

INTERAGENCY AGREEMENT

This Interagency Agreement ("Agreement") is entered into between the **Puget Sound Clean Air Agency**, (hereinafter referred to as the "Agency"), a municipal corporation of the laws of the state of Washington, and the **City of Tacoma**, acting through its **Environmental Services Department**, (hereinafter referred to as "ESD"), 326 East D Street, Tacoma, WA 98421.

WHEREAS, the United States Environmental Protection Agency has designated a portion of Pierce County, including the City of Tacoma, as not attaining the National Ambient Air Quality Standard for fine particulate; and

WHEREAS, the Agency is assisting the Washington State Department of Ecology in developing a strategy to return the Tacoma-Pierce County nonattainment area to attainment and the Agency's assistance has included a stakeholder process to identify and evaluate strategies for reducing emissions, implementing recommendations from the stakeholder process, and conducting public outreach to increase awareness and help change behaviors; and

WHEREAS, in December 2011, the stakeholders' recommendations were finalized in a report to the Agency and adopted by the Agency's Board of Directors in February 2012 by Resolution No. 1238, and such recommendations include the use of additional field inspectors and evening enforcement during stage one and stage two burn bans to minimize the increase in ambient concentrations of fine particulate due to solid fuel burning during meteorological conditions conducive to high fine particulate concentrations; and

WHEREAS, the Agency intends to increase enforcement consistent with the above to meet the National Ambient Air Quality Standard for fine particulate, and needs additional support to accomplish these goals; and

WHEREAS, ESD staff conduct field inspections to assure compliance with applicable federal, state and local laws relating to operation and maintenance of its municipal storm and sanitary systems within the Tacoma nonattainment area, including during the winter seasons(s) and is well positioned to make observations that can support the Agency's enforcement of burn bans; and

WHEREAS during rainfall events, fine particulate in the ambient air falls to impervious surfaces within Tacoma for collection by and eventual discharge from the municipal stormwater system, which may cause sediment contamination in receiving waters at certain locations, and

WHEREAS, ESD and the Agency share a common goal of minimizing the increase in ambient concentrations of fine particulate during burn ban episodes, and

WHEREAS, the parties desire to enter into this Agreement to describe their respective roles and responsibilities regarding ESD's effort to support the Agency's enforcement of stage one and stage two burn bans within Tacoma as described herein;

NOW, THEREFORE, the Agency and ESD mutually agree as follows:

1. **Purpose and Scope of this Agreement.** The purpose of this Agreement is to outline the responsibilities of the Agency and ESD including reimbursement for the time and resources ESD staff dedicates to support the Agency's enforcement of burn bans within Tacoma by making observations and communicating them to the Agency during stage one and stage two burn bans.

A. Duties of the Agency

The Agency shall:

1. Lead, coordinate, and implement the burn ban observation effort.
2. In coordination with ESD, develop and implement a (hereinafter "Detailed Work Plan") to guide ESD staff during burn bans. The Detailed Work Plan will describe: burn ban training content and schedule(s) for assigned ESD staff; stage one or stage two burn bans; geographic areas for burn ban; work shift schedule(s) for burn bans; procedures, including deadlines, to submit observation reports to the Agency; and any other details the Agency deems necessary to assure success of the burn ban patrol events. The Agency shall provide ESD with a draft of the Detailed Work Plan by November 15, 2012. The Agency shall provide ESD with the final Detailed Work Plan by December 1, 2012.
3. Train ESD staff on conducting burn ban observations.
4. Supervise and provide work assignments to ESD staff for conducting burn ban observations and related activities. This shall include notifying ESD staff when and where patrols will occur.
5. As deemed necessary by the Agency, provide equipment for burn ban observations by ESD, including camera kits for burn ban observations made at night. The Agency retains ownership of all equipment provided by the Agency to ESD under this Agreement. The Agency Project Manager will use a log sheet or other similar tracking system to ensure that the Agency can track any loaned equipment and that it is properly returned to the Agency.
6. The Agency acknowledges that ESD's source of funding for its field inspections and other work is provided from Tacoma-owned and operated wastewater and surface utility revenue, and that this revenue source does not cover the cost of the activities ESD will conduct on behalf of the Agency under this Agreement. For this reason, all activities ESD conducts on behalf of the Agency under this Agreement of whatever nature shall be fully reimbursed by the Agency, including but not limited to time spent by ESD planning activities under this Agreement, reviewing the Agency work plans, reporting and invoicing activities to the Agency, internal documentation, conference calls, appeal preparation and participation, whether called as a witness by the Agency, or subpoenaed as a witness by an appellant, including associated travel, salary direct

and indirect costs, and all other costs and expenses ESD incurs performing activities under this Agreement on behalf of the Agency (except as provided in paragraphs B(11) and B(12) of this Agreement). In accordance with Section 2, "Compensation," the Agency shall reimburse ESD up to \$35,000 in Agency Fiscal Year 2013 for performing any and all duties described in Section 1.A above, and Section 1(B) and Attachment A below.

B. Duties of ESD

Subject to authorization by the Tacoma City Manager in accordance with Tacoma Municipal Code 1.06.710, ESD shall conduct the following activities on behalf of the Agency:

1. By November 30, 2012, provide the Agency Project Manager with the names and contact information for each ESD staff person assigned to perform the duties as described in this Agreement.
2. Cooperate in creating the Detailed Work Plan as described in Section 1(A) (2) above, including in-person meetings with the Agency Project Manager as necessary to draft the Detailed Work Plan. ESD shall provide comments on the draft to the Agency Project Manager by e-mail by November 22, 2012.
3. By November 30, 2012, make all ESD staff assigned in Section 1(B) (1) available for all training(s) provided by the Agency.
4. If requested by the Agency, and subject to ESD staff availability, assign ESD staff to patrol during both stage one and stage two burn bans. ESD management may direct ESD staff to patrol evenings, holidays, and/or weekends.
5. Implement the final agreed upon Detailed Work Plan. This includes ensuring all ESD staff follows all Agency procedures and processes for burn ban observations as described in the Detailed Work Plan, including but not limited to reporting of observations with proper documentation.
6. Give Agency equipment left in ESD's custody the same care provided similar property of its own. Agency equipment in ESD's custody shall remain in the possession of ESD for the time period specified by the Agency Project Manager. ESD shall use the Agency provided tracking system to keep an inventory of the camera kits used for burn ban observations made at night.
7. Assign ESD staff to participate in phone calls and in-person meetings with the Agency Project Manager and other Agency staff if requested by the Agency.
8. If requested, support enforcement proceedings for notices of violation and/or civil penalties issued by the Agency based on information provided by ESD staff, including but not limited to participating in any related administrative appeals, if called as a witness by the Agency, or subpoenaed as a witness by an appellant.
9. Consistent with Section 2, provide monthly invoices and reports to the Agency identifying: staff hours expended to the nearest quarter hour, including overtime; vehicle mileage (with actual miles driven); and administrative costs.

10. Provide quarterly reports to the Agency Project Manager by e-mail on forms provided by the Agency. The quarterly reports shall include relevant information such as:
 - a. number of ESD staff who participated in each day of burn ban patrols;
 - b. number of observation reports submitted;
 - c. number of hours to the nearest quarter hour spent in the field, per individual, during burn ban compliance inspection patrols;
 - d. number of overtime hours (to the nearest quarter hour) worked by each individual;
 - e. number of actual miles driven during patrol;
 - f. geographic areas where burn ban patrols occurred; and
 - g. other information as requested by the Agency Project Manager.
11. Provide vehicles for all work performed by ESD staff pursuant to this Agreement.
12. Services provided by ESD under this Agreement are contingent upon available funding by the Agency.
13. Return all equipment back to the Agency by the date specified by the Agency Project Manager.

2. **Compensation.**

A. The parties understand and acknowledge that the actual number of burn ban days that may be designated by the Agency is unpredictable and cannot be determined in advance. This Agreement does not guarantee any minimum or certain number of burn ban days or any amount of work for ESD personnel. The Agency shall only pay for work conducted by ESD that is related directly to burn ban patrols conducted by ESD pursuant to this Agreement, and in addition, the Agency shall pay for ESD staff time spent in training(s), and for other items described in Sections 1.A and 1.B, above, and in Attachment A, which is hereby incorporated by reference to this Agreement.

B. The total amount paid by the Agency for performance of the work under this Agreement shall not exceed \$35,000. The funding for this Agreement is provided by the Per Capita Fund and is part of the Agency Fine Particulate/Nonattainment work plan for Fiscal Year 2013. The Agency shall pay ESD at the hourly rates listed in Attachment A, and in Sections 1.A and 1.B above.

C. To obtain payment, ESD shall submit invoices monthly to the Agency. Submitted invoices shall include a breakdown of charges for each staff person by the hours worked (to the nearest quarter hour) showing task and/or subtask performed; the cost per hour including overtime rates; the number of actual miles driven; and the specific number of hours spent within a given billing period.

D. Submitted invoices may include indirect costs as described in this Agreement. Indirect costs include time spent on administrative tasks, such as billing and are calculated as a

percentage of the salaries and benefits invoiced and cannot be based on equipment. Indirect costs shall not exceed 25% of the salaries and benefits.

E. The Agency shall reimburse expenses as identified in this paragraph or as authorized in advance by the Agency Project Manager. Such expenses may include mileage for vehicles used directly for burn ban patrols at the current Internal Revenue Service (IRS) standard mileage rate. To receive reimbursement, ESD must identify on the submitted invoices a detailed breakdown of authorized expenses, identifying the nature of the expenses, and the dates expenses were incurred.

F. ESD shall submit invoices to the Agency's Manager of Finance and Purchasing (Finance Manager, Puget Sound Clean Air Agency, 1904 Third Avenue, Suite 105, Seattle, WA 98101 – 206.689.4036) and upon satisfactory performance shall be paid within thirty (30) days after review and approval by the Agency Project Manager. The final invoice must be submitted no later than thirty (30) working days after the termination date of this Agreement.

3. **Term.** The effective date of this Agreement is the date it is fully executed by the parties. No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by the Agency. Any costs incurred prior to the effective date of this Agreement will be at the sole expense and risk of ESD. The termination date of this Agreement is June 30, 2013.

4. **Relationship.** ESD and the Agency intend that an independent contractor relationship will be created under this Agreement. ESD employees or agents are not employees of the Agency and shall not be entitled to compensation or benefits of any kind other than as specifically provided herein. ESD will not hold himself/herself out as nor claim to be an officer or an employee of the Agency by reason hereof, nor will ESD make any claim of right, privilege or benefit which would accrue to an employee under the law..

5. **Payroll and Taxes.** ESD assumes full responsibility for the payment of all wages, payroll taxes, use, sales, income or other form of taxes, fees and licenses related to the actions of its employees or agents pursuant to this Agreement.

6. **Communications.** The following project managers shall be the contacts for all communications regarding the performance of this Agreement.

| ESD | Agency |
|-------------------------------------|---|
| Project Manager: Mike Kennedy | Project Manager: Kim Cole |
| ESD | Puget Sound Clean Air Agency |
| 326 East D Street, Tacoma, WA 98421 | 1904 Third Avenue, Suite 105 Seattle, WA 98101 |
| Phone: (253) 502-2162 | Phone: (206) 689-4020 |
| Fax: (253) 502-2295 | Fax: (206) 343-7522 |
| E-mail: mkennedy@cityoftacoma.org | E-mail: kimc@pscleanair.org |

6. **Changes.** The parties may, from time to time, require changes in this Agreement. The parties shall mutually agree to the changes by written amendment to the Agreement.

7. **Early Termination.** Either party may terminate this Agreement at any time with or without cause by giving a thirty (30) day written notice of such termination and by specifying the effective date of the termination; provided that the termination shall be preceded by a face-to-face meeting between ESD and the Agency. Upon termination of this Agreement, the Agency, in addition to any other rights provided in this Agreement, may require ESD to deliver to the Agency any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

8. **Subcontracting.** ESD shall not enter into subcontracts for any of the services or work contemplated under this Agreement without obtaining prior written approval of the Agency. In no event shall the existence of any subcontract operate to release or reduce the liability of ESD to the Agency for any breach in the performance of ESD's duties.

9. **Assignment.** The work provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party, in whole or in part, without the express prior written consent of the other party.

10. **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 this Agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this Agreement.

11. **Compliance with All Laws and Regulations.** The parties shall comply with all applicable local, state, and federal laws, regulations, and standards necessary for the performance of this Agreement.

12. **Choice of Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in Pierce County, Washington.

13. **Severability.** The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

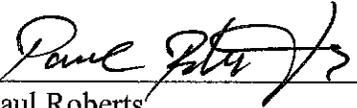
14. **Disputes.** The designated representatives herein shall use their best efforts to resolve disputes between the Parties informally and in an expeditious manner. If the designated representatives are unable to resolve a dispute, then the matter shall be referred to the Agency's Executive Director and the City's Public Works Director, or their designees for resolution. If these efforts fail, the Parties agree to engage in mediation or arbitration according to procedures and conditions mutually agreed upon by the parties, with each party bearing their own costs and sharing equally in the cost of the mediator or arbitrator's services.

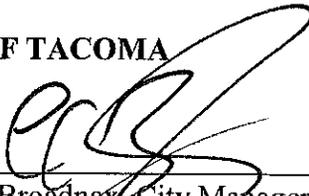
14. **Entire Agreement.** This Agreement, with Attachment A, contains the entire agreement between the parties regarding the activities ESD will perform on behalf of the Agency. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Agreement are superseded hereby.

THIS Agreement is executed by the persons signing below, who warrant they have the authority to execute this Agreement.

PUGET SOUND CLEAN AIR AGENCY

CITY OF TACOMA

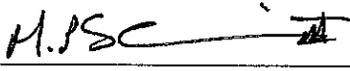
By 
Paul Roberts
Board of Directors, Chair

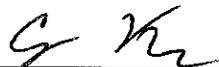
By 
T.C. Broadnax, City Manager

Date: 11/15/2012

Date: 11/21/12

Attest:

By: 
Michael P. Slevin, III, P.E.
Interim Director
Environmental Services Department

By 
Craig Kenworthy
Executive Director

Date: 11/15/12

Date: 8 NOV 12

Approved as to form:

Approved as to form:

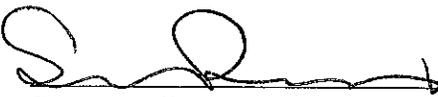

Jennifer Dold, Attorney

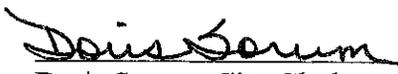

Douglas Mosich, Deputy City Attorney

Date: 11/15/12

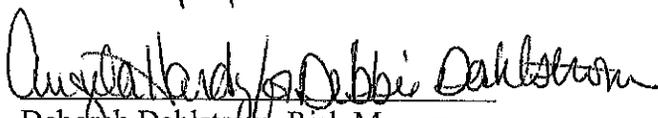
Date: 11-8-12

Attest:


Steven Call, Interim Finance Director


Doris Sorum, City Clerk

Date: 11/8/12


Deborah Dahlstrom, Risk Manager

Date: 11-21-2012

Date: 11-13-12

Attachment A of Interagency Agreement No. 2013001-0-IAA ESD

ESD Staff Hourly Rates:

Surface Water Environmental Compliance Senior Environmental Specialist
Straight Time hours (Salaried position no overtime): \$71.66/hour

Surface Water Environmental Compliance Source Control Representative
Straight Time hours (6:30AM-5:00PM, weekdays): \$57.14/hour.
Overtime hours (hours in excess of 8 hours per weekday, or 5PM-6:30AM, and/or Saturdays):
\$55.18/hour.
Double Time hours (Sundays): \$73.58/hr.

Surface Water Environmental Compliance Source Control Representative Senior
Straight Time hours (6:30AM-5:00PM, weekdays): \$61.70/hour.
Overtime hours (hours in excess of 8 hours per weekday, or 5PM-6:30AM, and/or weekend,
Saturdays): \$59.59/hour.
Double Time hours (Sundays): \$79.45/hour.

Wastewater Environmental Compliance Senior Environmental Specialist
Straight Time hours (Salaried position no overtime): \$71.19

Wastewater Environmental Compliance Source Control Representative
Straight Time hours (6:30AM-5:00PM, weekdays): \$57.37/hour.
Overtime hours (hours in excess of 8 hours per weekday, or 5PM-6:30AM, and/or Saturdays):
\$55.41/hour.
Double Time hours (Sundays): \$73.88/hour.

Wastewater Environmental Compliance Source Control Representative Senior
Straight Time hours (6:30AM-5:00PM, weekdays): \$61.70/hour.
Overtime hours (hours in excess of 8 hours per weekday, or 5PM-6:30AM, and/or weekend,
Saturdays): \$59.59/hour.
Double Time hours (Sundays): \$79.45/hour.