



**DEPARTMENT OF PERSONNEL
CUSTOMER SERVICE AGREEMENT**

DOP Contract Number: K585
Customer Contract Number: _____

This Agreement, pursuant to RCW 41.06.080; the Interlocal Cooperation Act, Chapter 39.34 Revised Code of Washington (RCW), is made and entered into by and between the Department of Personnel (DOP), located at 521 Capitol Way S, PO Box 47500, Olympia, WA 98504-7500, and the Puget Sound Clean Air Agency, (Customer), located at 1904 Third Avenue – Suite 105, Seattle, WA 98101.

1. PURPOSE

This Customer Service Agreement sets out the terms and conditions under which DOP provides services to Customer. This Agreement governs two types of transactions: Customer purchases of services directly from DOP; and Customer purchases of services from third party vendors through master contracts executed and administered by DOP.

2. PERIOD OF PERFORMANCE

This Agreement shall be effective on the date of execution by both parties and will remain in full force and effect until terminated by either party in accordance with Section 11, *Termination*.

3. DOP SERVICES

For those services for which DOP does not publish rates (e.g. open enrollment classes), DOP will provide services according to Work Orders signed by Customer and DOP under the terms of this Agreement. Each Work Order shall include a description of the specific services to be provided, the term, the cost of such services from quotation or from the published rate schedule, and any other terms and conditions applicable to that service. Work Orders should include Rights in Data language sufficient to protect Customer's ownership rights in any data originating under the Work Order. See Section 15, *Rights in Data*.

4. MASTER CONTRACT SERVICES

4.1 TERMS OF DOP MASTER CONTRACTS

A master contract is a competitively acquired contract executed by DOP and a vendor enabling DOP, and other eligible public sector entities (per RCW 41.06.080) with a fully executed DOP Customer Service Agreement, to purchase services from that contractor. When DOP contracts for services on behalf of its customers generally, or the undersigned Customer specifically, Customer may purchase services covered by the master contract on the same terms and conditions as DOP. Such a purchase by Customer may be accomplished by a Work Order directed by Customer to the third party contractor. DOP is not responsible for contractor performance of any master contracts, nor is DOP responsible for payment by Customer.

4.2 CONVENIENCE RATHER THAN MANDATORY BUY

Customer may contract independently for the purchase of any particular service.

4.3 USE OF OMWBE CERTIFIED COMPANIES

Customer shall consider Minority and Women Business Enterprise (M/WBEs) when identifying contractors for consideration or competition for award of a Second Tier Master Contract order, field order or task order. At a minimum, Customer should consider, if available, at least one women-owned small business enterprise, and a minority owned small business enterprise.

OMWBE goals are voluntary. Orders placed against the Master Contract will be credited toward the ordering agencies M/WBE Utilization.

5. PAYMENT

5.1 SERVICE CHARGES

Charges for services provided by DOP will be based either on the then-current published DOP rates, or on specific quotation described in Work Orders. Published rates are subject to change. Current rates are published at DOP's web site at <http://www.dop.wa.gov/>. The current rates supersede and replace all previous published rates.

5.2 MASTER CONTRACT FEES

DOP charges Customers a contract administration fee for use of DOP-established master contracts. Specific fees are established for each master contract as a means for DOP to recover costs associated with the establishment, maintenance, and administration of the contracts and agreements. Master contract administration fees are published at DOP's web site at <http://www.dop.wa.gov/>. Published fee rates are subject to change. The current fee rates supersede and replace all previous published rates.

DOP shall submit invoices for services performed and applicable fees, if any, under this Contract. Customer shall remit payment to DOP within thirty (30) days upon receipt of properly completed invoice(s). Failure by the Customer may result in termination of this Customer Service Agreement.

5.3 ESTIMATES

Upon Customer request, DOP may provide an estimate of costs for proposed services. Specific agreements addressing costs, schedules, and other factors will be described in a Work Order. Customer is responsible for paying the agreed amounts set forth in the Work Order.

5.4 TAXES

If DOP is required to pay sales or use tax in order to provide service under this Agreement, such taxes will be added to the Customer invoice. Customer shall pay all taxes on Master Contract administration fees.

5.5 INVOICES AND LATE PAYMENT

DOP will invoice Customer monthly detailing charges for services rendered during the preceding month. Payment is due upon receipt of invoice by Customer and becomes delinquent thirty (30) days thereafter.

A late payment charge may be applied to any remaining balance sixty (60) days after invoice. Late payment charges, if any, will be imposed on the unpaid balance at the rate of one percent (1%) per month. Agreements with balances more than ninety (90) days past due may be terminated under Section 11.2, *Termination for Cause*, and services discontinued. Amounts disputed by Customer under Section 10, *Disputes, Governing Law, and Venue*, are not subject to late payment charges.

5.6 NOTICE OF INVOICE DISPUTE

Customer will promptly notify DOP of disputes regarding invoices, or of services which Customer believes do not conform with the agreed upon terms of this Agreement or Work Order, within thirty (30) days of receipt of invoice or performance of services whichever occurs later. Failure to give written notice within thirty (30) days after receipt of invoice or performance of services constitutes waiver of any objection to services or invoices.

6. NOTICES

All notices and communications which may be required by this Agreement shall be in writing and sent:

If to DOP, to:

Department of Personnel
Attention: Contracts Administrator
PO Box 47500
Olympia, WA 98504-7500

Phone: (360) 664-6309
Fax: (360) 586-4694

E-Mail:DebbieD@dop.wa.gov

If to Customer, to:

Puget Sound Clean Air Agency
Attention:

Address:

Phone:

Fax:

E-Mail:

7. AMENDMENTS/MODIFICATIONS

This Agreement may be modified or amended by the mutual written consent of the parties. Terms and conditions specified in an amendment will have precedence over the terms and conditions specified in this Agreement.

8. INDEMNIFICATION

Each party to this Agreement shall be responsible for its own acts and/or omissions and those of its officers, employees or agents. No party to this Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement.

By executing this agreement , a Customer that is not a state agency waives its immunity under Title 51 RCW (Industrial Insurance) to the extent it is required to indemnify, defend and hold harmless DOP, the state of Washington, and agencies, officials, agents or employees of the state.

9. LIMITATION OF LIABILITIES AND REMEDIES

9.1 NON-CONFORMING SERVICES

For any DOP-provided services which fail to conform to the specifications of this Agreement or Work Order hereto, and such failure is caused solely by the negligence of DOP, no charge will be invoiced. If both parties are negligent, they agree to apportion between them the cost or damages attributable to the actions of each. Customer is solely responsible for any cost or damages caused in whole or in part by inaccurate or inadequate information furnished by Customer or Customer's subcontractors to DOP.

9.2 FORCE MAJEURE

Neither DOP nor Customer shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either DOP or Customer. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Customer acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, pandemic flu, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of DOP, Customer, or their respective subcontractors.

9.3 EQUIPMENT DAMAGE

For any equipment or property damaged as the result of negligence by either party, the negligent party will be obligated to pay for repair or replacement of that equipment or

property. If both parties are negligent, the parties agree to apportion between them the damage attributable to the actions of each.

9.4 DAMAGES

Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.

9.5 THIRD PARTY CLAIMS

In the event that either party is found liable for damages to third parties as a result of the performance of services under this Agreement, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Agreement.

10. DISPUTES, GOVERNING LAW, AND VENUE

When a dispute arises, the parties will first attempt to negotiate a mutually satisfactory solution. In the event the dispute cannot be resolved between the parties, they may agree to an alternative dispute resolution process. The parties agree to proceed diligently with the performance of services requested under any Work Order while any dispute is pending.

Neither party will sue the other for claims arising from disputes arising under this Agreement, except that DOP may pursue collection actions if necessary to recover charges for services, and if such action is taken, venue lies in Thurston County Superior Court. Each party consents to the jurisdiction of the Thurston County Superior court. This Agreement is governed by the laws of the state of Washington.

11. TERMINATION

11.1 TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement or any document executed under authority of this Agreement, including without limitation Work Orders hereunder, upon ninety (90) days' written notice to the other.

11.2 TERMINATION FOR CAUSE

If for any cause, Customer or DOP does not fulfill in a timely and proper manner its performance obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within fifteen (15) working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party to the other party.

Upon termination of this Agreement, Customer will pay for services rendered prior to the effective date of the termination.

11.3 TERMINATION OF A WORK ORDER

Services specified in a Work Order may be terminated by either party for the reasons and in the manner outlined above, unless provided otherwise therein.

12. ASSURANCES

The parties agree that all activity pursuant to this Agreement shall be in accordance with all applicable federal, state and local laws, rules, and regulations as they currently exist or as amended.

13. DISCLOSURE OF CUSTOMER DATA

DOP is subject to the requirements of chapter 42.56 RCW, which requires the disclosure of certain records in its possession. Records, documents, or other property of Customer, in any medium, furnished by Customer to DOP, may be subject to that law. If DOP receives a request for these records from a third party, DOP will not disclose or make available this material without prior notice to

Customer. DOP will utilize reasonable security procedures and protections to assure that Customer material is not erroneously disclosed to third parties.

14. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed.

15. RIGHTS IN DATA

For work provided directly by DOP, unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by Customer. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

For work provided to the Customer through a third-party master contract, rights in data shall be governed by terms and conditions contained in the master contract work order. Unless otherwise provided in the master contract work order, all works for hire shall be owned by the Customer.

16. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

17. ASSIGNMENT

This Agreement may not be assigned by either party to a third party without the prior written consent of DOP and Customer.

18. WAIVER

If a breach of a provision of this Agreement is waived for a particular transaction or occurrence, waiver for a similar breach in a subsequent similar transaction or occurrence may not be implied.

19. SEVERABILITY

If any term or condition of this Agreement or application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application.

20. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes, and local laws, rules and regulations;
- b. Work Orders; and

c. Any other provisions of this Agreement, including materials incorporated by reference.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington
Department of Personnel

Puget Sound Clean Air Agency

By: Scott R. Turner

By: Dennis J. McLerran
Please Print

Title: Assistant Director

Title: Executive Director

Signature: Scott R Turner

Signature: Dennis J. McLerran

Date: 21 Sept 2009

Date: 9/16/09

BOILERPLATE APPROVED AS TO FORM
Suzanne Shaw, AAG
April 24, 2009
Approval on File with the DOP Contracts Office



Puget Sound Clean Air Agency
1904 3rd Ave., Ste 105
Seattle, WA 98101

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Scott R Turner, Assistant Director

Typed Name & Title of Authorized Representative

Scott R Turner
Signature of Authorized Representative

21 Sept 2009
Date

I am unable to certify to the above statements. My explanation is attached