

DELEGATION AGREEMENT

Between

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

And

THE CITY OF TUCSON

Delegation Agreement #ADEQ17-0003

Whereas A.R.S. §49-1010 authorizes the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to a city, town or county the authority to administer the provisions of and enforce all or any part of Chapter 6, Underground Storage Tank Regulation, of Title 49 of the Arizona Revised Statutes, and

Whereas the City of Tucson is a city (hereinafter referred to as City), and

Whereas the City is required by A.R.S. §49-106 to enforce and observe rules adopted by ADEQ and laws of the State of Arizona pertaining to the preservation of public health and protection of the environment, and

Whereas A.R.S. §41-1081 sets forth standards for delegation,

Therefore, the Director of ADEQ delegates to the City, and the City agrees to accept the delegation of authority to perform those inspection functions and duties described in **Appendix A** to this Agreement, which is fully incorporated by reference herein, on behalf of ADEQ and in accordance with the terms and conditions contained herein.

A. DELEGATED FUNCTIONS, POWERS AND DUTIES

The functions, powers and duties that are delegated by this Agreement are identified in **Appendix A**. All functions, powers and duties not specifically delegated in this Agreement are retained by ADEQ.

B. STANDARDS OF PERFORMANCE

1. The standards of performance required to adequately perform the delegated functions, powers and duties and fulfill the terms of the agreement are the same as those expected of ADEQ personnel. ADEQ policies and guidance should be used in implementing the delegated functions. ADEQ's program-specific performance expectations are identified in **Appendix A**.
2. ADEQ shall provide the City with periodic training. City personnel will be invited to attend ADEQ internal compliance and enforcement training, which will be offered at least once during an annual year. ADEQ will provide operating guidance for use in implementing the terms of this Agreement. The City should contact ADEQ for clarification or guidance on procedural or technical issues.

C. BUDGET

For each State Fiscal Year (SFY) during the term of this Agreement, ADEQ will pay the City up to a **maximum of \$15,000** based on the Inspection Type rates of **\$400.00** per UST installation or UST closure inspection and **\$250.00** per Modification inspection. Total funds available from ADEQ for this Contract shall not exceed \$15,000 for a SFY, unless otherwise amended in accordance with Section N.

D. NON-AVAILABILITY OF FUNDS

Pursuant to A.R.S. §35-214, every payment obligation of the State under this Contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

E. PAYMENT MECHANISM

Invoices shall be paid within thirty days after receipt of an invoice and accompanying report(s) that meets the Completeness Criteria in **Appendix A** for the Inspection Type completed and invoiced. Within 15 calendar days after receipt of report(s) accompanying an invoice (Invoicing Report), ADEQ may reject the report(s), in a written notice to the City, for failure to meet the required Completeness Criteria and decline to pay the invoice until a revised report(s) that meets the Completeness Criteria for the Inspection Type completed and invoiced has been submitted to

ADEQ.

F. NON-DISCRIMINATION

Pursuant to Title 41, Chapter 9, Article 4 of the Arizona Revised Statutes and Executive Order 2009-09, the Contractor shall provide access to equal employment opportunities for all persons, regardless of race, color, religion, sex, age, national origin, or political affiliation, and to all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. Both parties shall take affirmative action to ensure that applicants for employment and employees are treated without regard to race, age, color, religion, sex, or national origin and in compliance with the Americans with Disabilities Act.

G. E-VERIFY

Pursuant to A.R.S. §41-4401 each party hereby warrants its compliance with all Federal immigration laws and regulations that relate to its employees and warrants its compliance with Section A.R.S. §23-214(A). These warranties shall remain in effect through the term of the Contract. A breach of this warranty shall be deemed a material breach of the contract, subject to penalties up to and including termination of this contract. Each party retains the legal right to inspect the papers of any contractor employee who works on the contract to ensure that the contractor is complying with this warranty.

H. QUALIFICATIONS OF PERSONNEL RESPONSIBLE FOR EXERCISING THE DELEGATED FUNCTIONS, POWERS AND DUTIES.

1. The required qualifications for personnel responsible for exercising the delegated functions, powers and duties are identified in **Appendix A**.
2. The City represents that it employs all personnel required for the performance of the services under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with, ADEQ unless otherwise specified herein.
3. All the services required hereunder shall be performed by the City, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. It is further agreed that the City warrants that it is fully qualified and authorized under state and local law to perform the services contemplated under this Agreement.

I. CANCELLATION OF STATE CONTRACTS FOR CONFLICT OF INTEREST

Either party may cancel this Agreement in accordance with Paragraph O of this Agreement, without penalty or further obligation, pursuant to A.R.S. §38-511.

J. RECORD KEEPING REQUIREMENTS

Pursuant to A.R.S. §§ 35-214 and 35-215, both Parties shall retain all data, books, accounts, reports, files and other records (“records”) relating to this Contract for a period of five years after

completion of the Contract, any litigation, claim, negotiation, audit, cost recovery, or action involving the records has been completed or from the date of complete resolution of any dispute and any applicable appeals, unless a longer period is required by statute or rule.. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, either Party shall produce the original of any or all such records

K. OVERSIGHT ACTIVITIES

1. ADEQ reserves the right to accompany City personnel on inspections and may review all records relating to the performance of the activities set forth in this Agreement. Where practicable, ADEQ will provide prior notice to City of its intent to accompany City employees on inspections. City representatives may accompany ADEQ inspectors on inspections for purposes of training, information sharing or to coordinate City and ADEQ activities.
2. At least once during the term of this delegation agreement, the ADEQ delegating program shall conduct an evaluation of the delegated responsibilities. More frequent evaluations may be undertaken at the request of either party to this Agreement. The results of all program evaluations shall be in writing and shall be communicated to the City and the Office of Administrative Counsel. The results of all program evaluations are public documents pursuant to A.R.S. §39-121 *et seq.*

L. CONFLICT RESOLUTION PROCEDURES

1. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona and the Arizona Procurement Code.
2. In the event of any judicial proceeding related to this Agreement or any unauthorized Subcontract, the parties agree that venue shall be proper in Maricopa County, Arizona.
3. The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518, except as may be required by other applicable statutes. Each party shall bear its own arbitration fees, attorney's fees and costs. The decision of the arbitrator is final and binding upon the parties.

M. SUBDELEGATION

City may only subdelegate the functions powers and duties delegated pursuant to this Agreement to another local government agency or political subdivision with the prior written approval of ADEQ. Written approval may be provided by the Director, Deputy Director or appropriate Division Director.

N. AMENDMENT PROCEDURES

1. Any amendment which substantially changes any term or condition of this Agreement or Appendix A to this Agreement must comply with the provisions of A.R.S. §41-1081

For ADEQ:
Amy Aeed
UST-LUST Section
Arizona Dept. of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007

For City:
Jim Critchley, Chief
City of Tucson Fire Department
P.O. Box 27210
Tucson AZ 85726-7210

3. Either party to this Agreement may designate a new Project Manager by filing a notice with the other party in accordance with these notice requirements.

R. SEVERABILITY

The provisions of this Agreement are severable to the extent that any provision or application found to be invalid shall not affect any other provision or application of the Agreement, which shall remain in effect without the invalid provision or application.

S. PUBLIC DISCLOSURE OF TRADE SECRETS AND CONFIDENTIAL INFORMATION PROHIBITED

ADEQ and the City shall comply with prohibitions on public disclosure of trade secrets and confidential information related to critical infrastructure or petroleum products in A.R.S. §§ 27-274, 41-1803(G), 41-2065(24) and 44-1374.

T. LOBBYING

The City shall not engage in lobbying activities, as defined in 40 CFR part 34 and ARS §41-1231 *et seq.*, using monies awarded under this contract. Upon award of a contract, the City shall disclose all lobbying activities to ADEQ to the extent they are an actual or potential conflict of interest or where such activities would create an appearance of impropriety. The City shall implement and maintain adequate controls to ensure that monies awarded under a contract shall not be used for lobbying.

including Public Notice & Comment.

2. All amendments shall be in writing; shall be executed by the Director of ADEQ, the Mayor of the City, and the Clerk of the City Council; and shall be approved as to form by the Attorney General and the City Attorney.

O. TERMINATION PROCEDURES

1. This Agreement may be terminated in whole or in part by either party, with or without cause, after giving 30 days advance written notice of termination by certified mail to the other party. The notice shall specify the effective date of termination.
2. The City shall, within 30 days after the effective date of the termination of all or part of this Agreement, deliver to the ADEQ Director all finished or unfinished files, public documents or pending inspection documents received by the City for those functions, powers, and duties being terminated and a summary status report of those functions, powers, and duties, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by such termination.
3. If the Agreement is terminated, the City shall be paid for all allowable costs incurred prior to the date of termination, subject to audit verification by ADEQ or its duly authorized representative.

P. TERM OF AGREEMENT

The effective date of this Agreement is thirty days after the director gives written notice of the final decision to enter into the delegation agreement. The expiration date of this Agreement is **June 30, 2020**. In the event a new Agreement is not executed by that date, this Agreement may be extended by mutual agreement of both parties by filing an amendment in accordance with the provisions of A.R.S. §41-1081.

Q. NOTICES, CORRESPONDENCE, REPORTS AND INVOICES

1. All notices, correspondence, and reports from the Contractor shall be sent to the contact listed below, unless otherwise specified in the Scope of Work:

Laura Malone
Director, Waste Programs Division
Arizona Department of Environmental Quality
1110 W. Washington Street
Phoenix, AZ 85007
602-771-4567
llm@azdeq.gov

2. All correspondence relating to the execution of the Contract, clarification of this Contract, and Contract Amendments shall be sent to the following project managers:

**APPENDIX A
TO
DELEGATION AGREEMENT #ADEQ17-0003
with
THE CITY OF TUCSON**

Scope of Work

A. DELEGATED RESPONSIBILITIES

Program Overview

In order to enhance ADEQ's ability to effectively monitor Underground Storage Tanks (USTs), regulate them and enforce existing laws relating to USTs within the State of Arizona, the Waste Programs Division has allocated some UST Regulatory Account monies to contract with municipalities within the State to assist to assist them with scheduling, conducting and reporting on inspections of UST installations, modifications, and closures. A.R.S. § 49-1015(C)(5) authorizes use of the UST Revolving Fund for the costs incurred in administering the regulatory requirements of Chapter 6 of Title 49 of the Arizona Revised Statutes. Pursuant to this agreement, ADEQ will provide funding to the City of Tucson (hereinafter City) to conduct specific UST tank inspection and reporting activities within their fire code jurisdictions.

A.R.S. §37-1383 allows cities with populations greater than 100,000 to assume jurisdiction in fire code matters. The City meets this criterion and agrees to perform those underground storage tank management functions listed below.

Functions and Duties	Applicable Laws	Personnel Qualifications	Standards of Performance
Installation and modification project inspections	A.R.S. §49-1011 §49-1009	C.1, 2, or 3*	D.1, 2, 4, 5
Closure inspections	A.R.S §49-1008 §49-1011*	C.1, 2, or 3*	D. 3, 4, 5
Oversight	A.A.C. Title 18 Chapter 12 Article 8	Certified and licensed ADEQ UST Service Provider in the relevant category	D

* So long as the entire inspection process is the subject of Oversight by a certified ADEQ UST Service Provider licensed pursuant to Title 18, Chapter 12, Article 8 of the Arizona Administrative Code in the relevant category: “installation & retrofit;” or licensed in the appropriate category based on the type of modification being performed, or licensed in the category of “decommissioning”. Current Service Provider Certification Identification number shall be included in the Inspection Report.

To assist and support the City in implementing these delegated functions, ADEQ will:

1. Assist the City with training of inspectors.
2. Provide technical assistance to the City regarding the appropriateness of UST equipment, devices, or techniques, under applicable state and federal law.
3. Supply the City with a listing of tank closure sites, including owner/operator name, address, number of tanks, anticipated date of closure and any other pertinent information. This listing shall be provided to the City upon request.
4. Provide the City with a current listing of Leaking Underground Storage Tanks (LUST) sites upon request.
5. Pursuant to A.A.C. R18-12-271(B), grant waivers of 30 day pre-closure notification. It will remain the UST owner/operator's responsibility to coordinate the closure inspection with the City inspector.
7. Provide the City with operating guidance for use in implementing the terms of this Agreement. Guidance shall include, but is not limited to, program guidance memoranda, third party or EPA Publications, procedural guidelines and other material that may assist the City in making decisions necessary to carry out the functions, powers and duties of this Agreement. ADEQ will update this guidance material periodically as the need arises. The City is encouraged to contact ADEQ at any time to request clarification or to request that additional guidance be added to cover a particular topic.

B. EXCEPTIONS AND SPECIAL PROVISIONS

1. Authority over federal facilities, public schools, or facilities owned by state, county or municipal agencies is not delegated. Jurisdiction over such facilities shall rest with the Office of the State Fire Marshal.
2. The Office of the State Fire Marshal shall retain jurisdiction for federal facilities, public schools and state-owned or county-owned businesses.

C. PERSONNEL QUALIFICATIONS

Duties shall be performed by a person who possesses one of the following combinations of qualifications, subject to oversight as required in Section D below:

1. Qualifications combination one:
 - a. Completion of 60 credit hours of accredited college or university education in an applicable field or five (5) years of professional experience in an applicable field; and
 - b. Completion of 40 hours of Occupational Safety and Health Act (“OSHA”) Hazardous Materials Training; or completion of an International Code Council (“ICC”) Fire Inspector I and II course; and
 - c. Completion of an ADEQ sponsored inspector certification course.*

2. Qualifications combination two:
 - a. Completion of 40 hours of OSHA Hazardous Materials Training or certification by the National Fire Academy as a Hazardous Materials Substance Specialist; or completion of an International Code Council (“ICC”) Fire Inspector I and II course; and
 - b. Completion of five (5) years related professional experience; and
 - c. Completion of all OSHA refresher course training necessary to stay current with OSHA requirements; and
 - d. Completion of an ADEQ sponsored inspector certification course.*

3. Qualifications combination three:
 - a. Graduation from high school or an equivalent program (GED program); and
 - b. Completion of five (5) years of related UST inspection experience; or completion of an ICC Fire Inspector I and II course; and
 - c. Completion of 40 hours of OSHA Hazardous Materials Training; or completion of an ICC Fire Inspector I and II course; and
 - d. Completion of an ADEQ sponsored inspector certification course.*

* Dates for the ADEQ inspector certification course will be established by ADEQ.

D. STANDARDS OF PERFORMANCE

1. **Installation:** Confirm that each newly installed UST system meets all standard industry codes and performance standards for new UST systems in A.A.C. R18-12-220, to ensure the integrity and proper functioning of the tank system, including the following critical installation activities:

- Pre-Installation tank testing (air pressure test, soaping all surfaces, seams and fittings while inspected for bubbles)
- Tank site preparation including anchoring, tank placement, backfilling
- Cathodic protection installation (if necessary)
- Vent and product piping assembly
- Proper layout of piping runs, tightening of joints
- Proper installation of monitoring equipment
- Installation of tank manholes, catch basins, sumps
- Post-installation piping and tank air test prior to placing product into the tank system for the final tightness test

In addition, the report(s) must confirm that the inspection process has been effectively conducted, as follows:

- The inspection was conducted in accordance with UST System Codes of Practice and Performance Standards in A.A.C. R18-12-281; and
- The entire inspection process was overseen by a certified ADEQ UST Service Provider licensed in the category of “installation & retrofit” pursuant to Title 18, Chapter 12, Article 8 of the Arizona Administrative Code. Current Service Provider Certification Identification number shall be included in the Inspection Report.

2. **Modification:** Confirm that each modified UST system meets the following standard industry codes and performance standards, to ensure the integrity and proper functioning of the tank system:

- Any repair was conducted in accordance with requirements set forth in A.A.C. R18-12-233;
- Any retrofits or upgrades were conducted in accordance with A.A.C. R18-12-221

In addition, the report(s) must be submitted to ADEQ within seven days after the final inspection date and must confirm that the inspection process has been effectively conducted, as follows:

- The inspection was conducted in accordance with UST System Codes of Practice and Performance Standards in A.A.C. R18-12-281; and
- The entire inspection process was overseen by a certified ADEQ UST Service Provider licensed in the appropriate category based on the type of modification being performed pursuant to Title 18, Chapter 12, Article 8 of the Arizona Administrative Code. Current Service Provider Certification Identification number shall be included in the Inspection Report.

3. **Closure:** Confirm that each permanent closure (removals, closures in place and Change in Service) was completed in compliance with all requirements in A.A.C. R18-12-271 through -272, including the following critical permanent closure activities:

- All regulated product was removed from the tank, drained and flushed piping product into the tank
- The UST was emptied and cleaned (triple rinse) by removing all regulated liquids and accumulated residues
- The upper half of the UST was excavated and exposed; or the entire UST was excavated and removed to a secure location; or the UST was filled with an inert solid material; or the use of the UST system has changed from the storage of a regulated substance to the storage of a non-regulated substance.
- All tank openings have been temporarily plugged and petroleum vapors have been purged
- Fill, gauge, product and vent lines have been disconnected from the tank, unless its use has changed to the storage of a non-regulated substance
- For closures in place, open ends which are not to be used have been capped or plugged
- Sampling has been completed of soils and, if required, water and/or groundwater in the excavation zone

In addition, the report(s) must confirm that the inspection process has been effectively conducted, as follows:

- The inspection was conducted in accordance with UST System Codes of Practice and Performance Standards in A.A.C. R18-12-281; and
- The entire process was overseen by a certified ADEQ UST Service Provider licensed in the category of “decommissioning” pursuant to Title 18, Chapter 12, Article 8 of the Arizona Administrative Code. Current Service Provider Certification Identification number shall be included in the Inspection Report.

4. Coordination shall be performed by the City with local and State agencies to ensure that information regarding new UST installation, upgrading projects and closures is referred to the City in their jurisdiction. This information will in turn be passed from the City to ADEQ in monthly written reports provided to ADEQ.
5. The City shall provide ADEQ and EPA generated outreach materials to the regulated community when appropriate.

E. RECORD KEEPING AND REPORTING REQUIREMENTS

1. City shall submit a completed ADEQ Installation Report Form to ADEQ within 30 days of final inspection date provided final inspection is approved. Any deviation from UST requirements in approved plans shall be referred to ADEQ for enforcement within 30 days of performance of the inspection.

2. City shall submit an ADEQ Closure Inspection Report Form to ADEQ within 30 days of the inspection date. All suspected or confirmed releases shall be reported to ADEQ by the LA within 24 hours of discovery, as well as on the site inspection form. For laboratory sample information, the assigned number of the laboratory must be stated in report.
3. City shall submit a monthly summary of activities shall be submitted to ADEQ's Tanks Inspections and Compliance Enforcement Unit Supervisor, which contains at a minimum:
 - a. A list of facilities for which inspection reports were completed under this agreement during the month;
 - b. Tallies of the number of items completed by program area in the following categories, as appropriate, during the month:
 - (i) Facility installations;
 - (ii) Facility modifications; and
 - (iii) Facility closures.

F. AGENCY CONTACT PERSONS:

The following LA Employee has been designated as responsible for administering the functions and duties pursuant to this Appendix. The LA shall provide written notice of any successor.

Name: Jim Critchley
Title: Chief, City of Tucson Fire Department
Address: P.O. Box 27210
Tucson AZ 85726-7210
(520) 771-4828

The following ADEQ employee has been designated as responsible for administering the functions and duties pursuant to this Appendix. The ADEQ shall provide written notice of any successor.

Name: Travis Barnum
Title: Supervisor, Tanks Inspections and Compliance Enforcement Unit
Address: Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007
(602) 771-4196

The naming of a successor to either of the above individuals shall not require the re-execution of or an amendment to this Agreement.

