DELEGATION AGREEMENT # 06-0016

Between

Arizona Department of Environmental Quality

And

The City of Tucson

Whereas, A.R.S. §§ 49-107 and 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, hereinafter, Functions 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, 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 of this Agreement (Appendix A for UST Delegated Responsibilities and Appendix B for UST Budget and Payment Mechanism) on behalf of ADEQ and in accordance with the terms and conditions contained herein.

ATTACHMENT TO RESOLUTION NO. 20231

A. DELEGATED FUNCTIONS AND DUTIES

The Functions and Duties that are delegated to the LA by this Agreement are identified in Sections A through M, and in Appendices A and B. All Functions 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 and Duties and fulfill the terms of the agreement are the same as those expected of ADEQ personnel. ADEQ policies and guidance shall be used in implementing the delegated Functions and Duties. Program-specific standards of performance are identified in the Appendices.

2. ADEQ shall provide LA with periodic training. LA personnel shall be invited to attend ADEQ internal compliance and enforcement training. ADEQ shall provide operating guidance for use in implementing the terms of this Agreement within 90 days after execution of this Agreement. New or updated guidance shall be provided to LA within 30 days after the effective date of the guidance. The guidance shall, at a minimum, include ADEQ Engineering Bulletins, ADEQ program guidance memoranda, substantive policy statements including rule clarifications, copies of all applicable forms, policies and procedures, and other material that may assist the LA to carry out the Functions and Duties contained in this Agreement. LA may contact ADEQ for clarification or guidance on procedural or technical issues. In the event of any dispute between LA and a third party regarding LA's interpretation or application of ADEQ statutes, rules, bulletins, or guidelines, ADEQ shall, upon request by LA, provide timely assistance and direction to LA.

C. TYPES OF FEES

1. To the extent permitted by law, ADEQ delegates fee authority for delegated Functions and Duties. Any fees imposed by LA pursuant to delegation of authority within this Agreement shall be limited to the cost of service, including all direct and indirect costs. Fees shall conform to the requirements of A.R.S. § 49-104(B)(7).

2. All fees paid by ADEQ pursuant to Appendix B shall be retained by the LA in consideration for performing regulatory requirements of Title 49, Chapter 6 as described by Delegated Responsibilities in Appendix A in this Agreement.

D. PERSONNEL QUALIFICATIONS

1. The required personnel qualifications for exercising the delegated Functions and Duties are identified in Appendix A for UST Delegated Responsibilities.

E. RECORD KEEPING AND REPORTING REQUIREMENTS

1. LA agrees to prepare and maintain records relating to the performance of the Functions and Duties as specified in this Agreement, for a period of five (5) 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, whichever is longer, unless a longer period is required by statute or rule.

2. LA agrees to create and submit reports related to LA's performance of the Functions and Duties as specified in this Agreement. The reports shall be created by LA and submitted to ADEQ in accordance with the specifications in Appendix A for UST Delegated Responsibilities and Appendix B for UST Budget and Payment Mechanism.

F. OVERSIGHT ACTIVITIES

1. ADEQ may accompany LA personnel on inspections and may review all records relating to the performance of the Functions and Duties as 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. LA will provide prior notice to ADEQ of its request to accompany ADEQ inspectors on inspections.

2. At least once during the term of this Agreement, each ADEQ delegating program shall conduct an evaluation of the LA's performance of the Functions and Duties. More frequent evaluations may be undertaken at the request of either party to this Agreement. The initial results of all program evaluations shall be in writing and shall be communicated to the LA in a draft report. LA shall be entitled to comment on the draft report. After response to comments, ADEQ shall finalize the report and transmit a copy to LA. The final reports of all program evaluations are public documents pursuant to A.R.S. § 39-121 *et seq*.

3. ADEQ may transfer funds to LA to carry out the purposes of this Agreement. If such a 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. DELEGATION OF ENFORCEMENT AUTHORITIES; LOCAL AGENCY OBLIGATIONS

1. In carrying out its Functions and Duties under this Agreement, LA shall comply with the provisions of A.R.S. § 49-106 and observe and enforce the rules of ADEQ and laws of the State of Arizona as delegated in this Agreement.

2. ADEQ retains its authority to take enforcement action against any individual or facility the regulation of which may be covered by this Agreement. ADEQ may,

at its discretion, refrain from exercising such authority if ADEQ determines the enforcement action taken by LA is timely, appropriate and effective. Except in a case involving an immediate threat to the public health, safety or environment, ADEQ agrees to give LA 30 days written notice of its intent to initiate an enforcement action if LA fails to do so. In cases involving imminent hazards, ADEQ shall notify LA prior to undertaking such an enforcement action.

3. In those cases where the Attorney General has exclusive authority to bring an action to collect civil penalties, ADEQ shall timely notify the Attorney General of LA's intent to initiate enforcement and such enforcement shall be coordinated among LA, ADEQ, the Attorney General and LA's City Attorney.

4. In all other cases of civil enforcement, the LA and ADEQ shall coordinate litigation and settlements. LA and ADEQ may act as co-plaintiffs when possible to maximize resources.

5. Civil penalties assessed and collected under the authority of this Agreement shall be in the name of the State of Arizona and shall be forwarded to ADEQ with copies of court documentation for deposit into the state general treasury in accordance with Arizona Revised Statutes, Title 35, Article 3.

6. ADEQ may periodically develop and implement compliance initiatives directed at certain classes of violations or facilities that are in violation of applicable rules. ADEQ will provide LA with at least 30 days written notice of a compliance initiative. LA agrees that, when such initiatives involve facilities, the regulation of which has been delegated in this Agreement, it will, to the best of its ability, assure the successful implementation of such strategies as they relate to such facilities. With 30 days notice to the LA, ADEQ may implement a compliance initiative under this paragraph.

H. LICENSING AUTHORITY

Pursuant to the provisions of A.A.C. R18-1-502(A)(7), licensing time frames set forth in Arizona Administrative Code Title 18, Chapter 1, Article 5 do not apply to licenses issued by the LA when acting under the terms of this Agreement.

I. DELEGATION TO OTHER LOCAL AGENCIES AND SUBDELEGATION

1. ADEQ's delegation to a municipality within LA's boundaries shall in no way infringe upon, reduce or usurp a LA's right, authority and responsibility to implement non-delegated locally authorized activities and programs.

2. ADEQ shall provide LA a copy of any delegation agreement with a municipality located within LA's boundaries.

3. 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 of ADEQ.

J. CONFLICT RESOLUTION PROCEDURES

1. The parties may resolve a conflict arising from this Agreement through arbitration. If the parties invoke this provision, the parties shall select a mutually acceptable third party as arbitrator. Each party shall bear its own arbitration fees, attorney fees and costs.

K. AMENDMENT PROCEDURES; TERMINATION AND SUSPENSION PROCEDURES

1. Either party at any time may initiate an amendment to this Agreement. An amendment shall be in writing, shall be executed by the Director of ADEQ, the Director of the LA, the Chairman of the LA's City Council, the Clerk of the City Council and shall be approved as to form by the Attorney General and the LA's City Attorney. Amendments shall be filed with the Secretary of State and LA's City Recorder's Office. Amendments shall be effective on the date of filing with the Secretary of State.

2. 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 and in compliance with paragraph 3 of this section.

3. 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 and Duties being terminated, a summary status report of those Functions and Duties, and shall provide written notification to all persons with pending applications and to all regulated facilities affected by such termination.

4. The cancellation provisions of A.R.S. § 38-511, the terms of which are hereby incorporated herein, shall apply to this Agreement.

L. TERM OF AGREEMENT

1. 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 June 30, 2010. 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

1. Edward M. Ranger
   Administrative Counsel
   Arizona Department of Environmental Quality
   1110 W. Washington Street
   Phoenix, AZ 85007

(602) 771-2212

2. Dan Uthe
Deputy Chief Fire Marshal
City of Tucson Fire Department
797 East Ajo
Tucson, AZ 85713
(520) 791-4014

The name of a successor to either of the above individuals shall not require the execution of an amendment to this Agreement.

DELEGATION AGREEMENT # 06-0016
THE CITY OF TUCSON

APPENDIX A
Underground Storage Tanks

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 Tank Programs Division has reserved a portion of the Regulatory Account monies of the UST Revolving Fund established in A.R.S. § 49-1015 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.

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. 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.

5. 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: Dan Uthe
Title: Deputy Chief Fire Marshal
Address: City of Tucson Fire Department
797 East Ajo
Tucson, AZ 85713

(520) 791-4014

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
Phone:	(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.

APPENDIX B
BUDGET AND PAYMENT MECHANISM

A. BUDGET

For the period of July 1, 2005 through June 30, 2006 ADEQ shall pay LA $375 per facility installation or facility closure inspection. ADEQ and LA mutually agree to review and amend Appendix B annually.

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.

DELEGATION AGREEMENT # 06-0016
THE CITY OF TUCSON

Local Agency
City of Tucson

December 5, 2005

Mayor **Date**

Arizona Department of
Environmental Quality

12/22/05

Director **Date**

ATTEST:

December 5, 2005

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