

Delegation Agreement No. EV26-0095

between the

Arizona Department of Environmental Quality

and the

Lake Havasu City

WHEREAS, A.R.S. § 49-107 generally authorizes the Director of the Arizona Department of Environmental Quality (ADEQ) to delegate to a local environmental agency, county health department, public health services district or municipality any functions, powers, or duties (Functions and Duties) which the Director believes can be competently, efficiently, and properly performed by the local agency, and

WHEREAS, A.R.S. § 49-501(D) specifically permits the Director to delegate authority for the issuance of open burning permits to a county, city, town, or fire district, and

WHEREAS, A.R.S. § 41-1081 sets forth the standards for delegation agreements between the delegating agency and the political subdivision, and

WHEREAS, the Lake Havasu City (Local Authority or LA) meets the delegation qualification set forth in A.R.S. § 49-501(D), and

WHEREAS, the Director of ADEQ believes the LA will competently, efficiently, and properly perform the Functions and Duties covered by this Agreement, and

WHEREAS, The LA deems that it is in its best interests to accept such delegation, and

WHEREAS, this Delegation Agreement meets the standards set forth in A.R.S. § 41-1081.

THEREFORE, the Director of ADEQ delegates to the LA and the LA accepts the delegation to perform those Functions and Duties on behalf of ADEQ and in accordance with the terms and conditions contained herein.

A. DELEGATED FUNCTIONS AND DUTIES

The Functions and Duties delegated to the LA by this Agreement are identified in A.R.S. § 49-501 and A.A.C. R18-2-602 pertaining to the issuance of open burning permits.

B. STANDARDS OF PERFORMANCE

1. OPEN BURNING CONFORMANCE

In carrying out its Functions and Duties under this Agreement, the LA shall comply with the provisions of A.R.S. § 49-501 and A.A.C. R18-2-602.

2. GENERAL CONFORMANCE

Pursuant to A.R.S. § 49-106, the rules adopted by ADEQ apply and shall be observed throughout this state, or as provided by their terms, and the appropriate local officer, council or board shall enforce them. Section 49-106 does not limit the authority of local governing bodies to adopt ordinances and rules within their respective jurisdictions if those ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of ADEQ, but section 49-106 does not grant local governing bodies any authority not otherwise provided by separate state law.

3. RECORDS AND INSPECTIONS

- a. The LA agrees to prepare records relating to each of the Open Burn permits issued under this Agreement. The LA agrees to maintain each of these records for a period of five years after issuance of the respective permit and make them available for inspection by the Director as required by A.A.C. R18-2-602(G).
- b. The LA agrees to maintain and provide to ADEQ upon request a copy of each open burn permit issued in the previous calendar year and a record of daily burn activity, excluding household waste burn permits, as required by A.A.C. R18-2-602(G).
- c. ADEQ representatives may accompany employees of the LA on inspections and review all records relating to the performance of the activities set forth in this Agreement. Where practicable, ADEQ will provide prior notice to the LA of its intent to accompany the LA's employees on inspections.

4. OPERATING GUIDANCE

- a. ADEQ will provide the LA with a copy of A.R.S. § 49-501 and A.A.C. R18-2-602, an open burning permit application form, and an open burning permit form.
- b. Additional guidance may be provided on an as-requested basis. This additional guidance may include other material that may assist the LA in making decisions necessary to carry out the activities covered by this Agreement.
- c. ***The LA is encouraged to contact ADEQ at any time to request clarification or to request that guidance be provided to cover a particular topic.***

5. COMPLIANCE AND ENFORCEMENT

- a. The LA shall monitor compliance with permit conditions.
- b. Pursuant to A.A.C. R18-2-602(D)(3)(o), the LA may order that a burn be extinguished or prohibit burning during periods of inadequate smoke dispersion, excessive visibility impairment, or extreme fire danger.
- c. The LA shall initiate timely and appropriate referrals to ADEQ when necessary for enforcement actions against individuals and facilities to resolve permit noncompliance or violation of statutes and rules applicable to this Agreement, including A.R.S. § 49-501 and A.A.C. R18-2-602. When necessary, ADEQ will work with the LA to enforce the statutes and rules applicable to this Agreement.

- d. Nothing herein shall preclude the LA from independently initiating enforcement action pursuant to its own authority, including civil or criminal statute or local ordinance, or from pursuing any other available legal or equitable remedy.
- e. ADEQ retains its complete authority to take enforcement action against any individual, facility or violator covered by this Agreement or, at its sole discretion, to refrain from exercising such authority if enforcement action taken or initiated by the LA is timely, appropriate, and effective.
- f. If the LA contacts the County Attorney for enforcement assistance, the LA shall communicate the details of that request to ADEQ within 24-48 hours.
- g. The LA shall respond to imminent health hazards which fall under the LA's area of jurisdiction. ADEQ also retains any and all authority defined in A.R.S. Title 49 to respond to, abate, or eliminate an imminent and substantial danger to public health or the environment.
- h. ***The LA shall contact ADEQ with any compliance or enforcement questions or issues.***

C. TERMS AND CONDITIONS OF AGREEMENT

1. TERM OF AGREEMENT

This Agreement shall be effective 30 days after ADEQ gives written notice of its final decision to enter into this Agreement. This Agreement shall remain in effect for ten (10) years from its effective date.

2. AMENDMENT PROCEDURES

- a. This Agreement may be modified or renegotiated for additional periods upon mutual written agreement of the parties, by formal amendment executed with the same formalities as this Agreement.
- b. Amendments shall comply with the provisions of A.R.S. § 41-1081, including public notice and comment.
- c. Amendments to this Agreement shall be effective 30 calendar days after ADEQ gives written notice of its final decision to modify this Agreement.

3. TERMINATION PROCEDURES

- a. Either party may terminate this Agreement at any earlier time by providing written notice to the other party at least thirty (30) days prior to the termination date. The notice shall specify the effective date of termination.
- b. Either party may cancel this Agreement for conflict of interest in accordance with section (C)(3)(a) of this Agreement, without penalty or further obligation, pursuant to A.R.S. § 38-511.
- c. The LA shall, prior to the termination of the Agreement, deliver to the Director all files, public documents, and pending applications received by the LA for those delegated Functions and Duties being terminated, and a summary status report of those delegated Functions and Duties, and shall provide written notification of the effective date of termination to all persons with pending applications and to all regulated facilities affected by the termination of this Agreement.

4. LOCAL FEE

Pursuant to A.R.S. § 41-1083, the LA may not assess any fee, tax or other assessment in the exercise of its delegated Functions and Duties pursuant to this Agreement unless the LA is otherwise authorized by law to impose the fee, tax or other assessment.

5. PERSONNEL QUALIFICATIONS

- a. In order to assure ADEQ's delegation is competently, efficiently, and properly performed by qualified personnel, the LA agrees to authorize only fire service providers performing fire protection services within that county, city, town or fire district to issue open burning permits, pursuant to A.R.S. § 49-501 and A.A.C. R18-2-602. Qualified personnel have training in the issuance of open burning permits.
- b. LA may request and receive training by ADEQ for the issuance of open burning permits and the LA agrees to be trained by ADEQ as necessary.

6. CONFLICT RESOLUTION PROCEDURES

- a. This Agreement shall be governed by and construed in accordance with Arizona Revised Statutes Title 49 and other laws and regulations of the State of Arizona as applicable, including the Arizona Procurement Code at A.R.S. § 41-2501 *et. seq.* and administrative rules and regulations A.A.C. R2-7-101 *et. seq.*
- b. 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. *See* A.R.S. §§ 12-123 and 12-401(17).
- c. 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 (Title 41).

7. DELEGATION TO OTHER LOCAL AGENCIES AND SUB-DELEGATION

- a. ADEQ's delegation to another political jurisdiction within the LA's boundaries shall in no way infringe upon, reduce or usurp the LA's right, authority and responsibility to implement non-delegated locally authorized activities and programs.
- b. Prior to entering into any delegation agreement with another political subdivision within the LA's boundaries, ADEQ shall coordinate with both the LA and the other political subdivision on jurisdictional issues.
- c. ADEQ shall provide the LA a copy of any delegation agreement with another jurisdiction located within the LA's boundaries.
- d. Before any changes to jurisdictional boundaries are made that affect this Agreement, parties shall notify ADEQ, and ADEQ shall coordinate with the parties.
- e. The LA may not subdelegate the Functions and Duties delegated pursuant to this Agreement to another local government agency or political subdivision without first obtaining the prior written approval of the Director. Pursuant to A.R.S. § 49-501(D), with the prior written approval of the Director, the LA may assign the issuance of open burning permits to a private fire protection service provider that performs fire protection services within the LA's jurisdiction.

8. PRIMARY CONTACT PERSONS

- a. The parties shall address all notices relative to this Agreement to the following persons:

Peter Pilafas
Fire Chief
Lake Havasu City Fire Department
2330 McCulloch Blvd N
Lake Havasu City, AZ 86403
928-855-1141
pilafasp@lhcaz.gov
lhcfire@lhcaz.gov

Karla Murrieta
Unit Manager, Air Quality Permits, Air Quality Division
ADEQ
1110 W. Washington St.
Phoenix, AZ 85007
602-637-4820
murietta.karla@azdeq.gov

- b. If a party names a successor to its primary contact person, that party shall provide notice to the other party as specified in section (C)(8)(a) of this Agreement. The naming of a successor shall not require the execution of an amendment to this Agreement.

9. SEVERABILITY

In the event that any provision of this Agreement is determined to be void or unenforceable, such determination shall not affect the remainder of this Agreement, which shall continue to be in full force and effect.

10. NON-DISCRIMINATION

All Parties shall comply with all existing federal, state, and local laws, rules, policies, or executive orders, including the Americans with Disabilities Act and State of Arizona Executive Order 2023-1, to prohibit discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing the contract or subcontract.

Signatures on next page

Delegation Agreement No. EV26-0095

Daniel Czecholinski

Date:
Title: Director of Air Quality Division
Arizona Department of Environmental Quality

Jess Knudson

Date:
Title: City Manager
Lake Havasu City

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney
Date: