

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

*Protecting Texas by Reducing and Preventing
Pollution*

**SEP Agreement No. 2011-25
SEP Amendment No. 1**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT ("SEP") AGREEMENT
AMENDMENT BETWEEN THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ") AND
HOUSTON-GALVESTON AREA COUNCIL-AERCO ("H-G AERCO")**

SEP AMENDMENT NO. 1

This document is SEP Amendment No. 1 ("Amendment") to SEP Agreement No. 2011-25, between TCEQ and Houston-Galveston Area Council-AERCO (collectively, the "Parties"). This Amendment delineates the revised Special Conditions and Estimated Budget for SEP Agreement No. 2011-25.

Upon signature of this Amendment by the Parties, as established in SEP Agreement No. 2011-25, the following provisions will be accepted and incorporated into SEP Agreement No. 2011-25:

- The Special Conditions, attached as Exhibit 1 of this Amendment, supersede and replace the previously approved Special Conditions (located on page 12 of SEP Agreement No. 2011-25); and
- The Estimated Budget for Clean Vehicles Partnership Project, attached as Exhibit 2 of this Amendment, supersedes and replaces the previously approved Estimated Budget (located on page 16 of SEP Agreement No. 2011-25).

In accordance with Section 11 of SEP Agreement No. 2011-25, this Amendment shall become effective solely upon agreement and signature of this document by the Parties. The effective date of this Amendment will be the date of the last signatory below.

All conditions and requirements of SEP Agreement No. 2011-25 that are not addressed in this Amendment shall remain unchanged.

SEP Agreement No. 2011-25
SEP Amendment No. 1

TCEQ:

Texas Commission on Environmental Quality



(Signature)

Erin E. Chancellor
(Printed Name)

Director, Office of Legal Services
(Title)

Date: February 5, 2021

THIRD-PARTY ADMINISTRATOR:

Houston-Galveston Area Council-AERCO


DocuSigned by:
82EC270D5D61423...

(Signature)

Charles Wemple

(Printed Name)

Executive Director
(Title)

Date: 4/16/2021

SEP Agreement No. 2011-25
SEP Amendment No. 1

Exhibit 1

Special Conditions

1. The following provision is added to **General Condition 5 SEP Funds**:

5.1.1 The full amount of any SEP Funds received under SEP Agreement No. 2009-005 that remain in Third-Party Administrator's SEP Account at the time of the execution of this Amendment will be taken into account when and if any SEP contributions are allocated under this Agreement. Additionally, such SEP Funds are subject to all terms and conditions in this Agreement and will be subject to Audit as provided in General Condition 14.1 of SEP Agreement No. 2011-25. Third-Party Administrator shall report the SEP Funds in its first Quarterly Report under this Agreement.

5.4.1 The SEP Funds authorized for administrative expenses, totaling \$58,959.97 as listed in Exhibit 2 of this Amendment, may be used to compensate Third-Party's Administrator's personnel for salary, expenses, and travel directly related to implementing the SEP. In order for SEP Funds to be used towards administrative expenses, they must be identified and included in the Estimated Project Budget. Pursuant to TEX. WATER CODE § 7.067, the total amount of SEP Funds spent on administrative expenses cannot exceed 10% of the direct cost of the Project.

2. Replace **General Condition 6 Other Contributions** with the following:

6.1 Nothing in this Agreement is to be construed to prevent Third-Party Administrator from accepting funds from charitable contributors or other sources to the extent permitted by law. If Third-Party Administrator receives funding for any of the items listed in Exhibit 2 of this Amendment from sources other than SEP Funds, Third-Party Administrator must report the source and amount of those funds to the TCEQ and include a list of the items that were purchased with those funds within the next applicable Quarterly Report.

3. The following provisions are added to **General Condition 13.2 Quarterly Reports**:

13.2.8 Completed copies of the SEP Vehicle Replacement Disposition Form, attached as Exhibit 3 (located on pages 17-18 of SEP Agreement No. 2011-25), for each bus that is replaced, along with the required supporting documentation.

13.2.9 Completed copies of the SEP Vehicle Retrofit Form, attached as Exhibit 4 (located on page 19 of SEP Agreement No. 2011-25), for each bus that is retrofitted, along with the required supporting documentation.

SEP Agreement No. 2011-25
SEP Amendment No. 1

13.2.10 For each converted bus engine, proof that the old engine was fully decommissioned and scrapped, including photographs, receipts, and invoices.

13.2.11 A statement regarding the amount of any scrap value of the decommissioned buses and engines and bank statements or other documentation to show that the scrap value was deposited into the SEP Funds Account.

13.2.12 Copies of all contracts between Third-Party Administrator and recipients of SEP Funds.

13.2.13 Detailed invoices, contracts, receipts, work logs, paid invoices, checks, mileage logs, paystubs, and other supporting records for the administrative services performed, benefit allocations received, and the travel costs incurred by Third-Party Administrator's personnel.

13.2.14 Detailed invoices, contracts, receipts, work logs, and work plans for all work conducted by Third-Party Administrator's personnel.

13.2.15 Copies of all invoices, receipts, checks, and other supporting documentation for all SEP Fund expenditures associated with direct and indirect overhead costs.

SEP Agreement No. 2011-25
SEP Amendment No. 1

Exhibit 2

Estimated Project Budget for Clean Vehicles Partnership

No.	Allowable SEP Expense Items	Quantity	Price Per Item	Item Total
1	New base model school bus, including purchase price and delivery charges	33	\$120,000	\$3,960,000
2	Conversions to cleaner fuel engine systems – Equipment and contract labor	20	\$69,444	\$1,388,880
3	Retrofits/anti-idling devices – equipment and contract labor	10	\$10,000	\$100,000
	Total Project Cost			\$5,488,800
4	Personnel Salaries			
	Manager	160 hours	\$52.22/Hr.	\$8,355.20
	Administrative Assistant	90 hours	\$29.08/Hr.	\$2,617.20
	Senior Program Coordinator	300 hours	\$38.83/Hr.	\$11,649.00
	Program Coordinator	125 hours	\$31.00/Hr.	\$3,875.00
	Grant Accountant	80 hours	\$36.00/Hr.	\$2,880.00
5	Benefits Allocation for employees listed in Item No. 4 (vacation, sick leave, and retirement contributions)			\$13,994.92
6	Travel			\$1,000.00
7	Overhead Costs			
	GIS/Network Allocation (costs of maintaining network -including software and hardware)			\$3,556.05
	Internal Service Allocation (costs associated with lease and maintenance of copiers, paper, and copier supplies)			\$2,936.95
	Indirect Allocation (costs associated with office supplies, shipping and postage, and utilities)			\$5,278.29
	Rent Allocation (costs of leased space)			\$2,817.36
	Total Project Administration Costs			\$58,959.97
	Total Cost			\$5,547,759.97

Exhibit 3

SEP Vehicle Replacement Disposition Form

REPLACEMENT Disposition of Vehicle or Equipment (Complete only for Replacement Activity)		
SEP Third-Party Administrator		SEP Agreement No.
SEP Project Name		Phone
Replacement Contract Name		Contract No.
OLD VEHICLE OR EQUIPMENT INFORMATION		
Please provide information on the vehicle or equipment being replaced. Refer to the vehicle's operation manual or contact the dealer for information.		
Vehicle Identification No.		
Make	Model	Year
Registration Document No.		
Engine Serial No. (required)		
Make	Model	Year
READ AND CHECK DISPOSITION STATEMENT BELOW Read the following carefully!		
<input type="checkbox"/> Vehicle /Equipment (Including the engine) was destroyed.		
Destruction means making a hole 3 inches or larger in the engine block and cutting both frame and rails in half (or other pre-approved destruction) making it inoperable. The hole in the engine block must not be on a removable plate and must be in the vicinity of the engine serial number. All photos must be in color and not blurry. When using salvage or recycling companies, attach a written document that proves receipt of the old equipment, engine, or vehicle. Follow the list below that best applies to your vehicle or equipment. It is your responsibility to ensure that the salvage or recycling companies adhere to these procedures.		
CHECKLIST FOR DISPOSITION ITEMS FOR ON ROAD VEHICLES		
<input type="checkbox"/> A photo of the whole vehicle in operating condition before destruction (both sides of the vehicle). <input type="checkbox"/> A photo of the engine block from the vehicle in operating condition before destruction (both sides of the engine). <input type="checkbox"/> A photo of both frames before destruction. <input type="checkbox"/> A photo of the whole vehicle after destruction (both sides of the vehicle). <input type="checkbox"/> A photo of the engine block after destruction with a 3-inch or larger hole that cannot be repaired. The entire engine must be visible in the photo. <input type="checkbox"/> A photo of both frames after destruction with both sides of the frame cut completely in half. <input type="checkbox"/> A copy of the Nonrepairable Vehicle Title from the Texas Department of Motor Vehicles, Form VTR-441. <input type="checkbox"/> A document from the salvage or recycling company if you sell the equipment for scrappage and that company does the destruction.		
CHECKLIST FOR DISPOSITION ITEMS FOR OFF ROAD EQUIPMENT		
<input type="checkbox"/> A photo of the whole piece of equipment before destruction (both sides of the equipment). <input type="checkbox"/> A photo of the engine block in operating condition before destruction (both sides of the engine). <input type="checkbox"/> A photo before structural damage (both sides of the equipment). <input type="checkbox"/> A photo of the whole piece of equipment after destruction (both sides of the equipment). <input type="checkbox"/> A photo of the engine block after destruction with a 3-inch or larger hole that cannot be repaired. The entire engine must be visible in the photo. <input type="checkbox"/> A photo of both sides of the equipment after structural damage that cannot be repaired. <input type="checkbox"/> A document from the salvage or recycling company if you sell the equipment for scrappage and that company does the destruction.		
THIRD PARTY ADMINISTRATOR CERTIFICATION		
I, the undersigned, certify that, to the best of my knowledge, all submitted information is true. I understand that the TCEQ may require reimbursement of SEP Funds if the disposition is not met. I understand that failure to comply with these SEP requirements may result in my organization reimbursing all SEP Funds, as well as termination of this SEP Agreement between my organization and the TCEQ.		
Third-Party Administrator Authorized Signature _____ Date _____		
Name _____ Title _____		

Third-Party Administrator	Houston-Galveston Area Council-AERCO
Agreement Number	2011-25
SEP Title	Clean Vehicles Partnership

Texas Commission on Environmental Quality Third-Party Supplemental Environmental Project Agreement

This Agreement Concerning Supplemental Environmental Project Funds (hereinafter "Agreement") is entered into by and between the Texas Commission on Environmental Quality (hereinafter "TCEQ"), an agency of the State of Texas, and Houston-Galveston Area Council-AERCO (hereinafter "Third-Party Administrator"), a voluntary association of local governments operating as a non-profit organization under U.S. Internal Revenue Code Section 501(c)(3) (collectively, "the Parties"). This Agreement supersedes Supplemental Environmental Project No. 2009-005 ("SEP No. 2009-005").

General Conditions

1. Contact Information

Each Party hereby designates the following person as its representative for implementing this Agreement and for receipt of notice or other information pursuant to the Agreement:

Contact Information for Third-Party Administrator:

Name: Shelley Whitworth
Title: Air Quality Program Manager
Address: 3555 Timmons Lane, Suite 120
Houston, Texas 77027
Telephone: 713-499-6695
Facsimile: 713-993-4505
Email: shelly.whitworth@h-gac.com

Contact Information for TCEQ:

Name: Stephanie Frazee
Telephone: 512-239-3400
Facsimile: 512-239-3434
Email: stephanie.frazee@tceq.texas.gov

Mailing Address:

Litigation Division
Attn: SEP Attorney
Mail Code 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Overnight or Courier:

Litigation Division
Attn: SEP Attorney
Mail Code 175
Texas Commission on Environmental Quality
12100 Park 35 Circle, Bldg. A
Austin, Texas 78753

2. Definitions & Clarifications

2.1 "Effective Date" refers to the date this Agreement begins and is the date of the last signatory below.

2.2 "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and the use of the terms does not create a presumption that components not expressed are excluded.

2.3 "Party" or "Parties" refers to one or all of the signatories to this Agreement, respectively.

2.4 "SEP" refers to Supplemental Environmental Project.

2.5 "SEP Funds" means funds that, with the TCEQ approval, are contributed to Third-Party Administrator by respondents in enforcement actions brought by the TCEQ to offset the administrative penalty due to the State of Texas General Revenue Fund. The term includes interest earned on the original contribution.

2.6 "Project" refers to the project that is approved by the TCEQ as a SEP and described in the exhibits in this Agreement.

2.7 Computation of Times. When any period of time is referred to in the Agreement by days, it will be computed to exclude the first and include the last day of such period. A calendar day of twenty-four hours measured from midnight to the next midnight constitutes a day. A period referred to as a "month" is the period ending on the same numerical day in the subsequent calendar month as the day on which the period began, e.g., from the 9th to the 9th, provided that if the numerical day for calculation of a period of months is greater than the number of actual days in the concluding month, the period will end on the last day of that month. A period referred to as a "week" is a period of seven days. A period referred to as a "year" is a period of 365 days. If the last day of any period described above falls on a Saturday or Sunday or on a state or federal holiday and action is required of the Third-Party Administrator on that day, such day will be omitted from the computation and the required day for action will move forward to the next day that is not a Saturday or Sunday or on a state or federal holiday.

2.8 "Allowable SEP Expenses" are the reasonable, necessary, actual direct costs listed in Exhibit 2 of this Agreement.

3. Exhibits

The following exhibits are attached to this Agreement and incorporated herein by reference:

Exhibit 1, entitled "Clean Vehicles Partnership Project."

Exhibit 2, entitled "Estimated Project Budget for Clean Vehicles Partnership Project."

Exhibit 3, entitled "SEP Vehicle Replacement Disposition Form."

Exhibit 4, entitled "SEP Vehicle Retrofit Form."

4. Approvable SEP

The Parties agree that the Project meets the definition of a SEP pursuant to Texas Water Code § 7.067 and the TCEQ guidance on SEPs.

5. SEP Funds

5.1 Estimated Project Budget. TCEQ has approved the Estimated Project Budget attached as Exhibit 2. SEP expenditures for each line item must be Allowable SEP Expenses and must not exceed ten percent (10%) over the budgeted amount for that line item, unless Third-Party Administrator receives written approval from TCEQ prior to the expenditure pursuant to Section 11 of this Agreement. If Third-Party Administrator does not receive TCEQ approval for the increased cost expenditure, SEP Funds must not be used for that increased cost expenditure. The Parties acknowledge that there may be other Project costs that are not in Exhibit 2 that may be paid for with non-SEP funds.

5.2 Maintenance of SEP Funds. Upon receipt of its first Project contribution from a respondent in a TCEQ enforcement action, Third-Party Administrator shall open and maintain a separate SEP Funds Account. The SEP Funds Account must be a fee-free account used exclusively for SEP Funds at a financial institution that is insured by the Federal Deposit Insurance Corporation ("FDIC") and provides regular accounting statements that are acceptable to the TCEQ. All earned interest on SEP Funds must be accounted for and it becomes part of the SEP Funds under this Agreement. Allowable SEP Expenses must be paid directly to the recipient from the SEP Funds Account. SEP Funds must not be commingled with any non-SEP Funds. Use of SEP Funds to reimburse payments made from accounts other than the SEP Funds Account is considered commingling.

5.3 Use of SEP Funds. Third-Party Administrator shall expend SEP Funds only for Allowable SEP Expenses that are authorized by the Estimated Project Budget in Exhibit 2 of this Agreement. Third-Party Administrator shall ensure that the expenditure of SEP Funds results in the performance of adequate and timely work and that purchases are made in accordance with this Agreement. Third-Party Administrator may expend SEP Funds for work being performed by or for Third-Party Administrator. However, Third-Party Administrator shall not act as a Third-Party Administrator granting SEP Funds for the benefit of other parties, except under a legally enforceable written

contract on a cost reimbursement basis. Third-Party Administrator shall provide copies of such contracts to the TCEQ.

5.4 Administrative Expenses. TCEQ may include administrative expenses related to implementing the Project in the Estimated Project Budget attached as Exhibit 2. Administrative expenses include overhead costs, personnel salary and fringe benefits, and travel and per diem expenses associated with implementing the Project. Administrative expenses may not exceed ten percent (10%) of the total direct cost of implementing the project. If administrative expenses are included in the Estimated Project Budget in Exhibit 2, ten percent of each contribution may be applied towards administrative expenses until the maximum allowed by the Estimated Project Budget in Exhibit 2 is reached. SEP Funds used for administrative costs must be used in accordance with the Uniform Grant and Contract Management Act, Texas Government Code Chapter 783.

5.5 Accounting. Third-Party Administrator shall specifically account, at least on a quarterly basis, for the receipt and expenditure of SEP Funds, including all interest earned on such funds, on the approved TCEQ reporting form as set forth in General Condition 13.2. Failure to provide required reports will constitute grounds for termination of this Agreement; however, an extension of time may be granted at the sole discretion of the TCEQ.

5.6 Timely Expenditure. Third-Party Administrator shall expend SEP Funds within one year of receiving the contribution. In the TCEQ's sole discretion, this time period may be extended upon request from Third-Party Administrator. Any request for extension must be on the approved TCEQ form, include reasonable justification for the extension, and be received thirty (30) days prior to the end of the required performance period.

5.7 No Guarantee of Funding. Funding under this Agreement is limited to voluntary SEP contributions through the TCEQ enforcement process. Third-Party Administrator understands that there is no guarantee that it will receive any SEP Funds under this Agreement.

5.8 Refund of SEP Funds. If at any time the TCEQ determines that SEP Funds were spent in a manner that is not in accordance with this Agreement, Third-Party Administrator shall, on request from the TCEQ, return all such SEP Funds to the TCEQ and account for all SEP Funds within thirty (30) days of demand by TCEQ. Return of SEP Funds will be accompanied by a detailed written accounting connecting the funds to specific docket numbers in a manner acceptable to the TCEQ. The refunded SEP Funds must be in the form of a check or money order made out to "Texas Commission on Environmental Quality" and sent to the TCEQ address in Section 10 of this Agreement.

If at any time the TCEQ determines that Third-Party Administrator failed to spend SEP Funds in a timely manner as required by this Agreement, Third-

Party Administrator shall, on request from the TCEQ, return all such SEP Funds to the TCEQ and account for all SEP Funds within thirty (30) days of demand by TCEQ. Return of SEP Funds will be accompanied by a detailed written accounting connecting the funds to specific docket numbers in a manner acceptable to the TCEQ. The refunded SEP Funds must be in the form of a check or money order made out to "Texas Commission on Environmental Quality" and sent to the TCEQ address in Section 10 of this Agreement. In lieu of the return of unexpended SEP Funds and with the approval of TCEQ, Third-Party Administrator shall transfer the SEP Funds to another TCEQ SEP as directed by TCEQ.

These obligations survive termination of the Agreement.

6. Other Contributions

Nothing in this Agreement is to be construed to prevent Third-Party Administrator from accepting funds from charitable contributors or other sources to the extent permitted by law. If Third-Party Administrator receives funding from sources other than SEP Funds ("non-SEP funds") for any of the items listed in Exhibit 2 of this Agreement for which Third-Party Administrator also receives SEP Funds, Third-Party Administrator shall report the source and amount of the non-SEP funds and provide a list of items and expenses for which the non-SEP funds were used in the Quarterly Reports required under General Condition 13.2.

7. TCEQ Enforcement Actions

This Agreement does not create any rights on behalf of Third-Party Administrator or contributing respondents in TCEQ enforcement actions. Third-Party Administrator shall have no role in the TCEQ enforcement process other than to receive approved, voluntary SEP contributions from respondents and perform the Project according to the terms of this Agreement.

8. Compliance

Third-Party Administrator shall perform the Project in accordance with this Agreement as well as applicable state and federal laws, rules, and regulations. In so doing, Third-Party Administrator shall obtain all necessary permits and licenses.

9. Term of Agreement

The Agreement begins on the Effective Date and automatically renews in one year increments unless terminated by either Party in accordance with this Agreement.

10. Termination

Upon thirty (30) days prior written notice to the other Party, either Party may terminate this Agreement with or without cause. Within thirty (30) days of the effective date of the termination, Third-Party Administrator shall make a written

accounting to the TCEQ of all SEP Funds received, expended, and remaining under this Agreement. This accounting must associate SEP Funds to specific docket numbers and must utilize the TCEQ SEP Third-Party Administrator Final Quarterly Report as set forth in General Condition 13.3. With this written accounting, Third-Party Administrator shall also return all remaining SEP Funds to the TCEQ that have not been expended. The return of remaining SEP Funds must be in the form of a check or money order made out to "Texas Commission on Environmental Quality" and sent to the TCEQ address listed below. These obligations survive termination of the Agreement.

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

11. Amendments

With the exception of contact information or a Section 5.1 TCEQ-approved increase in an Allowable SEP Expense, line item changes to this Agreement may only be made by a written amendment, signed and agreed to by all Parties. Changes to Section 1, Contact Information, may be made by written notice from one Party to the other Party. Increases of more than 10% in an Allowable SEP Expense line item must be approved in writing by the TCEQ Litigation Division Director. In the sole discretion of TCEQ, extensive change requests may require a new Agreement.

12. Notices and Other Information

12.1 Effective Delivery. All notices and other information will be deemed to be delivered on the date they are received if they are: 1) hand-delivered, as evidenced by a signed acknowledgement of receipt; 2) delivered by a nationally recognized courier service, as evidenced by the confirmation of delivery rendered by the courier service; 3) or mailed through the U.S. Postal Service by certified or registered mail, return receipt requested, as evidenced by the acknowledgement of receipt returned to the sender by the postal authorities. Electronic transfer by facsimile or email is not effective for notice unless acknowledged by the other Party.

12.2 Bankruptcy and/or Business Closing. In the event that Third-Party Administrator closes its business and/or files a petition for bankruptcy protection, Third-Party Administrator shall provide written notice to the TCEQ within twenty-four (24) hours of such closure and/or filing. Notice must be sent to the designated TCEQ contact under this Agreement as well as the TCEQ Bankruptcy Program. Notice to the TCEQ Bankruptcy Program must include contact information and be sent to: TCEQ Bankruptcy Program, P.O. Box 13087, Mail Code 205, Austin, Texas 78711.

12.3 Notice of Change. Third-Party Administrator agrees that all information it provided to the TCEQ was correct at the time of submission and remains correct throughout the term of this Agreement, and that in entering into this Agreement, the TCEQ has materially relied on all information provided by Third-Party Administrator, regardless of whether such information is incorporated into this Agreement. Third-Party Administrator agrees to give five (5) days written notice to the TCEQ if there is any material change in the information.

13. Records and Reporting

13.1 Records. Third-Party Administrator shall maintain organized and legible financial records, books, documents, and other evidence reasonably pertinent to its performance under this Agreement for a minimum of three (3) years from the date that a Final Quarterly Report is submitted. Third-Party Administrator shall maintain all financial records in accordance with generally accepted accounting principles. This obligation survives termination of the Agreement.

13.2 Quarterly Reports. Third-Party Administrator shall submit quarterly reports, within the timelines contained therein, to the TCEQ on the approved TCEQ SEP Third-Party Administrator Quarterly Report form ("QR" or "Quarterly Report"). The QRs must contain the following information:

13.2.1 A list of the amount of SEP Funds received during the previous quarter with each respondent name, corresponding contribution docket number, dollar amount received, and date received, and copies of contribution checks;

13.2.2 A list of actual expenditures on the Project paid for with SEP Funds and any necessary accompanying explanation and documentation including invoices and general ledgers;

13.2.3 SEP Fund Account financial institution statements for each month of the previous quarter;

13.2.4 The total balance of the SEP Funds with interest separately noted;

13.2.5 A description of the Project to which SEP Funds were allocated and progress made to date;

13.2.6 Copies of all receipts for all SEP Fund expenditures, copies of all checks for SEP Fund expenditures, and documentation and explanations to support all electronic funds transfers from the SEP Account.

13.2.7 Any additional information listed in the Special Conditions of this Agreement, requested by the TCEQ or the Quarterly Report Form, or that Third-Party Administrator believes would demonstrate compliance with this Agreement.

13.3 Final Reports. Third-Party Administrator shall submit a final Quarterly Report to the TCEQ on the approved TCEQ SEP Third-Party Administrator QR form ("Final QR" or "Final Quarterly Report"), within the timelines contained therein, for the quarter during which the Project concluded. This obligation survives termination of the Agreement. In addition to the information required in General Condition 13.2, the Final QR must contain the following information:

13.3.1 A list of remaining SEP Funds assigned by contribution docket number that were not used for the Project (such funds must be returned to TCEQ within thirty (30) days) after the due date of the Final QR;

13.3.2 Any additional information Third-Party Administrator believes would demonstrate compliance with this Agreement; and

13.3.3 Any additional information requested by the TCEQ.

13.4 Additional Reporting. Third-Party Administrator agrees to provide additional information requested by the TCEQ under this Agreement within thirty (30) days of receipt of the request.

14. Access

14.1 Inspection and Audit. Third-Party Administrator shall permit TCEQ as well as authorized state and federal agencies to have unrestricted access to all records, data, and facilities as necessary to review, inspect, and audit all activities and services associated with SEP Funds under this Agreement. Third-Party Administrator shall provide appropriate accommodations for such access and inspection.

14.2 Access to Project. Third-Party Administrator agrees to allow access by the TCEQ and its representatives to the site of any work performed in whole or in part utilizing SEP Funds and it shall require its contractors to provide the same access.

14.3 These obligations survive termination of this Agreement.

15. Insurance

Unless prohibited by law, Third-Party Administrator shall require its contractors and suppliers to obtain and maintain adequate insurance coverages sufficient to protect the Third-Party Administrator from all claims and liability for injury to persons and

for damage to property arising under the Agreement. If Third-Party Administrator is performing work under this Agreement using its own employees and resources, then (unless Third-Party Administrator is a governmental entity or this requirement is waived by TCEQ) Third-Party Administrator shall obtain and maintain insurance coverages sufficient to protect the Third-Party Administrator from all claims and liability for injury to persons and for damage to property arising out of Third-Party Administrator's performance of the work under this Agreement.

16. Assumption of Risk

The Project is performed at Third-Party Administrator's sole risk as to the means, methods, design, processes, procedures, and conduct of the Project.

17. Independent Entity

Third-Party Administrator is an independent entity and performs the Project as part of its own authorized functions. Third-Party Administrator agrees that it undertakes performance in accordance with this Agreement as its own work and does not act in any capacity on behalf of the TCEQ or as a TCEQ-hired contractor or vendor of goods or services.

18. Acknowledgement of Financial Support

Third-Party Administrator shall acknowledge the financial support of the TCEQ SEP program in any publication involving the use of SEP Funds or whenever work funded in whole or in part by this Agreement is publicized or reported in news media. All publications, news releases and project signs must contain the following notation (or its equivalent if approved by the TCEQ):

Performed with penalty monies from a
Texas Commission on Environmental Quality enforcement action.

19. Publicity

Third-Party Administrator shall not publicize the name of contributors of SEP Funds without consent of the contributor and notice to the TCEQ.

20. Public Information

The Texas Public Information Act (Texas Government Code, Chapter 552) applies to all information delivered to the TCEQ in the course of performance under this Agreement. The TCEQ assumes no obligation to make legal arguments in support of any claims pertaining to confidentiality, patents, trade secrets, or copyright.

21. Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the remainder of the Agreement will be construed to conform to the intent of the Parties.

22. Conflict of Interest

Third-Party Administrator shall notify the TCEQ in writing of any actual, apparent, or potential conflict of interest regarding Third-Party Administrator or any related entity or individual performing or having involvement with any portion of the Project. At the TCEQ's request, Third-Party Administrator shall ensure that any entity with an organizational conflict of interest or an individual with a personal conflict of interest will not take part in any way in the performance of the Project. Third-Party Administrator agrees that the TCEQ has sole discretion to determine whether a conflict exists.

23. Governing Law

This Agreement will be governed by, construed, and interpreted under the laws of the State of Texas as well as any applicable federal law.

24. Venue

Third-Party Administrator agrees that the Agreement is being performed in Travis County, Texas, because this Agreement has been solicited and is being administered in Travis County, Texas. Third-Party Administrator agrees that any permissible cause of action involving this Agreement arises solely in Travis County. This provision does not waive the TCEQ's sovereign immunity.

25. Sovereign Immunity

The Parties agree that this Agreement does not waive the State of Texas' sovereign immunity or official immunity to which TCEQ's officers, employees, or agents are entitled relating to suit, liability, and the payment of damages.

26. Assignment

No delegation, transfer, or assignment of duties, obligations, or rights under or interests in the Agreement will be binding on the TCEQ without its express written consent. Any such delegation, transfer, or assignment made without the written consent of TCEQ is void. No delegation, transfer, or assignment will release or discharge Third-Party Administrator from any duty or responsibility under this Agreement.

27. Survival of Obligations

All representations, warranties, and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in

the Agreement, will survive beyond the termination or completion of the Agreement.

28. Indemnification

To the fullest extent permitted by law, Third-Party Administrator shall indemnify and hold harmless TCEQ and its representatives from and against all losses, liabilities, damages, and other claims of any type arising from the performance of the Project by Third-Party Administrator or its contractors, subcontractors, suppliers and agents, including those arising from workmanship, materials, or from a breach of applicable laws, regulations, safety standards, or directives regardless of whether such acts or omissions are negligently or recklessly performed. This covenant survives the termination of the Agreement.

29. Full Integration

This Agreement, including all exhibits, merges any prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding the Project.

30. Counterparts

This Agreement may be signed in any number of counterparts, and as signed, constitutes one Agreement binding on the Parties hereto, even though the Parties do not sign the same counterpart.

31. Authorized Signatories

The Parties agree that the signatories to this Agreement are authorized to enter into this Agreement on behalf of the entities indicated below each respective signature. Furthermore, the Parties agree that each is bound by the terms and conditions of this Agreement after it is signed by each Party.

32. Conflicting Conditions

There are Special Conditions and an Exhibit 1 to this Agreement that may be more restrictive than the General Conditions to this Agreement. If there is a conflict between the Special and the General Conditions, the Special Conditions and Exhibit 1 control.

Special Conditions

1. The following provision is added to **General Condition 5.1. Estimated Project Budget:**

5.1.1 The full amount of any SEP Funds received under SEP Agreement No. 2009-005 that remain in Third-Party Administrator's SEP Account at the time of the execution of this Agreement will be taken into account when and if any SEP contributions are allocated under this Agreement. Additionally, such SEP Funds are subject to all terms and conditions in this Agreement and will be subject to Audit as provided in General Condition 14.1. Third-Party Administrator shall report the SEP Funds in its first Quarterly Report under this Agreement.

2. The following provisions are added to **General Condition 13.2 Quarterly Reports:**

13.2.8 Completed copies of the SEP Vehicle Replacement Disposition Form, attached as Exhibit 3, for each bus that is replaced, along with the required supporting documentation.

13.2.9 Completed copies of the SEP Vehicle Retrofit Form, attached as Exhibit 4, for each bus that is retrofitted, along with the required supporting documentation.

13.2.10 For each converted bus engine, proof that the old engine was fully decommissioned and scrapped, including photographs, receipts, and invoices.

13.2.11 A statement regarding the amount of any scrap value of the decommissioned buses and engines and bank statements or other documentation to show that the scrap value was deposited into the SEP Funds Account.

13.2.12 Copies of all contracts between Third-Party Administrator and recipients of SEP Funds.

Exhibit 1

Clean Vehicles Partnership Project

Project Description

Third-Party Administrator shall use SEP Funds to replace old, higher emission buses that do not meet 2010 EPA emissions standards ("Old Buses") with new, lower emission buses that meet the most recent EPA emissions standards ("New Buses") or to retrofit or convert Old Buses with emissions reducing equipment. Third-Party Administrator shall allocate SEP Funds to public entities such as school districts, local governments, and public transit authorities ("SEP Recipients") that apply for replacement, retrofit, or conversion of buses. This may be done exclusively with SEP Funds, or Third-Party Administrator or SEP Recipients may combine SEP Funds with other funds in order to accomplish a replacement, retrofit, or conversion. In determining allocation of SEP Funds, Third-Party Administrator shall give priority to projects resulting in the greatest emissions reductions. Third-Party Administrator shall ensure that SEP Recipients spend SEP Funds appropriately and in a manner consistent with this Agreement.

Third-Party Administrator, at its own expense, shall conduct outreach to potential SEP Recipients to make them aware that there may be funds available through Third-Party Administrator to assist in replacing, retrofitting, or converting older vehicles.

Third-Party Administrator shall ensure that each New Bus purchased has an engine that meets the most recent EPA emissions standards. SEP Funds may also be used for retrofit or conversion technology that brings an Old Bus up to current EPA emissions standards. New Buses may be alternative-fueled. SEP Funds may be used for up to 100% of the replacement, conversion, or retrofit cost. SEP Funds will be used only for purchase of New Buses or conversion or retrofit equipment and contract labor for installation of equipment. SEP Funds will not be used for financing such a purchase through a lease-purchase or similar agreement.

Retrofitting means reducing exhaust emissions to current EPA standards by installing devices that are verified or certified by the EPA or the California Air Resources Board ("CARB") as proven retrofit technologies. Converting means replacing an engine system with an alternative fuel engine system to bring the Old Bus within the current EPA emissions standards.

Buses to be replaced, retrofitted, or converted must be in regular use (driven at least five hundred miles per year for at least the past two years) by the SEP Recipient and must not already be scheduled for replacement in the following twenty-four months. Third-Party Administrator may not provide SEP Funds to an entity if the SEP Funds will be used to meet a legal requirement to replace, retrofit, or convert a bus.

All replaced buses must be fully decommissioned. Third-Party Administrator shall provide proof of decommissioning to TCEQ for each replaced vehicle by submitting a copy of the TCEQ SEP Vehicle Replacement Disposition Form, attached as Exhibit 3, for each replaced vehicle, along with supporting documentation. For all retrofits, Third-Party Administrator shall provide a completed copy of the TCEQ SEP Vehicle Retrofit Form, attached as Exhibit 4, along with supporting documentation. For all converted buses, Third-Party Administrator shall ensure that the old engine is fully decommissioned and scrapped and shall provide supporting documentation.

Any additional non-SEP funding used towards a replacement, retrofit, or conversion, such as grants, fuel credits, or tax credits, shall be noted in the Quarterly Reports and subtracted from the total amount that is eligible for SEP Funds. If the total of the SEP Funds spent exceeds the final cost after other funding is applied, the SEP Funds Account must be reimbursed for the difference.

Prior to beginning any work on a school bus replacement, retrofit, or conversion project under this SEP, Third-Party Administrator shall coordinate with the TCEQ Clean School Bus Program, so the TCEQ can determine whether there are any existing contractual reporting commitments under the Texas Clean School Bus Program.

The Parties recognize that Third-Party Administrator may have requirements for replacements, retrofits, or conversions in addition to those contained in this Agreement and that Third-Party Administrator's vehicle replacement program may be broader than what is included in this Agreement; however, SEP Funds may only be used as set forth in this Agreement.

Project Scope

The scope of this SEP is one year. The estimated budget in Exhibit 2 for this SEP is for one year. Pursuant to General Condition 9, this Agreement renews annually unless terminated by either Party in accordance with this Agreement.

Environmental Benefit

This SEP will directly benefit air quality by reducing harmful exhaust emissions that contribute to the formation of ozone and may cause or exacerbate a number of respiratory diseases, including asthma. For example, by replacing a 1989 diesel bus with a 2010 ultra-low emission model, passengers' exposure to NO_x may be reduced by 98 percent; VOCs by 93 percent; CO by 83 percent; and PM by 99 percent. In addition, by encouraging less bus idling, this SEP contributes to public awareness of air pollution and air quality.

Eligible Areas and Counties

Angelina, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Hardin, Harris, Houston, Jasper, Jefferson, Liberty, Matagorda, Montgomery, Nacogdoches,

Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Waller, and Wharton Counties

Minimum Contribution Amount

\$500

Exhibit 2

Estimated Project Budget for Clean Vehicles Partnership

No.	Allowable SEP Expense Items	Quantity	Price Per Item	Item Total
1	New base model school bus, including purchase price and delivery charges	33	\$120,000	\$3,960,000
2	Conversions to cleaner fuel engine systems – equipment and contract labor	20	\$69,444	\$1,388,880
3	Retrofits/anti-idling devices – equipment and contract labor	10	\$10,000	\$100,000
	Total			\$5,488,800

Exhibit 3

SEP Vehicle Replacement Disposition Form

Table 1: Replacement Info

REPLACEMENT: Disposition of Vehicle (complete only for Replacement Activity)			
SEP Thlrd-Party Adminlstrator:		SEP Agreement No.:	
SEP Title:		Phone No.:	
Replacement Contract School District Name:		Replacement Contract No.:	

Old Vehicle Information

Please provide information on the vehicle being replaced.
Refer to the Vehicle's Operation's Manual or contact the dealer for information.

Table 2: Old Vehicle Info

Vehicle ID #:					
Vehicle Make:		Model:		Year:	
Registration Document #:				(Document number is located on vehicle registration form.)	
Engine Serial #:				(Found on the engine's emission label on the engine block and must be provided. If information is unavailable, you must provide an explanation.)	
Engine Make:		Model:		Year:	

Is a dated copy of the school district's current fleet list attached? Yes___ No___
 Is a dated copy of the school district's current policy to reduce school bus idling attached? Yes___ No___
 Is this vehicle used on a weekly basis? Yes___ No___
 What is the primary route driven using this vehicle? _____
 When was this vehicle purchased by the school? Month_____ Year_____
 Is this vehicle currently scheduled and budgeted for replacement? Yes___ No___

READ AND CHECK DISPOSITION STATEMENT BELOW

Table 3 Checklist for Disposition

_____ **Vehicle (including the engine) was destroyed.**

Destruction means making a hole 3 inches or larger in the engine block and cutting both frame rails in half (or other pre-approved destruction) making it inoperable. The hole in the engine block must not be on a removable plate, and must be in the vicinity of the engine serial number. All photos must be in color and not blurry. When using salvage or recycling companies, attach a written document that proves receipt of the old engine or vehicle. Follow the list below. It is your responsibility that the salvage or recycling companies adhere to these procedures.

CHECKLIST FOR DISPOSITION ITEMS FOR ON-ROAD VEHICLES:

_____ A photo of the whole vehicle in operating condition before destruction (both sides of the vehicle).

_____ A photo of the engine block from the vehicle in operating condition before destruction (both sides of the engine).

_____ A photo of both frames before destruction.

_____ A photo of the whole vehicle after destruction (both sides of the vehicle).

_____ A photo of the engine block after destruction with a 3-inch hole or larger that cannot be repaired. **The entire engine must be visible in the photo.**

_____ A photo of both frames after destruction with both sides of the frame cut completely in half.

_____ A copy of the Non-repairable Vehicle Title from the Texas Department of Motor Vehicles, Form VTR-441.

_____ A document from the salvage or recycling company if you sell the vehicle for scrap and that company does the destruction.

Third-Party Administrator's Certification: I, the undersigned, certify that, to the best of my knowledge, all submitted information is true. I understand that the TCEQ may require reimbursement of SEP funds if the disposition requirement is not met. I understand that failure to comply with these SEP requirements may result in my organization reimbursing all SEP Funds, as well as termination of this SEP Agreement between my organization and TCEQ.

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Third-Party Administrator's Authorized Signature Date

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Print Third-Party Administrator's Authorized Name and Title

Exhibit 4
SEP Vehicle Retrofit Form

RETROFIT: Complete for each Vehicle retrofitted.			
SEP Third-Party Administrator:		SEP Agreement No.	
SEP Title:		Phone No.:	
Retrofit Contract School District Name:		Retrofit Contract No.:	

Old Vehicle Information

Vehicle ID #:			
Vehicle Make:		Model:	
		Year:	
Registration Document #:	(Document number is located on vehicle registration form.)		
Engine Family Code:	(This consists of twelve characters combining the model year, manufacturer, and engine type, among other things.)		
Engine Serial #:	(Found on the engine's emission label on the engine block and must be provided. If information is unavailable, you must provide an explanation.)		
Engine Make:		Model:	
		Year:	

Retrofit Equipment Type

	__Diesel Particulate Filter	__Closed Crankcase Filtration System	__Diesel Oxidation Catalyst
Vendor:			
Manufacturer:			
Part #:			

Is a dated copy of the school district's current fleet list attached? Yes__ No__

Is a dated copy of the school district's current policy to reduce school bus idling attached? Yes__ No__

Is this vehicle used on a weekly basis? Yes__ No__

What is the primary route driven using this vehicle? _____

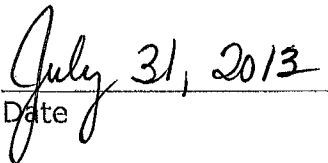
When was this vehicle purchased by the school? Month_____ Year_____

Is this vehicle currently scheduled and budgeted for retrofit? Yes__ No__

Signatures for Third-Party Administrator

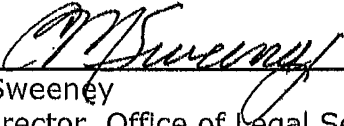


Jack Steele
Executive Director
Houston-Galveston Area Council



Date

Signature for the TCEQ



Caroline Sweeney
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality

Date June 28, 2013