

# Supplemental Environmental Project (SEP) Oversight Agreement Summary

<b>Agreement Number</b> SEPYR-XXX-XX	<b>Case Number</b> CASE NUMBER
---	-----------------------------------

This Agreement is entered into between the California Air Resources Board (CARB) and the Supplemental Environmental Project (SEP) Recipient/Administrator, [SEP RECIPIENT NAME].

- |   |            |         |            |
|---|------------|---------|------------|
| 1. The Term of this agreement is  | XX/XX/XXXX | Through | XX/XX/XXXX |
| 2. The amount of the SEP contribution is  | \$XXXXX.XX |         |            |
| 3. The SEP Recipient/Administrator Agrees to comply with and be bound by the terms and conditions identified in the following documents:  |            |         |            |
| <ul style="list-style-type: none"> <li>• Attachment 1: SEP Oversight Agreement</li> <li>• Attachment 2: SEP Proposal</li> <li>• Attachment 3: SEP Budget</li> <li>• Attachment 4: Reporting Guidelines and Samples</li> <li>• Attachment 5: Final Reporting Guidelines</li> <li>• Attachment 6: Payment Acknowledgement Form</li> </ul> |            |         |            |

### SEP Recipient/Administrator

<b>1. SEP Recipient/Administrator</b> [SEP ADMINISTRATOR NAME]	<b>2. SEP Name</b> [SEP NAME]
<b>3. Name and Title of Authorized Signee</b> [NAME, TITLE]	<b>4. Phone Number</b> XXX-XXX-XXXX
<b>5. Address</b> # STREET NAME	<b>6. City, State and Zip</b> [CITY, STATE, XXXX]

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

### CARB

<b>1. Name and Title of Authorized Signee</b> [NAME, TITLE]	<b>2. Phone Number</b> XXX-XXX-XXXX
<b>3. Address</b> # STREET NAME	<b>4. City, State and Zip</b> [CITY, STATE, XXXX]

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## ATTACHMENT 1 SEP Oversight Agreement

This Supplemental Environmental Project Oversight Agreement (SEP Agreement) is entered into by and between |SEP RECIPIENT NAME| (referred to as the "SEP Recipient/Administrator") with its principal place of business at, |SEP RECIPIENT ADDRESS|, and the California Air Resources Board ("CARB") with its principal place of business at 1001 I Street, Sacramento, CA 95814 for |SEP NAME| ("the Project").

### A. PURPOSE

The purpose of this SEP Agreement is to ensure proper implementation and oversight of the SEP where the SEP Recipient/Administrator has agreed to the terms and conditions set forth below to participate in CARB's SEP Program.

### B. PROJECT SCOPE OF WORK

The Scope of Work, Project details, and timelines are outlined in Attachment 2, the "SEP Proposal." The budget information is outlined in Attachment 3, the "SEP Budget."

The SEP Recipient/Administrator shall follow the timelines and budget outlined in the SEP Proposal and SEP Budget. The SEP Recipient/Administrator shall notify CARB, in writing, of any changes. CARB will approve or deny the requested changes within ten (10) business days from the date the SEP Recipient/Administrator requests the changes.

### C. CARB SEP POLICY

The SEP Recipient/Administrator will comply with the CARB SEP policy located at [https://ww2.arb.ca.gov/sites/default/files/2019-05/SEP\\_Policy\\_1.pdf](https://ww2.arb.ca.gov/sites/default/files/2019-05/SEP_Policy_1.pdf)

### D. FUNDING

1. |RESPONSIBLE PARTY| has selected the Project as part of the enforcement settlement agreement between |RESPONSIBLE PARTY| and CARB. Under the terms of the settlement agreement, |RESPONSIBLE PARTY| has agreed to make payment in the amount of \$|AMOUNT|, for Case Number |CASE NUMBER| directly to the SEP Recipient/Administrator, at the address listed in section (G) below.
2. The SEP Recipient/Administrator shall provide proof of payment to CARB within ten (10) business days of receiving payment, in the form of the payment

acknowledgement form (Attachment 6), and a copy of the check, wire transfer confirmation, or credit card receipt.

3. Upon receipt of the funding, the SEP Recipient/Administrator shall fully implement, and complete the SEP in accordance with the description, budget, timeline, and reporting requirements stated in this SEP Agreement.
4. The SEP Recipient/Administrator shall establish a trust account, or similar account approved by CARB to hold all SEP funds received from violators. This interest-bearing account will be referred to as the SEP Program Account. SEP funds from violators will be deposited into the SEP Program Account. Any interest generated from funds held in the SEP Program Account shall be used to fund the Project and is subject to the funding requirements listed in this agreement.
5. Upon completion, the SEP Recipient/Administrator shall send any remaining funds, including any interest earned, to CARB for deposit into the Air Pollution Control Fund.
6. If the SEP is not fully implemented in accordance with the terms of this SEP Agreement and the SEP Policies, CARB is entitled to recover the full amount paid toward the Project, from the SEP Recipient/Administrator, less any amount waived based on the timely and successful completion of any interim milestone(s), to be deposited into the Air Pollution Control Fund.

**E. REPORTS AND RECORDKEEPING**

1. Quarterly Reporting Requirement. SEP Recipient/Administrators shall submit regular quarterly reports called "Progress Reports" and "Expense Reports" documenting the Project throughout its lifespan as well as a "Closure Report" upon completion of the Project.
2. Quarterly Reporting Timelines. SEP Recipient/Administrators shall submit the quarterly reports by the follow reporting timelines:

Due Dates for Quarterly Reporting		
Quarter	Reporting Periods	Report Submission Deadlines
1	January 1 through March 31	April 30
2	April 1 through June 30	July 31
3	July 1 through September 30	October 31
4	October 1 through December 31	January 31

**If the due date falls on a weekend, your report will be due the following business day.**

Samples for quarterly reports are included in Attachment 4.

3. Required Information. Reports must contain the following information:

a. Progress Reports:

The SEP Recipient/Administrator shall submit these reports to CARB by the dates specified in section (E)(2) above and must include the following:

- i. The "*Project Progress Summary*," describing the following:
  - 1) The key activities of the Project that were completed, or not completed, during the reporting period; and
  - 2) The progress made toward achieving the results described in the SEP proposal timeline during this period.
- ii. All completed activity milestones and results for the reporting cycle that includes a copy of the data collected and a summary of the results that were achieved (quantitative and qualitative impacts).

b. Expense Reports:

The SEP Recipient/Administrator shall submit these reports to CARB by the dates specified in section (E)(2) above and must include copies of supporting documents include receipts, paid invoices, travel logs, time reports, and any other supporting documents with CARB approval.

c. Closeout Reports:

The SEP Recipient/Administrator shall submit these reports to CARB within thirty (30) calendar days of completing the SEP and must certify under penalty of perjury the completion of the SEP in accordance with terms of this SEP Agreement. The Closeout Report outline can be found in Attachment 5, and MUST include the Final Expense Report showing that all of the funds have been expended. Supporting documents must be included (i.e. receipts, paid invoices, travel logs, time reports, and any other supporting documents with CARB approval.)

4. Recordkeeping: The SEP Recipient/Administrator shall maintain all records required to be produced under this SEP Agreement for three (3) years after the Project is complete, unless a longer period of retention is stipulated by the parties in writing.

**F. SITE VISITS AND AUDITS**

The SEP Recipient/Administrator shall allow CARB to review and copy any records and supporting documents pertaining to the performance of this SEP Agreement and all funds received.

The CARB SEP team may perform periodic site visits to ensure the Project activities are consistent with progress reporting or if progress reports or expense reports are not complete. Such visits provide an opportunity for two-way communication between CARB and the SEP Recipient/Administrator.

The CARB SEP team may conduct compliance audits if closeout reports are not submitted within 30 days of Project completion or if the reports are not complete. The audit aims to ensure timely and proper compliance with the SEP Agreement, and to evaluate financial information including expenses paid for with penalty monies received.

**G. CONTACTS**

CARB and the SEP Recipient/Administrator will each appoint one individual to act as the principal contact person for notices and other communications under this SEP Agreement. CARB and the SEP Recipient/Administrator may change its contact person at any time by written notice to the other party.

CARB		SEP Recipient/Administrator	
Attention:	STAFF NAME	Attention:	SEP ADMIN NAME
Address:	8340 Ferguson Avenue, Sacramento, CA 95828	Address:	SEP ADMIN ADDRESS
Phone:	916-229-XXXX	Phone:	SEP ADMIN PHONE
Email:	Staff.name@arb.ca.gov	Email:	SEP ADMIN E ADDRESS

**H. ADDITIONAL PROVISIONS**

1. Binding Effect. This SEP Agreement binds the SEP Recipient/Administrator and any receivers, trustees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this SEP Agreement.
2. Assignment: This SEP Agreement is not assignable by the SEP Recipient/Administrator either in whole or in part, without CARB’s written consent in the form of a formal written agreement.

3. Amendment: No amendment or variation of the terms of this SEP Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in the SEP Agreement is binding on any of the parties.
4. Audit: The SEP Recipient/Administrator agrees that CARB shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this SEP Agreement and all funds received. The SEP Recipient agrees to allow interviews of any employees who might reasonable have information related to such records.
5. Compliance with Law and Regulations: The SEP Recipient/Administrator shall, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal, state, and local laws and regulations.
6. Confidentiality: The SEP/Recipient Administrator shall not disclose any record that CARB has designated as confidential, or is the subject of a pending request for confidentiality.
7. Conflict of Interest: The SEP Recipient/Administrator certifies that it is in compliance with applicable state and/or federal conflict of interest laws.
8. Disputes: The SEP Recipient/Administrator shall continue with the responsibilities under this SEP Agreement during any dispute. SEP Recipient/Administrator staff or management may work in good faith with CARB staff or management to resolve any disagreements or conflicts arising from implementation of this SEP Agreement. However, any disagreements that cannot be resolved informally within 30 days of when the issue is first raised with CARB staff shall be subject to resolution by the CARB Executive Officer, or his designated representative. Nothing contained in this paragraph is intended to limit any of the rights or remedies that the parties may have under law.
9. Environmental Justice: In the performance of this SEP Agreement, the SEP Recipient/Administrator shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income population of the State.
10. Fiscal Management Systems and Accounting Standards: The SEP Recipient/Administrator agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of SEP funds to a level of expenditure adequate to establish that such funds have not been used in violation of State law or this SEP Agreement.

11. Force Majeure: Neither CARB nor the SEP Recipient/Administrator shall be liable for or deemed to be in default for any delay or failure in performance under this SEP Agreement or interruption or services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, etc.
12. Governing Law: This SEP Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. The SEP Recipient/Administrator hereby waives any existing sovereign immunity for the purposes of this SEP Agreement.
13. Indemnification: The SEP Recipient/Administrator agrees to indemnify, defend and hold harmless the State and the Board and its officers, employees, agents, representatives, and successors-in-interest against any and all liability, loss, and expense, including reasonable attorneys' fees, from any and all claims for injury or damages arising out of the performance by the SEP Recipient/Administrator on the proposed Project and out of the operation of equipment that is purchased with funds from this SEP.
14. Independent Contractor: The SEP Recipient/Administrator and its agents and employees, if any, in their performance of this SEP Agreement, shall act in an independent capacity and not as officers, employees or agents of CARB.
15. Limitation of Liability: CARB shall not be liable to the SEP Recipient/Administrator by way of indemnity, or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts, or liable for any financial or economic loss, or any indirect, punitive, special, or consequential damages whatsoever that may be related to this SEP Agreement.
16. Nondiscrimination: During the performance of this SEP Agreement, the SEP Recipient/Administrator and its third-party entities shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. The SEP Recipient/Administrator and its third-party entities shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The SEP Recipient/Administrator and its third-party entities shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (Cal. Code of Regs., tit. 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part

hereof as if set forth in full. The SEP Recipient/Administrator and its third-party entities shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

17. No Third Party Rights: The parties to this SEP Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this SEP Agreement, or of any duty, covenant, obligation or undertaking establish herein.
18. Personally Identifiable Information: Information or data that personally identifies an individual or individuals is confidential in accordance with California Civil Code sections 1798, et seq. and other relevant State or Federal statutes and regulations. The SEP Recipient/Administrator shall safeguard all such information or data which comes into their possession under this SEP Agreement in perpetuity, and shall not release or publish any such information or data.
19. Entirety. This SEP Agreement and all attachments constitutes the entire agreement and understanding between the Parties concerning the SEP, and supersedes and replaces any and all prior negotiations and agreements of any kind, whether written or oral, between the Parties concerning the SEP.
20. Choice of Law: This SEP Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
21. Effective Date: The effective date shall be the date upon which this SEP Agreement is fully executed.
22. Professionals: For Projects involving installation or construction services, the SEP Recipient/Administrator agrees that only licensed professionals will be used to perform services under this SEP Agreement where such services are called for and licensed professionals are required for those services under State law.
23. Severability: If a court of competent jurisdiction holds any provision of this SEP Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of those provisions, will not be affected.
24. SEP Recipient/Administrator's responsibility for work: The SEP Recipient/Administrator shall be responsible for all aspects of the performance of the work and for persons or entities engaged in the work, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The SEP Recipient/Administrator shall be responsible for any and all disputes arising out of its contract for work on the Project, including but not limited to payment disputes with contractors, subcontractors, and providers of services. The State will not mediate disputes between the SEP Recipient/Administrator and any other entity concerning responsibility for performance of the work.



25. Termination: CARB may terminate this SEP Agreement by written notice at any time prior to completion of projects funded to this SEP, upon violation by the SEP Recipient/Administrator of any material provision after such violation has been called to the attention of the SEP Recipient/Administrator and after failure of the SEP Recipient/Administrator to bring itself into compliance with the provisions of this SEP Agreement. All Remaining funds shall be sent to CARB for deposit into the Air Pollution Control Fund.
26. Timeliness: Time is of the essence in this SEP Agreement. The SEP Recipient/Administrator shall proceed with and complete the Project in an expeditious and timely manner.
27. Waiver of Rights: Any waiver of rights with respect to a default or other matter arising under the SEP Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this SEP Agreement are in addition to any other rights and remedies provided by law.
28. Rules of Construction: Each party has participated fully in the review and drafting of this SEP Agreement, has had the opportunity to consult with counsel, is fully informed of the terms and effect of this SEP Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this SEP Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this SEP Agreement.
29. Counterparts. This SEP Agreement may be executed in counterparts. Facsimile or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this SEP Agreement.
30. Authority. The undersigned represents that he or she has full authority to enter into this Settlement Agreement.