

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Kelly Keel, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

### **SEP Agreement No. 2011-35**

### **SEP Amendment No. 1**

### **SUPPLEMENTAL ENVIRONMENTAL PROJECT ("SEP") AGREEMENT AMENDMENT BETWEEN THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ") AND THE SOUTHEAST TEXAS REGIONAL PLANNING COMMISSION ("SETRPC") SEP AMENDMENT NO. 1**

In accordance with General Condition 11 of SEP Agreement No. 2011-35 between TCEQ and SETRPC (collectively, "Parties"), this document is SEP Amendment No. 1 ("Amendment"). This Amendment delineates a revised General Condition and Estimated Budget for SEP Agreement No. 2011-35.

Upon signature of this Amendment by the Parties, the following provisions will be accepted and incorporated into SEP Agreement No. 2011-35:

- General Condition 5.2, attached as Exhibit 1 of this Amendment, supersedes and replaces the previously approved General Condition 5.2 (located on page 3 of SEP Agreement No. 2011-35); and
- The Estimated Budget for Southeast Texas Regional Air Monitoring Network, attached as Exhibit 2 of this Amendment, supersedes and replaces the previously approved Estimated Budget (located on page 15 of SEP Agreement No. 2011-35). This amendment includes an increase to the overall budget total for the Estimated Budget for the Southeast Texas Regional Air Monitoring Network, formerly Exhibit 2, located on page 15 of SEP Agreement No. 2011-35.

This Amendment shall become effective upon 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. 2011-35 that are not addressed in this Amendment shall remain unchanged.

SEP Agreement No. 2011-35  
SEP Amendment No. 1

**Texas Commission on Environmental Quality:**



(Signature)

Erin E. Chancellor

(Printed Name)

Director, Office of Legal Services

(Title)

Date: 12/12/2023

**South East Texas Regional Planning Commission:**

DocuSigned by:



(Signature)

Shanna Burke

(Printed Name)

Executive Director

(Title)

Date: 11/3/2023

SEP Agreement No. 2011-35  
SEP Amendment No. 1

**Exhibit 1**

**General Conditions**

1. Replace **General Condition 5.2** with the following:

**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 becomes part of the SEP Funds under this Agreement.

SEP Agreement No. 2011-35  
SEP Amendment No. 1

**Exhibit 2**

**Estimated Project Budget for the Southeast Texas Regional Air Monitoring Network**

| <b>No.</b>                         | <b>Expense Item</b>   | <b>Price</b>       |
|------------------------------------|---|--------------------|
| <b>1</b>                           | Monthly monitoring services by contractor for Sabine Pass, Airport, Mauriceville, Port Neches, Beaumont, West Orange, and Cove School sites (Basic Network) | \$48,640/ month    |
| <b>2</b>                           | Monthly monitoring services by contractor for Memorial High School site (GC and Meteorological Monitoring)  | \$5,640/ month     |
| <b>3</b>                           | Monthly monitoring services by contractor for Port Arthur site (PAIG Monitoring and Canister Sampling)  | \$18,030/ month    |
| <b>Total Cost per Month</b>        |   | <b>\$72,310</b>    |
| <b>Total Lifetime Project Cost</b> |   | <b>\$1,500,000</b> |

|                                  |  |
|----------------------------------|--|
| <b>Third-Party Administrator</b> | <b>Southeast Texas Regional Planning Commission</b>    |
| <b>Agreement Number</b>          | <b>2011-35</b>   |
| <b>SEP Title</b>                 | <b>Southeast Texas Regional Air Monitoring Network</b> |

## **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 Southeast Texas Regional Planning Commission (hereinafter "Third-Party Administrator"), a governmental entity created by the State of Texas as a voluntary association of local governments (collectively, "the Parties"). This Agreement supersedes Supplemental Environmental Project No. 2008-010 ("SEP No. 2008-010").

### **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: Bob Dickinson  
Title: Director, Transportation & Environmental Resources  
Address: 2210 Eastex Freeway  
Beaumont, Texas 77703  
Telephone: 409-899-8444, ext. 7520  
Facsimile: 409-729-6511  
Email: bdickinson@setrpc.org

##### **Contact Information for TCEQ:**

Name: Meaghan Bailey  
Telephone: 512-239-0205  
Facsimile: 512-239-3434  
Email: meaghan.bailey@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 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 **“Southeast Texas Regional Air Monitoring Network.”**

**Exhibit 2**, entitled **“Estimated Project Budget for Southeast Texas Regional Air Monitoring Network.”**

**Exhibit 3**, entitled **“Monitoring Sites and Parameters.”**

#### **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. 2008-010 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** Documentation for all contracted services, including detailed receipts, contracts, invoices, and work plans.

**13.2.9** Up-to-date copies of Third-Party Administrator's Quality Assurance Project Plan (QAPP).

**13.2.10** Monitoring data or reports showing that monitoring sites are active and functional. If monitoring stations are not functional for any period of time, Third-Party Administrator must report the outage and provide an explanation and time frame for returning the site to functionality.



## **Exhibit 1**

### **Southeast Texas Regional Air Monitoring Network**

#### **Project Description**

This Project involves air quality monitoring throughout Jefferson and Orange Counties, specifically the Beaumont and Port Arthur area. Third-Party Administrator operates nine air monitors in this area. Exhibit 3 shows the monitoring sites and pollutants monitored at each site.

Third-Party Administrator shall use SEP Funds to pay a contractor for monthly operation and maintenance of the sites, acquisition of all data from the monitors, processing and validating all data, monthly reporting of data, and performance of Quality Assurance Audits on all hardware systems. The air monitors will operate on a continuous basis, 24 hours per day, 365 days per year. Third-Party Administrator shall ensure that the data is validated and sent to TCEQ's Leading Environmental Analysis and Display System (LEADS) in a format acceptable to TCEQ. Third-Party Administrator shall acquire or retain, at its own expense, all necessary leases for the right to place monitoring stations on property and to conduct monitoring activities. Third-Party Administrator shall provide a way for TCEQ to contact equipment operators during normal working hours to address data quality or communication issues. Data displayed on TCEQ's website will be reviewed periodically for quality assurance by Third-Party Administrator and will be subject to change pending final validation by Third-Party Administrator.

Operation and maintenance of the ambient air monitoring stations includes canister sampling and gas chromatographs (GCs). Ancillary equipment includes sample conditioning systems, meteorological towers, climate controlled equipment shelters, a remote communications system, and electronic data logging capability. Ambient monitoring protocols will conform to applicable TCEQ and EPA guidelines.

Third-Party Administrator shall generate and maintain a QAPP adhering to the principles of *EPA Requirements for Quality Assurance Project Plans*, EPA QA/R-5. Third-Party Administrator shall ensure that analysis of all data collected from the sites listed in Exhibit 3 comply with TCEQ Standard Operating Procedures for the analysis and measurement of VOCs in ambient air. Third-Party Administrator must also ensure that the laboratory data generated by this Project is from a TCEQ-accredited laboratory in compliance with all applicable laws and rules.

#### **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 Project will provide environmental benefits to the Beaumont and Port Arthur area by providing measurements of concentrations of certain air pollutants and an evaluation of those air pollutants. Continued air monitoring in this area will help with better understanding air quality pollutants and will enable better identification of emissions sources. The data will focus on specific chemicals that may raise air quality concerns. The information obtained from this network will provide the community with more knowledge of the types and quantities of pollutants emitted from the industries in this area. In addition, data obtained from the monitoring sites and made available to the public may be used by TCEQ and EPA.

### **Eligible Areas and Counties**

Angelina, Hardin, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, Trinity, and Tyler Counties

### **Minimum Contribution Amount**

\$500

## Exhibit 2

### Estimated Project Budget for Southeast Texas Regional Air Monitoring Network

| No. | Allowable SEP Expense Items   | Quantity  | Price Per Item | Item Total       |
|-----|---|-----------|----------------|------------------|
| 1   | Monthly monitoring services by contractor for Sabine Pass, Airport, Mauriceville, Port Neches, Beaumont, West Orange, and Cove School sites (Basic Network) | 12 months | \$48,640/month | \$583,680        |
| 2   | Monthly monitoring services by contractor for Memorial High School site (GC and Meteorological Monitoring)  | 12 months | \$5,640/month  | \$67,680         |
| 3   | Monthly monitoring services by contractor for Port Arthur site (PAIG Monitoring and Canister Sampling)  | 12 months | \$18,030/month | \$216,360        |
|     | <b>Total Cost</b>   |           |                | <b>\$867,720</b> |

## Exhibit 3

### Monitoring Sites and Parameters

| Site Name    | Additional Site Information   | AQS#           | Parameters     |     |    |                 |   |    |              |                |         |               |                 |    |    |
|--------------|---|----------------|----------------|-----|----|-----------------|---|----|--------------|----------------|---------|---------------|-----------------|----|----|
|              |   |                | O <sub>3</sub> | NOx | CO | SO <sub>2</sub> | Reduced Sulfurs (H <sub>2</sub> S and CS <sub>2</sub> ) | PM | VOC Canister | Continuous VOC |         |               | Solar Radiation | WS | WD |
|              |   |                |                |     |    |                 |   |    |              | Benzene        | Styrene | 1,3-Butadiene |                 |    |    |
| Sabine Pass  | SETRPC 40 Sabine Pass (0640, 1654)  | 482450101      | X              | X   |    |                 |   | X  |              |                |         |               |                 | X  | X  |
| West Orange  | Canister Sampler (WS and WD at nearby location) on private property in West Orange, 2813 Austin Ave. Orange, TX | Not Applicable |                |     |    |                 |   | X  | X            |                |         |               |                 | X  | X  |
| Mauriceville | SETRPC 42 Mauriceville (0311, 0642, 0665)   | 483611100      | X              | X   |    |                 |   | X  | X            |                |         |               |                 | X  | X  |
| Airport      | SETRPC 43 Jefferson Co Airport (0643)   | 482450102      | X              | X   |    |                 |   |    | X            |                |         |               | X               | X  | X  |
| Beaumont     | Canister Sampler on top of Court House 1001 Pearl Street Beaumont, TX   | Not Applicable |                |     |    |                 |   |    | X            |                |         |               |                 |    |    |
| Port Neches  | SETRPC Canister Sampler at Port Neches Fire Station 1200 Merriman at 600 Avenue D Port Neches, TX.              | Not Applicable |                |     |    |                 |   |    | X            |                |         |               |                 |    |    |
| Cove School  | West Orange School (West Orange-Cove CISD) 1220 S. Dupont Dr. at Old Cove School Orange, TX                     | Not Applicable |                |     |    |                 |   |    | X            |                |         |               |                 |    |    |
| Port Arthur  | SETRPC Port Arthur (0628, 1628, 628)  | 482450628      | X              | X   | X  | X               | X   | X  | X            |                |         |               |                 | X  | X  |
| Memorial HS  | Port Arthur Memorial School (0303, 0689)  | 482450021      |                |     |    |                 |   |    |              | X              | X       | X             |                 | X  | X  |

O<sub>3</sub> = Ozone

NO<sub>x</sub> = Nitrogen Oxides

CO = Carbon Monoxide

SO<sub>2</sub> = Sulfur Dioxide

Reduced Sulfurs = Hydrogen Sulfide (H<sub>2</sub>S) and Carbon Disulfide (CS<sub>2</sub>)

PM = Particulate Matter

VOC Canister = Volatile Organic Compounds via Canister Method

Continuous VOC = VOC via Automated Gas Chromatograph

WS = Wind Speed

WD = Wind Direction

**Signature for Third-Party Administrator**



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Shaun P. Davis  
Executive Director  
Southeast Texas Regional Planning Commission

10-8-14

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Date

**Signature for the TCEQ**

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

  
\_\_\_\_\_  
Date