

## AGREEMENT

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This 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 **Pierce County, by and through its Planning & Land Services Department and Public Works & Utilities Department**, (hereinafter referred to as "Pierce County"), 2702 S 42nd Street, Suite 201, Tacoma, WA 98409.

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**WHEREAS**, the United States Environmental Protection Agency (US EPA) has designated a portion of Pierce County 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 non-attainment 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 recommendations from the stakeholders for returning the air to attainment were finalized in a report to the Agency and the Agency's Board of Directors adopted those recommendations in Resolution No. 1238 in February 2012, and recommended measures include the use of additional field inspectors and evening enforcement during first and second stage burn bans in the fine particulate nonattainment area 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 and make progress towards meeting the National Ambient Air Quality Standard for fine particulate; and

**WHEREAS**, the Agency expects to need additional support to perform effective enforcement of burn bans; and

**WHEREAS**, the Agency and Pierce County understand the need to plan for the burn ban enforcement efforts as described herein; and

**WHEREAS**, Pierce County has personnel available within the nonattainment area during the winter season(s) and is well positioned to make observations in support of the Agency's enforcement of burn bans; and

**WHEREAS**, the Agency desires to enter into an Agreement with Pierce County for Pierce County to provide staff time for observations during burn bans as described in this Agreement; and

**NOW, THEREFORE**, the Agency and Pierce County 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 Pierce County regarding Pierce County's observations during stage one and stage two burn bans.

Based on Pierce County employees' knowledge of the local community and familiarity with environmental inspections and enforcement, Pierce County and the Agency agree that Pierce County will make observations for the Agency for stage one and stage two burn ban enforcement.

**A. Duties of the Agency**

The Agency shall:

1. Lead, coordinate, and implement the burn ban observation effort.
2. In coordination with Pierce County, develop a Detailed Work Plan to guide Pierce County staff during burn bans. The Detailed Work Plan will describe: burn ban training content and schedule(s) for assigned Pierce County staff; contacts at Pierce County when the Agency designates a stage one or stage two burn ban; geographic areas to which Pierce County staff will be assigned to patrol for burn ban observations; work shift schedule(s) for burn ban patrol(s); procedures, including deadlines, for Pierce County to submit burn ban 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 Pierce County a draft Detailed Work Plan within 14 days of the date this Agreement is fully executed. The Agency shall provide Pierce County the final Detailed Work Plan within 30 days of the date this Agreement is fully executed.
3. Train Pierce County staff on conducting burn ban observations.
4. Supervise and provide work assignments to Pierce County staff for conducting burn ban observations and related activities. This shall include notifying Pierce County staff when and where patrols will occur.
5. Provide or approve all outreach materials distributed during or in relation to the burn observation effort.
6. As deemed necessary by the Agency, provide equipment for inspections, including camera kits for burn ban observations made at night. Ownership of these items will remain with the Agency. The Agency Project Manager will use a log sheet to check in and check out the camera kits used for night observations.
7. In accordance with Section 2 "Compensation," reimburse Pierce County up to \$94,000 in Agency Fiscal Year 2014 for performing certain duties described in Section 1(B) below.
8. Closely monitor the contract amount against the invoiced amounts and ensure that Pierce County is not asked to perform burn ban patrol work beyond the budgeted amount.

9. Compensate Pierce County's Project Manager for up to 125 hours at the rate specified in Attachment A, for the administration of this Agreement, effective on the date this Agreement is fully executed.

**B. Duties of Pierce County**

Pierce County shall:

1. Provide the Agency Project Manager with the names and contact information for each Pierce County staff person assigned to perform burn ban observations and other duties as described in this Agreement within 14 days of the date this Agreement is fully executed.
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. Pierce County shall provide comments on the draft to the Agency Project Manager by e-mail within 21 days of the date this Agreement is fully executed.
3. Make all Pierce County staff assigned in Section 1(B)(1) available for all training(s) provided by the Agency regarding burn ban observations within 30 days of the date this Agreement is fully executed.
4. To the best of its ability, assure all assigned Pierce County staff are made available to patrol during both stage one and stage two burn bans as directed by the Agency. The assigned Pierce County staff shall be available on short notice (within 24 hours), and shall be available to work evenings, holidays, and/or weekends.
5. Implement the final agreed upon Detailed Work Plan. This includes ensuring all Pierce County 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 inspections with proper documentation.
6. Give Agency equipment left in Pierce County's custody the same care provided similar property of its own. Agency equipment in Pierce County's custody shall remain in the possession of Pierce County for the time period specified by the Agency Project Manager. Pierce County shall use the Agency-provided log sheet to keep an inventory of the camera kits used for burn ban observations made at night.
7. As directed by the Agency, distribute outreach materials provided by the Agency during or in relation to burn ban observations.
8. Assign Pierce County staff to participate in phone calls and in-person meetings with the Agency Project Manager and other Agency staff as needed and/or requested by the Agency.
9. Support proceedings for notices of violation and/or civil penalties issued by the Agency based on information provided by Pierce County staff, including but not limited to, participating in any administrative appeals related to issued notices or penalties.

10. Consistent with Section 2, provide monthly invoices and reports to the Agency identifying: staff hours expended to the nearest tenth of an hour, including overtime; vehicle usage (actual miles driven); and administrative costs as described in Section 2 of this Agreement.
11. Provide cell phones and computer access for Pierce County staff at no charge to the Agency.
12. Provide vehicles for all work performed by Pierce County staff pursuant to this Agreement.
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 Pierce County personnel. The Agency shall only pay for Pierce County work related directly to burn ban patrols conducted by Pierce County pursuant to this Agreement, and in addition, the Agency shall pay Pierce County for mileage and staff time spent in meeting(s), training(s), and as witnesses in any subsequent administrative hearing related to Pierce County staff burn ban observations conducted for the Agency.

B. The total amount paid by the Agency for satisfactory performance of the work under this Agreement shall not exceed \$94,000. The funding for this Agreement is provided by the Civil Penalty Fund and is part of the Agency Fine Particulate/Nonattainment work plan for Fiscal Year 2014. The Agency shall pay Pierce County at the hourly rates listed in Attachment A.

C. To obtain payment, Pierce County shall submit invoices monthly to the Agency and the invoices shall include: staff hours worked (to the nearest tenth of an hour) and showing task and/or subtask performed; the name of the staff person who performed the work; the cost per hour; the number of actual miles driven; and the specific number of hours spent within a given billing period.

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

E. Pierce County 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 ten (10) working days after the termination date of this Agreement.

F. Funding for work to be conducted after June 30, 2014 is contingent upon approval of funding by the Agency Board of Directors and satisfactory performance by Pierce County, and Pierce County shall not proceed to perform any work under this Agreement after June 30, 2014 until so authorized by the Agency Project Manager.

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 Pierce County. The termination date of this Agreement is December 31, 2014.

4. **Relationship.** Pierce County and the Agency intend that an independent contractor relationship will be created under this Agreement. Pierce County 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. Pierce County employees will not hold themselves out as nor claim to be an officer or an employee of the Agency by reason hereof, nor will Pierce County make any claim of right, privilege or benefit which would accrue to an employee under the law.

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

<b>Pierce County</b>	<b>Agency</b>
Project Manager: Kathleen Larrabee	Project Manager: Kim Cole
Pierce County	Puget Sound Clean Air Agency
2401 S 35 <sup>th</sup> Street, Tacoma, WA 98409	1904 Third Avenue, Suite 105 Seattle, WA 98101
Phone: (253)798-3628	Phone: (206) 689-4020
Fax: (253) 798-7425	Fax: (206) 343-7522
E-mail: klarrab@co.pierce.wa.us	E-mail: kimc@psccleanair.org

5. **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. Any future changes to Attachment A may be accomplished by mutual agreement of the parties through a written letter agreement or e-mail communications.

6. **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 Pierce County and the Agency. Upon termination of this Agreement, the Agency, in addition to any other rights provided in this Agreement, may require Pierce County to deliver to the Agency any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated.

7. **Subcontracting.** Pierce County 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 Pierce County to the Agency for any breach in the performance of Pierce County's duties.

8. **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.

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

10. **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.

11. **Exception.** It will not be considered a breach of agreement if the county staff are unavailable for burn ban observations due to emergency response of a localized nature (e.g., volcano erupts, flood recovery).

12. **Payroll and Taxes.** Pierce County 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.

13. **Severability.** If any term or condition of this contract or the application thereof to any person(s) or circumstances 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. To this end, the terms and conditions of this contract are declared severable.

14. **Waiver.** Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

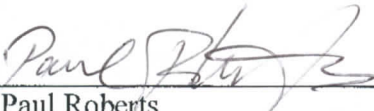
15. **Entire Agreement.** This written contract represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.


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

**PUGET SOUND CLEAN AIR AGENCY**

**PIERCE COUNTY**

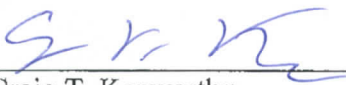
Approved as to legal form only:

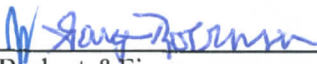
By:   
Paul Roberts  
Board of Directors, Chair  
Date: 10/11/13

By:   
Deputy Prosecuting Attorney  
Date: 9.18.13

Attest:

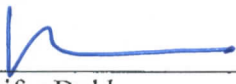
Recommended:

By:   
Craig T. Kenworthy  
Executive Director  
Date: 10/7/2013

By:   
Budget & Finance  
Date: 9/27/13

Approved as to Form:

Approved:

By:   
Jennifer Dold  
Attorney  
Date: 10/7/13

By:   
Department Director  
(less than \$250,000)  
Date: 9/13/13

**Agreement No. 2014005-0-IAA**

Attachment A of Agreement No. 2014005-0-IAA

Position	Rate of pay	Outside Billing Rate	Location	Name
Engineering Technician 2	\$31.05	\$68.57	Traffic Eng	Mike Bannon
Engineering Technician 2	\$31.05	\$68.57	Sewer Utilities	Scott Burkart
Engineering Technician 2	\$31.05	\$68.57	Traffic Eng	Chris Manners
Water Quality Specialist 2	\$29.93	\$68.57	SWM	Rhondi Felton
Water Quality Specialist 2	\$31.05	\$68.57	SWM	Dennis Lightburn
Water Quality Specialist 2	\$26.05	\$68.57	SWM	Robert Zinkevich
Engineering Technician 3	\$30.38	\$84.93	Construction Eng	Peter Lewis
Engineering Technician 3	\$37.48	\$84.93	Survey	Steve McKibbin
Engineering Technician 3	\$35.73	\$84.93	SWM	Mark Schumacher
Engineering Technician 3	\$37.48	\$84.93	Sewer Utilities	Matt Shaw
Engineering Technician 3	\$37.48	\$84.93	Sewer Utilities	Bob Wagner
Water Quality Specialist 3	\$37.48	\$84.93	SWM	Jim Gillette
Water Quality Specialist 3	\$36.63	\$84.93	SWM	Chris Greco
Water Quality Specialist 3	\$37.48	\$84.93	SWM	Clarence Johnson
Planner 2	\$35.73	\$84.97	SWM	Shelly Eisenbarth
Planner 3	\$42.51	\$84.97	Transportation P&P	Shawn Phelps
Planner 3	\$41.50	\$84.97	SWM	Rob Wenman
Planner 3	\$42.51	\$84.97	Sewer Utilities	Mike Galizio
Civil Engineer 1	\$36.63	\$88.59	SWM	Brian Bennett
Civil Engineer 1	\$33.96	\$88.59	SWM	Ryan Rutkosky
Civil Engineer 1	\$39.38	\$88.59	Traffic Eng	Eric Yannello
Civil Engineer 2	\$44.66	\$100.94	SWM	Randy Brake
Civil Engineer 2	\$44.66	\$100.96	Sewer Utilities	Jeff Roscoe
Civil Engineer 2	\$44.66	\$100.96	SWM	Doug Thompson
Maintenance Worker	\$24.02	\$55.77	Roads Maintenance	Gary O'Connor
PW Quality Assurance Tech	\$35.23	\$80.94	Roads Maintenance	Ismael Ramirez
Road Operation Field Supervisor	\$35.23	\$77.85	Roads Maintenance	Michael Lowman
Code Enforcement Officer	\$37.48	\$82.46	Solid Waste	Jim Howe
Code Enforcement Officer	\$37.48	\$82.46	Solid Waste	Ingela Gordon
Code Enforcement Officer	\$37.48	\$82.46	Solid Waste	Mark Luppino
Code Enforcement Super.	\$45.27	\$99.59	Solid Waste	Yvonne Reed
Project Coordinator	\$37.48	\$82.46	Solid Waste	Craig Swanson
Right of Way Agent	\$39.95	\$90.55	Transportation Div	Erich Hertzog
Planner 4	\$48.14	\$116.50	PALS	Kathleen Larrabee