

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

SEP Title: Air Quality Monitoring in the Paso Del Norte Air Basin
SEP Number: 2024-01
Third-Party Administrator: North American Development Bank
Effective Date: November 24, 2025
Total Project Budget: \$1,262,500
Expiration Date: November 24, 2030

Agreement Introduction

The Texas Commission on Environmental Quality (“TCEQ”), an agency of the State of Texas, and North American Development Bank (“NADB” or “Third-Party Administrator”), a binational financial institution established and governed by the United States of America and Mexico (collectively, “the parties”) enter this Third-Party Supplemental Environmental Project Agreement (from now on “Agreement”). The Agreement is effective on the date signed by an authorized representative of TCEQ.

Under a separate agreement (the “Air Quality Fund Agreement” or “AQF Agreement”), which is not related to Supplemental Environmental Projects (“SEPs”) described by Texas Water Code § 7.067, the parties have already established the “Administrative Fund for Air Quality Monitoring in the Paso del Norte Air Basin” (the “AQF”), which is managed by NADB. The AQF provides funding to strengthen the Air Quality monitoring capabilities in Ciudad Juárez, Chihuahua, for facilitating the improvement of air quality in the Ciudad Juárez, Chihuahua/El Paso, Texas/Doña Ana County, New Mexico air basin. The AQF is managed by NADB and used to support actions identified by a “Fund Committee” aided by an “Administrative Unit,” both established by the Joint Advisory Committee (“JAC”) for the improvement of air quality in the Paso del Norte Air Basin. The AQF Agreement allows other contributors to provide additional funding to the AQF by entering into their own agreements with NADB, characterized as Addenda, having essentially the same terms as the AQF Agreement between TCEQ and NADB.

Under the AQF Agreement, NADB, the Fund Committee, and the Administrative Unit have established procedures for managing AQF expenditures through hiring Performing Parties to install, maintain, and operate air quality monitoring stations in appropriate eligible locations. Even if such Performing Parties are independent contractors of NADB, the Fund Committee, or the Administrative Unit, adequate performance by the Performing Parties is ensured via oversight of their contracts, which are managed by NADB in the terms of the AQF Agreement. In this Agreement, “Performing Parties” refers to these independent contractors and not TCEQ or NADB. Only academic institutions, private entities (including for-profit and not-for-profit organizations), and individuals are eligible to receive funds and act as Performing Parties for the AQF; State and Municipal governments cannot serve as vendors or contractors, or provide services funded pursuant to the AQF Agreement.

NADB has now also developed an environmental enhancement project (“Project”) which is described in this Agreement. The parties agree that the Project qualifies as a SEP under Texas Water Code § 7.067 and TCEQ guidance on SEPs. The parties further agree that this Agreement is not an Addendum under the AQF Agreement. Any duties and obligations described under this Agreement are independent of duties and obligations under the AQF Agreement and may persist beyond the termination of the AQF Agreement. However, the parties acknowledge that Third-Party Administrator may perform its duties and obligations under this Agreement using the same general procedures, Fund Committee, and Administrative Unit it uses for the AQF Agreement, provided that all specific requirements of this Agreement are met (including all reporting and data posting requirements). For the purposes of implementing and complying with this Agreement, the parties agree that reference to “TCEQ” in the Agreement’s provisions means TCEQ’s SEP Program, unless otherwise indicated. The parties also acknowledge that Third-Party Administrator may terminate this Agreement, pursuant to the provisions of General

Condition No. 2.4., at a time that may coincide with Third-Party Administrator’s termination of related activities under the AQF Agreement.

This Agreement designates this Project as a pre-approved SEP. Respondents to TCEQ enforcement actions may choose to contribute to an eligible pre-approved SEP that benefits the community in which the alleged violation occurred. All contributions to pre-approved SEPs are voluntary, and all funds will come directly from eligible respondents. **TCEQ will not provide any direct funding, and no amount of funding is guaranteed.**

Contact Information

Each party designates the following individual as its initial representative for implementing this Agreement and for receipt of notice or other information required by the Agreement.

Contact Information for Third-Party Administrator:

Name: Renata Manning-Gbogbo
Title: Head of Capacity and Technical Assistance Unit
Address: 203 South St. Mary’s Street # 300, San Antonio, TX 78205, USA
Telephone: (210) 231-4890
Email: rmanning@nadb.org

Contact Information for TCEQ:

Name: Mihir Kulkarni
Title: SEP Attorney
Telephone: (512) 239-6224
Email: SEPReports@tceq.texas.gov

Mailing Address:
Litigation Division
Attn: SEP Attorney
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Signature Page

**Texas Commission on
Environmental Quality**

Third-Party Administrator

Phillip Ledbetter
Authorized Signature


Authorized Signature

Phillip Ledbetter
Printed Name

Salvador Lopez
Printed Name

Director of OLS
Title

Chief Environmental Officer
Title

Nov. 24, 2025
Date

Oct 15, 2025
Date

Agreement Documents List

This Agreement between TCEQ and Third-Party Administrator consists of the Agreement Documents listed on this page. Documents on this list include all amendments. In the event of a conflict of terms, the Agreement Documents as amended control in the order that items are listed below, with the Agreement Documents higher on the list controlling over the items lower on the list, unless the Special Terms and Conditions specify otherwise. All Agreement provisions, however, are subject to control by the latest amendment, the most specific provision, and by the applicable state and federal laws, rules, and regulations.

- Agreement Introduction
- Signature Page
- Agreement Documents List (this page)
- Special Terms and Conditions
- Estimated Project Budget for Air Quality Monitoring in the Paso del Norte Air Basin
- Project Description
- General Terms and Conditions
- Exhibit A, Air Monitor Locations

Special Terms and Conditions

The following provisions are added to **General Condition 2.3.2., Unilateral Amendments:**

- 2.3.2.2. At the written request of or through Third-Party Administrator, TCEQ may change the approved location of an air monitor or add additional air monitors to be funded by this Agreement through unilateral amendment. This may include changes to the Project Description that affect the scope of the project, changes in the total amount of funds in the Estimated Project Budget, and/or changes to the amount allowed for specific line items.
- 2.3.2.3. At the written request of Third-Party Administrator, TCEQ may unilaterally amend the Agreement to increase the annual budget included in the Estimated Project Budget to compensate for inflation or other price changes. The "Total Project Cost" will be amended accordingly.

The following provision is added to **General Condition 2.4.3., Opportunity to Cure:**

- 2.4.3.1. **Coordination with Other Parties.** TCEQ recognizes that Third-Party Administrator works in coordination with other parties, including contractors, to ensure this Project is performed, and that Third-Party Administrator will rely on these other parties to ensure some of the Project requirements under this Agreement are met. Third Party-Administrator shall have a period of 30 days from the date of any written notice from TCEQ about nonconformance to cure such issues and provide supporting documentation thereof to TCEQ. Third-Party Administrator may submit one written request for additional time, but the request must be submitted to TCEQ at least 3 days prior to the 30-day deadline, and must include a request for a new deadline not to exceed 5 additional days subsequent to the original deadline to cure, and an explanation for why the 30-day deadline will not be met. TCEQ reserves sole discretion for whether to approve any such requested extension.

The following provisions are added to **General Condition 2., Contract Period:**

- 2.5. **Agreement separate from existing contracts.** The duration and obligations of this agreement are separate from any other existing contracts or agreements. The obligations under this agreement may persist beyond the termination of any other agreements, such as the AQF Agreement referenced in the Agreement Introduction. Any obligations or reporting requirements included in this Agreement must be fulfilled separately and independently as described in this Agreement. However, the parties acknowledge that Third-Party Administrator may terminate this Agreement, pursuant to the provisions of General Condition No. 2.4, at a time that may coincide with Third-Party Administrator's termination of related activities under other agreements.

The following provision is added to **General Condition 3., SEP Funds:**

- 3.10. **Right to refuse contributions.** Third-Party Administrator has the right to refuse contributions made to this Project. If Third-Party Administrator wishes to refuse a contribution, it shall notify TCEQ as soon as possible after receipt of the contribution check that it does not wish to accept, no later than 21 days after receipt.

The following provisions are added to **General Condition 3.3., Use of SEP Funds:**

- 3.3.1. Third-Party Administrator shall ensure it or one of its coordinating, Performing Parties acquire or retain all necessary leases for the right to place monitoring stations on property and to conduct monitoring activities.

If a written lease is not necessary for access onto any property, Third-Party Administrator shall request that a written explanation be provided to TCEQ as to how or why access is nevertheless reliable. If requested by TCEQ, Third-Party Administrator must submit a written statement from the owner of such property that reflects its permission for access and use by Third-Party Administrator or Performing Party. SEP Funds must not be used to acquire right of, or permission to access and use such properties.

- 3.3.2. Third-Party Administrator shall ensure that existing SEP Funds are expended for continuing performance of the project regardless of the status of any additional external funding mechanisms for the monitoring sites. If the expenditure of any remaining SEP Funds is no longer possible, Third-Party Administrator will notify TCEQ.
- 3.3.3. Third-Party Administrator shall promptly notify TCEQ and obtain permission in writing before using SEP funds for any additional monitors beyond those included in Exhibit A, Air Monitor Locations. Third-Party Administrator shall ensure the location of these additional monitors, including the address, longitude and latitude, and current ownership information, is provided to TCEQ.

The following provisions are added to **General Condition 4.2.1., Quarterly Report Contents:**

- 4.2.1.7. Documentation for all contracted services and purchased approved materials or equipment by Third-Party Administrator or its Performing Parties, including detailed receipts, contracts, invoices, and work plans.
- 4.2.1.8. Up-to-date copies of any new documentation concerning Quality Assurance for data relevant to this Project, drafted or utilized by Third-Party Administrator or other parties with whom it coordinates to ensure performance of this Project.
- 4.2.1.9. Documentation of any internal or independent audits and results from those audits performed during the reporting period.
- 4.2.1.10. 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 ensure the outage is reported, together with an explanation and estimated time frame for returning the site to functionality.

The following provision is added to **General Condition 5.1., Access:**

- 5.1.3. TCEQ and Third-Party Administrator each acknowledge that financial records related to this Agreement may be subject to review by either party. The parties further acknowledge that documents and information in TCEQ's possession are subject to review by other Texas agencies with responsibilities related to expenditures of public funds (including, but not limited to, the Texas State Auditor), to determine that expenditures funded under this Agreement are allowable, and the parties agree to cooperate with each other to comply with these requirements. Notwithstanding the foregoing, nothing herein constitutes or may in any way be interpreted as a waiver by Third-Party Administrator of its immunities and privileges pursuant to its organizational documents or relevant law, including but not limited to the inviolability of its archives.

The following provisions are added to **General Condition 5.2., Quality and Acceptance:**

- 5.2.1. The data collected using SEP Funds shall be made publicly available online, including to users in the United States, via websites and domains as

determined by Third-Party Administrator or another party with whom it coordinates for the performance of this Project (e.g., the Fund Committee). This provision of data online must be performed in a matter that is acceptable to TCEQ.

- 5.2.2. Third-Party Administrator shall ensure TCEQ has a way to contact equipment operators during normal working hours to address data quality or communication issues. Third-Party Administrator shall also work with TCEQ to ensure such communications are available in English, if TCEQ determines it is necessary for TCEQ's needs. TCEQ appreciates that Third-Party Administrator may not have this information immediately available, but it will provide any such information to TCEQ within two working days.
- 5.2.3. All work performed under this Agreement that involves the acquisition of environmental data must be in accordance with Quality Assurance protocols and/or standards that govern, are required, or are instructive for the jurisdiction(s) where data is being collected. This includes adherence to applicable Normas Oficiales Mexicanas for network operations and health risk communications.
- 5.2.4. Third-Party Administrator shall ensure submittal of any relevant protocols or standards to TCEQ within 6 months of the effective date of this Agreement. Third-Party Administrator shall ensure that contracts with Performing Parties establish requirements to ensure compliance with these protocols or standards.
- 5.2.5. Third-Party Administrator shall ensure that the data produced by the air monitoring stations is reliable. Third-Party Administrator shall ensure that an independent audit of the quality of the information provided by the monitoring stations is performed at least annually.

The following provisions are added to **General Condition 10., Agreement Interpretation:**

- 10.12. **Language.** This Agreement is in the English language only, which shall be the controlling language in all respects for this Agreement. Any version of this Agreement in any other language shall be for accommodation only and shall not be binding upon the parties. All communication, notices, reports, and supporting documentation to be made, given, or approved pursuant to this Agreement shall be made available in the English language, unless: (1) the information at issue is readily understandable in Spanish (*e.g.*, data) by someone who speaks English but not Spanish; and (2) TCEQ's SEP Program has agreed in writing that provision of it in Spanish alone is acceptable. TCEQ reserves the right to withdraw such agreement, and it also reserves the right to make requests for Third-Party Administrator to ensure translations of such information into English are provided to TCEQ.

Estimated Project Budget for Air Quality Monitoring in The Paso Del Norte Air Basin (“Estimated Project Budget”)

No.	Allowable SEP Expense Items	Item Total
1	Contractor expenses (students, technical staff, air quality experts, cleaning personnel, construction/maintenance workers, transportation to monitoring stations and field work, and others directly involved with implementation of the project)	\$402,500
2	Consumable parts, equipment, and materials for network enhancement and expansion (materials and equipment for an additional monitoring station, automatic particulate matter analyzers, Ozone or NO _x monitors, calibration laboratory equipment, Zero Air calibration gas or equivalent, cleaning and maintenance materials, consumable parts including filters, external pumps, UV lights and other repair kits, materials for infrastructure maintenance and repairs)	\$860,000
Total Direct Project Cost		\$1,262,500

Project Description

I. Facts/Purpose

The purpose of the project is to fund operation and maintenance expenses for air quality monitoring stations in the city of Juárez, Mexico. This will allow for more complete information about air quality in the Paso del Norte Air Basin, which includes both Juárez and the city of El Paso, Texas. Improving the air quality monitoring network in this region will enhance the binational air quality information system, health risk communication, and effectiveness of air improvement projects in the area. Texas Water Code § 7.067(a) allows for SEPs to be performed in Mexico if the project would substantially benefit the State of Texas.

Third-Party Administrator, the North American Development Bank, or NADB, is a binational institution established by an agreement between the governments of the United States and Mexico to provide support to environmental infrastructure projects. NADB also assists projects that preserve, protect, and enhance the well-being of the people of the United States and Mexico.

Air quality monitoring in the Paso del Norte Air Basin poses complex challenges due to geography, population, and navigating international jurisdictions. The air basin encompasses two countries, three states, five counties, multiple cities, and a sovereign Native American tribe. Close to three million people live, travel, and trade in this mountainous region. Operating air monitors in the area is necessary to ensure continuous, reliable, and publicly available air quality data for the region. The data from the monitors receiving funding from this SEP will be made available on Mexico's "Sistema Nacional de Informacion de la Calidad" webpage. The air monitoring data will be used in evaluating air quality in the area, including issuance of air quality warnings.

Air monitoring data is available from the following webpages, and is published according to Mexican federal guidelines:

- <http://airejuarez.uacj.mx:8080/dashboard/84eec570-836c-11ec-818a-25e89f13819e?publicId=dd290ec0-b7f8-11eb-804b-e776409dbd07>
- <https://sinaica.inecc.gob.mx/>

SEP Funds will be used to support the operation and maintenance of the monitoring stations in Ciudad Juárez. Currently, there are four stations, with the potential for up to additional 10 monitors to be added.

II. Use of Sep Funds

SEP funds would be used for operation and maintenance of air quality monitoring sites in and near Juárez. This would include acquisition of data from the monitors, processing and validating all data, reporting data, and performing quality assurance. This will also include materials and equipment for potential additional monitors, and equipment necessary for quality assurance and calibration. The air monitors will operate on a continuous basis, 24 hours per day, 365 days per year.

III. Project Scope

This SEP will support air monitoring stations located in and near Juárez, Chihuahua. Juárez is located in the Paso del Norte Air Basin shared with El Paso, Texas, and Doña Ana, New Mexico. This includes monitoring stations Canales Lira, Advance, PTAR, and Clinica de Nutricion. The scope of the project may expand to include operation and maintenance of any air monitors added in the region in the future. In such case, Third-Party Administrator will ensure written updates are provided to TCEQ with information on each additional station.

IV. Environmental Benefit

This SEP will improve information regarding pollution levels related to ambient air quality standards in the Paso del Norte Air Basin. These standards are regulatory measures to set targets for pollution reduction and to achieve and/or maintain clean air. This SEP would support performance of the Texas State Implementation Plan by helping to more accurately track international emissions. Monitoring air quality standards also helps in assessing the level of pollution in relation to the ambient air quality standards. Robust monitoring helps to guard against extreme events by alerting people and initiating appropriate responsive action. In the event of unsafe air quality, monitoring can ensure that residents of the Paso del Norte Air Basin are alerted and advised of health risks and precautionary measures. Monitoring will also assist in state-wide assessments of air quality and pollution. This SEP will enhance international communications regarding air quality, health risks, and the effectiveness of air improvement projects in the area.

The information enabled by air monitor funding will be valuable for several parties: environmental agencies in both the US and Mexico; researchers and scientists from universities and research centers; industry; activists; and the general population living in the shared basin, who can benefit from more accurate health risk warnings and impactful policy interventions.

When air quality is poor, it is unhealthy, especially for sensitive populations such as children, older adults, or people with heart disease, asthma, and other respiratory ailments. There are many types of air pollution, and each have a different effect on human health. Air pollution can have significant short term and long-term impacts on health. Air quality monitoring, and improvement of air quality data, as proposed by this project, will assist the population with health and safety measures related to air quality.

V. Eligible Areas and Counties

This project is eligible to receive penalties from environmental violations affecting the following Texas counties:

Atascosa, Bandera, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Live Oak, Maverick, McMullen, Medina, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Zapata, and Zavala.

VI. Minimum Contribution Amount

The minimum contribution amount is \$5,000. Third-Party Administrator has the discretion to accept contributions under the minimum contribution amount.

General Terms and Conditions

1. DEFINITIONS

- 1.1. **“Allowable SEP Expenses”** are the reasonable and necessary actual costs listed in the Estimated Project Budget for this Agreement.
- 1.2. **“Book Account”** refers to a ledger account or other accounting mechanism used to maintain a detailed record of debits and credits of SEP Funds separate from any other funds.
- 1.3. **“Contract”** refers to this Agreement. The terms “Contract” and “Agreement” may be used interchangeably.
- 1.4. **“Effective Date”** refers to the date this Agreement begins and is the date the Agreement is signed by an authorized representative of TCEQ.
- 1.5. **“Includes”** and **“Including”** are terms of enlargement and not of limitation or exclusive enumeration. The use of these terms does not create a presumption that any components that are not explicitly mentioned are excluded.
- 1.6. **“Indemnification”** means security against legal liability.
- 1.7. **“Overhead Costs”** means costs that are necessary for operation that are not directly related to goods or services required for this Project.
- 1.8. **“Party”** or **“Parties”** refers to one or all of the signatories to this Agreement, respectively.
- 1.9. **“PAL”** refers to the TCEQ’s Pre-Approved List, or the public list of SEPs that respondents to TCEQ administrative enforcement actions may select from to make eligible contributions of SEP funds.
- 1.10. **“Project”** refers to the project that is approved by TCEQ as a SEP and described by this Agreement.
- 1.11. **“Remit”** means transferring funds in a manner approved by TCEQ.
- 1.12. **“SEP”** refers to Supplemental Environmental Project.
- 1.13. **“SEP Funds”** means funds that, with TCEQ approval, are contributed to Third-Party Administrator by respondents to TCEQ enforcement actions. These contributions offset the administrative penalties that would otherwise be due to the State of Texas General Revenue Fund. The term includes interest earned on funds.

2. CONTRACT PERIOD

- 2.1. **Contract Period.** The Agreement begins on the Effective Date and is effective for a term of **five years** unless terminated by either party in accordance with this Agreement. At TCEQ’s sole discretion, the term of this Agreement may be extended by three additional one-year increments upon written request from Third-Party Administrator or upon TCEQ’s own initiative. Any request for extension must be received 30 days prior to the end of the term.
- 2.2. **Fully Funded.** When the Total Cost of the Estimated Project Budget is met or exceeded by a contribution from a respondent, TCEQ will consider the project fully funded. When the project is fully funded, TCEQ will remove it from the PAL. Third-Party Administrator is still responsible for the expenditure of funds and completion of the project in accordance with this Agreement after the SEP is fully funded. Third-Party Administrator may request an amendment through the process described in Section 2.3 to increase the budget if the project is not and will not foreseeably be complete after being fully

funded. This amendment will again allow the project to be added to the pre-approved list of SEPs available to respondents for contributions.

- 2.3. Amendments.** This Agreement may be amended by mutual agreement. Except as specifically allowed by the Agreement, all material changes to the Agreement require a written amendment that both parties sign.
- 2.3.1. Material Changes.** “Material changes” include the following:
- 2.3.1.1. Changes in the total amount of funds in the estimated project budget and/ or changes to the amount allowed for specific line items;
 - 2.3.1.2. Changes to the Agreement’s Expiration Date;
 - 2.3.1.3. Changes to the Project Description that affect the nature or scope of the project; and
 - 2.3.1.4. Changes that affect the material obligations of the Third-Party Administrator in this Agreement.
- 2.3.2. Unilateral Amendments.** Only as specifically allowed by the Agreement, TCEQ may issue unilateral amendments. Unilateral amendments take effect when issued by TCEQ.
- 2.3.2.1. The only portion of the agreement that the Third-Party Administrator may unilaterally amend is the Contact Information located in the Agreement Introduction through written notice to the other party. TCEQ may also unilaterally amend the Contact Information.
- 2.3.3. Minor Changes.** TCEQ has the authority, without a written amendment, to correct typographical errors; make written Agreement interpretations, and make minor, non-material changes to the requirements in the Project Description, reporting requirements, or as agreed to elsewhere in the Contract. Third-Party Administrator may request in writing that TCEQ make Minor Changes to the Agreement. If Third-Party Administrator objects to a Minor Change, it must provide TCEQ with a written objection to any Minor Change no later than five (5) business days from the effective date of the Minor Change. A copy of the agreed change shall be retained by both Third-Party Administrator and TCEQ. Minor, non-material changes may include, but are not limited to:
- 2.3.3.1. Changes to the schedule in the Project Description, including extending any proposed date included in the project, not to exceed the expiration date of the Agreement;
 - 2.3.3.2. Changes to the individual tasks/activities in the Project Description, if applicable, that do not substantially change the obligations of the Parties relative to those tasks/activities; and
 - 2.3.3.3. Changes to the descriptions of the Estimated Project Budget line items that do not substantively affect the nature of the line item, including changes to update model or equipment types. Changes to the amount of funds allowed for each item is not a Minor Change.
- 2.4. Termination.** Either party may terminate this Agreement with or without cause after providing written notice 30 days prior.
- 2.4.1. Final Accounting.** Within 90 days after the effective date of the termination, Third-Party Administrator shall make a written accounting to 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 Report form as specified in Section 4.3 of this Agreement. This final accounting must include the remittal or transfer of all SEP Funds under Section 3.8 of this Agreement.

- 2.4.1.1. If TCEQ finds that any SEP funds are not accounted for in the Final Accounting and remittal to TCEQ of any remaining SEP Funds, Third-Party Administrator shall be required to remit these funds to TCEQ from sources unrelated to its SEP Funds or accounts. Failure to remit funds that were not properly accounted for to TCEQ will result in Third-Party Administrator owing a debt to TCEQ. TCEQ appreciates that Third-Party Administrator may require time to recover such funds from its Performing Parties (including contractors), and TCEQ commits to only take action on such a debt from Third-Party Administrator if it is necessary to do so, in the sole discretion of TCEQ.
- 2.4.2. **Termination for Cause.** TCEQ may terminate for cause without a 30 day notice period if Third-Party Administrator materially fails to comply with the Agreement, including any one or more of the following acts or omissions: violations of accounting practices, including comingling; failure to expend funds in a timeframe agreed by the parties; failure to submit quarter reports on a timely basis; or expenditure of SEP Funds in a manner not authorized by this Agreement.
- 2.4.3. **Opportunity to Cure.** Third-Party Administrator will have a reasonable opportunity to correct any nonconforming performance if possible under the circumstances.

3. SEP FUNDS

- 3.1. **Estimated Project Budget.** TCEQ has approved the Estimated Project Budget on page 8 of this Agreement. SEP expenditures for each line item must be Allowable SEP Expenses. Expenditures must not exceed 10% over the budgeted amount for each line item unless Third-Party Administrator receives prior written approval from TCEQ. If Third-Party Administrator does not receive TCEQ approval for the amount of an expenditure that exceeds a line item by 10%, SEP Funds must not be used for that increased cost expenditure. Third-Party Administrator shall, on request from TCEQ, remit to TCEQ any line item expenditures in excess of the 10% limit, in accordance with the procedures outlined in Section 3.8 of this Agreement. The Parties acknowledge that there may be other Project costs that are not included in the Estimated Project Budget that may be paid for with non-SEP Funds.
- 3.2. **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 book account. Any Bank account where SEP Funds are deposited must be at a financial institution that is insured by the Federal Deposit Insurance Corporation and that provides regular accounting statements that are acceptable to TCEQ.
 - 3.2.1. **Interest.** The SEP Funds account may either be interest-bearing or non interest-bearing. All earned interest on SEP Funds, if any, must be accounted for. Any earned interest on SEP Funds becomes part of the SEP Funds.
 - 3.2.2. **Commingling.** Third-Party Administrator shall track SEP Funds using its established accounting system, ensuring that such funds are not commingled with any non-SEP Funds. SEP Funds may only be used to reimburse other accounts with the express prior permission of TCEQ. Reimbursing other accounts without prior written approval from TCEQ is considered comingling under this Agreement.

- 3.3. **Use of SEP Funds.** Third-Party Administrator shall ensure expenditure of SEP Funds only for Allowable SEP Expenses that are authorized by the Estimated Project Budget on page 8 of this Agreement. Third-Party Administrator shall ensure that the expenditure of SEP Funds results in the performance of adequate and timely Project 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.
- 3.4. **Administrative Expenses.** Third-Party Administrator is neither a local government nor an organization exempt from federal income taxation described by 26 U.S.C. § 501(c)(3). In accordance with Texas Water Code § 7.067(c), Third-Party Administrator may only expend SEP Funds for direct project expenses. SEP Funds must not be used for administrative expenses, including overhead costs, personnel salary and fringe benefits, and travel and per diem expenses associated with implementing the Project. The parties recognize that Third-Party Administrator will not be required to cover any administrative expenses using its own resources. In the event that Third-Party Administrator is unable to procure funding to pay for administrative expenses associated to this Project, the parties further recognize that Third-Party Administrator may decide to terminate this Agreement pursuant to General Term and Condition No. 2.4.
- 3.5. **Accounting.** Third-Party Administrator shall account for the receipt and expenditure of SEP Funds, including all interest earned on such funds, if any. Third-Party Administrator will submit records of this accounting at least quarterly as described in Section 4.2., Quarterly Reports.
- 3.6. **Timely Expenditure.** Third-Party Administrator shall expend SEP funds in a timely manner after receipt of SEP Funds. If TCEQ determines that SEP funds were not expended in a reasonable period of time, it may request a written explanation for the delay and a plan to expend the funds. **TCEQ appreciates that the organizational structure Third-Party Administrator operates in may require it to depend on and coordinate with other parties mentioned elsewhere in this Agreement, and TCEQ recognizes that this informs what timeframes are reasonable and expected.** Failure to expend SEP Funds in a timely manner may result in termination of the Agreement.
- 3.7. **No Guarantee of Funding.** Respondents to TCEQ enforcement actions voluntarily contribute to eligible SEPs of their choice. Therefore, it is possible that no respondents will choose to contribute SEP Funds to this Project. *Third-Party Administrator understands that there is no guarantee that it will receive any SEP Funds under this Agreement.*
- 3.8. **Remittal of SEP Funds.**
- 3.8.1. **Refund requirements.** Any remittal of SEP Funds made according to the terms of this Agreement, made either to the SEP Account or to TCEQ, must be accompanied by a detailed written accounting in a manner acceptable to TCEQ.
- 3.8.1.1. If funds are remitted to TCEQ, the remitted 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 following TCEQ Address:
- Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

- 3.8.2. **Transfer of SEP Funds to another project.** In lieu of remitting unexpended SEP Funds after the conclusion or termination of the Project, and with the written direction of TCEQ, Third-Party Administrator may transfer SEP Funds to another SEP as directed by TCEQ. Any transfer of SEP Funds must be accompanied by a detailed written accounting in a manner acceptable to TCEQ.
- 3.8.3. **Remaining Funds.** If any SEP Funds remain after the conclusion or termination of the Project, Third-Party Administrator must either remit the SEP Funds to TCEQ or transfer the SEP Funds to another SEP as directed by TCEQ. Third-Party Administrator must remit or transfer SEP Funds within 30 days after the due date of the Final Quarterly Report required by Section 4.3.
- 3.8.4. **Unallowable costs.** If at any time TCEQ determines that SEP Funds were expended in a manner that is not allowed by this Agreement, Third-Party Administrator shall, on request from TCEQ, remit all improperly spent SEP Funds to the SEP Account. Such a remittal shall be accompanied by a detailed written accounting in a manner acceptable to TCEQ.
- 3.9. **Other contributions to the Project.** 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. Third-Party Administrator may expend funds from sources other than SEP Funds (“non-SEP Funds”) in furtherance of the Project, so long as the expenditures do not violate the accounting practices described in Section 3.2 of this Agreement. If Third-Party Administrator expends non-SEP Funds for any of the line items listed in the Estimated Project Budget of this Agreement, 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 Section 4.2.

4. REPORTING REQUIREMENTS

- 4.1. **Records.** Third-Party Administrator shall maintain all records relating to the Agreement, including organized and legible financial records, books, documents, and other evidence reasonably pertinent to its performance under this Agreement for the duration of the entire Agreement, and for a minimum of 5 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.
- 4.2. **Quarterly Reports.** Third-Party Administrator is required to send Quarterly Reports (“QRs”) to account for SEP Funds and update TCEQ on the status of the Project. The QRs must be submitted on the approved TCEQ SEP Third-Party Administrator QR Form (“QR Form”). The deadlines for sending QRs are:

Quarter	Months within the Quarter	Report Due Date
Q1	January - March	May 15
Q2	April - June	August 15
Q3	July - September	November 15
Q4	October - December	February 15 of the following year

- 4.2.1. **Quarterly Report Contents.** The QRs must include the following information:
- 4.2.1.1. A list of the amount of SEP Funds received during the previous quarter with each corresponding respondent name, contribution docket number, dollar amount received, and date received, as well as copies of contribution checks;

- 4.2.1.2. 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;
 - 4.2.1.3. The total balance of the SEP Funds, with interest, if any, separately noted;
 - 4.2.1.4. A description of the Project to which SEP Funds were allocated and progress made to date;
 - 4.2.1.5. 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 Funds account; and
 - 4.2.1.6. Any additional information required by the Special Conditions of this Agreement, requested by TCEQ or in the QR Form, or that Third-Party Administrator believes would demonstrate compliance with this Agreement.
- 4.2.2. **Failure to submit QRs.** QRs must be submitted in accordance with the deadline contained therein, even if they do not contain or reflect any new SEP Funds activities. Third-Party Administrator may request an extension from TCEQ in writing. QR Extensions requests must include a reason for seeking the extension and be received by TCEQ within 30 days of the deadline. Failure to provide QRs in a timely manner will constitute grounds for termination of this Agreement.
- 4.3. **Final Report.** At the conclusion or termination of the Project, Third-Party Administrator is required to submit a final QR to TCEQ on the approved QR Form for the quarter in which the Project concluded. The deadlines for doing so are included on the QR Form. In addition to the information required in Section 4.2.1 of this Agreement, this final QR must include the following information:
- 4.3.1. An accounting of SEP Funds that were not used for the Project;
 - 4.3.2. Any additional information Third-Party Administrator believes would demonstrate compliance with this Agreement; and
 - 4.3.3. Any additional information requested by TCEQ.
- 4.4. **Additional Reporting.** Third-Party Administrator agrees to provide additional information and/or documentation requested by TCEQ under this Agreement within 30 days after receipt of the request, unless TCEQ specifies another deadline in writing.
- 4.5. **Surviving obligations.** The obligations required by Section 4.1, Records; Section 4.3, Final Report; and Section 4.4, Additional Reporting, survive the termination of this Agreement.

5. THIRD-PARTY ADMINISTRATOR'S RESPONSIBILITIES

- 5.1. **Access.** The following obligations survive termination of this Agreement.
- 5.1.1. **Inspection and Audit.** Third-Party Administrator shall provide TCEQ all records, data, and facilities that are necessary for TCEQ's review, inspection, and audit of all activities and services associated with SEP Funds under this Agreement. Except for Quarterly Reports (QRs), Third-Party Administrator may propose to TCEQ that any such information may be made available online in lieu of provision to TCEQ, and TCEQ may grant such request if it demonstrates TCEQ can sufficiently evaluate it to confirm Third-Party Administrator's compliance with its obligations under this Agreement. TCEQ reserves the right to request any performance information be provided to TCEQ, for TCEQ to hold in its possession, if necessary

in TCEQ's sole judgment to evaluate Third-Party Administrator's compliance with this Agreement. Additionally, to whatever extent TCEQ possesses such records, data, and information, the parties agree that it is subject to review by other authorized state and federal agencies, and that it is subject to the Texas Public Information Act, codified in Chapter 552 of the Texas Government Code. Notwithstanding the foregoing, nothing herein constitutes or may in any way be interpreted as a waiver by Third Party Administrator of its immunities and privileges pursuant to its organizational documents or relevant law, including but not limited to the inviolability of its archives.

- 5.2. **Quality and Acceptance.** All work performed under this Agreement must be complete and satisfactory in the reasonable judgment of TCEQ. All materials and equipment shall be handled in accordance with the instructions of the applicable supplier, except as otherwise provided in the Agreement.
- 5.3. **Insurance.** Unless prohibited by law, Third-Party Administrator shall require its contractors and suppliers to obtain and maintain adequate insurance coverage sufficient to protect Third-Party Administrator from all claims and liability for injury to persons and for damage to property arising from work performed 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 coverage sufficient to protect 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.
- 5.4. **Assumption of Risk.** Third-Party Administrator will enter contracts with vendors and service providers (Performing Parties), who will undertake performance of the work as independent contractors and do not act in any capacity on behalf of TCEQ or Third-Party Administrator, nor as a TCEQ or Third-Party Administrator agent or employee. Performing Parties must agree that the scope of work is furnished and performed at their sole risk as to the means, methods, design, processes, procedures, and performance.

Nothing in this Agreement or in the contracts to be entered into between Third-Party Administrator and Performing Parties shall create an employee-employer relationship between Performing Parties and TCEQ or Third-Party Administrator. Nothing in this Agreement or in the contracts to be entered into between Third-Party Administrator and Performing Parties shall create a joint venture between TCEQ or Third-Party Administrator and any Performing Party.

All acts and omissions of subcontractors, suppliers, and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with a Performing Party shall be considered to be acts and omissions of Performing Party.

Nothing in this Agreement or in the contracts to be entered into between Third-Party Administrator and Performing Parties shall create a contractual relationship between TCEQ or Third-Party Administrator and any of the subcontractors, suppliers, or other persons or organizations who are in a contractual relationship with the Performing Parties.

Third-Party Administrator will include language in its contracts with Performing Parties to ensure the content of this General Condition 5.4. is incorporated and properly implemented. Additionally, Third-Party Administrator will include language in the same contracts to ensure requirements of this Agreement are followed, if those requirements are relevant to work done by Performing Parties.

- 5.5. **No Third-Party Beneficiary.** Third-Party Administrator is an independent entity and performs the Project as part of its own authorized functions, except to the extent that it coordinates together with other organizations mentioned elsewhere in this Agreement. Nothing in this Agreement shall create a contractual relationship between TCEQ and any of Third-Party Administrator's subcontractors, suppliers, or other persons or organizations with a contractual relationship with Third-Party Administrator.
- 5.6. **Indemnification.** To the extent authorized by law, Third-Party Administrator shall seek to require all contractors performing contract activities to indemnify, defend, and hold harmless TCEQ and NADB and their officers and employees from and against all losses, liabilities, damages, and other claims of any type arising from the performance of contract activities by the contractors or its subcontractors, suppliers, and agents. This includes those arising from defect in design, workmanship, materials, or from infringement of any patent, trademark, or copyright or from a breach of applicable laws, regulations, safety standards, or directives.
- 5.7. **Excluded Parties.** Third-Party Administrator represents and warrants that it is not listed in the prohibited vendors lists authorized by Executive Order No. 13224 "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control. Third-Party Administrator will notify TCEQ if it can no longer make this representation.

6. CONFLICT OF INTEREST

- 6.1. Third-Party Administrator shall promptly disclose in writing to TCEQ any actual, apparent, or potential conflicts of interest, including but not limited to disclosure of:
- 6.1.1. Any consulting fees or other compensation not explicitly authorized by the Agreement paid to employees, officers, agents of Third-Party Administrator, or members of their immediate families, or paid by subcontractor or subrecipients;
 - 6.1.2. Any organizational conflicts of interest between Third-Party Administrator and its subcontractors or subrecipients under a subaward; or
 - 6.1.3. Any conflicts of interest between Third-Party Administrator and respondents to TCEQ enforcement actions that contribute SEP Funds to this project.
- 6.2. No entity or individual with any actual, apparent, or potential conflict of interest will take part in performance of the Project without TCEQ's written consent. Third-Party Administrator agrees that TCEQ has sole discretion to determine whether a conflict exists and agrees that a conflict of interest is grounds for termination of this Agreement.

7. PUBLIC DISCLOSURE

- 7.1. **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 online or in news media. All publications, news releases, and project signs must contain the following notation (or its equivalent if approved by TCEQ):
- Performed with penalty funds from a
Texas Commission on Environmental Quality enforcement action.
- 7.2. **Publicity.** Third-Party Administrator shall not publicize the name of contributors of SEP Funds without consent of the contributor and notice to TCEQ.
- 7.3. **Public Information.** The Texas Public Information Act (Texas Government Code, Chapter 552) applies to all information delivered to TCEQ in the course of performance under

this Agreement. This means that any document provided to TCEQ may be subject to public disclosure upon request, to the extent required and as governed by the Texas Public Information Act and NADB's Charter and associated policies and procedures. TCEQ assumes no obligation to make legal arguments in support of any claims pertaining to confidentiality, patents, trade secrets, or copyright, but TCEQ will endeavor to provide notice to Third-Party Administrator of any request for its information submitted to TCEQ under this Agreement, if said information was submitted to TCEQ under a claim of confidentiality.

- 7.4. **Audit of Funds.** Third-Party Administrator understands that acceptance of SEP Funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation of TCEQ's records in connection with those funds. Third-Party Administrator further agrees to fully cooperate with the State Auditor's Office or its successor during any audit or investigation, including providing all records requested that are relevant and operative for the performance of this SEP. Notwithstanding the foregoing, nothing herein constitutes or may in any way be interpreted as a waiver by Third Party Administrator of its immunities and privileges pursuant to its organizational documents or relevant law, including but not limited to the inviolability of its archives.
- 7.5. **Publication.** Third-Party Administrator agrees to notify TCEQ 5 days prior to the publication or advertisement of information related to this Agreement, as distinct from the project itself. Third-Party Administrator agrees not to use the TCEQ logo or the TCEQ graphic as an advertisement or endorsement without written permission signed by the appropriate TCEQ authority.

8. NOTICES AND OTHER INFORMATION

- 8.1. **Delivery of Notice.** Notices are deemed to be delivered 3 working days after postmarked if sent by U.S. Postal Service certified or registered mail, return receipt requested. Notices delivered by other means are deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, email, or other commercially accepted means.
- 8.2. **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 TCEQ within 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.
- 8.3. **Notice of Change.** Third-Party Administrator agrees that all information it provided to TCEQ was correct at the time of submission, and that in entering into this Agreement, 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 TCEQ if there is any material change in the information.

9. IMMUNITIES

The parties agree that none of the terms of this Agreement are intended, by either party, to waive any sovereign immunity, or other immunity, including immunity of assets, to which it would otherwise be entitled to under applicable law, including international law and NADB's organizational documents.

10. AGREEMENT INTERPRETATION

- 10.1. Headings.** The headings of the sections contained in this Agreement are for convenience only and do not control or affect the meaning or construction of any provision of this Agreement.
- 10.2. Interpretation of Time.** All days are calendar days unless stated otherwise. Days are counted to exclude the first and include the last day of a period. If the last day of the period is a Saturday or Sunday or a state or federal holiday, it is omitted from the computation. A “year” is a period of 365 days. A “month” is the period ending on the same numerical day in the subsequent calendar month as the day on which the period began.
- 10.3. State, Federal, and International Law.** This Agreement is governed by and interpreted under the laws of the State of Texas, as well as applicable federal law and international law applicable to Third-Party Administrator.
- 10.4. Venue.** Third-Party Administrator agrees that the Agreement is being performed in Travis County, Texas, United States of America, because this Agreement 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 any sovereign, or other immunity enjoyed by either Party to this Agreement.
- 10.5. Severability.** If any provision of this Agreement is found by any court, tribunal, or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable, it shall be deemed severable (to the extent of such illegality, invalidity, or unenforceability) and the remaining part of the provision and the rest of the provisions of this Agreement shall continue in full force and effect. If possible, the severed provision shall be deemed to have been replaced by a valid provision having as near an effect to that intended by the severed provision as will be legal and enforceable.
- 10.6. Assignment.** No delegation of the obligations, rights, or interests in the Agreement, and no assignment of payments by Third-Party Administrator will be binding on TCEQ without its written consent, except as restricted by law. No assignment will release or discharge the Third-Party Administrator from any duty or responsibility under the Agreement.
- 10.7. Compliance with Laws.** TCEQ relies on Third-Party Administrator to require that performance of all Agreement activities be in conformity with all applicable laws, regulations, and rules, and obtain all necessary permits and licenses.
- 10.8. Counterparts.** This Agreement may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Agreement.
- 10.9. Accessibility.** All electronic content and documents created as deliverables under this Agreement must meet the accessibility standards prescribed in 1 Texas Administrative Code §§ 206.50 and 213 for state agency web pages, web content, software, and hardware, unless TCEQ agrees that exceptions or exemptions apply.
- 10.10. Full Integration.** This Agreement, including any and all exhibits and amendments, 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.
- 10.11. 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.

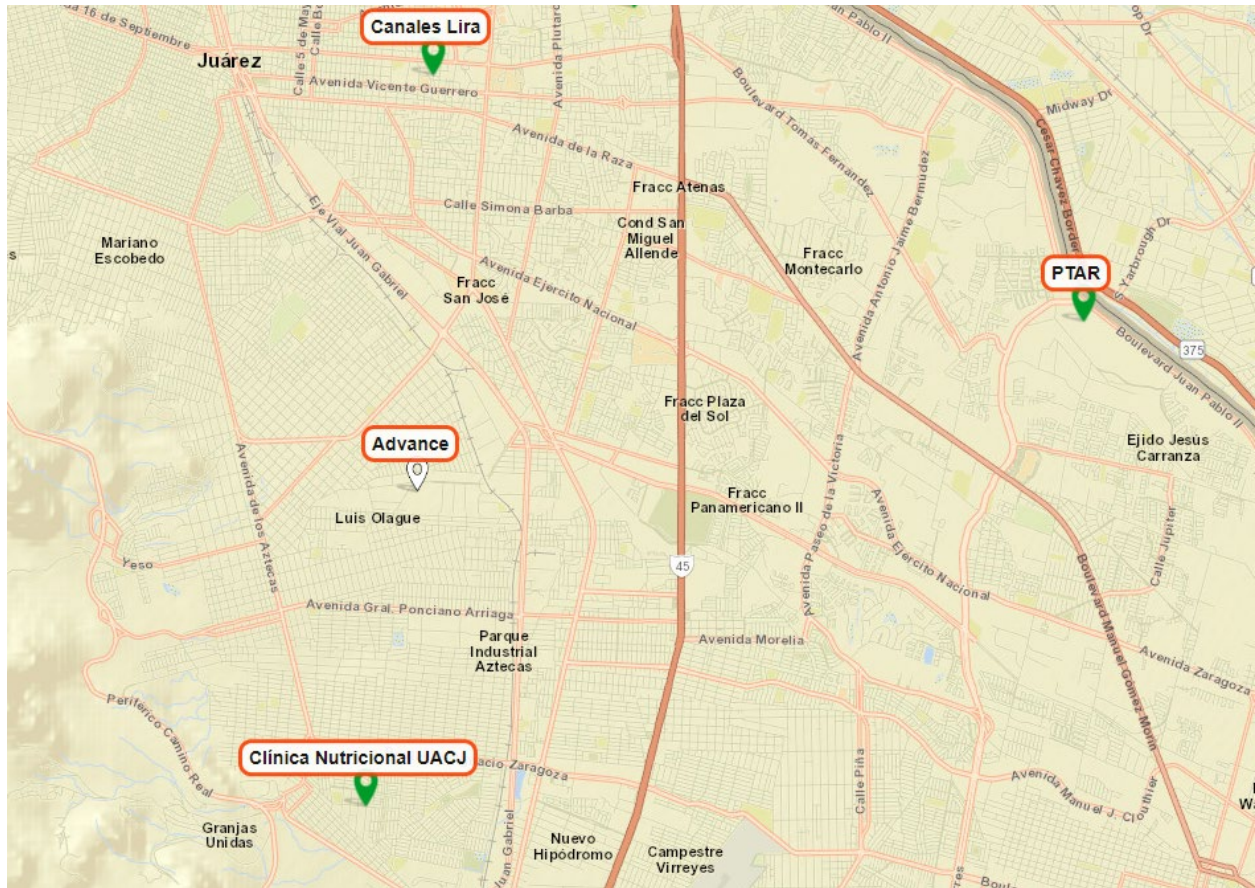
11. FORCE MAJEURE

Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, changes in applicable law, or other causes that are beyond the reasonable control of either party, could not reasonably be foreseen, and by the exercise of all reasonable due diligence, is unable to be overcome by either party. Neither party shall be liable to the other for any failure or delay of performance of any requirement included in the contract caused by force majeure. Upon timely notice by Third-Party Administrator, the time for performance shall be extended for a reasonable period after the causes of delay or failure have been removed provided Third-Party Administrator exercises all reasonable due diligence to perform. Third-Party Administrator must provide evidence of any failure resulting in impossibility to perform.

12. UNIFORM ASSURANCES

- 12.1. Executive Head of a State Agency.** In accordance with Texas Government Code § 669.003, relating to contracting with the executive head of a state agency, Third-Party Administrator certifies that it is not (1) the executive head of TCEQ, (2) a person who at any time during the four years before the date of the Contract was the executive head of TCEQ, or (3) a person who employs a current or former executive head of TCEQ affected by this section.

Exhibit A: Air Monitor Locations



Monitoring Station	Coordinates	Monitors
Canales Lira	31.74 N, 106.5 W	Ozone Analyzer Teledyne T400
Advance	31.69 N, 106.46 W	Ozone Analyzer Teledyne T400
PTAR	31.69 N, 106.38 W	Ozone Analyzer Teledyne T400
Clinica de Nutricion		Ozone Analyzer Thermo Scientific 49I-A1NAA, PM2.5 and PM 10 Teledyne T640