

**NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
NORTH TEXAS DIESEL EMISSIONS REDUCTION PROJECT
2023 CALL FOR PARTNERS**

Rebate Agreement

AGREEMENT COVER SHEET

TYPE OF AGREEMENT: Rebate Agreement for Reimbursable Activities with [PERFORMING PARTY] for the North Texas Diesel Emissions Reduction Project 2023 Call for Partners

PROJECT NUMBER: TRN[xxxx]

AGREEMENT PERIOD: Agreement Execution through [Date]

MAXIMUM AWARD AMOUNT: \$[Total] (\$[Dollar Amount] FEDERAL REBATE AMOUNT + \$[Dollar Amount] LOCAL MATCH)

PARTIES:

NCTCOG

North Central Texas Council of Governments
616 Six Flags Drive
Centerpoint II
Arlington, Texas 76011

PERFORMING PARTY

[Name]
[Street Address]
[City, State, Zip]

Contacts

Project Manager:

Jason Brown
Principal Air Quality Planner
817-704-2514
jbrown@nctcog.org

Agreement Coordinator:

[Name]
[Title]
[Phone #]
[Email Address]

**NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
NORTH TEXAS DIESEL EMISSIONS REDUCTION PROJECT
2023 CALL FOR PARTNERS**

ARTICLE 1. PARTIES

- 1.1 Parties.** This Agreement, hereinafter referred to as the “Agreement”, is made and entered into by and between the North Central Texas Council of Governments, hereinafter referred to as “NCTCOG”, and [PERFORMING PARTY], hereinafter referred to as the “PERFORMING PARTY”. NCTCOG and the PERFORMING PARTY may each be referred to as a “Party” and may be collectively referred to as “Parties” to this Agreement.

ARTICLE 2. TERMS OF AGREEMENT

- 2.1 Scope of Work.** The PERFORMING PARTY covenants and represents to NCTCOG that the PERFORMING PARTY will implement or perform activities as provided for in the **Scope of Work** (Appendix A) hereinafter referred to as the “**SCOPE**”. **Tasks**, as defined in the SCOPE, refer to a set of actions the PERFORMING PARTY must accomplish for each Scope Activity. **Scope Activities**, as defined in the SCOPE, relate to the individual equipment, vehicles, engines and/or technologies that were identified in the PERFORMING PARTY’S application and approved for implementation. A unique identifier, the “**Scope Activity Number**”, will be used for requesting reimbursements.
- 2.2 Scope of Work Changes.** Changes to the SCOPE must be agreed to by both parties, in writing.
- 2.3 Scope Activities.** PERFORMING PARTY shall complete Scope Activities in accordance with the North Texas Diesel Emissions Reduction Project 2023 Call for partners Guidelines and as listed in the SCOPE, except as otherwise identified in this Agreement.
- 2.4 Activity Life.** The PERFORMING PARTY will own, and/or lease, and operate the grant-funded equipment, vehicles, engines and/or technologies for the duration of the NCTCOG approved Activity Life as identified in the SCOPE, unless otherwise approved in writing by NCTCOG.
- 2.5 Geographic Location.** PERFORMING PARTY agrees that equipment, vehicles, engines, and/or technologies purchased under this Agreement must be operated predominantly within the North Texas counties of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Navarro, Parker, Rockwall, Tarrant, or Wise. Predominantly shall be defined as used fifty-one percent within the aforementioned counties.
- 2.6 Compliance.** All activities funded, operated, and maintained under this Agreement must be in compliance with federal, State, and local law and, if applicable, the PERFORMING PARTY’S Clean Fleet Policy, consistent with the Regional Transportation Council’s Clean Fleet Policy as adopted in December 2014.
- 2.7 Diesel Emission Reductions.** The PERFORMING PARTY agrees that emissions reductions provided by each Scope Activity shall be used by NCTCOG to meet air quality requirements and goals. The PERFORMING PARTY may not utilize emissions reductions to satisfy other air quality commitments.

- 2.8 Time of Performance.** The PERFORMING PARTY shall commence performance of the SCOPE after all parties have executed the agreement. All Scope Activities should be completed no later than the completion deadline referenced in the SCOPE. This Agreement shall terminate upon completion of all Scope Activities, or by an act as identified in Section 2.9. Certain rights and obligations identified in this Agreement shall survive termination of this Agreement.
- 2.9 Termination.** Either party reserves the right to terminate this Agreement in whole or in part. Notice of termination must be provided in writing, shall set forth the reasons for termination, and shall provide for a minimum of ten (10) days to cure the defect. Termination is effective only in the event the party fails to cure the defect within the period stated in the termination notice including any written extensions. If the Agreement is terminated, NCTCOG shall only be liable for eligible expenses completed before the effective date of termination. If Agreement is terminated, certain reporting requirements identified in this Agreement shall survive termination of this Agreement. NCTCOG will render payment upon the completion of reporting requirements. The Parties may terminate this Agreement at any time by mutual written concurrence.

ARTICLE 3. AMENDMENTS

- 3.1 Agreement.** This Agreement embodies all of the agreements of the parties relating to its subject matter and supersedes all prior understandings and agreements regarding such subject matter.
- 3.2 Severability.** In the event any one or more of the provisions contained in this Agreement shall be for any reason held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) hereof, and this Agreement shall be revised so as to cure such invalid, illegal, or unenforceable provision(s) to carry out as near as possible the original intent of the Parties.
- 3.3 Changed Circumstances.** If future federal, State, or local statute, ordinance, regulation, rule, or action render this Agreement, in whole or in part, illegal, invalid, unenforceable, or impractical, the parties agree to delete and/or to modify such portions of the Agreement as are necessary to render it valid, enforceable, and/or practical. Each section, paragraph, or provision of this Agreement shall be considered severable, and if, for any reason, any section, paragraph, or provision herein is determined to be invalid under current or future law, regulation, or rule, such invalidity shall not impair the operation of or otherwise affect the valid portions of this instrument.
- 3.4 Modifications.** Modifications to this Agreement must be reviewed by all parties and agreed to in writing.

ARTICLE 4. EQUIPMENT USE AND PROPERTY MANAGEMENT

- 4.1 Equipment Use, Management, and Disposition.** The PERFORMING PARTY agrees to utilize equipment funded through this Agreement for the purposes outlined in the SCOPE and consistent with the goals and objectives of the North Texas Diesel Emissions Reduction Project 2023 Call for partners Guidelines during the Activity Life defined in the SCOPE, and until all programmatic interest in the equipment is fulfilled. NCTCOG encourages the PERFORMING PARTY to continue to utilize equipment acquired through this Agreement for the purposes outlined in the SCOPE and consistent with the goals and

objectives of the North Texas Diesel Emissions Reduction Project 2023 Call for partners Guidelines beyond the Activity Life. At the end of the Activity Life, or upon transfer of ownership, the PERFORMING PARTY shall submit to NCTCOG a written notification of the disposition of equipment funded through this Agreement. The notification shall describe the continued use and condition of the equipment and remaining useful life.

The PERFORMING PARTY agrees to provide NCTCOG reasonable information concerning the use and condition of the equipment upon request.

ARTICLE 5. FUNDING & BUDGET

- 5.1 Award Amount.** The total anticipated project cost is **Dollar Amount (\$dollar Amount)**. NCTCOG will reimburse PERFORMING PARTY's eligible costs of implementing Task(s) as outlined in the SCOPE under the conditions in this Agreement not to exceed the maximum Award Amount of **Dollar Amount (\$dollar Amount)**. The actual amount of reimbursement may be less than the maximum Award Amount and will be determined under the conditions of this Agreement. Eligible costs incurred by the PERFORMING PARTY that are not reimbursed through payment of the funding award shall be recorded as mandatory cost share or local match contribution to the project by the PERFORMING PARTY. For the purpose of this Agreement, reimbursement shall also mean payment of a rebate.

ARTICLE 6. PAYMENTS

- 6.1 Payment.** Reimbursement shall be made only upon completion of a Task or SCOPE Activity. A cost may not be considered incurred and eligible for reimbursement until the product or service has been received, accepted, and paid for by the PERFORMING PARTY. Any reimbursement under this Agreement shall be payable only after eligible costs are approved by NCTCOG. NCTCOG will approve payments as soon as practicable, but not later than forty-five (45) days after a complete Request for Reimbursement has been received, provided that complete and accurate supporting documentation has been submitted to NCTCOG. Costs incurred prior to execution of this Agreement may not be eligible for reimbursement. There shall be no obligation whatsoever to pay for performance of this Agreement from the monies of NCTCOG, other than grant funds received by NCTCOG from NCTCOG's funding agency for the purposes of reimbursement under this Agreement.
- 6.2 Reimbursement.** All reimbursement requests prepared by the PERFORMING PARTY shall be submitted by the deadlines outlined in the SCOPE to NCTCOG at TRGrants@nctcog.org. Requests for Reimbursement shall include PERFORMING PARTY invoice on letterhead, signatory or submittal by a certifying official as detailed in Article 6.3, proof of payment, applicable receipts, and other supporting documentation that identifies the incremental cost of capital purchases identified in the SCOPE, and shall detail the portion of cost to be reimbursed by NCTCOG and the portion of cost credited as local match. PERFORMING PARTY must also submit proof of delivery before payment can be approved. A Request for Reimbursement Form shall be accompanied by an Activity Information Form. NCTCOG may deem a Request for Reimbursement incomplete if the data and/or documentation are incomplete or improper, or if the PERFORMING PARTY fails to submit necessary reports or provide other information requested by NCTCOG under the terms of this Agreement.

Forms required for reimbursement are available online and can be downloaded from NCTCOG website at www.nctcog.org/aqfunding/forms. A hard copy is available at the request of the PERFORMING PARTY.

- 6.3 Certifying Official.** As detailed in Article 6.2, the PERFORMING PARTY is required to provide signed invoices. In lieu of documenting certifications on each invoice, the individual noted below has the authority, on behalf of the PERFORMING PARTY, to make such certifications and serve as the signatory on invoices related to this project. By signing the invoice, Certifying Officials are acknowledging review of invoices to ensure expenses included in the invoice are consistent with the agreement, all services and costs documented on the invoice are accurate and eligible, and all contractors have been fully paid.

Any invoices received by NCTCOG without the signature of the individual noted below may result in the invoice being returned unpaid.

Certifying Official Name: [Name]
Certifying Official Title: [Title]

- 6.4 Eligible Expenses.** NCTCOG may reject requests for reimbursements which fail to demonstrate that costs are eligible for reimbursement and/or which fail to conform to the requirements of this Agreement. Eligible and allowable expenses are limited to costs determined by NCTCOG in its sole discretion as eligible costs necessary for the purchase of equipment, vehicle, and/or engine as identified in the SCOPE and NCTCOG's funding agreement. Costs incurred prior to execution of the agreement are not eligible for reimbursement.
- 6.5 Availability of Funds.** Any reimbursement under this Agreement shall be payable only after eligible costs are approved by NCTCOG. This Agreement and all claims, suits, or obligations arising under or related to this Agreement are subject to and limited to the receipt and availability of funds which are received from the funding agency by NCTCOG dedicated for the purpose of this Agreement.
- 6.6 Balance of Funds.** If actual costs are lower than expected and the full Award Amount is not fully utilized, the PERFORMING PARTY may request approval from NCTCOG to use the balance of the Award Amount in a manner consistent with the SCOPE and all requirements of this Agreement, including cost share. If this situation arises, the PERFORMING PARTY will notify the NCTCOG Project Manager and request approval as quickly as possible to ensure timely implementation.
- 6.7 Return of Funds.** The PERFORMING PARTY may be required to return funds received from NCTCOG for reimbursement of Scope Activities where the PERFORMING PARTY has failed to comply with the requirements set forth in this Agreement, including but not limited to: 1) failure to comply with vehicle disposition requirements, 2) failure to comply with reporting requirements as identified in the SCOPE, and 3) failure to maintain operation and possession of the grant-funded equipment, vehicles, engines, and/or technology through the duration of the Activity Life, as identified in the SCOPE. NCTCOG may waive these requirements in their sole discretion.

ARTICLE 7. RIGHTS

- 7.1 **Authority.** The PERFORMING PARTY shall have no authority to act for or on behalf of NCTCOG except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. The PERFORMING PARTY may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of NCTCOG.
- 7.2 **Assignment.** Without the prior written consent of NCTCOG, the PERFORMING PARTY may not transfer or assign any rights or duties under or any interest in this Agreement.

ARTICLE 8. MISCELLANEOUS PROVISIONS

- 8.1 **Property Insurance.** The PERFORMING PARTY must maintain sufficient property insurance (which may be satisfied by PERFORMING PARTY'S self-insurance program) for the repair or replacement of any Scope Activity for the Activity Life as defined in the SCOPE, unless otherwise expressly agreed upon in writing by NCTCOG.
- 8.2 **Insurance Claims.** Any insurance proceeds received by or on behalf of the PERFORMING PARTY under an insurance policy due to the damage or destruction of equipment, vehicles, engines and/or technologies funded under this Agreement must be utilized to repair or acquire an equivalent or better low emissions engine/technology or be paid to NCTCOG.
- 8.3 **Indemnification.** To the extent authorized by law, the PERFORMING PARTY shall indemnify, save and hold NCTCOG/Regional Transportation Council (RTC), its officials, officers, and employees harmless from any and all actions, obligations, claims, damages, expenses, costs of any kind, debts, negligence, and liabilities arising from, or in any way related to, acts or omissions of the PERFORMING PARTY, its employees, volunteers, subcontractors, or clientele, in the performance of, or failure to perform under, this Agreement.
- 8.4 **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that, if the performance of any provision of this Agreement is delayed by force majeure, defined as reason of war, civil commotion, act of God, governmental restriction, regulation or interference, fire, explosion, hurricane, flood, failure of transportation, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed. Each party must inform the other in writing within reasonable time of the existence of such force majeure.
- 8.5 **Captions.** The captions, headings, and arrangements used in this Agreement are for convenience only and shall not in any way affect, limit, amplify, or modify its terms and provisions.
- 8.6 **Disputes and Remedies.** The PERFORMING PARTY and NCTCOG shall negotiate in good faith toward resolving any disputes that arise under this Agreement. This agreement does not limit any remedy or right under law available to a Party to enforce the terms herein.

- 8.7 Public Comment Process.** As applicable, public meeting and public hearing notices regarding this project shall be provided to NCTCOG within five (5) days of publication. Meeting minutes, summaries of communication, and copies of written responses to public comments and questions shall be transmitted to the NCTCOG staff contact person as identified on the Agreement cover sheet within thirty (30) days following the meeting.
- 8.8 Notice.** All notices regarding this Agreement shall be in writing and shall be delivered to the addresses shown below, as applicable, with a copy provided to NCTCOG Project Manager, staff contact, and Agreement Administrator; and PERFORMING PARTY'S Agreement Coordinator identified on the Agreement cover sheet. Statements made or documentation provided through electronic mail can be deemed as official notices.

NCTCOG

Michael Morris, P.E.
Director of Transportation
Transportation Department
616 Six Flags Drive
Arlington, Texas 76011
Telephone No.: (817) 695-9240
Facsimile No.: (817) 640-3028

PERFORMING PARTY

[Company Name]
[Name]
[Title]
[Street Address]
[City, State, Zip]

- 8.9 Normal Fleet Attrition.** The PERFORMING PARTY understands that funds under this Agreement cannot be used for emission reductions that result from vehicle/equipment replacements/repowers that would have occurred within three years of the project start date through normal attrition/fleet turnover. Normal attrition/fleet turnover is typically defined by the equipment, vehicle, engine, or fleet owner's budget plan, operating plan, standard procedures, or retirement schedule. Supporting evidence in written form must be provided to NCTCOG to verify that replacement/repower projects would not have occurred without grant funding awarded under this Agreement.
- 8.10 Fleet Expansion.** The PERFORMING PARTY understands that funds under this Agreement cannot be used for the purchase of vehicles or equipment to expand a fleet. The PERFORMING PARTY agrees that:
- 8.10.1 Function.** The replacement vehicle, engine, or equipment will perform the same function as the vehicle, engine, or equipment that is being replaced.
- 8.10.2 Type.** The replacement vehicle, engine, or equipment will be of the same type and similar gross vehicle weight rating (GVWR) or horsepower as the vehicle, engine, or equipment being replaced, as detailed in the SCOPE.
- 8.11 False Claim.** The PERFORMING PARTY must promptly refer to the Environmental Project Agency's (EPA's) Inspector General any credible evidence that a principal, employee, agent, subgrantee contractor, subcontractor, loan recipient, or other person

has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this grant or subgrants awarded by the grantee.

8.12 Trafficking Victim Protection Act of 2000. The PERFORMING PARTY, PERFORMING PARTY'S employees, PERFORMING PARTY'S subrecipients, and PERFORMING PARTY'S subrecipients' employees under this Agreement, may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award of subawards under the award.

8.13 Recycled Paper. The PERFORMING PARTY agrees that:

8.13.1 Resource Conservation and Recovery Act. Preference shall be given in procurement programs to the purchase of recycled products pursuant to the EPA guidelines as established in 40 CFR 247.

8.13.2 Reporting. In accordance with EPA Order 1000.25 and Executive Order 13423 dated January 24, 2007, and/or 40 CFR 30.16, recycled paper and double-sided printing shall be used for all reports that are prepared as a part of this Agreement.

8.14 Federal Award Requirements. During the performance of this Agreement, the PERFORMING PARTY, shall comply with the following federal award requirements.

8.14.1 Title VI of the Civil Rights Act of 1964 (42 USC §2000d et seq., 78 stat. 252), which prohibits discrimination on the basis of race, color, and national origin.

8.14.2 Federal Funding Accountability and Transparency Act Requirements.

- A. As a recipient of funds under this agreement the PERFORMING PARTY agrees to comply with the Federal Funding Accountability and Transparency Act (FFATA) and implementing regulations at 2 CFR 170, including Appendix A. This agreement is subject to the following award terms:

<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22705.pdf> and
<http://www.gpo.gov/fdsys/pkg/FR-2010-09-14/pdf/2010-22706.pdf>.

B. PERFORMING PARTY agrees that it shall:

1. Obtain and provide to NCTCOG a System for Award Management (SAM) number (Federal Acquisition Regulation, Part 4, Sub-part 4.11) if this award provides more than \$25,000 in federal funding. The SAM number may be obtained by visiting the SAM website whose address is: <https://www.sam.gov/portal/public/SAM/>
2. Obtain and provide to NCTCOG a Data Universal Numbering System (DUNS) number, a unique nine-character number that allows the federal government to track the distribution of federal money. The DUNS number may be requested free of charge for all businesses and entities required to do so by visiting the Dun & Bradstreet on-line registration website <http://fedgov.dnb.com/webform>; and

C. Report total compensation and names of its top five (5) executives to the State if:

1. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25,000,000; and
2. The compensation information is not already available through reporting to the United States Securities and Exchange Commission.

8.14.3 Hotel-Motel Fire Safety. Pursuant to 15 USC 2225a, the PERFORMING PARTY agrees to ensure that all space for conferences, meetings, trainings funded in 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).

8.15 Internal Compliance Program. NCTCOG has adopted an Internal Compliance Program to prevent waste, fraud, or abuse. Contractors, agents, and volunteers can report suspected waste, fraud, or abuse at: [North Central Texas Council of Governments - Compliance Portal \(nctcog.org\)](https://www.nctcog.org/Compliance-Portal). Additional information regarding the Internal Compliance Program is available at the previous web address.

8.16 Senate Bill 13 Prohibition Against Boycotting Energy Companies. Pursuant to Chapter 2274, Government Code, as enacted by S.B. 13, 87th Legislature, NCTCOG is prohibited from using public funds to contract with entities who boycott energy companies. The Subrecipient agrees that it does not discriminate against energy companies and will not discriminate during the term of the Agreement.

8.17 Senate Bill 19 Prohibition Against Boycotting Firearm and Ammunition Industries. Pursuant to Chapter 2274, Government Code, as enacted by S.B. 19, 87th Legislature, NCTCOG is prohibited from using public funds to contract with entities who discriminate against firearm and ammunition industries. The Subrecipient agrees that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the Agreement.

ARTICLE 9. ACCESSIBILITY AND MAINTENANCE OF RECORDS

9.1 Maintenance. The PERFORMING PARTY shall maintain a record keeping system for all activities, including program records and financial management records, which support and document all expenditures of funds made under this Agreement, in accordance with federal regulations, State rules, and the Agreement. This section shall not be interpreted to require maintenance of multiple exact duplicate copies of any record or document.

9.2 Retention. All records must be maintained for a minimum of three (3) years following the expiration of the Activity Life as described in the SCOPE. In the event any litigation or claim is still pending upon the expiration of the Activity Life, these records shall be retained until resolution of the litigation or claim. NCTCOG, NCTCOG's funding agency, or their designees shall have access to all records that are directly applicable to this Agreement for the purpose of making audit examinations.

ARTICLE 10. AUDITS AND EVALUATIONS

- 10.1 Submission of Audits.** As applicable, the PERFORMING PARTY shall provide NCTCOG, for its review, a copy of any audit received as a result of PERFORMING PARTY policy or audits of federal and State governments relating to the expenditure of funds under this Agreement. Such audits shall include or be accompanied by any applicable audit management letter issued and applicable responses to the auditor's findings and recommendations. All audits shall be submitted to NCTCOG within thirty (30) days of receipt of each issued report.
- 10.2 Financial Records.** The PERFORMING PARTY understands that acceptance of funds under this Agreement acts as acceptance of the authority of NCTCOG, NCTCOG's funding agency, or their designees to conduct an audit or investigation in connection with those funds. The PERFORMING PARTY further agrees to cooperate fully with NCTCOG, NCTCOG's funding agency, or their designees in the performance of an audit or investigation, including providing access to conduct financial and program monitoring of funding awarded to the PERFORMING PARTY under this Agreement and to perform an audit of related records that may encompass an examination of financial transactions, accounts and reports, as well as an evaluation of compliance with the terms and conditions of this Agreement.
- 10.3 Subcontractors.** The PERFORMING PARTY will ensure that the aforementioned clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING PARTY and the requirement to cooperate is included in any subcontract it awards under this Agreement. The PERFORMING PARTY will include in all subcontracts for work under this Agreement a requirement that subcontractors will provide access to all relevant financial records, including bank statements.
- 10.4 Capital Assets and Usage Records.** The PERFORMING PARTY shall authorize NCTCOG, NCTCOG's funding agency, or their designees to inspect, with or without notice, equipment, vehicles, engines and/or technologies purchased by the PERFORMING PARTY with funds provided for under this Agreement.
- 10.5 Acceptable Verification.** Upon request, the PERFORMING PARTY agrees to provide NCTCOG sufficient verification that the operation commitment identified in the SCOPE is taking place in one or more eligible counties listed in Section 2.5. Sufficient verification will be determined by NCTCOG, in its sole discretion. Examples of acceptable verification include sworn affidavits from the PERFORMING PARTY, data from global positioning system, or similar devices, or other reliable information sources.

ARTICLE 11. REPRESENTATIONS

- 11.1 Alteration of Original Application.** The information and data provided in the original application submitted by the PERFORMING PARTY may have been altered after original submittal to NCTCOG to ensure that the information and calculations in the application are accurate. The PERFORMING PARTY hereby ratifies, adopts, and agrees to all representations in the Approved Application and deliverables it has provided to NCTCOG during the proposal process and agrees to give prompt written notice to NCTCOG if there is any material change in these certifications or deliverables.

- 11.2 Legal Mandate.** The PERFORMING PARTY represents that the tasks funded under this Agreement are not required by any State or federal law, rule, regulation, memorandum of agreement, or other legally binding document.
- 11.3 Vehicle Markers.** The PERFORMING PARTY agrees to place a label or sticker on funded equipment, vehicles, engines and/or technologies upon request by NCTCOG identifying it as part of an NCTCOG award and/or utilizing an alternative fuel or advanced technology.

ARTICLE 12. REPORTS

- 12.1 Project Reporting.** The PERFORMING PARTY shall provide NCTCOG with all reports detailed in the SCOPE, including information pertaining to the project and activity usage as identified in SCOPE.

ARTICLE 13. ASSURANCES

- 13.1 Equal Employment Opportunity.** The PERFORMING PARTY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, or national origin. The PERFORMING PARTY shall take affirmative action to ensure that applicants are employed, and that employees are treated, during their employment, without regard to their race, religion, color, sex, sexual orientation, gender identity, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 13.2 Nondiscrimination on the Basis of Disability.** The PERFORMING PARTY agrees that no otherwise qualified disabled person shall, solely by reason of their disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the project. The PERFORMING PARTY shall insure that all fixed facility construction or alteration and all new equipment included in the project comply with applicable regulations regarding Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, set forth in 49 CFR, Part 27 and any amendments thereto.
- 13.3 Noncollusion.** The PERFORMING PARTY warrants that it has not employed or retained any company or person, other than a bona fide employee working for it, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. If the PERFORMING PARTY breaches or violates this warranty, NCTCOG shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, brokerage fee, gift, or contingent fee.
- 13.4 Gratuities.** Any person doing business with or who, reasonably speaking, may do business with NCTCOG under this Agreement may, not make any offer of benefits, gifts or favors to employees of NCTCOG. Failure on the part of the PERFORMING PARTY to adhere to this policy may result in termination of this Agreement.

13.5 Debarment/Suspension. The PERFORMING PARTY is prohibited from making any award or permitting any award at any tier to any party which is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, Debarment and Suspension. The PERFORMING PARTY and its subcontractors shall comply with the special provision “Certification Requirements for Recipients of Grants and Cooperative Agreements Regarding Debarments and Suspensions,” which is included as Appendix B of this Agreement.

13.6 Restrictions on Lobbying. The PERFORMING PARTY and PERFORMING PARTY’S subrecipients are prohibited from using monies for lobbying purposes; the PERFORMING PARTY shall comply with the special provision, “Lobbying Certification and Disclosure of Lobbying Activities,” which is included as Appendix C of this Agreement. The PERFORMING PARTY shall include a statement of compliance with the Lobbying Certification and Disclosure of Lobbying Activities in applicable procurement solicitations. Lobbying Certification and Disclosure of Lobbying Activities shall be completed by PERFORMING PARTY’S subrecipients and included in PERFORMING PARTY’S subrecipients’ contracts, as applicable.

PERFORMING PARTY agrees to comply with the Title 40 CFR Part 34, New Restrictions on Lobbying. 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.

13.7 Buy America. The PERFORMING PARTY agrees to comply with all Buy America requirements under IIJA P.L. 117-58, Secs 70911 – 70917., which require a domestic manufacturing process for any steel or iron products. The PERFORMING PARTY must provide a Buy America Certification, example Certification document attached as Appendix D, completed by the equipment manufacturer or demonstrate that the Environmental Protection Agency has granted a waiver of the Buy America requirements.

13.8 Compliance with Regulations. During the performance of this Agreement, the PERFORMING PARTY, for itself, its assignees, and successors, agrees to comply with all applicable local, State, and federal regulations.

13.9 Drug Free Workplace. The PERFORMING PARTY must make an ongoing, good-faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in 40 CFR 36.200 – 36.230.

13.10 Interest of Public Officials. No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

13.11 Substitution of Subcontractors. NCTCOG must be notified of all substitutions of subcontracts.

APPENDICES

The following appendices are attached and made part of this Agreement.

Appendix A: Scope of Work and Approved Application Summary

Appendix B: Lower Tier Participant Debarment Certification

Appendix C: Lobbying Certification and Disclosure of Lobbying Activities

Appendix D: Buy America Certification

DRAFT

IN WITNESS WHEREOF, the Parties have executed this Agreement. This Agreement becomes effective on the day the last Party signs.

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

Mike Eastland, Executive Director

Date

[PERFORMING PARTY]

[Signatory Authority], [Title]

Date

DRAFT

APPENDIX A
SCOPE OF WORK

DRAFT

North Texas Emission Reduction Project 2023 Call for partners

**APPENDIX A
SCOPE OF WORK**

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APPENDIX B

LOWER TIER PARTICIPANT DEBARMENT CERTIFICATION

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**APPENDIX B
CERTIFICATION REQUIREMENTS FOR RECIPIENTS OF GRANTS
AND COOPERATIVE AGREEMENTS REGARDING
DEBARMENT AND SUSPENSIONS**

2 CFR Part 180 excludes entities and individuals that the federal government has either debarred or suspended from obtaining federal assistance funds through grants, cooperative agreements, or third-party contracts. NCTCOG has elected to include the requirements of the 2 CFR Part 180 in all third-party contracts for federal funds. A certification process has been established as a means to ensure that debarred, suspended, or voluntarily excluded persons do not participate in a federally assisted project. The inability of a person to provide the required certification will not necessarily result in a denial of participation in a covered transaction. A person that is unable to provide a positive certification as set forth in the Circular may submit a complete explanation attached to the certification. NCTCOG will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. **Failure to furnish a certification or any explanation may disqualify that person from participating in the project.**

Each potential third-party contractor, subcontractor under a third-party contract, subgrantee, or subrecipient must provide to the grantee or recipient of a cooperative agreement, as appropriate, a certification for a lower-tier participant. In general, lower-level employees or procurements of less than \$25,000 will not be covered by the certification process procedures, except in the case of procurements with individuals that would have a critical influence on or substantive control over the project; nevertheless, a participant is not authorized to involve a lower-level employee or enter into a contract of less than \$25,000 with a person actually known by the participant to be debarred, suspended or voluntarily excluded.

NCTCOG requires each potential contractor subgrantee, or subrecipient for a third-party contract to complete the certification in Appendix G.2 for itself and its principals.

If an applicant for a grant or cooperative agreement or a potential contractor for a third-party contract knowingly enters into a lower-tier covered transaction such as a third-party contract or subcontract under a major third-party contract or subgrant with a person that is suspended, debarred, ineligible, or voluntarily excluded from participation in the project, in addition to other remedies available to the federal government, NCTCOG may terminate the grant or subcontract, the underlying grant or cooperative agreement for cause or default.

CERTIFICATION INFORMATION

This certification is to be used by contractors pursuant to 2 CFR Part 180 when any of the following occur:

- any transaction between the contractor and a person (other than a procurement contract for goods and services), regardless of type, under a primary covered transaction
- any procurement contract for goods or services when the estimated cost is \$25,000 or more
- any procurement contract for goods or services between the contractor and a person, regardless of the amount, under which the person will have a critical influence on or substantive control over that covered transaction. Such persons include principal investigators and providers of federally required audit services.

A *procurement* transaction is the process of acquiring goods and services.

A *nonprocurement* transaction is the granting of financial assistance to entities to assist the grantor in meeting objectives that are mutually beneficial to the grantee and grantor.

A COPY OF THIS CERTIFICATION IS TO BE FURNISHED TO AUTHORIZED FUNDING AGENCY REPRESENTATIVES UPON REQUEST.

**APPENDIX B.1
LOWER TIER PARTICIPANT DEBARMENT CERTIFICATION**

_____, being duly
(Name of certifying official)
sworn or under penalty of perjury under the laws of the United States, certifies that neither

_____, nor its principals
(Name of lower tier participant)
are presently:

- debarred, suspended, proposed for debarment,
- declared ineligible,
- or voluntarily excluded from participation in this transaction by any federal department or agency

Where the above identified lower tier participant is unable to certify to any of the above statements in this certification, such prospective participant shall indicate below to whom the exception applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of award but will be considered in determining contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

EXCEPTIONS:

Signature of Certifying Official

Title

Date of Certification

Form 1734
Rev.10-91
TPFS

APPENDIX C

LOBBYING CERTIFICATION AND DISCLOSURE OF LOBBYING ACTIVITIES

DRAFT

**APPENDIX C
LOBBYING CERTIFICATION
FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

The undersigned certifies to the best of his or her knowledge and belief, that:

- (1) No federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension continuation, renewal amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title

Agency

Date

TxDOT
1-91
TPFS

DISCLOSURE OF LOBBYING ACTIVITIES
Complete this form to disclose lobbying activities
(See instructions for public burden disclosure)

1. Type of Action: <ul style="list-style-type: none"> • a. contract • b. grant • c. cooperative agreement • d. loan • e. loan guarantee • f. loan insurance 	2. Status of Action: <ul style="list-style-type: none"> • a. bid/offer/application • b. initial award • c. post-award 	3. Report Type: <ul style="list-style-type: none"> • a. initial filing • b. material charge <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
4. Name and Address of Reporting Entity: <ul style="list-style-type: none"> • Prime • Tier _____ <i>if know</i> 	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:	
6. Department Agency:	7. Program Name/Description:	
8. Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i>	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment (check all that apply): \$ _____ • actual • planned	13. Type of Payment (check all that apply): <ul style="list-style-type: none"> • a. retainer • b. one-time fee • c. commission • d. contingent fee • e. deferred • f. other; specify: _____ 	
12. Form of payment (check all that apply): <ul style="list-style-type: none"> • a. cash • b. in-kind specify: nature _____ value _____ 		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation sheet(s) SF-LLL-A attached: • Yes • No		
16. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This information will be available for public inspection.	Signature: _____ Print Name: _____ Title: _____ Telephone: _____ Date: _____	
NCTCOG Use Only:	Authorized for Local Reproduction Standard Form - LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime recipient, at the initiation or receipt of a covered action or a material change to a previous filing. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an employee of the North Central Texas Council of Governments (NCTCOG), a member of the Regional Transportation Council (RTC), an officer or employee of the RTC, or an employee of a member of the RTC in connection with a covered action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report.

1. Identify the type of covered action for which lobbying activity is and/or has been secured to influence the outcome of a covered action.
2. Identify the status of the covered action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee (e.g., the first subawardee of the prime is the 1st tier). Subawards include, but are not limited to, subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime recipient.
6. Enter the name of the agency making the award or loan commitment.
7. Enter the program name or description for the covered action (item 1.)
8. Enter the most appropriate identifying number available for action identified in item 1 (e.g., Request for Proposal (RFP) number; invitation for Bid (B) number; grant announcement number; contract grant or loan award number; application/proposal control number assigned by the agency). Include prefixes (e.g., "RFP-DE-90-001").
9. For a covered action where there has been an award or loan commitment by the agency, enter the amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered action.
(b) Enter the full names of the individuals(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate boxes(s). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contract with officials. Identify the employee of NCTCOG, the member of the RTC, an officer or employee of the RTC, or the employee of a member of the RTC in connection with a covered.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and the telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity: _____
Page _____ of _____

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**APPENDIX D
BUY AMERICA CERTIFICATION**

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**APPENDIX D
BUY AMERICA CERTIFICATION**

The undersigned certifies that the following equipment complies with the Buy America requirements under the Infrastructure Investment and Jobs Act ("IIJA") P.L. 117-58, Secs 70911 – 70917 requiring a domestic manufacturing process for any steel or iron products (including protective coatings). A valid Buy America Certification shall include a signed certification.

To be considered domestic, all steel and iron used, and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude minimal use of foreign steel, and iron materials that does not exceed one-tenth of one percent of the total contract cost or \$2,500, whichever is greater ("de minimus amount").

For manufactured products, if comprised of less than fifty percent (50%) iron and steel it is not "predominantly" considered iron or steel and is covered by the Manufactured Products waiver and therefore in compliance with IIJA P.L. 117-58, Secs 70911 – 70917.

I certify that the following items include only domestic iron or steel as defined above, or if not include only a de minimus amount of foreign iron or steel, or if a manufactured product contains less than 50 percent iron or steel.

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

Name, Title

Company

Date