

# Texas Clean School Bus Grant Program

## Request for Grant Activities for School Bus Retrofits To Reduce Emissions from Diesel School Buses in Texas Fiscal Year 2009

RFGA Contract No. 582-9-89240

### Eligible Entities

Any school district or charter school that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under this program. Private schools are not eligible for funding. An eligible entity that leases buses may be eligible for grants if the eligible entity is the applicant and consents to being a third-party to an agreement with the leasing company and TCEQ.

### Eligible Buses

A diesel school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining, unless the applicant agrees to remove the retrofit device at the end of the bus life and reinstall the device on another bus.

### Application Deadline

During this grant cycle, applications will be considered on a first-come-first-served basis. Applications must be received by the Texas Clean School Bus Grant Program Coordinator by 5:00 p.m., Central Time, on December 15, 2008.

It is the responsibility of the applicant to ensure that applications are delivered to the Texas Clean School Bus Grant Program Coordinator by the required deadline.

### Contracting with TCEQ

Applicants must agree to be contractually bound by:

- the requirements established in this RFGA,
- the terms and conditions included in this RFGA, *including the Project Completion deadline of March 31, 2009* and
- the project work plan and other commitments on the application forms.

The award of a grant is dependent upon funding availability and the TCEQ may suspend acceptance of applications prior December 15, 2008.

Application forms are available on the Texas Electronic State Business Daily at <http://esbd.cpa.state.tx.us/>, TexasCleanSchoolBus.org or by calling the TCEQ at 512-239-3100.

### SUBMIT APPLICATIONS TO:

<b>Regular Mail</b> TCEQ Clean School Bus Grant Program, MC-112 P.O. Box 13087 Austin, Texas 78711-3087	<b>Overnight Delivery or Courier</b> TCEQ Clean School Bus Grant Coordinator 12100 Park 35 Circle, Bldg F, Room 1301 Austin, Texas 78711-3087
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**Texas Commission on Environmental Quality  
Texas Clean School Bus Program**

**Request for Grant Activities for School Bus Retrofits  
Fiscal Year 2009**

**CLEAN SCHOOL BUS GRANT REQUIREMENTS**

**1. PROGRAM OVERVIEW:**

1.1 This grant program implements the portion of the Texas Emissions Reduction Plan (TERP) related to the Texas Clean School Bus Program, as authorized under Chapter 390, Texas Health and Safety Code. The TCEQ adopted rules to implement this program under 30 Texas Administrative Code (TAC) Chapter 114, Subchapter K, Division 4.

1.2 The goal of this program is to reduce children's exposure to diesel exhaust in and around diesel school buses. Under the program, the TCEQ will provide grants to offset the incremental cost of eligible projects that reduce diesel exhaust emissions.

1.3 Exposure to diesel exhaust can cause health problems and aggravate existing respiratory diseases such as asthma. Recognizing these health impacts, the U.S. Environmental Protection Agency (EPA) requires:

- (1) ultra-low sulfur diesel fuel to be the standard U.S produced on-road diesel fuel; and
- (2) new heavy-duty diesel buses to include advanced pollution control systems that significantly reduce emissions up to 95 percent starting in 2007.

However, existing buses are not required to be upgraded to these new emission standards. Installing retrofit systems on existing buses reduces harmful emissions.

1.4 In this document the Clean School Bus Grant Program Requirements relate to the applications, RFGA and through the resulting Contract. The Clean School Bus Grant Program Requirements, in addition to the General Terms and Conditions and project work plan and budget, constitute the Agreement.

**2. ELIGIBLE APPLICANTS**

2.1 Any Texas school district, charter school or transportation system provided by a countywide school district may apply for and receive a grant under this program. Private schools are not considered school districts for the purposes of this grant. A "School District" is authorized and created pursuant to Chapter 11 of the Texas Education Code. A "Charter School" is a school authorized and created by Chapter 12 of the Texas Education Code. A "Private School" is any school run for profit or not-for profit by any entity other than a School District or the State of Texas.

2.2 The TCEQ is not obligated to fund a proposal from an applicant that has demonstrated marginal or unsatisfactory performance on previous grants or contracts with the TCEQ and other state agencies.

2.3 The TCEQ is not obligated to fund a proposal when TCEQ determines the proposal poses a risk due to the financial condition of the applicant or other risk factors as determined by the TCEQ.

2.4 The TCEQ is not obligated to fund a proposal from an applicant that is under federal, state, or local enforcement action for violation of environmental laws or permits.

2.5 The TCEQ is not obligated to fund a proposal from an applicant with an overall compliance history classification of poor or from an applicant who is delinquent in paying TCEQ penalties or fees.

2.6 School buses that are otherwise eligible for a Clean School Bus Grant, but are owned by a private leasing company may be eligible for a Clean School Bus Grant if the school district in which the leased buses operate is the applicant and the private leasing company certifies its willingness to be a party to the resulting grant agreement. (See Form 4.) Special Terms and Conditions relevant to such an arrangement will be negotiated prior to the signature of the contract.

2.7 The TCEQ is not obligated to fund any application, even if it was received by the deadline.

2.8 TCEQ in its discretion may reimburse costs incurred as of the date the RFGA is posted. Whether the discretion to reimburse these costs is exercised may depend in part on whether the timeframe for retrofit installment was accurately described in the application.

### **3. MAXIMUM FUNDING AMOUNTS**

During this application period, TCEQ will limit awards to no more than \$250,000 for each school district. The TCEQ is not obligated to fund projects up to the maximum allocated amount and may adjust or exceed funding amounts. The TCEQ may select parts of an application for funding and may fund less than the amount requested. The TCEQ may make funding contingent upon additional conditions or changes to the project pertaining to equipment, logistical considerations, expenses, and other program elements.

### **4. ELIGIBLE BUSES**

4.1 Any bus proposed for retrofit must be used on a regular daily route to and from a school and have at least five years of useful life remaining. Applicants may agree to remove the retrofit device at the end of a bus' use and reinstall the device on another bus with TCEQ written approval. All sizes of diesel-fueled school buses are eligible.

4.2 For clean school bus grants that fund retrofits of buses owned by private entities, the parties shall agree to additional special terms and conditions that govern the use of funds.

4.3 For clean school bus grants funded with federal money, the parties shall agree to additional federal terms and conditions to govern the use of funds.

4.4 For clean school bus grants that fund retrofits in counties identified as "Affected Counties" in Texas Health and Safety Code (see Article 6) the parties shall agree to additional special terms and conditions that govern the use of funds.

### **5. ELIGIBLE ACTIVITIES**

5.1 Eligible activities include the purchase and installation of eligible retrofit systems on eligible buses. Because many of the available retrofit systems have been verified only for certain engines, the applicant is responsible for researching and confirming that it is installing an appropriate technology for the proposed bus. Eligible systems include:

**Closed Crankcase Filtration Systems.** Closed crankcase filtration systems (CCFS) that are shown to reduce crankcase PM emissions may be funded independently or in conjunction with another verified system. Because of the effectiveness of CCFS to reduce the PM emissions most likely to enter the bus interior, applicants are encouraged to submit proposals for CCFS use.

**Diesel Particulate Filters.** Diesel particulate filters (DPF) that are verified by the U.S. Environmental Protection Agency (EPA) or the California Air Resources Board (CARB) are for buses manufactured in or after 1994. Most filter systems require the use of ultra-low sulfur diesel (15 ppm or less sulfur). Applicants are responsible for ensuring the continued availability of ultra-low sulfur diesel in their area.

**Diesel Oxidation Catalysts.** Diesel oxidation catalysts (DOC) that are verified by the EPA or CARB to reduce PM emissions may be considered for:

- buses manufactured before 1994;
- buses manufactured in or after 1994 for which a DPF is not available; or
- areas where ultra-low sulfur diesel fuel is not available.

**Partial Flow Through Filters.** Partial Flow Through Filters (FTF) that are verified by EPA or CARB to reduce PM emissions may be considered for specific vehicle and engine uses.

Applicants are encouraged to consider combinations of these retrofit systems to create cost effective overall emission reductions.

5.2 Other retrofit systems that are verified by the EPA or CARB to reduce PM emissions by at least 25 percent may be funded at a later date. The systems must be reviewed by TCEQ and added to the list of eligible technologies.

5.3 Applicants are encouraged to obtain additional funds from other sources to retrofit the maximum number of buses.

5.4 An activity is not eligible if it is required by any state or federal law, rule, memorandum of agreement, or other legally binding document. Exceptions include:

- a change that is not required by state or federal law, rule, memorandum of agreement or other legally binding document on the date of the grant award; and
- an activity that is required only by local law or regulation or by controlling board policy.

5.5 An activity involving a new emission reduction measure that would otherwise generate marketable credits under state or federal averaging, banking, or trading programs is not eligible for funding unless the reductions are permanently retired.

## **6. FUNDING IN AFFECTED COUNTIES**

The Texas Clean School Bus Program is a statewide program open to all eligible entities in Texas. There are multiple sources of funding for the program including TERP. TERP counties include those counties within the nonattainment areas designated under the Federal Clean Air Act, 107(d), as well as other counties identified as "Affected Counties" in Texas Health and Safety Code 386.001(2) and TCEQ rules (30 TAC 114.629). Counties within TERP eligible areas will be funded by appropriate sources and will include the relevant terms and conditions. Eligible counties and the boundaries of nonattainment areas may be subject to change.

## **7. ELIGIBLE COSTS**

7.1 The TCEQ will reimburse the cost of equipment purchase and installation, subject to limitations expressed in Article 7.4. Eligible costs include reasonable and necessary personnel expenses if in-house labor is used to install equipment. However, the recipient may not use the grant for administrative expenses or indirect charges.

7.2 The TCEQ neither encourages nor discourages use of a consultant to assist with applications. The TCEQ has no agreement with any consultant that applications they submit will receive favorable treatment. Consultant fees are the responsibility of the applicant or vendor and may not be charged to the grant, either directly or as an addition to the equipment cost.

7.3 When determining the cost basis for the grant and reimbursement, the award must be reduced by the value of any other incentive that directly reduces costs, including tax credits or deductions, other grants, or other financial assistance.

7.4 All purchase decisions must be based on sound business practices and arm's length bargaining. In most cases, this requires a competitive procurement process. The maximum reimbursement amounts for equipment purchase and installation are:

- Diesel Particular Filters - \$8,250 per device/bus
- Diesel Oxidation Catalyst - \$1,500 per device/bus
- Closed Crankcase Filtration System - \$800 per device/bus
- Partial Flow Through Filters - \$6,000 per device/bus

The TCEQ may consider exceptions to the caps on a case-by-case basis with adequate justification from the applicant.

## **8. DETERMINATION OF ELIGIBILITY OF COST**

8.1. The TCEQ will reimburse the Performing Party for those costs that are eligible for reimbursement in accordance with all requirements. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are allowable for implementing the Grant Activities approved by the TCEQ in this Agreement. Costs must be included in this Agreement to be eligible for reimbursement.

8.2. In order to be allowable, costs must be included in the Agreement and must satisfy the requirements of this Agreement, the Uniform Grant Management Standards (UGMS), the TCEQ *Allowable Expenditure Guidelines*, state agency rules, all applicable state and federal laws, and the RFGA under which the application was submitted.

8.3. The Performing Party agrees the UGMS shall govern this grant. The UGMS document is located on the internet at the following address:

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

8.4. Unless expressly authorized by the TCEQ, eligible costs do not include:

8.4.1. amounts deducted from the true price of the purchase of Grant Equipment whether as discounts, rebates, refunds or otherwise;

8.4.2. amounts which the Performing Party owes or agrees to pay the vendor or contractor for any purpose other than the implementation of Grant Activities;

8.4.3. 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; and,

8.4.4. amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are received by the Performing Party.

8.5. Amounts of costs stated in this Agreement are maximum amounts of reimbursement. The amount of costs for which reimbursement may be requested is the lesser of 1) the costs stated in the Application of this Agreement or 2) the actual eligible costs. In no event will reimbursement exceed the Contract Amount.

## **9. REIMBURSEMENT**

9.1. **Eligibility for reimbursement.** Except as provided for under Article 8.2., to be eligible for reimbursement under this Agreement, a cost must have been incurred and paid by the Performing Party prior to claiming reimbursement from TCEQ. All grant activity costs must have been incurred by the Performing Party prior to claiming reimbursement. Therefore, Grant Equipment must be purchased and installed prior to a request for reimbursement. Ineligible invoices will be rejected.

9.2. **Assignment of Payment.** Subject to approval by the TCEQ, the Performing Party may assign the payments due from the TCEQ directly to the supplier, subcontractor, or other appropriate entity from which the goods or services were procured or financed by the Performing Party. A properly completed Texas Application for Payee Identification Number should be completed and sent to TCEQ prior to submitting the Request for Reimbursement Forms. The Notice of Assignment must be completed and submitted with the Request for Reimbursement Forms. Under this option, the Grant Equipment included under a cost must have been received and accepted by the Performing Party, and the Performing Party must have an obligation to pay the expense. Sufficient supporting documentation must be submitted, as outlined in the form instructions, to document that the goods or services were received and that the payment amount is owed to the entity designated to receive the payment from the state. Payments will not be made to a consultant or entity that acts as a middle-man between the applicant and a vendor.

9.3. **Final Request for Reimbursement.** A final Request for Reimbursement form, indicating in the appropriate box that it is the final request, shall be submitted to the TCEQ by no later than sixty (60) days after the Project Completion date of this Agreement. The TCEQ, in its sole discretion, may accept and pay a reimbursement request submitted after this deadline.

9.4. **Release of Claims.** The final Request for Reimbursement must include a signed Release of Claims, releasing all claims for payment of any funds due and payable by the TCEQ, upon TCEQ's payment of the reimbursement request.

9.5. The Performing Party shall submit any supporting documentation required or requested by TCEQ. In order to be reimbursed for each payment, the Performing Party is specifically required to submit the following supporting documents:

9.5.1. Canceled checks or wire transfers;

9.5.2. Written purchase agreements;

9.5.3. Bills of Sale or Receipts for Delivery;

9.5.4. Other documentation requested by TCEQ in order to support the assertions in the Request for Reimbursement.

9.6. The TCEQ may waive the requirement for submission of any supporting documents that are not applicable to the Performing Party.

9.7. The TCEQ may at any time, in its sole discretion, establish additional criteria and requirements for reimbursement of costs.

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

9.9. No entitlement. In accordance with this Agreement, the Performing Party does not have an expectation or entitlement of continued receipt of financial assistance under this Agreement. Therefore, Performing Party waives any claim for damages arising from or resulting from TCEQ's termination of this Agreement for any reason.

9.10. The Performing Party shall notify the TCEQ, in its Request for Reimbursement forms, of any financial incentive that offsets the cost of the proposed project. The TCEQ, in reimbursing the Performing Party, may reduce the amount of authorized incremental costs eligible for reimbursement by the value of any additional financial incentive received by the Performing Party, without an Amendment to this Agreement.

## **10. CONTRACT REQUIREMENTS**

10.1 When signed by both the applicant and the TCEQ, the application becomes part of the contract. By submitting a signed application, the applicant is agreeing to abide by the contract, which consists of:

- the RFGA, including the requirements and the terms and conditions; and
- the application, including the project work plan and budget.

After TCEQ has reviewed, approved, and signed the application, a copy of the contract will be provided to the Performing Party. Costs can be eligible for reimbursement of retrofits at the date of the RFGA posting; however, reimbursement is not guaranteed until there is a signed contract by both parties. Performing Party bears the risk that TCEQ will not fully reimburse costs if retrofits are installed prior to contract signature.

10.2 The Performing Party must maintain the grant-funded retrofit system in good operating condition. Performing Parties should include at minimum a five-year manufacturer and installer warranty in their purchase agreements. Retrofit systems will require maintenance and replacement parts before the end of the activity life. The Performing Party is responsible for all maintenance and replacement part costs.

10.3 The Project Completion date is March 31, 2009. All retrofits must be installed by the project completion date in order to be eligible for cost reimbursement. Extensions shall be granted in only cases of extreme hardship after a showing is made by the school district and the Contract is amended.

## **11. MONITORING AND REPORTING**

11.1 The Performing Party must monitor bus use for the five-year activity life and may be requested by TCEQ to provide appropriate confirmation. The five-year activity life is established by contract and commences when the retrofitted bus goes back in service.

11.2 The TCEQ may provide an identifying mark for grant-funded buses to aid the TCEQ and the Performing Party in identifying and tracking those buses. The Performing Party must place the label on the grant-funded bus if requested to do so by the TCEQ.

## **12. APPLICATION AND AGREEMENT**

The applicant must determine the specific buses to be retrofitted and obtain final bids for equipment and installation before submitting an application. Three original copies of the completed and signed Application and Agreement form must be submitted. Applications will be processed on a first-come-first-served basis. Incomplete forms will not be considered.

## **13. PUBLIC INFORMATION**

Upon submission, all applications are subject to the Texas Public Information Act.

## **14. STANDARDS AND MEASURES OF PERFORMANCE**

14.1 Overview. The TCEQ is required to monitor a performing party's performance. The Performing Party agrees that the standards and measures set forth in this RFGA are appropriate criteria for the applicant's performance during the term of the contract.

14.2 Standards:

- **Quality and Accuracy.** The Performing Party's grant activities conform to the requirements of the grant agreement.
- **Timeliness.** The Performing Party's grant activities are completed on schedule.
- **Reports and Administrative and Financial Operations.** The Performing Party's administrative and financial operations comply with all obligations in law and in this Agreement, including, record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.
- **Communication.** The Performing Party's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ.
- **Other.** Other factors unique to the type of project, as determined by the TCEQ.

14.3 Measures. The TCEQ will monitor the Performing Party's performance and evaluate the level of compliance with the standards utilizing these performance measures:

- **Exceeds Expectations.** The Performing Party fully complied with all the standards on a consistent basis.
- **Satisfactory Performance.** The Performing Party complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.
- **Marginal Performance.** The Performing Party was acceptable, although a significant number of deficiencies had to be corrected before the contract requirements could be considered met.
- **Unsatisfactory Performance.** The Performing Party was not acceptable, even after attempts to correct deficiencies.

## **15. CONTRACTOR EVALUATION**

The TCEQ will prepare a written evaluation of the Performing Party upon completion of the contract, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation will be provided to the Performing Party and a copy retained in the TCEQ's contract files. The content of the evaluation shall be wholly within the discretion of the TCEQ. The Performing Party may provide a written statement that explains or disagrees with the evaluation, which will be incorporated into the evaluation. The Performing Party waives any claim for damages against TCEQ for the evaluation. A rating of marginal or unsatisfactory performance may be used as a basis to lower or otherwise change the priority and ranking of a future application.

## **GENERAL TERMS AND CONDITIONS**

16. Statement of Agreement: This Agreement is entered by the parties listed on the Signature Page for the purpose of providing a grant to financially assist the Performing Party in implementing the Grant Activities. The Parties agree: Performing Party shall conduct the Grant Activities required by this Agreement; TCEQ will reimburse authorized Allowable Costs subject to the Texas Uniform Grant Management Standards (UGMS) and the Agreement; Performing Party is not a vendor of goods and services under Texas Government Code Chapter 2251; if, during the Contract Period, the Performing Party chooses to not complete the Grant Activities and withdraw from the obligations under this Agreement, the Performing Party may terminate this Agreement by providing thirty (30) days written notice to the TCEQ.

17. Contract Period: The Effective Date of this Agreement is the date on which the Signature Page of the Contract Documents is signed by the last of the parties to sign. This Agreement commences on the Effective Date and, for purposes of availability of funding and completion of TCEQ's obligations to reimburse the Performing Party for authorized expenses, shall expire on March 31, 2009, or upon completion of all requirements, whichever is earlier, unless otherwise terminated in accordance with the Contract Documents. However, reporting and other requirements as identified in the Contract Documents shall survive the termination of this Agreement. The Performing Party agrees to and shall perform in accordance with the Contract Documents beyond any event of termination and through the end of the activity life of each activity included in the approved Application. 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.

18. Representations. The Performing Party ratifies and attests to all representations in this Agreement and agrees to give prompt written notice to the TCEQ if there is any material change in these certifications or deliverables.

19. Continuing Obligations. All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Grant Activities and termination or completion of the Agreement until August 31, 2014, or until the end of the activity life, whichever is later.

20. Remedies Available to the TCEQ. The following Schedule of Remedies applies to this Agreement 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:

- 20.1. reject substandard performance and request corrections without charge to the TCEQ;
- 20.2. issue notice of substandard performance or other non-conforming act or omission;
- 20.3. request and receive return of any over payments or inappropriate payments;
- 20.4. reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;
- 20.5. suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;
- 20.6. reject reimbursement request and withhold and retain all or partial payments for recovery

of administrative costs or to be returned to the TERP fund as authorized by state law; and/or

20.7. terminate the Agreement, demand and receive: return of all equipment purchased with grant funds, return of all unexpended funds, and repayment of improperly expended funds.

21. Cumulative Remedies. TCEQ may avail itself of any remedy or sanction provided in this Agreement or in law to recover any losses arising from or caused by the Performing Party's substandard performance or any material non-conformity with the Agreement 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.

22. Bankruptcy. If the Performing Party files for bankruptcy, the Performing Party shall immediately notify TCEQ Clean School Bus Grant Coordinator in writing AND send notification by certified mail directly to TCEQ Bankruptcy Program, MC-132, P. O. Box 13087, Austin, Tx 78711-3087. The notice shall include the appropriate contract number(s).

23. Insurance. Unless otherwise expressly agreed by the TCEQ, the Performing Party shall 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. Any insurance proceeds received by or on behalf of the Performing Party under an insurance policy due to the damage or destruction of Grant Equipment must be utilized to acquire equivalent or better Grant Equipment or be paid to the TCEQ. If otherwise permissible under applicable law, Governmental entities may use an established self-insurance program to satisfy this requirement. If requested by the TCEQ, the Performing Party shall provide proof of insurance coverage. The TCEQ may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. The TCEQ may also waive this requirement, at its sole discretion, for certain types of entities.

24. Maintenance. 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. Upon the occurrence of a repairable malfunction or damage to Grant Equipment, the Performing Party shall cause the Grant Equipment to be repaired and restored to the level of optimum performance. The TCEQ will not reimburse any costs for Grant Equipment maintenance.

25. The Performing Party agrees to keep and use the Grant Equipment purchased under this Agreement for the Activity Life. Grant Equipment used outside of the scope of this Agreement may require the Performing Party to return a pro rata share of the grant to TCEQ.

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

27. RFGA Criteria. This Agreement is subject to the criteria established in the RFGA issued by the TCEQ and under which the grant application was submitted, and any amendments.

28. Debts. The TCEQ may offset against reimbursement payments, any amounts owed by the Performing Party to the TCEQ or the State of Texas, whether owed under this program or otherwise.

29. State Auditor's Office. Pursuant to Government Code §2262.003(a), Contractor

understands that acceptance of funds under contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor 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. Contractor understands that an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

30. Records. 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. Records under this Article shall be maintained by the Performing Party during performance of the grant activity under this Agreement, for the Project Life as set forth in this Agreement, and for three 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.

31. Access to Records, Grant Equipment, and Vehicles, Equipment, and Engines Being Replaced. The Performing Party shall allow access to all the material including bank statements and records by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying. The Performing Party shall provide appropriate facilities and equipment for such access and inspection. The Performing Party shall allow access to all Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under this Agreement, by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. In addition, the Performing Party shall allow access to all vehicles, equipment, and engines being replaced under this Agreement.

32. Compliance with Laws. The Performing Party shall give all notices and comply in all material respects with all Laws and Regulations applicable to furnishing and performance of the Grant Activities. Except where otherwise expressly required by applicable Laws and Regulations, TCEQ shall not be responsible for monitoring Performing Party's compliance with any Laws or Regulations.

33. Safety. 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.

34. In performing the Grant Activities, the Performing Party undertakes performance for its own benefit and not as agent for the TCEQ.

35. Waiver. Unless authorized in writing by the TCEQ in accordance with this Agreement, no waiver of any obligation of the Performing Party shall bind the TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

36. Title. Subject to this Agreement, ownership of grant equipment acquired under this Agreement by the Performing Party shall vest upon acquisition in the Performing Party.

37. Assignment. This Agreement will inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto. This Agreement is not transferable or otherwise assignable by the Performing Party without the written consent of the TCEQ and any attempted transfer without such consent is void.

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

39. Sovereign Immunity. The parties hereby agree that this Agreement does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. The parties further agree that all claims, suits, or obligations arising under or related to this Agreement are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

40. Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, excluding any choice of law rules which may direct the application of laws of another jurisdiction. Any action at law or in equity to enforce the terms and conditions of this agreement shall be brought in Travis County, Texas. This provision does not waive the TCEQ's sovereign immunity.

41. Severability. Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and Performing Party, who agree that Contract Documents are reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

42. Termination for Cause. This Agreement may be terminated in whole or in part by the TCEQ for cause, including a material failure by the Performing Party to comply with the requirements of the Contract Documents, upon thirty (30) days written notice.

43. Termination for Convenience. TCEQ or Performing Party may, upon thirty (30) days written notice, terminate this Contract for convenience. Termination shall not prejudice any other right or remedy of TCEQ or the Performing Party.

43.1 Reimbursement Upon Early Termination. If terminated for convenience by TCEQ, Performing Party may request reimbursement for: conforming Contract Activities and timely, reasonable costs directly attributable to termination. Performing Party shall not be paid for: work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from the termination. If the basis for a termination for cause is found to not be material, the termination is converted into a termination for convenience.

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

45. Identifying Mark. Upon request by TCEQ, Performing Party shall install, or permit TCEQ or its contractor to install, a prominently placed identifying mark on the equipment, identifying it as TCEQ-funded equipment and containing such other information as TCEQ shall specify.

45.1. If Performing Party does not display the identifying mark within a reasonable time of the TCEQ request or refuses to permit access to its equipment for the display of the mark, Performing Party shall promptly return all grant funds used to purchase the equipment

46. Definitions:

46.1. *Activity* – the installation of a single retrofit system for an individual vehicle, in accordance with the terms of the Contract Documents.

46.2. *Activity Life* - is five years from the installation of the grant equipment, or if the grant equipment is moved from one bus to another, the sum of time the grant equipment is installed and in use on the eligible school buses, so long as the sum is equal to five years, during which time equipment usage must be recorded.

46.3. *Application* - the application for a grant submitted by the Performing Party, including the Signature Page; Forms 1, 2, 3, and 4; and any amendments or supplemental conditions added to the application in order for it to be approved.

46.4. *Grant Equipment* - the equipment and the related goods and services in the grant activity for which the cost of purchase is reimbursed by the TCEQ under the Agreement.

46.5 *Include* – The word “include” and all forms such as “including” shall be construed to introduce a non-exhaustive list. The parties agree include is a term of enlargement, and does not limit the scope of the preceding noun.

46.6. *Minor Change* - a written document that changes the specific equipment, vehicle or engine for a unit listed in the application.

46.7. *Performing Party* – the Grantee or legal Eligible Applicant named in the Contract Documents.

46.8. *Project Completion Date* – The required deadline for purchase and installation of Grant Equipment. The Project Completion Date is a material term to the contract.

46.9. *Written Amendment* - a document signed by the Performing Party and the TCEQ that changes at least one term in the contract, including authorizing 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.

## **End of Terms and Conditions**

## **Federal Terms and Forms**

This section contains the federal terms and conditions as well as federal forms. None of these documents are required to be returned until after a grant award has been made. Certain geographic areas within Texas are associated with federal dollars. TCEQ will award federal funds based on those restrictions, to the relevant school districts.

1. These Federal Conditions are applicable to this Contract because there are federal funds associated with the funding. The following conditions apply to this Contract in addition to all other contract terms. The Federal Conditions are based generally on requirements for which TCEQ is responsible and on the specific funding provided by the grant funding this agreement.

2. **FEDERAL REQUIREMENTS**

All applicable requirements of TCEQ's federal grants and 40 CFR Parts 30 through 35 are incorporated by reference.

3. **FEDERAL INTELLECTUAL PROPERTY REQUIREMENTS**

A nonexclusive, perpetual, irrevocable license to use, copy, publish, and modify any intellectual property to which rights are granted or assigned to TCEQ in this Contract are also granted to, assigned to, or reserved by the Federal Government. To the extent consistent with the rights of third parties, the Federal Government shall also have the right to sell any intellectual property right it reserves or acquires through this Contract.

4. **ACKNOWLEDGMENT OF FINANCIAL SUPPORT**

The PERFORMING PARTY shall acknowledge the financial support of the TCEQ and the U.S. EPA whenever work funded, in whole or part, by this Contract is publicized or reported in news media or publications. All reports and other documents completed as a part of this Contract, other than documents prepared exclusively for internal use within the TCEQ, shall carry the following notation on the front cover or title page:

PREPARED IN COOPERATION WITH THE  
Texas Commission on Environmental Quality AND  
U.S. ENVIRONMENTAL PROTECTION AGENCY

The preparation of this report was financed through grants from the U.S. Environmental Protection Agency through the Texas Commission on Environmental Quality.

If the funding source is a U.S. agency other than U.S. EPA, the name of the appropriate federal agency should be substituted.

5. **COST AND PRICE OF THIS CONTRACT**

If this Contract was not competitively procured or if payment is based on reimbursement of actual costs, then PERFORMING PARTY shall submit cost information sufficient for a cost analysis as required by 40 CFR §31.36. This information must be submitted on forms provided by the TCEQ.

6. **ACCOUNTING SYSTEMS AND PROPERTY MANAGEMENT SYSTEMS**

6.1. PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies with 40 CFR §31.20. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

6.2. PERFORMING PARTY shall have a property management system that complies with the standard of and requirements in 40 CFR §§ 31.32 through 31.33.

7. **RECORD DOCUMENTS, DATA, RECORDS, ACCESS, AND AUDIT**

7.1 The Federal Government and its agencies will have no fewer rights of access to records as are granted to, assigned to, or reserved by the TCEQ under this Contract.

7.2 Performing Party standards of administration, property management, procurement and financial management, as well as records and facilities of recipients, their contractors and subcontractors are subject to audit and inspection by the Comptroller General of the United States and EPA in accordance with Office of Management and Budget (OMB) Circulars A-87, A-102, or A-110, as appropriate, A-133 and 40 CFR Part 31. The Performing Party's standards governing procurement shall be in accordance with 40 CFR, Part 31.36 and OMB Circular A-102. The recipient shall maintain a financial management system which meets the requirements of 40 CFR Part 31.20.

## 8. DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." On or prior to the effective date of this Contract, PERFORMING PARTY must submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters. PERFORMING PARTY must also submit a Certification Regarding Debarment, Suspension, and Other Responsibility Matters / Lower Tier for each subcontractor it employs to conduct the Work. These certifications must be submitted on forms provided by the TCEQ.

8.1 Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

## 9. MINORITY BUSINESS ENTERPRISES / WOMEN'S BUSINESS ENTERPRISES (MWBEs)

9.1. PERFORMING PARTY shall take steps to encourage participation by minority business enterprises and women's business enterprises (MWBES) in the performance of this Contract.

9.2. If the *General Conditions* of this Contract do not contain a requirement that PERFORMING PARTY submit information regarding its subcontracts with Historically Underutilized Businesses (HUBs) as defined by Texas law, then PERFORMING PARTY shall comply with the MBE/WBE requirements imposed on TCEQ in the federal grant or grants funding this Contract, and submit information regarding its subcontracts with MBE/WBEs on forms provided by the TCEQ.

9.3. PERFORMING PARTY agrees that qualified MWBEs shall have the maximum practicable opportunity to participate in the performance of the Work required under this Contract through possible subcontracts to carry out portions of the Work and by way of goods and/or services procurement contracts that directly support the required Work.

9.4. PERFORMING PARTY will submit a completed HUB PROGRESS ASSESSMENT REPORT with each reimbursement request submitted. At a minimum this report shall include the name of the MWBE, a description of the work, services or materials provided, the amount paid to the MWBE, and the name and telephone number of a contact person within the MWBE.

9.5. The PERFORMING PARTY shall conduct the following actions in connection with solicitations for subcontractors and for suppliers (vendors) of contract-required goods and/or services:

9.5.1. Place qualified MWBEs on solicitation lists for subcontractors and vendors;

9.5.2. Assure that at least three MWBEs are solicited whenever they are potential sources for subcontractor-performed work or vendor-provided goods and/or services;

9.5.3. Each solicitation shall include a copy of the specifications, adequate information about the plans, Scope of Service, and requirements of the work to be subcontracted or the goods and/or services to be procured, and shall provide sufficient time to allow all interested parties the opportunity to participate effectively;

9.5.4. Records of solicitations for subcontractor or vendor services, including the responses received from potential MWBE subcontractors and vendors, shall be maintained and reported to TCEQ;

9.5.5. Submit explanatory information in cases where bids were not solicited prior to obtaining the services of subcontractors or vendors, or where a MWBE was low bidder but the subcontract or procurement contract was awarded to a non MWBE;

9.5.6 Divide total subcontractor or vendor requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such business enterprises; if sufficient subcontracting or goods and/or service provider opportunities are not available, PERFORMING PARTY shall submit explanatory information to TCEQ;

9.5.7. Establish delivery schedules, where requirements permit, which encourage participation by MWBEs;

9.5.8. Utilize the Texas Comptroller of Public Accounts (CPA) Centralized Master Bidders List (CMBL) and Historically Underutilized Business (HUB) Directory (<<http://www.window.state.tx.us/procurement/>>) and the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce (<<http://www.doc.gov>>) when searching for MWBE subcontractors and/or vendors; and

9.5.9. Require its subcontractors to take the actions listed in 5.1 - 5.8 of this Article in all of its subcontracts that contemplate the letting of lower-tier subcontracts.

#### 10. PROHIBITION USE OF FEDERAL FUNDS FOR LOBBYING AND LITIGATION

10.1 Contractor agrees that none of the funds paid under this Contract will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. When Contractor applies for final payment, Contractor will certify on a written form provided by the TCEQ that Contractor has complied with this provision.

10.2 Recipients shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

10.3 The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

#### 11. TCEQ AND EPA PROVISIONS INCORPORATED INTO THIS AGREEMENT.

All Programmatic Conditions Remain the same project management and execution will be very closely monitored by EPA representatives throughout the assistance agreement's project and budget periods. TCEQ incorporates into this Agreement provisions that it is required to pass through to grant recipients by EPA to facilitate effective implementation of the scope of work and strong ongoing collaboration between the TCEQ and EPA.

12. Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

13. In accordance with EPA Order 1000.25 and Executive Order 13101, Greening the Government

Through Waste Prevention, Recycling, and Federal Acquisition, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms. Please note that Section 901 of Executive Order 13101, dated September 14, 1998, revoked Executive Order 12873, Federal Acquisition, Recycling, and Waste Prevention in its entirety.

14. In accordance with **40 CFR Part 31.41**, the recipient shall submit an annual Financial Status Report (FSR), Standard Form 269 or 269A.

15. Pursuant to 40 CFR 30.18, if applicable and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

16. In accordance with OMB Circular A-133, the recipient shall obtain a single audit if it expends \$500,000 or more a year in federal awards.

17. The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.000 – 36.230.

17.1 The consequences for violating this condition are detailed under Title 40 CFR 36.510, which can be accessed at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06-40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06-40cfr36_06.html).

18. The Federal share of allowable expenditures chargeable to this project will be financed by the EPA through the U.S. TREASURY AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM.

18.1 The recipient will provide timely reporting of cash disbursements and balances through annual submission (within 15 working days following the end of each calendar year for the reporting period January 1 ending December 31) of a Federal Cash Transactions Report (SF-272).

19. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term “management fees or similar charges” refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

### **End of Federal Terms and Conditions**