

PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT, made and entered into this 26th day of April, 2011, by and between the **CITY OF TACOMA**, a municipal corporation of the State of Washington (hereinafter referred to as the "CITY"), and the **PUGET SOUND CLEAN AIR AGENCY**, a municipal corporation of the State of Washington (hereinafter referred to as "AGENCY");

In consideration of the mutual promises and obligations hereinafter set forth, the Parties hereto agree as follows:

1. Scope of Services/Work

- A. The AGENCY agrees to diligently and completely perform the services and/or deliverables described in Exhibit A attached hereto and incorporated herein.
- B. Changes To Scope of Work. Changes to the general scope of services and/or deliverables may be made upon mutual agreement of the parties upon execution in writing of a change order or amendment hereto. If the changes will result in additional work effort by AGENCY, the CITY will agree to reasonably compensate the AGENCY for such additional effort up to the maximum amount specified herein or as otherwise provided by City Code.

2. Term

- A. All services shall be satisfactorily completed on or before December 31, 2013 and this Contract shall expire on said date unless mutually extended in writing by the Parties.
- B. Neither party shall be considered to be in default in the performance of this Contract to the extent such performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party and, in such event, the time for performance shall be extended for a period equal to any time lost as a result thereof. In the event AGENCY is unable to proceed due to a delay solely attributable to CITY, AGENCY shall advise CITY of such delay in writing as soon as is practicable.

3. Compensation and Payment

- A. The CITY shall compensate the AGENCY for the services and deliverables performed under this Contract as follows:

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Professional Services Contract

City of Tacoma/Puget Sound Clean Air Agency

Form Date: 6/2010

Attorney: MPL

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Check ONLY one:

- On the basis of Time and Materials according to the rates and charges set forth in Exhibit
- In accordance with Exhibit A.
- At the rate of \$ per hour.
- B.** The total price to be paid by CITY for AGENCY'S full and complete performance of the Scope of Work hereunder shall not exceed \$50,000 without the written consent of the CITY. Said price shall be the total compensation for AGENCY'S performance hereunder including, but not limited to, all work, deliverables, materials, supplies, equipment, subcontractor's fees, and all reimbursable travel and miscellaneous or incidental expenses to be incurred by AGENCY.
- C.** The AGENCY shall submit monthly invoices in a format comparable to the invoice attached hereto and identified as Exhibit B, for services completed and/or deliverables furnished during the previous month. Upon CITY'S request, AGENCY shall submit necessary and appropriate documentation, as determined by the CITY, for all invoiced services and deliverables.
- D.** Payment shall be made through the CITY'S ordinary payment process, and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
- E.** The CITY may withhold payment to the AGENCY for any services or deliverables not performed as required hereunder until such time as the AGENCY modifies such services or deliverables to the satisfaction of the CITY.
- F.** All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
- G.** In the event the AGENCY incurs cost in excess of the sum authorized for service under this Contract, the AGENCY shall pay such excess from its own funds, and the CITY shall not be required to pay any part of such excess, and the AGENCY shall have no claim against the CITY on account thereof.

4. Independent AGENCY Status

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final 3 31 11.doc

- A. The services and deliverables shall be furnished by the AGENCY as an independent AGENCY, and nothing herein contained shall be construed to create a relationship of employer/employee or master/servant between the parties. No payroll or employment taxes of any kind shall be withheld or paid by the CITY with respect to payments to AGENCY. The payroll or employment taxes that are the subject of this paragraph include, but are not limited to, FICA, FUTA, federal income tax, state personal income tax, state disability insurance tax and state unemployment insurance tax. By reason of AGENCY's status as an independent AGENCY hereunder, no workers' compensation insurance has been or will be obtained by the CITY on account of AGENCY.
- B. The AGENCY shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Contract, unless otherwise specified in writing herein.

5. Contract Administration and Right to Audit

- A. The Public Works Department/Engineering Division for the CITY shall have primary responsibility for contract administration and approval of services to be performed by the AGENCY, and shall coordinate all communications between the AGENCY and the CITY.
- B. Upon CITY's request, the AGENCY shall make available to CITY within a reasonable amount of time all accounts, records, and documents related to the Scope of Work for CITY's inspection, auditing, or evaluation during normal business hours as reasonably needed by CITY to assess performance, compliance, and/or quality assurance under this Contract.

6. Records Retention

The AGENCY and the CITY shall maintain records in accordance with requirements of the Public Records Act, ch. 42.56 RCW. The parties shall cooperate with one another in providing responses to any public records requests received by either party related to this Contract.

7. Notices

Except for routine operational communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid, to the parties at the following addresses:

CITY	AGENCY
Mark D'Andrea, P.E. City of Tacoma, Public Works/ Engineering Department 747 Market Street, Room 544 Tacoma, WA 98402-3769	Beth Carper Puget Sound Clean Air Agency 1904 Third Ave., Suite 105 Seattle, WA 98101
Phone: 253-591-5518	Phone: 206-689-4057
Facsimile: 253-591-5181	Facsimile: 206-343-7522
E-mail: mdandrea@cityoftacoma.org	E-mail: elizabethC@pscleanair.org

8. Termination

Either party may terminate this Contract at any time, with or without cause, by giving ten (10) business days written notice to the other party. In the event of termination, all finished and unfinished work prepared by the AGENCY pursuant to this Contract shall be provided to the CITY within a reasonable amount of time. In the event CITY terminates this Contract due to the CITY's own reasons and without cause due to the AGENCY's actions or omissions, the CITY shall pay the AGENCY the amount due for actual work and services necessarily performed under this Contract up to the effective date of termination, not to exceed the total compensation set forth herein.

9. Taxes

The AGENCY acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Contract, and the AGENCY agrees to comply with all applicable laws regarding the reporting of income, maintenance of records, and all other requirements and obligations imposed pursuant to applicable law.

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 Contract.

12. Dispute Resolution

In the event of a dispute pertaining to this Contract, the parties agree to attempt to negotiate in good faith an acceptable resolution. If a resolution cannot be negotiated, then the parties agree to submit the dispute to voluntary non-binding mediation before pursuing other remedies. This provision does not limit either party's right to terminate authorized by this Contract.

13. Miscellaneous Provisions

- A. Governing Law and Venue. Washington law shall govern the interpretation of this Contract. Pierce County shall be the venue of any mediation, arbitration or litigation arising out of this Contract.
- B. Assignment. The parties shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Contract or for any of the compensation due hereunder without the prior written consent of the other party.
- C. No Third Party Beneficiaries. This Contract shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.
- D. Waiver. A waiver or failure by either party to enforce any provision of this Contract shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Contract.
- E. Severability and Survival. If any term, condition or provision of this Contract is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Contract, which by their sense and context are reasonably intended to survive the completion, expiration or cancellation of this Contract, shall survive termination of this Contract.
- F. Entire Agreement. This Contract and the attached Exhibits, as modified herein, contain the entire agreement between the parties as to the services to be rendered hereunder. All previous and contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Contract are superseded hereby. The Parties hereto mutually acknowledge,

understand and agree that the terms and conditions set forth herein shall control and prevail over any conflicting terms and conditions stated in any attachments hereto.

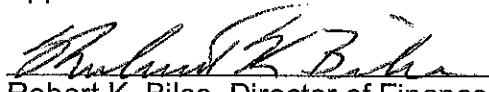
- G. Modification.** No modification or amendment of this Agreement shall be effective unless set forth in writing and signed by the Parties.
- H. Authority to enter into this Contract.** The undersigned AGENCY representative, by his/her signature below, represents and warrants that he/she is duly authorized to execute this legally binding Contract for and on behalf of AGENCY.

IN WITNESS WHEREOF the parties hereto have accepted and executed this Contract as of the day and year first written above.

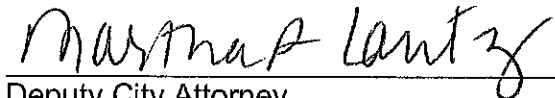
**CITY OF TACOMA, PUBLIC WORKS
DEPT/ENGINEERING DIVISION**


Richard E. McKinley, Director of Public Works

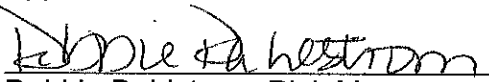
Approved:


Robert K. Biles, Director of Finance *RB*

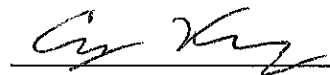
Approved as to Form and Legality:


Deputy City Attorney

Approved:


Debbie Dahlstrom, Risk Manager

PUGET SOUND CLEAN AIR AGENCY



Printed Name: Craig Kenworthy

Title: Executive Director

Address: 1904 Third Ave., Suite 105
Seattle, WA 98101

Tax ID: 91-0823558

EXHIBIT "A"

SCOPE OF WORK AND BUDGET

**PUGET SOUND LOCAL HAUL TRUCK DIESEL RETROFIT PROJECT
Puget Sound Clean Air Agency**

General

The purpose of this Contract is to provide consulting services and program support for the City of Tacoma's Puget Sound Local Haul Truck Diesel Retrofit Program as part of a \$2,500,000 CMAQ grant and a \$390,173 match from the Washington Department of Ecology.

Contract Tasks

The Agency will provide the following consulting services to the City:

- 1) General support, including but not limited to determining resources necessary to administer the project, and providing insight on potential program obstacles and feedback on processes. Agency staff will use its experience gained from implementing the current Port of Seattle ScRAPs program.
- 2) Review of documents related to program implementation.
- 3) Advice on retrofit technologies and their applicability to candidate vehicles.
- 4) Meeting attendance.

The City will discuss individual requests for consulting services verbally with PSCAA's Project Manager and will provide a follow-up request via email. If the requested task will require 8 or more hours to complete, PSCAA will provide a task budget and timeline for City review and approval. For tasks that will take less than 8 hours, PSCAA will provide the requested services as soon as possible and within 7 working days of the email request.

Contract Budget

Total costs for these consulting services are estimated in the budget below. Staff hours and personnel may shift among tasks as necessary to complete the requested work, but in no instance shall expenditures exceed the total amount shown unless directed by the City.

Table 1: Estimated budget

Contract Tasks	Hours	Personnel Hour Distribution^a	Budget^b
General Program Support	195 hours	80% Project Manager 15% Team Lead 5% Department Manager	\$17,325.00

Document Review	195 hours	80% Project manager 15% Team Lead 5% Department Manager	\$17,325.00
Expertise on Retrofit Technologies	120 hours	90% Project Manager 5% Team Lead 5% Department Manager	\$10,500.00
Meeting Attendance	49 hours	50% Project Manager 50% Team Lead	\$4,530.00
Reimbursables/Travel Expenses			\$320.00
Total			\$50,000.00

^a Project Manager Direct Salary Costs (DSC) = \$43.60/hr; Team Lead DSC=\$50.48/hr; Department Manager DSC:= \$51:30/hr

^b Budget includes fringe benefits and indirect costs: Fringe Benefits (FB)= 28.84% of DSC; Indirect Costs = 53.13% of (DSC+FB)..

Reimbursement of Funds

The total amount reimbursed shall not exceed \$50,000.

The Agency shall submit invoices requesting reimbursement monthly to the City. Invoices shall include a written summary of the work performed during the last progress period, administrative costs documenting hours worked, hourly pay rate, overhead, and indirect costs.

Reimbursement of mileage will be based on the standard mileage rate issued by the Internal Revenue Service as approved by the Agency.

EXHIBIT "B"

INVOICE

This form is intended to illustrate the information the City of Tacoma needs to process Contract payments. The City of Tacoma prefers that AGENCY use its own standard business invoice forms so long as they include the following information. AGENCY who do not have a standard business invoice form may use this form as their invoice. Your cooperation in providing the information we are requesting will ensure prompt processing of your payments.

I HEREBY REQUEST PAYMENT FOR THE FOLLOWING ITEMIZED SERVICES AND/OR PRODUCT DELIVERABLES:

Services (Describe):
Deliverables (Describe):

AS PER CONTRACT No.: _____ **AMOUNT DUE :** _____

I HEREBY CERTIFY THAT THIS BILL IS CORRECT AND JUST AND THAT PAYMENT FOR THE SERVICES AND/OR DELIVERABLES IDENTIFIED HAS NOT BEEN RECEIVED.

BY: _____ **DATE SIGNED:** _____
SIGNATURE:

TITLE: _____

ORGANIZATION NAME: _____

FEDERAL TAX ID No. or SS No.: _____

TELEPHONE NUMBER: _____

PLEASE REMIT PAYMENT TO: (PUGET SOUND CLEAN AIR AGENCY)

I Attest and Certify that all Services and/or Deliverables identified in this Invoice have been performed and/or supplied.

Contract Administrator Signature

City Dept/Division: Public Works/Engineering
Contact Name: Mark D'Andrea
Phone: 253-591-5518 Fax: 253-591-5181