DELEGATION AGREEMENT

Between

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

And

THE CITY OF TUCSON

Delegation Agreement /ADEQ14-062239

Whereas A.R.S. §49-107 and A.R.S. §49-1010, authorizes the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to a local environmental agency, health department or municipality or county board of health established under Title 36, Chapter 1, Article 3, any functions, powers, and duties which the Director believes can be competently, efficiently, and properly performed by the local agency, and

Whereas the City of Tucson is a local agency (hereinafter referred to as LA) as set forth in A.R.S. §49-107, and

Whereas the LA 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. §9-240, and A.R.S. §11-952 authorizes the City Council (and by delegation the LA, where LA is a municipality) to enter into contracts as necessary to assist LA in exercising its powers, and

Whereas the LA deems that it is in its best interests to accept such delegation,

Therefore, the Director of ADEQ delegates to the LA, and the LA agrees to accept the delegation of authority to perform those functions and duties described in the Appendices A and B of this Agreement on behalf of ADEQ and in accordance with the terms and conditions contained herein.

Exhibit A to Resolution No. 22209

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 LA with periodic training. LA 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 guidance will, at a minimum, include ADEQ Engineering Bulletins, ADEQ Program Guidance Memoranda, copies of all applicable forms, policies and procedures, a bibliography of third party design publications, and other material that may assist the LA in making decisions necessary to carry out the functions, powers and duties contained in this Agreement. LA should contact ADEQ for clarification or guidance on procedural or technical issues.

C. TYPES OF FEES

1. Any fees imposed by LA shall be limited to the cost of service, including all direct and indirect costs. Fees are authorized by, and shall conform to the requirements of A.R.S. §11-251.08, A.R.S. §49-112, A.R.S. §36-187 (if LA is a county health agency); A.R.S. §49-104(B)(7), 49-104(B)(13), 49-203(A)(7), 49-49-361(2), 49-362(A)(7), A.A.C. Title 18, Chapter 14, Article 1 (water quality fees); A.R.S. §49-480 (for air quality fees); A.R.S. §49-765 (for solid waste license fees).

2. All fees collected by LA pursuant to this section may be retained by the LA in consideration for performing the functions described in this agreement.

D. QUALIFICATIONS OF PERSONNEL OF LOCAL AGENCY RESPONSIBLE FOR EXERCISING THE DELEGATED FUNCTIONS, POWERS AND DUTIES.

The required qualifications for personnel responsible for exercising the delegated functions, powers and duties are identified in Appendix A.

E. RECORD KEEPING AND REPORTING REQUIREMENTS

1. LA agrees to prepare and maintain records relating to the performance of the activities specified in this Agreement, for a period of five years, from the date of expiration, termination or cancellation of this Agreement or from the date of complete resolution of any dispute and any applicable appeals unless a longer period is required by statute or rule.

2. The LA will transmit the activity reports to ADEQ as described in Appendix A.

F. OVERSIGHT ACTIVITIES

1. Because ADEQ retains ultimate responsibility for LA's activities under this agreement, ADEQ reserves the right to accompany LA 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 LA of its intent to accompany LA employees on inspections. LA representatives may accompany ADEQ inspectors on inspections for purposes of training, information sharing or to coordinate LA 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 LA and the ADEQ Government Agreements Officer. The results of all program evaluations are public documents pursuant to A.R.S. §39-121 et seq.

3. If the transfer of funds from ADEQ to the LA occurs, ADEQ shall conduct a financial audit of the LA's use of these funds at least once every two years. Audits shall be conducted in accordance with generally accepted accounting principles.

G. LICENSING TIME FRAMES

Licenses, as defined by A.R.S. §41-1001, issued by the LA pursuant to this agreement are not subject to A.R.S. §41-1072 et seq. Licenses issued by the LA are issued pursuant to the LA's own authority.

H. CONFLICT RESOLUTION PROCEDURES

Should a conflict arise between the parties to this Agreement, resolution shall be through arbitration by a mutually acceptable third party. 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.

I. DELEGATION TO OTHER LOCAL AGENCIES AND SUBDELEGATION

LA 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.

J. AMENDMENT PROCEDURES

1. All amendments shall be in writing, shall be executed by the Director of ADEQ, the Mayor of the LA, the Clerk of the LA City Council and be approved as to form by the Attorney General and the LA City Attorney. All amendments shall be filed with the Secretary of State.

2. An amendment which substantially change any term or condition of Sections A-J or the Appendices cannot be filed with the Secretary of State until that amendment has complied with the provisions of A.R.S. §49-1081.A-H including Public Notice & Comment.

K. TERMINATION AND SUSPENSION PROCEDURES

1. This Agreement may be terminated or suspended in whole or in part by either party, upon providing 30 days advance written notice by certified mail to the other party.

2. The LA shall, prior to the termination of all or part of this Agreement, forward to the ADEQ Director all files, public documents or pending applications received by the LA 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.

L. TERM OF AGREEMENT

The effective date of this Agreement is the date of filing of this Agreement with the Secretary of State. The expiration date of this Agreement is December 31, 2018. 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.

M. NAME AND ADDRESS OF PRIMARY CONTACT PERSONS

Department of Environmental Quality
Sherri Zendri
Administrative Counsel
1110 West Washington Street
Phoenix, Arizona 85007
(602) 771-2242

City of Tucson Fire Department
Laura Baker
Deputy Chief-Fire Prevention
300 S. Fire Central Place
Tucson, AZ 85701

DELEGATION AGREEMENT #14-062239

City of Tucson

April 8, 2014

Mayor **Date**

Arizona Department of Environmental Quality

6/13/14

Director **Date**

ATTEST:

April 8, 2014

City Clerk **Date**

Pursuant to A.R.S. §11-952.D., the foregoing Agreement has been reviewed by the undersigned attorneys for the City of Tucson and the Arizona Department of Environmental Quality, who have determined that this Agreement is in proper form and is within the powers and authority granted under Arizona law to the City of Tucson.

APPROVED AS TO FORM:

By

City Attorney

APPROVED AS TO FORM:

By

Assistant Attorney General

DELEGATION AGREEMENT
THE CITY OF TUCSON - ADEQ #14-062239
APPENDIX A to Exhibit A to Resolution No. 22209

A. DELEGATED RESPONSIBILITIES

Program Overview

In order to enhance ADEQ's ability to effectively monitor, regulate and enforce existing laws relating to underground storage tanks (USTs) within the State of Arizona, the Waste Programs Division has reserved a portion of the Regulatory Account monies of the UST Revolving Fund to contract municipalities within the State to assist municipalities in setting up underground storage tank monitoring programs. LA is a municipality and has requested funding from ADEQ to install and operate a monitoring program. The purpose of this delegation agreement is to provide an increased field presence and enhance information gathering capabilities to assist ADEQ in regulating USTs.

A.R.S. §41-2163 allows cities with populations greater than 100,000 to assume jurisdiction in fire code matters. The LA falls into this criterion and agrees to perform those underground storage tank management functions which are listed below.

Functions and Duties	Applicable Laws	Personnel Qualifications*	Standards of Performance**
Installation and upgrade project inspections	A.R.S. §49-1011 §49-1009	1, 2, 3	1, 3, 4
Closure inspections	A.R.S §49-1008 §49-1011	1, 2, 3	2, 3, 4

* Notation found in Section C; Any of the above listed job levels may perform this task.
** Notation found in Section D.

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

1. Assist the LA with training of inspectors.

2. Provide technical assistance to the LA regarding the appropriateness of UST equipment, devices, or techniques, under applicable state and federal law.

3. Supply the LA 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 LA upon request.

4. Provide the LA with a current listing of Leaking Underground Storage Tanks (LUST) sites.

5. Pursue recovery of LA personnel costs through LUST Trust Fund site-specific accounting, when applicable. ADEQ agrees to keep the LA informed of current accounting procedures for LUST Trust Fund monies.

6. Grant waivers of 30 day pre-closure notification. It will remain the UST owner/operator's responsibility to coordinate the closure inspection with the LA inspector.

7. Provide the LA 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 LA 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 LA 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 Marshall.

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

1. Duties shall be performed by a person with the following qualifications:
   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;

b. completion of 40 hours of Occupational Safety and Health Act ("OSHA") Hazardous Materials Training; and

c. completion of an ADEQ sponsored inspector certification course.*

2. Duties will be performed by a person with the following qualifications:

a. completion of 40 hours of OSHA Hazardous Materials Training or certification by the National Fire Academy as a Hazardous Materials Substance Specialist;

b. completion of five (5) years related professional experience;

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. Duties will be performed by a person with the following qualifications:

a. graduation from high school or an equivalent program (GED program);

b. completion of five (5) years of related UST inspection experience;

c. completion of 40 hours of OSHA Hazardous Materials Training; 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. All facilities approved for the installation or upgrading of USTs shall be inspected by the LA staff prior to backfill to ensure conformance with plans approved by the LA. Any deviation from UST requirements in approved plans shall be referred to ADEQ for enforcement within thirty (30) days of performance of the inspection.

2. All UST closures within the jurisdiction of the LA shall be inspected for physical and visual signs of contamination. Adherence to proper tank closure procedures pursuant to A.R.S. §49-1008 and A.A.C. R18-12-271 shall be documented.

3. Coordination shall be performed by the LA with local and State agencies to ensure that information regarding new UST installation, upgrading projects and closures is referred to the LA in their jurisdiction. This information will in turn be passed from the LA to ADEQ in monthly written reports provided to ADEQ.

4. The LA shall provide ADEQ and EPA generated outreach materials to the regulated community when appropriate.

E. RECORD KEEPING AND REPORTING REQUIREMENTS

1. An ADEQ Installation Report Form shall be submitted 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. An ADEQ Closure Inspection Report Form shall be submitted to ADEQ within 30 days of the inspection date, provided no release was suspected or discovered. 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. A quarterly summary of activities shall be submitted to ADEQ's UST Inspections and Compliance Unit Manager, which contains at a minimum:
   a. A list of facilities for which inspection reports were completed under this agreement during the quarter.
   b. Tallies of the number of items completed by program area in the following categories, as appropriate, during the quarter:
      (i) facility installations
      (ii) facility closures

4. ADEQ shall provide the LA at least monthly, an updated list of planned UST installation and closure inspections. ADEQ will hold this list confidential.

5. LA shall provide ADEQ at least monthly, an updated list of planned UST installation and closure inspections known to lie within the LA's delegation area. The LA will hold this list confidential to the extent permitted by public records provisions.

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: Laura Baker

Title: Deputy Chief, Fire Prevention

Address: City of Tucson Fire Department
300 S. Fire Central Place
Tucson, AZ 85713
(520) 791-4502

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: Nick Velasquez

Title: Manager, UST Inspections and Compliance Unit

Address: Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007
(602) 771-4315

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

DELEGATION AGREEMENT
THE CITY OF TUCSON - ADEQ #14-062239
APPENDIX B to Exhibit A to Resolution No. 22209

BUDGET AND PAYMENT MECHANISM

A. BUDGET

For the period of January 1, 2014 through December 31, 2014 ADEQ shall pay LA $375 per facility installation or facility closure inspection. ADEQ and LA mutually agree to review Appendix B annually and amend as necessary.

B. PAYMENT MECHANISM:

The per facility installation or facility closure inspection fee shall be paid on a monthly basis upon receipt of an invoice indicating the number of facility inspections for the prior month.