

INTERGOVERNMENTAL AGREEMENT NO. C1000241

BETWEEN

THE STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

AND

PUGET SOUND CLEAN AIR AGENCY

THIS AGREEMENT is made and entered into by and between the Department of Ecology, hereinafter referred to as "Ecology", and the Puget Sound Clean Air Agency hereinafter referred to as the "PSCAA".

IT IS THE PURPOSE OF THIS AGREEMENT to reimburse PSCAA for expenses incurred for utility services that support operation of monitoring equipment for the BioWatch Program.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

The PSCAA shall furnish the necessary utility service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment A attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on March 15, 2010 and be completed on June 30, 2010, unless terminated sooner as provided herein.

PAYMENT

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have determined that the cost of accomplishing the work herein will not exceed \$2,000. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount. Compensation for service(s) shall be based on the following rates or in accordance with the following terms, or as set forth in accordance with the budget in Attachment A.

BILLING PROCEDURE

The PSCAA shall submit invoices with a state invoice voucher (A19-1A). Payment to the PSCAA for approved and completed work will be made by warrant or account transfer by Ecology within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

SOURCE OF FUNDS:

The \$2,000 for this agreement is being provided by a Department of Homeland Security BioWatch grant, Agreement Number 2006-ST-091-TR005-04, Catalog of Federal Domestic Assistance Number 97.091 – BioWatch Program.

As applicable, Recipients of federal funding must comply with the following regulations:

- OMB CIRCULAR A-133** AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS
OMB CIRCULAR A-133 COMPLIANCE SUPPLEMENT
OMB CIRCULAR A-87 COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS
OMB CIRCULAR A-102 UNIFORM ADMINISTRATIVE REQUIREMENTS (THE COMMON RULE)

CERTIFICATION REGARDING SUSPENSION, DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

Federal Executive Order 12549 provides that Executive departments and agencies shall participate in a government-wide system for monitoring suspended, debarred and excluded parties. These departments and agencies have further passed this requirement onto their contractors and have provided pertinent regulations in the Code of Federal Regulations. The CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot. The web site for checking suspended, debarred or excluded parties is www.epls.gov.

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 service(s) 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. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

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 Ecology. 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.

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.

INSURANCE

PSCAA shall not provide insurance coverage for any Ecology employees or other Ecology-hired contractors for any activities conducted at the monitoring sites specified in Attachment A.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its 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 be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

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 rules;
- b. Statement of work; and
- c. Any other provisions of the agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be 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, which consent shall not be unreasonably withheld.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement including Attachment A, 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.

CONTRACT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact for all communications and billings regarding the performance of this Agreement.

The Contract/Program Manager for Ecology is:

Cheryl Witt,
Department of Ecology
PO Box 47600
Olympia, WA 98504
360/ 407 6805
cheryl.witt@ecy.wa.gov

The Contract/Program Manager for PSCAA is:

Matt Harper
Puget Sound Clean Air Agency
1904 Third Avenue, Suite 105
Seattle, WA 98101
206/ 689 4009
math@psccleanair.org

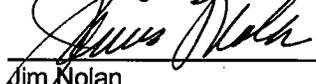
IN WITNESS WHEREOF, the parties have signed this Agreement.

State of Washington
Department of Ecology

 (for Stu Clark) 5/3/10
Stuart A. Clark Jeff Johnston Date

Air Quality Program Manager

Puget Sound
Clean Air Agency

 4/29/10
Jim Nolan Date

Interim Director

APPROVED AS TO FORM:
ATTORNEY GENERAL'S OFFICE

ATTACHMENT A

Statement of Work

PSCAA shall provide power at each of the following monitoring sites. The power provided will operate a Portable Sampling Unit of Ecology's choosing. PSCAA shall provide access keys to Ecology and Ecology contractors as jointly determined by Ecology and PSCAA for the BioWatch air monitoring sites.

Monitoring Sites include:

1. Seattle (Duwamish)
2. Kent
3. Lake Forest Park
4. Lynnwood Street
5. Tacoma South

Budget

Total budget amount to provide power for the five sites identified above not to exceed \$2,000.