3.1. The Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under the Agreement between NCTCOG and PERFORMING PARTY are listed in the Approved Application. The PERFORMING PARTY may not substitute different Grant Equipment from the units listed, including either the existing units to be replaced or those proposed for purchase or lease, without the approval of NCTCOG. This provision includes conformance with the model year and NOx emission rate of the engine as listed in the Approved Application. The PERFORMING PARTY understands that, in some circumstances, engines of the same make, model, and model year may be certified to different NOx emission rates, and that NCTCOG approval of the application does not constitute final verification that an engine meets the required certified NOx emission rate.

3.2. NCTCOG 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. NCTCOG 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 NCTCOG will apply to the PERFORMING PARTY's compliance with the provisions of Section 3.1. of this Article.

3.3. The PERFORMING PARTY shall ensure that not less than 75 percent of the annual usage of the Grant Equipment will take place in one or more of the eligible counties during the Activity Life of the Grant Equipment. PERFORMING PARTY agrees to provide NCTCOG sufficient verification that 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.

#### **ARTICLE 4. NEW PURCHASE OR LEASE CATEGORY**

The engine installed on Grant Equipment purchased or leased under the New Purchase or Lease category must be certified to a NOx 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 NCTCOG.

#### **ARTICLE 5. TRADE-IN OF EQUIPMENT OR ENGINES**

Unless approved in writing by NCTCOG 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 for purposes of receiving reimbursement of qualifying expenses.

#### **ARTICLE 6. ACTIVITY LIFE**

The PERFORMING PARTY agrees to keep and use the Grant Equipment purchased or leased under the 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 Article 12.

#### **ARTICLE 7. USE OF VEHICLES, EQUIPMENT, AND ENGINES BEING REPLACED**

7.1. Unless otherwise accepted by NCTCOG in accordance with Section 7.2. of this Article, the PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced under the Agreement between NCTCOG and PERFORMING PARTY in accordance with the disposition option marked and the arrangements explained by the PERFORMING PARTY for each activity in the Approved Application or by complete destruction in accordance with Section 7.4 of this Article. Any vehicles, equipment, and/or engines not disposed of in accordance with an alternative disposition option marked by the PERFORMING PARTY in the Approved Application, or otherwise accepted by NCTCOG, must

either be destroyed or otherwise rendered permanently inoperable by drilling a hole through the engine block and cutting the frame rails or other structural components of the vehicle or equipment.

7.2. NCTCOG may, but is not obligated to, accept an alternative disposition arrangement not originally marked by the PERFORMING PARTY in the Approved Application. The decision by NCTCOG on accepting an alternative disposition arrangement will include, but will not be limited to, consideration of whether the disposition approach used is consistent with one of the options originally available to the PERFORMING PARTY as listed in the Approved Application.

7.3. If the PERFORMING PARTY has indicated that the vehicles, equipment, or engine will be sold or transferred to another location in the United States, outside of Texas, but has not yet identified the final end user, the PERFORMING PARTY must notify NCTCOG in writing of the name, address, contact person, and phone number of the end user that will take ownership of the vehicle or equipment to be replaced prior to or within 30 days after the transfer of ownership. NCTCOG may withhold reimbursement payments for that activity, pending notification of the end user information. Unless otherwise directed by NCTCOG, the PERFORMING PARTY does not need to identify an end user for vehicles, equipment, or engines to be permanently removed from the United States.

7.4. The removal of vehicles, equipment, or engines replaced under the Agreement between NCTCOG and PERFORMING PARTY out of the State of Texas must be permanent. Engines completely disassembled at a remanufacture facility authorized by an engine manufacturer and used for parts in the remanufacture facility, and where the engine block serial number is removed, will be considered permanently removed from the State, even if an engine that is remanufactured using those parts is returned to the State. The obligation of the PERFORMING PARTY for ensuring that vehicles, equipment, or engines removed from the State of Texas under the Agreement between NCTCOG and PERFORMING PARTY are not returned to the State will be in accordance with either Subsection 7.4.1. or 7.4.2. of this Section.

7.4.1. If the PERFORMING PARTY does not retain ownership or other control of the vehicles, equipment, or engines removed from the State of Texas under the Agreement between NCTCOG and PERFORMING PARTY, then the PERFORMING PARTY's obligation for ensuring that the vehicles, equipment, or engines remain out of the State of Texas extends through either the completion of the approved disposition arrangements and reporting to NCTCOG, the termination date of the Agreement between NCTCOG and PERFORMING PARTY, or the issuance of the final reimbursements by NCTCOG for expenses incurred by the PERFORMING PARTY under the Agreement between NCTCOG and PERFORMING PARTY, whichever occurs later.

7.4.2. Any vehicles, equipment, or engines replaced under the Agreement between NCTCOG and PERFORMING PARTY and transferred out of the State of Texas in accordance with this Article, and remaining under the ownership or other direct control of the PERFORMING PARTY, may not be returned to the State of Texas. The PERFORMING PARTY may not sell or transfer control to a user in the State of Texas or to a user that the PERFORMING PARTY otherwise has reason to believe would return the vehicles, equipment, or engines to the State of Texas. If the sale or transfer occurs during the Activity Life, the PERFORMING PARTY must notify NCTCOG of the sale or transfer, and shall provide the TCEQ with information on the name and location of the entity receiving the vehicle, equipment, or engine.

7.5. If the vehicles, equipment and/or engines were replaced prior to the PERFORMING PARTY's receipt of a Notice to Proceed issued by NCTCOG, then those vehicles, equipment, and/or engines, shall

be destroyed or transferred outside of the State of Texas in accordance with the approved disposition option within 90 days of the PERFORMING PARTY's receipt of the Notice to Proceed. Otherwise, the vehicles, equipment, and/or engines, shall be destroyed or transferred out of the State of Texas in accordance with the approved disposition option within 90 days of purchasing the replacement vehicles or equipment. NCTCOG may grant an extension to this deadline without a change to the Agreement between NCTCOG and PERFORMING PARTY.

7.6. The PERFORMING PARTY shall submit on forms to be made available by NCTCOG information to verify the final disposition of the vehicles, equipment, and engines replaced under the Agreement between NCTCOG and PERFORMING PARTY. 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. Final disposition must be accomplished within 90 days of purchase of the replacement vehicles or equipment or within 90 days of receiving the signed NCTCOG Notice to Proceed, if the purchase has already occurred. Unless otherwise agreed to by NCTCOG, 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.

7.7. Failure of the PERFORMING PARTY to comply with the provisions of this Article will constitute a material failure to conform to the requirements of the Agreement between NCTCOG and PERFORMING PARTY.

## **ARTICLE 8. CREDIT FOR REPLACED VEHICLES OR EQUIPMENT**

8.1. In determining the expenses eligible for reimbursement under the Agreement between NCTCOG and PERFORMING PARTY, 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 vehicles, equipment, or engines being replaced, including the parts from those vehicles, equipment, or engines.

8.2. The PERFORMING PARTY must identify any value received for the replaced vehicle or equipment including, but not limited to, cash, goods, services, gifts, intangibles, discounts, or any other items of value.

8.3. The scrappage value, or trade-in or resale value if applicable, is considered a cost of performing the Grant Activities and as such must satisfy the cost guidelines of the 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. The value received and reported to NCTCOG must reflect the reasonable scrappage, trade-in, or sale of the old vehicle or equipment.

## **ARTICLE 9. PURCHASE AGREEMENTS AND SUBCONTRACTS**

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

## **ARTICLE 10. INFRASTRUCTURE COSTS**

10.1. As applicable, NCTCOG will reimburse the PERFORMING PARTY for no more than fifty (50) percent of the eligible costs for the purchase and installation of the infrastructure to be installed under the Agreement between NCTCOG and PERFORMING PARTY. Costs to be reimbursed must be approved by NCTCOG and listed in the Approved Application, and may not include expenses for in-house labor, in-house travel, or land purchases. Costs eligible for reimbursement, if approved by NCTCOG and included in the Approved Application, may include:

- 10.1.1. Invoice cost of the infrastructure equipment, including sales tax and delivery charges;
- 10.1.2. Associated supplies directly related to the installation of the infrastructure;
- 10.1.3. Installation costs;
- 10.1.4. Design and engineering work directly necessary for the installation of the infrastructure;
- 10.1.5. Re-engineering and construction costs, if the existing site must be modified to allow for installation of the infrastructure; and
- 10.1.6. Other costs directly related to the project, subject to approval of NCTCOG.

10.2. With each request for reimbursement of grant expenses, the PERFORMING PARTY shall list the eligible costs incurred. If the request for reimbursement is approved, NCTCOG will then reimburse the PERFORMING PARTY fifty (50) percent of those incurred costs.

## **ARTICLE 11. INSURANCE**

11.1. The PERFORMING PARTY shall obtain and maintain in full force for the term of the Agreement and at the expense of the PERFORMING PARTY insurance as listed below from insurers licensed under the laws of the State of Texas.

- 11.1.1. Worker's Compensation and Employer's Liability Insurance. Coverage in the following minimum amounts for all personnel furnishing work: bodily injury- by accident, \$500,000.00 per accident; by disease, \$500,000.00 per employee; and a per policy aggregate of \$1,000,000.00. Elective exemptions or coverage through an employee leasing arrangement will not satisfy this requirement
- 11.1.2. Insurance coverage naming NCTCOG, the State of Texas, acting through the Texas Commission on Environmental Quality, as additional insured and loss payees on its policies described below:
  - 11.1.2.1. Comprehensive General Liability in the amount of \$500,000.00 per occurrence for bodily injury and \$500,000.00 per occurrence for property damage, *or* \$1,000,000.00 per occurrence if the policy is issued for bodily injury and property damage combined, *and*, a per policy aggregate of \$2,000,000.00.
  - 11.1.2.2. If insurance policies are not written for amounts specified above, the PERFORMING PARTY shall carry Umbrella Excess Liability Insurance for any differences in amounts specified. If Umbrella Excess Liability insurance is provided, it shall follow the form of the primary coverage.
- 11.1.3. Local government Self Insurance policies may be deemed sufficient to satisfy the insurance requirements under this Article.

11.2. All policies of insurance shall include the following required provisions: 1) the North Central

Texas Council of Governments (NCTCOG) will be notified, in writing, of the cancellation or modification of a policy at least thirty (30) days prior to the effective date of the cancellation or modification; 2) where available, NCTCOG and TCEQ and their officers and employees are named as additional insured to the Commercial General Liability Insurance; 3) waiver of subrogation against NCTCOG and TCEQ, their officers and employees, for bodily injury (including death), property damage or any other loss arising from this contract; the waiver shall be on a form approved by NCTCOG and TCEQ and, 4) the PERFORMING PARTY's insurance is primary insurance with respect to NCTCOG and TCEQ, their officers and employees.

11.3. Insurance shall be effective prior to the PERFORMING PARTY commencing any Grant Activities under the Agreement.

11.4. Upon request, PERFORMING PARTY shall furnish evidence of insurance to NCTCOG.

**— End of Special Conditions —**

The undersigned agrees to the General and Special Conditions set forth in this document:

---

Signature of Certifying Official for PERFORMING PARTY

---

Title

---

Date