

SUPPLEMENTAL ENVIRONMENTAL PROJECT AGREEMENT

between

THE HOUSTON-GALVESTON AREA EMISSION REDUCTION CREDIT ORGANIZATION

and

THE EMISSION REDUCTION CREDIT CORPORATION OF THE GULF COAST

and

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

WHEREAS, pursuant to TEXAS WATER CODE SECTION 5.051, the Texas Commission on Environmental Quality (“TCEQ”) is created as an agency of the state, with the authority under TEXAS WATER CODE SECTION 5.229 to enter into contracts and with the authority under TEXAS WATER CODE SECTION 5.102 to perform acts specifically authorized or necessary and convenient to the exercise of its jurisdiction and powers; and

WHEREAS, pursuant to TEXAS WATER CODE SECTION 7.067, the Texas Commission on Environmental Quality may consider the willingness of a respondent in an administrative enforcement matter to contribute to supplemental environmental projects that are approved by the Commission; and

WHEREAS, the Houston-Galveston Area Emission Reduction Credit Organization have been organized according to TEXAS HEALTH & SAFETY CODE SECTION s 384.001 to 384.018 for the purpose to promote the coexistence of the improvement of air quality and economic development within the region; and

WHEREAS, the Emission Reduction Credit Corporation of the Gulf Coast has been organized by the Houston-Galveston Area Emission Reduction Credit Organization as a tax-exempt non-profit corporation under the Texas Non-Profit Corporation Act to receive and manage contributions including those pursuant to supplemental environmental projects, with all directors and officers of the Emission Reduction Credit Corporation of the Gulf Coast appointed by the board of directors of the Houston Galveston Area Emission Reduction Credit Organization (collectively referred to as the “Houston-Galveston AERCO”); and

WHEREAS, the Houston-Galveston AERCO’s projects described in the Project Description (Attachment A) meet the definition of a supplemental environmental project (“SEP”), pursuant

to TEXAS WATER CODE SECTION 7.067 and the TCEQ Regulatory Guidance Regarding the Use of Supplemental Environmental Projects; and

WHEREAS, the signatories to this Agreement have been authorized to enter into agreements and to execute contracts in furtherance of the mission of their respective organizations;

NOW, THEREFORE, the parties agree as follows:

1. **Approvable SEP:** The TCEQ agrees the projects described in Attachment A constitute approvable supplemental environmental projects in compliance with the TCEQ Regulatory Guidance Regarding the Use of Supplemental Environmental Projects and that funds voluntarily contributed as part of a settlement of a TCEQ enforcement action may be used to fund the project.
2. **Maintenance of SEP Monies:** Houston-Galveston AERCO agrees to maintain funds, which are approved by the TCEQ and contributed by respondents in enforcement actions brought by the TCEQ, in an interest-bearing account used exclusively for such funds. The contribution shall be referred to in this Agreement as “SEP monies.”
3. **Use of SEP Monies:** Houston-Galveston AERCO agrees to expend SEP monies which it receives solely for the projects described in the attached project descriptions (Attachment A). Houston-Galveston AERCO agrees that it shall not use any SEP monies, nor interest from such monies, for educational materials or administrative expenses associated with the implementation of the SEP project.
4. **Accounting:** Houston-Galveston AERCO shall specifically account for the receipt and expenditure of SEP monies, including all interest earned on such funds.
5. **Timely Expenditure:** Houston-Galveston AERCO agrees to spend all SEP monies received prior to expiration or termination of this Agreement and to ensure the expenditure of such monies results in adequate and timely work performed or purchases made in accordance with this Agreement. Houston-Galveston AERCO agrees to spend SEP monies within one year of contribution and will provide the TCEQ with timely notice and justification for the inability to spend such monies.
6. **Other Contributors:** Nothing in this Agreement shall be construed to prevent Houston-Galveston AERCO from accepting funds from charitable contributors or other sources to the extent permitted by law.

**Houston-Galveston AERCO
THIRD PARTY AGREEMENT**

7. Additional Funds Request Limitation: Houston-Galveston AERCO also agrees that it will not request additional contributions from any TCEQ contributor within six months of receiving funding from them through the SEP.
8. TCEQ Enforcement Actions: This Agreement does not create any rights on behalf of Houston-Galveston AERCO or contributing respondents in TCEQ enforcement actions. Houston-Galveston AERCO shall have no role in the TCEQ enforcement process other than to receive approved, voluntary SEP contributions from respondents according to the terms of this Agreement.
9. Project Performance: Houston-Galveston AERCO agrees that the projects described in Attachment A, funded with SEP monies, shall be performed in accordance with this Agreement and all applicable State and Federal laws, TCEQ rules, and SEP policies.
10. Reporting: Houston-Galveston AERCO agrees to provide the TCEQ SEP coordinator with reports according to the requirements in Attachment A. The timely submittal of complete reports shall be considered an essential element of performance under this Agreement.
11. Right to Audit: To the extent permitted by law, the parties mutually agree to provide to each other any further documentation required that is directly pertinent to performance under this Agreement. The TCEQ does not waive any rights it may have under the Texas Public Information Act, VERNON'S TEX. GOV. CODE § 552, or other law; Houston-Galveston AERCO agrees to provide to a representative of the TCEQ, upon request, access to all financial records, grant documents, invoices and contracts related to the receipt of SEP monies, the expenditure of those monies, and performance of the project under this Agreement. Houston-Galveston AERCO shall require that such contractors, subcontractors and grantees provide Houston-Galveston AERCO or to a representative of the TCEQ, upon request, access to the site of any work being financed in whole or in part by SEP monies.
12. Publicity: Houston-Galveston AERCO will not publicize the name of contributors of SEP monies without notice to the TCEQ, consent of the contributor(s), and without including the following statement or its equivalent: "The company's contribution to this project was made voluntarily as part of the settlement of an enforcement action brought by the Texas Commission on Environmental Quality."
13. Effective Date: This Agreement is effective on the date of last signatory.

**Houston-Galveston AERCO
THIRD PARTY AGREEMENT**

14. Agreement Term: This Agreement automatically renews, in one year increments, unless terminated with or without cause, by any party, in writing, at least thirty (30) days in advance.
15. Termination: Within 30 days of the effective date of termination, the Houston-Galveston AERCO shall make a written accounting to the TCEQ of all SEP monies received, interest accrued, and expenditures made under this Agreement, and shall pay to the General Revenue Fund of the State of Texas any such monies that will not be spent in accordance with this Agreement, including any interest earned on such monies.
16. Refund of SEP Monies: If at any time the TCEQ determines that SEP monies have been spent in a manner that has not resulted in adequate and timely work performed or purchases made in accordance with this Agreement, the TCEQ shall be entitled to require payment from Houston-Galveston AERCO of the total remaining amount of contributions, including any interest earned on those contributions, to the General Revenue Fund of the State of Texas.
17. Effective Delivery: Any notice or other written communication shall be considered delivered: (1) when postmarked, provided it is sent by certified mail, return receipt requested; or (2) when delivered, if delivered in person to the TCEQ SEP Coordinator, the TCEQ Executive Director, or the responsible official of Houston-Galveston AERCO.
18. Addresses: The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

Houston-Galveston AERCO
Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, TX 77227-2777

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

**Houston-Galveston AERCO
THIRD PARTY AGREEMENT**

19. Point of Contact for Respondents: Houston-Galveston AERCO's designated point of contact to receive SEP monies from contributing respondents shall be:

Air Quality Program Manager
Houston-Galveston Area Council
Houston-Galveston AERCO
P.O. Box 22777
Houston, TX 77227-2777

20. Amendments: Any amendments, modifications, or supplements shall be in writing, signed and executed on behalf of Houston-Galveston AERCO and the TCEQ.

It is anticipated by the parties that this Agreement may incorporate projects not presently listed in the attached project descriptions (Attachment A). Additional projects, approved in writing after the date of this Agreement by the Litigation Division Director, will be bound by this agreement and all the terms and conditions it contains.

21. Severable Provisions: The provisions of this Agreement are declared to be severable such that if any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable.
22. Governing Law: This Agreement shall be subject to and governed by the laws of the State of Texas.
23. Authorities Incorporated by Reference: Incorporated by reference, the same as if specifically written herein, are the rules, regulations, and all other requirements imposed by law; including but not limited to compliance with the pertinent rules and regulations of the State of Texas and those of federal agencies providing funds to the State of Texas, all of which shall apply to performance hereunder.
24. Full Integration: This Agreement, the attachments, and laws incorporated by reference merge the prior negotiations and understandings of the parties and embody 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 this project.

**Houston-Galveston AERCO
THIRD PARTY AGREEMENT**

I, the undersigned, have read and understand this Supplemental Environmental Project Agreement. I am authorized to execute this Supplemental Environmental Project Agreement on behalf of the entity indicated below my signature, and I do hereby agree to the terms and conditions specified herein. This Agreement is binding only after all parties listed below have signed this Agreement.

Lydia Gonzalez Gromatzky
Deputy Director, Legal Services
Texas Commission on Environmental Quality

Date

Ed Fiesinger
Chairman of the Board of Directors
Houston-Galveston Area Emission
Reduction Credit Organization

Date

Ed Fiesinger
Chairman of the Board of Directors
Emission Reduction Credit Corporation
of the Gulf Coast

Date

**Houston-Galveston AERCO
THIRD PARTY AGREEMENT**

Attachment A

Supplemental Environmental Projects

Project Descriptions

1. Project Title: Clean Cities/Clean Vehicles Program

Description: Supplemental Environmental Project (SEP) monies will be used to aid local government and area transit agencies in reaching local match requirements mandated by the Federal Highway Administration's ("FHWA") Congestion Mitigation/Air Quality ("CMAQ") funding program.

SEP monies will be disbursed to local government and transit agencies in need of funding assistance in the Houston-Galveston-Brazoria non-attainment area specifically for fleet turnover. Those SEP monies may be used by the local government and transit agencies as supplements to meet the local match requirements of the FHWA. SEP monies may be used to pay for the cost of retrofitting or replacing older fleet vehicles (e.g., cars, trucks and buses) and on-road/off-road mobile heavy duty equipment with alternative-fueled or cleaner-fueled equipment and vehicles. The old engine, vehicle, or equipment that has been replaced shall be permanently retired.

The local government and transit agencies will also use the SEP monies to retrofit more buses to reduce emissions. Houston-Galveston AERCO will send the TCEQ verification in the form of paid invoices and other documentation to show that the retrofits were completed. Retrofit technologies include particulate matter traps, diesel particulate matter filters, NOx reduction catalyst technology in combination with diesel particulate filters, and other emission control technologies that are developed and approved by U.S. EPA or the California Air Resources Board.

Environmental Benefits: The combination of new efficient engines, clean fuel and high-tech after treatment reduces particulate emissions on buses by more than 90% below today's level and reduces hydrocarbons below measurement capability by resulting in a direct reduction in particulate matter (PM), volatile organic compounds(VOCs), and nitrogen oxides (NOx) emissions.

Minimum allowable SEP contribution for this project: Any amount is acceptable.

**Houston-Galveston AERCO
THIRD PARTY AGREEMENT**

Counties: Unless limited by virtue of the SEP, eligible counties of the Houston-Galveston Transportation Management Area include Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

2. Records and Reporting

The Houston-Galveston AERCO shall maintain records of the costs of the SEP after receiving SEP monies. The Houston-Galveston AERCO shall submit quarterly reports. The first quarterly report shall be due within 90 days after receiving the first SEP contribution. The reports shall contain the following information:

- A. The total amount of contributions received under the SEP program for that quarter, including interest accounted to each contribution;
- B. A description of each project to which SEP funds were allocated and progress made to date;
- C. A list of actual expenditures paid by SEP monies for each project including documentation verifying payments made;
- D. The total balance of the SEP Account, including interest earned to date;
- E. The quantified environmental benefits, which include the amount of emissions reductions achieved;
- F. Projected expenditures of SEP monies remaining in the account; and
- G. Any additional information the Houston-Galveston AERCO believes will demonstrate compliance with the SEP agreement.

The Houston-Galveston AERCO agrees to provide additional information requested by the SEP Coordinator. All SEP reports and information shall be submitted to the following address:

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