

FUNDING and PARTICIPATION AGREEMENT

This Funding and Participation 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 **King County Solid Waste Division**, (hereinafter referred to as the "Participating Funder"), 201 South Jackson Street, Suite 701, Seattle, WA. 98104.

WHEREAS, the Puget Sound Clean Air Agency is responsible for protecting and enhancing the air quality in King, Kitsap, Pierce and Snohomish counties in Washington State and as part of its compliance and enforcement work, responds to odor issues in communities; and

WHEREAS, based on odor issues that have been raised in the Everett and Marysville area of Washington State, the Puget Sound Clean Air Agency and others in this region seek to gain more information regarding odors in this area through a technology-based community odor monitoring program; and

WHEREAS, 40% by volume of the organic material processed at the Everett facility is generated in King County including the City of Seattle. 20% originates in King County not including Seattle; and

WHEREAS, the Board of Directors of the Puget Sound Clean Air Agency deems it desirable to enter into an Agreement with the Participating Funder for the purposes of establishing, supporting and funding an integrated community monitoring program and community odor committee in the Everett/Marysville area of the State of Washington, hereinafter "Community Monitoring Program;" and

WHEREAS, the Puget Sound Clean Air Agency issued a request for proposal for a community monitoring program and as a result of that process, expects to enter into a separate contract with a consultant for the design, installation, and operation of the Community Monitoring Program; and

WHEREAS, the Agency expects that the Community Monitoring Program shall begin and the program is expected to run for approximately two years; and

WHEREAS, the lessons learned and tools refined from the Community Monitoring Program has the potential to provide relevant information regarding odors through a technology-based community odor monitoring program for other regions; and

WHEREAS, the Participating Funder represents that it is able and willing to participate in this Agreement; and

NOW, THEREFORE, the Agency and the Participating Funder mutually agree as follows:

1. **Purpose and Scope of this Agreement.**

The purpose of this Agreement is to provide partial funding for the creation and operation of a Community Monitoring Program by Odotech, Inc., including a community odor committee, in the Everett/Marysville area of the State of Washington. The Community Monitoring Program is a technology-based system intended to provide real time information about various odors in the Everett/Marysville area. The Community Monitoring Program will include a community odor observation committee comprised of community members and may include various other components, including but not limited to an audit of potential odor sources in the Everett/Marysville area; continuous monitoring of real-time emissions data from identified odor sources; consideration of continuous real-time meteorological data; and related modeling of real-time emissions and meteorological data.

The specific details and scope of the work for the Community Monitoring Program will be included in a separate contract to be executed by the Agency and a selected consultant.

The expected benefits of the Community Monitoring Program include:

- improved factual information about odors in the region
- improved flow of information and communications between the Agency, community members, and facilities in the region
- improved quality of life
- improved odor reduction measures and operations at facilities

A. Duties of Agency

Pursuant to adequate funding of the Community Monitoring Program, the Agency shall:

1. Execute a contract with a selected consultant to design, develop and operate the Community Monitoring Program;
2. Develop and maintain a budget for the Community Monitoring Program;
3. Oversee and coordinate all aspects of the Community Monitoring Program, including the budget;
4. Participate in the design, development, and operation of, and attend meetings related to, the Community Monitoring Program;
5. Provide quarterly progress reports by e-mail to all Participating Funders and receive communications from Participating Funders, consistent with Section B of this Agreement;
6. Ensure all Participating Funders are invited to relevant meetings related to the Community Monitoring Program;
7. Provide a final report by e-mail to all Participating Funders within 60 days of the conclusion of the Community Monitoring Program; and
8. Provide staffing to perform the work included within this Agreement.

B. Duties of Participating Funder

1. The Participating Funder shall contribute funds to support the Community Monitoring Program, and the Agency in performing its duties listed above, in the amount and manner described in paragraph 2 herein.
2. The Participating Funder shall cooperate with and support the purposes of this Agreement and the Community Monitoring Program. The Participating Funder will not seek to unduly influence or interfere with the Community Monitoring Program for its own private gain and at public loss. If a Participating Funder has concerns or questions regarding the Community Monitoring Program, it shall raise such concerns or questions with the Agency.

2. **Payments.** The Participating Funder shall pay a total amount of \$50,000 to the Agency for performance of the work identified in this Agreement. This total amount shall be paid by December 31, 2011.

3. **Term.** This Agreement shall be effective when signed by each Participating Funder and the Agency; this may be done by multiple original signed agreements. The termination date of this Agreement is June 30, 2013.

4. **Communications.** The following persons shall be the contact person for all communications regarding the performance of this Agreement.

King County Solid Waste Division	Agency
Project Contact: Jeff Gaisford	Project Manager: Laurie Halvorson
King County Solid Waste Division	Puget Sound Clean Air Agency
201 So. Jackson Street, Suite 701 Seattle, WA. 98104	1904 Third Avenue, Suite 105 Seattle, WA 98101
Phone: 206.296.4484	Phone: (206) 689-4030
Fax: 206.296.4475	Fax: (206) 343-7522
E-mail address: jeff.gaisford@kingcounty.gov	E-mail address: laurieh@pscleanair.org

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

6. **Termination.** Either party may terminate this Agreement at any time with or without cause by giving a thirty day (30) 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 the Participating Funder and the Agency. A notice of intent to terminate must be signed by an authorized official of the terminating entity. Termination of funds by the Participating Funder in this Agreement or termination of this Agreement shall not terminate, or effect, any other Participating Funder's Funding and Participation Agreement.

The Agency may terminate the Community Monitoring Program and/or this Agreement at any time if any funding of the Program is withdrawn, lost or reduced for any reason. If at the time of termination any collected funds remain, the Agency shall return those funds to Participating Funders on a pro-rated basis to be determined by the Agency.

7. **Subcontracting.** The Participating Funder shall not enter into subcontracts for any of the duties of 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 Participating Funder to the Agency for any breach in the performance of Participating Funder'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 and Hold Harmless.** 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. **No Admission.** The parties agree that neither is making any admission of fact or law by entering into 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. **Copyright Provisions.** Unless otherwise provided, all materials produced in relation to this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, the Participating Funder hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Agency, effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, 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.

13. **Participating Funder Not An Employee of the Agency.** The Participating Funder and the Agency intend that an independent contractor relationship will be created under this Agreement. The Participating Funder and his or her 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. The Participating Funder will not hold himself/herself out as nor claim to be an officer or an employee of the Agency or of the State of Washington by reason hereof, nor will the Participating Funder make any claim of right, privilege or benefit which would accrue to an employee under the law.

14. **Third Party Rights.** This Agreement is not intended to create any rights or causes of action enforceable by third persons not a party to this Agreement. Nothing in this Agreement may be the basis of any third party challenges or appeals.

15. **Severability.** The provisions of this Agreement are severable. If any provision is illegal or invalid for any reason whatsoever, that illegality or invalidity shall not affect the validity of the rest of the Agreement.

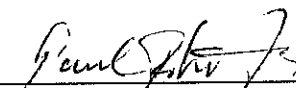
16. **Attorneys' Fees.** In the event of litigation or other action brought to enforce this Agreement, each party agrees to bear its own attorneys' fees and costs.

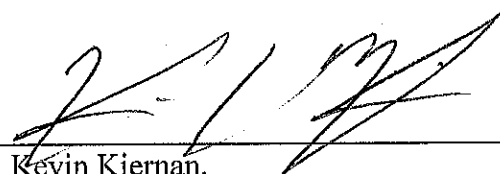
17. **Content and Understanding.** This Agreement contains a complete and integrated understanding and agreement between the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

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

PUGET SOUND CLEAN AIR AGENCY

**KING COUNTY SOLID WASTE
DIVISION**

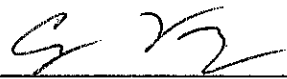
By: 
Paul Roberts
Board of Directors, Chair

By: 
Kevin Kiernan,
Director
King County Solid Waste Division

Date: 12-7-2011

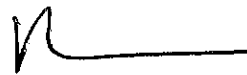
Date: 11-22-11

Attest:

By: 
Craig Kenworthy
Executive Director

Date: 12/16/11

Approved as to Form:

By: 
~~Laurie Halvorson~~ Jennifer A. Dold
~~Director of Compliance and Legal~~ Agency Attorney

Date: 12/5/11

