

**MEMORANDUM OF AGREEMENT NO. DA2011-61  
BETWEEN  
THE CITY OF SEATTLE  
AND  
PUGET SOUND CLEAN AIR AGENCY  
FOR  
Everett/Marysville COMMUNITY ODOR MONITORING PROGRAM**

ORIGINAL

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made by and between the City of Seattle ("City"), a municipal corporation of the State of Washington, acting through its Seattle Public Utilities Department ("SPU"), and Puget Sound Clean Air Agency ("Provider" or "PSCAA").

**1. TERM OF AGREEMENT.**

The term of this Agreement shall begin when fully executed by all parties, and shall end on December 31, 2012, unless amended by written agreement or terminated earlier pursuant to the provisions hereof.

**2. BILLING AND PAYMENT.**

Total compensation under this Agreement shall not exceed One Hundred Thousand Dollars (\$100,000) herein after referred to as the "Contract Amount," unless modified by a written amendment to this Agreement. The parties agree that the hourly rate includes all direct, indirect, and fixed fees for the project.

<b>Invoices shall be submitted to:</b>
Seattle Public Utilities Accounts Payable Department PO Box 34018 Seattle WA 98124-4018
<b>Invoices under this Contract shall clearly display the following information:</b> (sub-consultants' invoices shall also include this information)
<ul style="list-style-type: none"> <li>• Invoice Date and Invoice Number</li> <li>• The SPU Project Manager: Hans VanDusen</li> <li>• Agreement No. <b>DA2011-61</b></li> <li>• Agreement Title: <b>Everett/Marysville Community Odor Monitoring Program</b></li> <li>• Period covered by the invoice</li> <li>• Task # and title</li> <li>• Employee's name and classification</li> <li>• Employee's all-inclusive hourly rate and # of hours worked</li> <li>• Total labor costs per task</li> <li>• Itemization of direct, non-salary costs (per task, if so allocated)</li> <li>• The following Sub-Consultant payment information will be provided (attach Sub-Consultant invoices as backup): <ul style="list-style-type: none"> <li>○ Amount Paid to all Sub-Consultants for the invoice period (list separate totals for each Sub-Consultant).</li> <li>○ Cumulative To-Date amount paid to all Sub-Consultants (list separate totals for each Sub-Consultant).</li> </ul> </li> <li>• Cumulative costs per task and for the total project</li> </ul>

**3. SCOPE OF SERVICES.**

PSCAA will conduct an odor monitoring program for the Everett/Marysville area where much of the City of Seattle's organic material collected under City contracts is composted by the Cedar Grove Composting Company. The Everett/Marysville Community Odor Monitoring Program will include an audit of potential odor sources, design and installation of a continuous odor monitoring system and formation of a neighborhood Odor Observer Committee. PSCAA shall perform the services described in EXHIBIT A – SCOPE OF WORK; attached hereto and made a part of this Agreement.

Digital Materials: Provider shall provide digital materials, including reports, data, maps, graphs and photos that are compatible with current Seattle Public Utilities file and data formats.

**4. ADDRESSES FOR NOTICES AND DELIVERABLE MATERIALS.**

All official notices under this Agreement shall be delivered to the following addresses (or such other addresses as either party may designate in writing):

SPU:	Provider:
Hans VanDusen, Project Manager Seattle Public Utilities PO Box 34018 Seattle WA 98124-4018	Laurie Halvorson Puget Sound Clean Air Agency 1904 Third Avenue, Suite 05 Seattle, WA 98101

**5. NO JOINT UNDERTAKING.**

Nothing in this Agreement shall be construed to make or render the parties hereto partners, joint ventures or participants in any joint undertaking whatsoever.

**6. SCHEDULE.**

The parties shall comply with the schedule appearing in ATTACHMENT A – SCOPE OF WORK. Compliance with the schedule is important to successful completion of the Project. The parties shall promptly and regularly notify each other of any occurrences affecting the schedule and shall attempt to agree upon an amended schedule if necessary or appropriate, to be effective upon execution of an Amendment to this Agreement in accordance with Section 19. Notwithstanding, failure to comply with the schedule shall constitute a Default and be grounds for termination unless or until any Amendment is executed.

**7. NO THIRD PARTY BENEFICIARIES.**

This Agreement is entered into solely for the mutual benefit of the parties hereto. This Agreement is not entered into with the intent that it shall benefit either party's agents, assigns, consultants or contractors, and no such other person or entity shall be a third party beneficiary of this Agreement.

**8. PUBLICATION.**

Each party may publish the results of the Project, and may acknowledge its respective role in and support of the Project.

**9. INDEMNIFICATION.**

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

**10. ASSIGNMENT.**

This Agreement shall not be assigned in whole or in part by either party without the prior written approval of the other party.

**11. COMPLIANCE WITH LAW.**

The parties to this Agreement shall comply with all Federal, State, and local laws and ordinances.

**12. DEFAULT AND TERMINATION.**

Failure to keep or perform any term or condition of this Agreement shall be a default hereunder (a "Default"). Upon a Default, the aggrieved party shall provide written notice to the defaulting party, specifying the nature of the Default, and the aggrieved party's intention to terminate this Agreement if the Default is not corrected within thirty (30) days of the date of the notice. If the defaulting party fails to cure within the stated period, the aggrieved party may thereafter terminate this Agreement without any further proceedings. The aggrieved party will have available to it all remedies provided at law and equity.

**14. PARTIES ABILITY TO TERMINATE DUE TO LACK OF APPROPRIATIONS.**

It is understood that funds for the payment of the services to be provided hereunder are allocated out of monies received by the City from tax sources and/or other governmental entities and that funding for the services to be provided hereunder may be decreased or eliminated by executive or legislative action. Therefore, the parties agree that notwithstanding any other provision of this Agreement, if said funding is decreased or eliminated, or if in the judgment of the executive or legislative authority of the City, continuation of this Agreement would be an unnecessary expenditure of public funds, then the City may terminate this Agreement without further obligation to Provider after the City has given Provider written notice of such termination at least thirty (30) days prior to the effective date of termination and documentation of such executive or legislative action.

PSCAA may terminate the Everett/Marysville Community Odor Monitoring Program and this Agreement at any time if sufficient partner or agency funding for the program as described here are no longer available.

**15. SEVERABILITY.**

If any provision of this Agreement or any provision of any law, rule or document incorporated by reference into this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which legally can be given effect without the invalid provision. To this end, the provisions of this Agreement are declared to be severable.

**16. APPLICABLE LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The jurisdiction and venue of any action brought hereunder shall be in the Superior Court of King County, at Seattle.

**17. AUDIT.**

During the progress of the Everett/Marysville Regional Odor Monitoring Program and for a period of no less than three years from the Completion Date, each party will keep and make available for each other's inspection and audit all records pertaining to the Project. The parties to this Agreement shall furnish copies of Project records upon request and shall maintain the records in accordance with work order accounting procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office.

**18. AMENDMENT.**

This MOA shall not be amended or modified except in writing and signed by both parties hereto.

**19. ENTIRE AGREEMENT.**

This Agreement and any written attachments or Amendments thereto, constitutes the complete contractual agreement of the parties and any oral representations or understandings not incorporated herein are excluded.

IN WITNESS WHEREOF, in consideration of the terms, conditions and covenants contained herein, or attached and incorporated and made a part hereof, the parties have executed this Agreement by having they representatives affix their signatures below.

**PUGET SOUND CLEAN AIR AGENCY**  
1904 Third Avenue, Suite 105  
Seattle, WA 98101

**CITY OF SEATTLE**  
**SEATTLE PUBLIC UTILITIES**

By \_\_\_\_\_  
Signature Date 12/23/2011  
Paul Roberts  
Paul Roberts

By Nancy Ahern 12/23/11  
Signature Date  
\_\_\_\_\_  
Nancy Ahern

\_\_\_\_\_  
Board of Directors, Chair

**DEPUTY DIRECTOR**  
**SEATTLE PUBLIC UTILITIES**

If \$44,000 or greater, SPU Director Signature required

By Nancy Ahern for 12/23/11  
Signature Date  
\_\_\_\_\_  
Ray Hoffman

**DIRECTOR**  
**SEATTLE PUBLIC UTILITIES**

Attest:

By: Craig Kenworthy  
Craig Kenworthy, EDate:  
12/29/2011

Approved as to Form:

By: Jennifer A. Dold  
Jennifer A. Dold  
Agency Attorney  
Date: Dec. 21, 2011

EXHIBITS:

A -SCOPE OF WORK

B -TERMS AND CONDITIONS

SCOPE OF WORK

<b>PRIME Consultant:</b>	Puget Sound Clean Air Agency
<b>Contract No.:</b>	
<b>Contract Title:</b>	Everett-Marysville Community Odor Monitoring Program
<b>PROJECT BACKGROUND STATEMENT:</b>	
Puget Sound Clean Air Agency (PSCAA) will develop and implement a community odor monitoring program for the Everett/Marysville area where Cedar Grove Composting Company has a composting facility that processes yard and food waste from the City of Seattle. PSCAA issued an RFP to perform this work and selected the firm Odotech, Inc. to design and conduct the Regional Odor Monitoring Program.	

<b>TASK 1:</b>	<b>Community Odor Monitoring Program Design and Implementation</b>
<b>TASK DESCRIPTION:</b>	
<p>The community odor monitoring project will provide automated real-time dispersion modeling and information for multiple sites to permit PSCAA to work with all stakeholders in establishing best odor management practices and understand the dynamics of odors, while maintaining an archive of the overall regional odor generation sources.</p> <p>Specifically, the consultant retained by PSCAA will complete the following work elements:</p> <ol style="list-style-type: none"> <li>1) Preliminary audit of potential odor sources, sensitive neighborhoods and local topographic and meteorological conditions.</li> <li>2) Design and install a continuous odor monitoring system with electronic nose continuous odor monitoring, meteorological monitoring stations, web-based interface software, and multi-user access for authorized remote sites. The installed system will likely include up to 10 electronic noses installed for continuously monitored sources, one central control unit and software, and a weather station.</li> <li>3) Formation of a community Odor Observer Committee which will be in place for at least one year.</li> </ol>	
<b>TASK ASSUMPTIONS:</b>	
PSCAA is responsible for all elements of project design and implementation and will negotiate a contract with a consultant to carry out the project as proposed. PSCAA staff will share and review initial audit findings, system design and system outputs with SPU and other agencies and private parties that contribute funding to the project on a periodic basis.	
<b>MATERIALS TO BE PROVIDED BY SPU:</b>	
None	
<b>TASK DELIVERABLES:</b>	
<p>PSCAA will provide SPU with:</p> <ol style="list-style-type: none"> <li>1) A copy of the PSCAA contract with the consultant (including the Scope of Work , Budget Exhibits and Schedule) , who will be carrying out this project – due by February 15, 2012</li> <li>2) An initial report from the audit of potential odor sources, sensitive neighborhoods and local topographic and meteorological conditions by March 31, 2012.</li> <li>3) A timeline for system design and installation by May 31, 2012</li> <li>4) Documentation on equipment purchases and installation locations:</li> </ol>	

- First report due by June 30, 2012
  - Second report by August 31, 2012
  - Third report by October 31, 2012
  - Fourth report by December 31, 2012
- 5) At least quarterly updates on the installed odor monitoring system findings
- First report due by June 30, 2012
  - Second report due by August 31, 2012
  - Third report by October 31, 2012
  - Fourth report by December 31, 2012
- 6) Formation of community Odor Observer Committee – due by June 30, 2012
- 7) At least quarterly updates on the community Odor Observer Committee discussions
- First report due by June 31, 2012
  - Second report due by August 31, 2012
  - Third report due by October 31, 2012
  - Fourth report due by December 31, 2012

SPU is a partial funder of this work and will provide a contribution of \$100,000 in advance to support these deliverables. SPU shall cooperate with and support the purpose of this Agreement and the Community Odor Monitoring Program and will not seek to unduly influence or interfere with this project for its own gain and at public loss. If SPU has questions or concerns regarding the Community Odor Monitoring Program, it shall raise such concerns or questions with PSCAA. All of the tasks need to be completed by **December 31, 2012**. If the task deliverables are not completed, then PSCAA will refund all or a portion of the SPU contribution, as appropriate and on a pro-rated basis determined by PSCAA, based on a contract that PSCAA is developing with the consultant for carrying out this project.

(SPU MOA No. DA2011-61)

**TERMS AND CONDITIONS**

TERM OF THIS MOA		DOLLAR AMOUNT
START DATE	COMPLETION DATE	
Date fully executed by all parties	12/31/2012	\$100,000
<b>BILLING AND PAYMENT TERMS (Describe how Departments are to handle billing and payment for this work.)</b> (Additional billing and payment information can be attached as ATTACHMENT B-1)		
The amount paid to PSCAA is on a lump sum basis at the beginning of the project. If task deliverables are not completed by the end date of the agreement, then PSCAA will refund all or a portion of the contribution, as appropriate, based on the percentage of work completed.		
<b>NAME OF DEPARTMENT KEY PERSONNEL ESSENTIAL TO THE PROJECT</b>		
Laurie Halvorson Puget Sound Clean Air Agency 1904 Third Avenue, Suite 05 Seattle, WA 98101		
<b>NAME AND ADDRESS OF SPU'S PROJECT MANAGER</b>		
Hans VanDusen, Project Manager Seattle Public Utilities PO Box 34018 Seattle WA 98124-4018		
<b>DEPARTMENT NAME AND ADDRESS FOR DELIVERY OF NOTICES</b>	<b>SPU'S NAME AND ADDRESS FOR DELIVERY OF NOTICES</b>	
Laurie Halvorson Puget Sound Clean Air Agency 1904 Third Avenue, Suite 05 Seattle, WA 98101	Hans VanDusen, Project Manager Seattle Public Utilities PO Box 34018 Seattle WA 98124-4018	