

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. 2013-05
SEP Amendment No. 1**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT ("SEP") AGREEMENT
AMENDMENT BETWEEN THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ("TCEQ") AND
BAYOU LAND CONSERVANCY**

SEP AMENDMENT NO. 1

This document is SEP Amendment No. 1 ("Amendment") to SEP Agreement No. 2013-05, between TCEQ and Bayou Land Conservancy (collectively, the "Parties"). This Amendment delineates the revised Special Conditions, Project Description, and Estimated Budget for SEP Agreement No. 2013-05.

Upon signature of this Amendment by the Parties, as established in SEP Agreement No. 2013-05, the following provisions will be accepted and incorporated into SEP Agreement No. 2013-05:

- 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. 2013-05);
- The Project Description, attached as Exhibit 2 of this Amendment, supersedes and replaces the previously approved Project Description (located on page 13 of SEP Agreement No. 2013-05); and
- The Estimated Budget for Bayou Land Conservancy, attached as Exhibit 3 of this Amendment, supersedes and replaces the previously approved Estimated Budget (located on page 15 of SEP Agreement No. 2013-05);
- The Project Area Map, attached as Exhibit 4 of this Amendment, supersedes and replaces the previously approved Project Area Map (located on page 16 of SEP Agreement No. 2013-05).

In accordance with Section 11 of SEP Agreement No. 2013-05, 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. 2013-05 that are not addressed in this Amendment shall remain unchanged.

TCEQ:

Texas Commission on Environmental Quality

Margi Ligarde
(Signature)

Margaret Ligarde
(Printed Name)

Deputy Director, Office of Legal Services
(Title)

Date: Oct. 1, 2019

THIRD-PARTY ADMINISTRATOR:

Bayou Land Conservancy

Jill Boullion
(Signature)

Jill Boullion
(Printed Name)

Executive Director
(Title)

Date: 11-14-19

Exhibit 1

Special Conditions

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

5.1.1 Estimated Project Budget. TCEQ has approved the Estimated Project Budget attached as Exhibit 3. 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 SEP Agreement 2013-05. 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 3 that may be paid for with non-SEP funds.

2. The following provision is added to **General Condition 5.4 Administrative Expenses:**

5.4.1 The SEP Funds authorized for administrative expenses, totaling \$50,000 of the Estimated Project Budget in Exhibit 3 of this Amendment, shall be used solely to compensate Third-Party Administrator's two staff biologists for salary costs directly related to implementing the Project. This includes time spent mapping and conducting baseline inventories of properties Third-Party Administrator has successfully purchased a conservation easement for, as approved under this Agreement.

3. The following provision is added to **General Condition 6 Other Contributions:**

6.1 If Performing Party receives funding for any of the items listed in Exhibit 3 of this Amendment from sources other than SEP Funds, Performing Party 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.

4. The following provision is added to **General Condition 13 Records and Reporting:**

13.2.8 Detailed invoices, contracts, receipts, work logs, and work plans for all work conducted by third-party contractors.

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

13.2.10 Copies of all closing documents and filed documents.

13.2.11 Before and after pictures of all restoration work labeled with dates and locations.

13.2.12 Copies of all appraisals and surveys.

13.2.13 Dated before and after photographs of Project work, labeled with location.

13.2.14 Maps showing the geographic location where Project work is conducted.

13.2.15 Documents regarding Project property purchases and ownership.

13.2.12 Detailed final survey reports and additional documentation which detail the ecological health of project properties and the proposed restoration activities.

Exhibit 2

Lake Houston Watershed – Western Watershed Protection Project

Project Description

Third-Party Administrator has identified approximately 500 acres along the West Fork of the San Jacinto River, Spring Creek, Cypress Creek, and Lake Creek for property acquisition or acquisition of perpetual conservation easements in accordance with Subchapter A, Chapter 183, Texas Natural Resources Code. Exhibit 4 of this Amendment shows the targeted area. The goal of this Project is to protect the floodplain within the western tributaries of the Lake Houston Watershed. Third-Party Administrator shall use SEP Funds to conduct certain due diligence activities and to purchase land or conservation easements in perpetuity from private and public landowners. Third-Party Administrator shall also conduct restoration work as necessary on properties placed under a conservation easement or owned by the Third-Party Administrator.

The Third-Party Administrator currently owns one property, approximately 11.87 acres within the City of Houston in Harris County, Texas (the "Property"). The Property is adjacent to Cypress Creek and approximately 75% of the land is either within the floodway or 100-year floodplain of Cypress Creek. The Property includes wooded riparian habitat, portions of a flood control levee, grassy riparian lands adjacent to Cypress Creek, and a small detention basin. The Property's 11.87 acres are subject to a restrictive covenant and shall be maintained by the Third-Party Administrator for nature preserve purposes only. In accordance with the restrictive covenant, the Third-Party Administrator will ensure protection and enhancement of the land's natural resources. The Property was donated to the Third-Party Administrator to ensure that the land would be maintained and preserved as undeveloped natural space.

Third-Party Administrator shall use SEP funds on the Property for restoration work conducted by a contractor. Over time, invasive non-native vegetation species have colonized the Property. Non-native invasive species disrupt the natural ecosystem by limiting native vegetation diversity and wildlife. Restoration work on the Property includes eradicating non-native vegetation and reestablishing native vegetation. Eradication work may include either physical removal of a plant, herbicide application onto a plant, or a combination of the two methods. Depending on the habitat type, reestablishment of native species may include land preparation work and planting of trees, shrubs, or grassy-species. Third-Party Administrator shall submit a proposal to TCEQ describing restoration work at the Property and will include approximate boundaries and maps, proposed invasive species removal actions, proposed plantings, and any other information that may be requested by TCEQ.

Third-Party Administrator may seek ownership of additional properties in the future. These properties will follow the stated Project goal to protect the floodplain within the western tributaries of the Lake Houston Watershed. These properties would be undeveloped lands, adjacent to a waterbody, with high conservation values. Similar

to the currently owned property, they would include a restrictive covenant requiring them to be maintained in perpetuity solely for nature preserve purposes.

After a property has been identified for acquisition, Third-Party Administrator shall submit a proposal to TCEQ that includes property owner information, approximate boundaries and aerial maps, preliminary flora/fauna lists, and environmental details of stream frontage, wetland acreage, habitat type, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, Third-Party Administrator may use SEP Funds for approved due diligence activities and purchase of the land.

Targeted properties for conservation easements are owned by Harris County, Montgomery County, other local governments, and private landowners. After a property has been identified for conservation easement acquisition, Third-Party Administrator shall submit a proposal to TCEQ that includes property owner information, approximate boundaries and aerial maps, preliminary flora/fauna lists, and environmental details of stream frontage, wetland acreage, habitat type, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, Third-Party Administrator may use SEP Funds for approved due diligence activities and purchase of the conservation easement.

After TCEQ approval for either land acquisition or conservation easement acquisition, Third-Party Administrator shall prepare a baseline inventory and mapping of the property. The baseline inventory will assess the ecological health of the tract, including onsite biological inventories of all flora and fauna species. Mapping will be completed by collecting data to prepare flood, topographic, wetland, soil, and aerial field maps. This information will determine whether restoration activities will be necessary and will also ensure that Third-Party Administrator can preserve the ecological health of the property in the future. The Third-Party Administrator conducts annual surveys for all land under conservation easement and under its ownership. Annual surveys monitor the continued ecological health of properties. If annual surveys discover that the site's ecological values have suffered due to invasive species, trespassing, or other causes, restoration activities may be necessary.

Third-Party Administrator shall address and remedy all encumbrances to the property title, including mortgages and other liens, prior to closing on purchasing the land or the conservation easement. Third-Party Administrator shall not sell conservation easements or any other land interests acquired with SEP Funds. Third-Party Administrator shall ensure that a restrictive covenant requiring property to be maintained in perpetuity solely for nature preserve purposes is written into the property deed prior to closing. Third-Party Administrator shall record a copy of each land acquisition or conservation easement in the county deed records within 15 days of closing. Third-Party Administrator certifies that the conservation easements purchased for this Project will not be used as any additional or future mitigation project. Third-Party Administrator shall also use SEP Funds for habitat restoration and enhancement, including removing invasive species and planting native vegetation. Restoration activities will be conducted by a contractor and will take place on property protected by a conservation easement or owned by Third-Party

Administrator. Prior to commencing restoration activities, Third-Party Administrator shall submit a proposal to TCEQ that includes the exact property location and description, property owner information, specific restoration activities to be conducted, amount of SEP Funds to be used for restoration activities, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, Third-Party Administrator may use SEP Funds for the approved restoration activities.

Project Scope

The scope of this SEP is one year. The estimated budget in Exhibit 3 of this Amendment 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

Rapid development in the Lake Houston Watershed has led to removal of the natural riparian buffers along the waterways, which jeopardizes the air and water quality. Spring Creek, Cypress Creek, Lake Creek, and the West Fork of the San Jacinto River are major water sources for Lake Houston, which is Houston's primary source of drinking water. When land is cleared and developed within these floodplains, the water becomes more turbid and often has increased E. coli bacteria and other negative water quality contaminants.

Lands permanently preserved with conservation easements maintain vegetated banks and wooded floodplains to allow river overflow. When floodwater passes through the floodplain, the vegetated substrates are not eroded away, and the banks are maintained. Preserving the natural vegetated banks will help maintain water quality in this area. Additionally, many of the properties Third-Party Administrator will secure with conservation easements will be open to the public for low-impact recreational uses, and wildlife will benefit from connected habitat and undisturbed access to critical water sources.

Eligible Areas and Counties

Angelina, Aransas, Atascosa, Austin, Bee, Brazoria, Brazos, Brooks, Calhoun, Cameron, Chambers, Colorado, De Witt, Duval, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Hidalgo, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, McMullen, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Webb, Wharton, Willacy, and Zapata Counties

Minimum Contribution Amount

\$1,000

Exhibit 3

Estimated Budget for Lake Houston Watershed- Western Watershed Protection Project

Allowable SEP Expense Items	Quantity	Price Per Item	Item Total
Purchase of land in fee	200 acres	\$12,500/acre	\$2,500,000.00
Purchase of conservation easement	300 acres	\$10,000.00/acre	\$3,000,000.00
Appraisals	5 properties	\$6,000/acre	\$30,000.00
Surveys	5 properties	\$25,000/each	\$150,000.00
Title Insurance	5 properties	\$3,000.00/each	\$15,000.00
Restoration Work: invasive species removal	10 Properties	\$10,000/property	\$100,000.00
Restoration Work: Vegetation planting	10 Properties	\$10,000/property	\$100,000.00
Total Direct Costs			\$3,370,000.00
Salary costs for two staff biologist as provided in Special Condition 2	10 Properties	\$5,000/property	\$50,000.00
Total Cost			\$3,420,000.00

Exhibit 4

Project Area Map



Bayou Land Conservancy
10330 Lake Rd. Bldg. J, Houston, TX 7707
www.BayouLandConservancy.org (281) 576-1634

TCEQ SEP - Project Area

N
Imagery: 2011, True Color
Texas State Plane, South Central, NAD83
Drawn By: Stephanie Prosser
Bayou Land Conservancy
02/27/2012

Third-Party Administrator	Bayou Land Conservancy
Agreement Number	2013-05
SEP Title	Lake Houston Watershed – Western Watershed Protection Project

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 Bayou Land Conservancy (hereinafter "Third-Party Administrator"), a non-profit organization under U.S. Internal Revenue Code Section 501(c)(3) (collectively, "the Parties"). This Agreement supersedes Supplemental Environmental Project No. 2009-16 ("SEP No. 2009-16").

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: Stephanie Prosser
Title: Senior Conservation Lands Biologist
Address: 10330 Lake Road, Building J
Houston, Texas 77070
Telephone: 281-576-1634
Email: sprosser@bayouland.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 “**Lake Houston Watershed – Western Watershed Protection Project.**”

Exhibit 2, entitled “**Estimated Project Budget for Lake Houston Watershed – Western Watershed Protection Project.**”

Exhibit 3, entitled “**Project Area Map.**”

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. 2009-16 that remain in Third-Party Administrator's SEP Account shall be allocated to SEP Agreement No. 2013-05 upon the effective date of the 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 provision is added to **General Condition 5.4 Administrative Expenses:**

5.4.1 The SEP Funds authorized for administrative expenses, totaling \$125,000 of the Estimated Project Budget in Exhibit 2, shall be used solely to compensate Third-Party Administrator's two staff biologists for salary costs directly related to implementing the Project. This includes time spent mapping and conducting baseline inventories of properties Third-Party Administrator has successfully purchased a conservation easement for, as approved under this Agreement.

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

13.2.8 Detailed invoices, contracts, receipts, work logs, and work plans for all materials purchased and work conducted by contractors.

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

13.2.10 Copies of all closing documents and filed documents.

13.2.11 Before and after pictures of all restoration work labeled with dates and locations.

13.2.12 Copies of all appraisals and surveys.

Exhibit 1

Lake Houston Watershed – Western Watershed Protection Project

Project Description

Third-Party Administrator has identified approximately 600 acres along the West Fork of the San Jacinto River, Spring Creek, Cypress Creek, and Lake Creek for acquisition of perpetual conservation easements in accordance with Subchapter A, Chapter 183, Texas Natural Resources Code. Exhibit 3 shows the targeted area. The goal of this Project is to protect the floodplain within the western tributaries of the Lake Houston Watershed. Third-Party Administrator shall use SEP Funds to conduct certain due diligence activities and to purchase conservation easements in perpetuity from private and public landowners. Third-Party Administrator shall also conduct restoration work as necessary on properties that were previously degraded before being placed under a conservation easement. Targeted properties are owned by Harris County, Montgomery County, and private landowners.

After a property has been identified for conservation easement acquisition, Third-Party Administrator shall submit a proposal to TCEQ that includes property owner information, approximate boundaries and aerial maps, preliminary flora/fauna lists and environmental details of stream frontage, wetland acreage, habitat type, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, Third-Party Administrator may use SEP Funds for approved due diligence activities and purchase of the perpetual conservation easement.

After TCEQ approval, Third-Party Administrator shall prepare a baseline inventory and mapping of the property. The baseline inventory will assess the ecological health of the tract, including onsite biological inventories of all flora and fauna species. Mapping will be completed by collecting data to prepare flood, topographic, wetland, soil, and aerial field maps. This information will determine whether restoration activities will be necessary and will also ensure that Third-Party Administrator can preserve the ecological health of the property in the future.

Third-Party Administrator shall address and remedy all encumbrances to the property title, including mortgages and other liens, prior to closing on the conservation easement purchase. Third-Party Administrator shall not sell conservation easements or any other land interests acquired with SEP Funds. Third-Party Administrator shall record a copy of each conservation easement in the county deed records within 15 days of closing. Third-Party Administrator certifies that the conservation easements purchased for this Project will not be used as any additional or future mitigation project. Third-Party Administrator shall also use SEP Funds for habitat restoration and enhancement, including planting native trees. Restoration activities will be conducted by a contractor and will take place on property protected by a conservation easement. Prior to commencing restoration activities, Third-Party Administrator shall submit a proposal to TCEQ that includes the exact property location and description, property owner information, specific restoration activities to be conducted, amount of SEP Funds to be used for

restoration activities, and any other information that may be requested by TCEQ. Upon written approval by TCEQ, Third-Party Administrator may use SEP Funds for the approved restoration activities.

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

Rapid development in the Lake Houston Watershed has led to removal of the natural riparian buffers along the waterways, which jeopardizes the air and water quality. Spring Creek, Cypress Creek, Lake Creek, and the West Fork of the San Jacinto River are major water sources for Lake Houston, which is Houston's primary source of drinking water. When land is cleared and developed within these floodplains, the water becomes more turbid and often has increased E. coli bacteria and other negative water quality contaminants.

Lands permanently preserved with conservation easements maintain vegetated banks and wooded floodplains to allow river overflow. When floodwater passes through the floodplain, the vegetated substrates are not eroded away, and the banks are maintained. Preserving the natural vegetated banks will help maintain water quality in this area. Additionally, many of the properties Third-Party Administrator will secure with conservation easements will be open to the public for low-impact recreational uses, and wildlife will benefit from connected habitat and undisturbed access to water sources.

Eligible Areas and Counties

Angelina, Aransas, Atascosa, Austin, Bee, Brazoria, Brazos, Brooks, Calhoun, Cameron, Chambers, Colorado, De Witt, Duval, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Grimes, Hardin, Harris, Hidalgo, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, McMullen, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Starr, Trinity, Tyler, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, and Zapata Counties

Minimum Contribution Amount

\$1,000

Exhibit 2

Estimated Project Budget for Lake Houston Watershed – Western Watershed Protection Project

No.	Allowable SEP Expense Items	Quantity	Price Per Item	Item Total
1	Purchase of conservation easements	600 acres	\$6,000/acre	\$3,600,000
2	Appraisals	10	\$6,000/each	\$60,000
3	Surveys	10	\$25,000/each	\$250,000
4	Restoration work, including tree planting	25 properties	\$3,000/property	\$75,000
	Total Direct Costs			\$3,985,000
5	Salary costs for two staff biologists as provided in Special Condition 2	25 properties	5,000/property	\$125,000
Total Cost				\$4,110,000

Exhibit 3

Project Area Map



Bayou Land Conservancy
10330 Lake Rd. Bldg. J, Houston, TX 7707
www.BayouLandConservancy.org (281) 576-1634

TCEQ SEP - Project Area

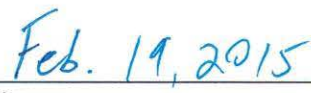


Imagery: 2011, True Color
Texas State Plane, South Central, NAD83
Drawn By: Stephanie Prosser
Bayou Land Conservancy
02/27/2012

Signature for Third-Party Administrator



Jennifer Lorenz
Executive Director
Bayou Land Conservancy



Date

Signature for the TCEQ



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



Date