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

SEP Title:	Rescue and Recovery Vehicles
SEP Number:	2024-02
Third-Party Administrator:	Texas State Aquarium Institute for Wildlife Conservation
Effective Date:	March 6, 2024
Total Project Budget:	$341,000
Expiration Date:	5 Years from the Effective Date (March 6, 2029)

Agreement Introduction

The Texas Commission on Environmental Quality ("TCEQ"), an agency of the State of Texas, and the Texas State Aquarium Institute for Wildlife Conservation ("Third-Party Administrator"), a non-profit organization under the U.S. Internal Revenue Code § 501(c)(3) (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.

The Third-Party Administrator has developed an environmental enhancement project ("Project") which is described in this Agreement. The parties agree that the Project qualifies as a supplemental environmental project ("SEP") under Texas Water Code § 7.067 and TCEQ guidance on SEPs. 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 their alleged violation(s) 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:

Contact Information for TCEQ:

Name: Barrett Hollingsworth
Title: SEP Attorney
Telephone: (512) 239-0657
Email: SEPReports@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 78711-3087

Signature page

Texas Commission on Environmental Quality	**Third-Party Administrator**
Erin E. Chancellor	
Authorized Signature	Authorized Signature
Erin E. Chancellor	Justin Sefcik
Printed Name	Printed Name
Director, Office of Legal Services	Chief Operating Officer
Title	Title
3/6/24	2/28/2024
Date	Date

Agreement Documents List

This Agreement between TCEQ and the 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 Boat and Vehicles
- Project Description
- General Terms and Conditions

Special Terms and Conditions

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

4.2.1.8. Documentation of any vehicle purchased using SEP funds, including detailed estimates, invoices, contracts, title information, and photos of the vehicle.

4.2.1.9. Reports that include information on when and how vehicles purchased using SEP funds were used, if applicable.

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

3.3.1 Third-Party Administrator shall own and operate any vehicle purchased with SEP Funds through this Agreement for at least five years following the date of purchase. In the event that Third-Party Administrator sells a vehicle purchased with SEP Funds during this five-year period, all funds received from the sale shall be deposited into the SEP account, become part of the SEP Funds, and be reported on the SEP Quarterly Report as a deposit. Third-Party Administrator shall use a form provided by TCEQ to document a sale occurring during this five-year period, available upon request.

3.3.2. Any optional equipment or accessories not included in the base price of a vehicle must directly support performance of the Project. SEP funds may not be used for any other optional equipment or accessories for vehicles. TCEQ has sole discretion to determine whether any optional vehicle equipment or accessories supports performance of the project.

Estimated Project Budget for Rescue and Recovery Vehicles
("Estimated Project Budget")

No.	Allowable SEP Expense Items	Quantity	Price Per Item	Item Total
1	Flat bottom boat and trailer	1	$80,000	$80,000
2	Refrigerated truck	1	$188,000	$188,000
3	Flatbed truck	1	$73,000	$73,000
Total Direct Project Cost				$341,000

Project Description for Rescue and Recovery Vehicles

I. Facts/Purpose

The purpose of the project is to purchase specialized vehicles that would be used for responding to emergencies to rescue and rehabilitate wildlife. The vehicles included in this project are a boat and trailer, a refrigerated truck, and a flatbed truck.

The acquisition of a boat and trailer would allow the Third-Party Administrator to expand its capacity for rescuing wildlife. This specialized vessel would offer a range of capacities ideally suited to rescue and recovery efforts, including a shallow draft. The boat would enable navigating challenging terrains to assist compromised animals, whether stranded on a small island or in remote areas of Corpus Christi Bay that were previously unreachable. By eliminating the limitations imposed by exclusively land-based access, a higher chance of survival is possible for various rescue scenarios.

A refrigerated truck serves multiple purposes in animal rescue activities. Primarily, a large cargo truck will be utilized to transport animals to allow them to maintain the appropriate body temperatures throughout transportation. A refrigerated truck would also allow for appropriate storage and transportation of emergency response equipment to respond to emergency situations more efficiently and in a timely manner. Finally, in the event of stationary equipment failure, a refrigerated truck would act as a contingency refrigerator to house food for rescued animals. A refrigerated truck extends the Third-Party Administrator's animal rescue response beyond its current facility.

Utilizing a flatbed truck for mobile emergency rescue activities offers a range of benefits that can significantly enhance the effectiveness of emergency services. A flatbed truck offers a spacious and open platform with a heavy load capacity that can accommodate various heavy equipment, supplies, and even utility vehicles.

II. Environmental Benefit

This project will aid in the rescue and rehabilitation of several types of animals that may be impacted by environmental emergencies, such as shorebirds, raptors, sea turtles, dolphins, and manatees. The vehicles purchased through this project allow for a more adaptable and comprehensive response to wildlife needs. Helping to save these species contributes to the preservation of biodiversity, helping maintain the delicate ecological balance within the Texas Gulf Coast region. With healthier populations of these species, there is a positive impact on the region's food web, ecosystem stability, and overall biodiversity. A thriving wildlife population fosters a robust Gulf Coast ecosystem, creating an optimal environment for sustainable living of wildlife and humans.

III. Project Scope

Third-Party Administrator will utilize vehicles purchased through this project to facilitate wildlife emergency response efforts across the entire Texas Gulf Coast.

IV. Eligible Areas and Counties

Penalty dollars from violations occurring in the following counties may be contributed towards this project: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, and Willacy.

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 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 penalty 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 thirty (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**. 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 an extension to 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 thirty (30) days prior.

2.4.1. Final Accounting. Within thirty (30) 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.

2.4.2. **Termination for Cause**. TCEQ may terminate for cause without a thirty 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 timely manner; 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 its nonconforming performance if possible under the circumstances.

3. SEP FUNDS

3.1 **Estimated Project Budget.** TCEQ has approved the Estimated Project Budget on page 5 of this Agreement. SEP expenditures for each line item must be Allowable SEP Expenses. Expenditures must not exceed ten percent (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 ten percent, 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 ten percent 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 account or book account The SEP Funds account must be a fee-free account without a minimum balance requirement that is used exclusively for SEP Funds. The SEP Funds account 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.** Unless Third-Party Administrator accounts for SEP Funds separately in a manner that receives prior written approval from the TCEQ, such as an acceptable book account, SEP Funds must not be commingled with any non-SEP Funds. SEP Funds may only be used to reimburse other accounts with

the express 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 expend SEP Funds only for Allowable SEP Expenses that are authorized by the Estimated Project Budget on page 5 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

In accordance with Texas Water Code § 7.067(c), TCEQ may allow Third-Party Administrator administrative expenses related to implementing the Project. Administrative expenses include overhead costs, personnel salary and fringe benefits, and travel and per diem expenses associated with implementing the Project. Third-Party Administrator must ensure that administrative expenses do not exceed 10% of the direct cost of the project. For SEP Funds to be used towards administrative expenses, the cost must either be identified and included in the Estimated Project Budget or have the prior written approval of TCEQ.

3.5 Accounting. Third-Party Administrator shall account for the receipt and expenditure of SEP Funds, including all interest earned on such funds. 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. 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 thirty (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 five (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 included on the QR Form.

4.2.1. **Quarterly Report Contents.** The QRs must include anything required within this Agreement, as well as 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. SEP Funds account financial institution statements for each month of the previous quarter;

4.2.1.4. The total balance of the SEP Funds, with interest, if any, separately noted;

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

4.2.1.6. 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 Funds account; and

4.2.1.7. 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 timely submitted even if they do not contain 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 thirty (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 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.

5.1.2. **Access to Project.** Third-Party Administrator agrees to provide access by 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.

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 the 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 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.

5.4. **Assumption of Risk.** Third-Party Administrator undertakes performance of the Project as its own work and does not act in any capacity on behalf of TCEQ nor as a TCEQ agent or employee. Third-Party Administrator agrees that the Project is performed at Third-Party Administrator's sole risk as to the means, methods, design, processes, procedures, and conduct of the Project.

5.5. **No Third-Party Beneficiary.** Third-Party Administrator is an independent entity and performs the Project as part of its own authorized functions. Nothing in this Agreement shall create a contractual relationship between TCEQ and any of the Third-Party Administrator's subcontractors, suppliers, or other persons or organizations with a contractual relationship with Third-Party Administrator.

5.6. **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 indemnification survives the termination of the Agreement.

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.

5.8 **COVID-19 Vaccine Passport Prohibition**. Under § 161.0085 of the Texas Health and Safety Code, Third-Party Administrator certifies that it is not ineligible to receive the Contract and will maintain this certification throughout the term of the Contract.

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. TCEQ assumes no obligation to make legal arguments in support of any claims pertaining to confidentiality, patents, trade secrets, or copyright.

7.4. Audit of Funds. The 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 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.

7.5 Publication. Third-Party Administrator agrees to notify TCEQ five (5) days prior to the publication or advertisement of information related to this Agreement. 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 three (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 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.

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. SOVEREIGN IMMUNITY

The parties agree that this Agreement does not waive any sovereign immunity to which either party is entitled by law.

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 and Federal Law. This Agreement is governed by and interpreted under the laws of the State of Texas, as well as applicable federal law.

10.4 **Venue.** Third-Party Administrator agrees that the Agreement is being performed in Travis County, Texas, 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 TCEQ's sovereign immunity.

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 perform all Agreement Activities 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, 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 the 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 the Third-Party Administrator exercises all reasonable due diligence to perform. The 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.

12.2 Open Meetings Act. Third-Party Administrator represents and warrants its compliance with Chapter 551 of the Texas Government Code which requires all regular, special or called meeting of a governmental body to be open to the public, except as otherwise provided by law.