

**AGREEMENT BETWEEN THE PORT OF TACOMA
AND THE PUGET SOUND CLEAN AIR AGENCY
FOR REIMBURSEMENT OF
CARGO HANDLING RETROFIT PROJECT**

This agreement is entered into between the **Puget Sound Clean Air Agency**, a municipal corporation of the laws of the State of Washington, hereinafter referred to as the "Agency" and the **Port of Tacoma** (hereinafter referred to as the "POT") 802 Port Center Road, Tacoma WA 98421-3800.

I. RECITALS

WHEREAS, the Puget Sound Clean Air Agency has established the Diesel Solutions program to promote and facilitate the retrofit of existing diesel vehicles and equipment used in public and private fleets with emission control equipment; and

WHEREAS, POT operates and maintains a fleet of diesel powered cargo handling equipment; and

WHEREAS, it is in the interest of POT, the Agency and the region to reduce air quality impacts associated with vehicles and equipment operations; and

WHEREAS, POT has voluntarily switched to ultra low sulfur diesel for all port operations, and

WHEREAS, POT has received a \$75,000 grant for partial reimbursement to purchase and install Diesel Oxidation Catalysts (DOC) on cargo handling equipment through the Environmental Protection Agency's (EPA) "Voluntary Diesel Retrofit Program Technology Demonstration Assistance Agreements To Benefit Sensitive Populations" program, Grant Number XA 832196-01-0 and

WHEREAS, the Agency previously committed to provide up to \$40,000 to cover the cost of purchasing and installing DOCs on the cargo handling straddle carriers, if the EPA grant was insufficient to cover the total cost, and

WHEREAS, POT has completed the purchase and installation of the DOCs and seeks reimbursement from the Agency in the amount of \$8,251.53 for installation expenses, and

II. AGREEMENT

NOW, THEREFORE, POT and the Agency agree as follows:

A. PURPOSE. The purpose of this Agreement is to establish procedures for the Agency to reimburse the POT for the installation costs not covered by the grant the Port of Tacoma received from EPA, EPA Grant Number XA 832196-01-0.

B. TERM. This Agreement shall commence on November 1, 2004 and shall terminate December 1, 2005.

C. REIMBURSEMENT. POT may apply for reimbursement from the Agency for the costs of installing diesel oxidation catalysts on up to 30 straddle carriers serving POT. The request for reimbursement shall be limited to the cost of labor and parts to perform the installation that exceeded the EPA grant for \$75,000.00, as described in this section.

1. The maximum amount that POT may be reimbursed by the Agency pursuant to this Agreement is \$8,251.53. Funding is provided through the State of Washington Department of Ecology Grants Number G0400074 and G0600058 for the Statewide School Bus Retrofit Program pursuant to the Agency's Diesel Solutions Ports/Marine work plan for Fiscal Year 2006.
2. POT may submit a reimbursement request to the Agency for the cost of installing diesel oxidation catalysts that was not covered by EPA Grant Number XA 832196-01-0. The reimbursement request shall contain a cover letter explaining the total cost of purchasing and installing the DOCs, less the EPA grant funding of \$75,000.00. In addition, POT shall provide documentation supporting the POT reimbursement request including the purchase orders for all DOCs and miscellaneous parts used in the installation as well as a determination of labor charges.
3. The request for reimbursement shall be sent to the Agency's Manager of Finance and Purchasing. The request for reimbursement shall be submitted no later than ten (10) working days after the termination date of this Agreement.

D. HOLD HARMLESS/INDEMNIFICATION. To the extent legally permitted, each party shall indemnify and hold harmless the other party from and against any and all claims, actions, damages, liability, and expense, including, without limitation, reasonable attorney's fees, incurred as a result of such party's actions under this agreement; provided that, if such claims, actions, damages, liability, or expense arise from concurrent negligence of two or more of the parties, including instances where this agreement is subject to the provisions of RCW 4.24.115, then the obligation to indemnify under this Agreement shall be effective only to the extent of each party's own negligence. No party shall be required under this section to indemnify another for its sole negligence.

E. NOTICES. All notices hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

To the Port of Tacoma:
Bryon Boerner
P.O. Box 1837
Tacoma, WA 98401

To the Puget Sound Clean Air Agency:
Tom Hudson
110 Union Street, Suite 500
Seattle, WA 98101

Or to such other respective addresses as either party hereto may hereafter designate in writing.

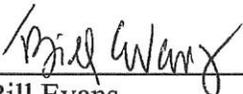
III. GENERAL PROVISIONS

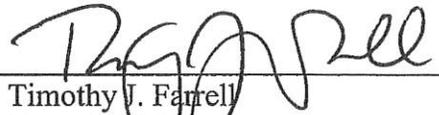
- A. APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Washington.
- B. AMENDMENTS/MODIFICATIONS.** This Agreement may be amended or modified only by written agreement of the parties.
- C. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

IN WITNESS HEREOF, the undersigned have, on the date set next to their signatures, executed this Agreement on behalf of the parties hereto.

**PUGET SOUND
CLEAN AIR AGENCY**

PORT OF TACOMA

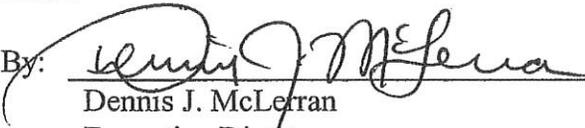
By: 
Bill Evans
Board of Directors, Chair

By: 
Timothy J. Farrell
Executive Director

Date: 12/22/05

Date: 12/06/05

Attest:

By: 
Dennis J. McLerran
Executive Director

Date: 12/16/05

Approved as to form:

By: Laurie Halvorson
Laurie Halvorson
General Counsel

Date: 12/13/05

U.S. Environmental Protection Agency
Washington, D.C. 20460

**Certification Regarding
Debarment, Suspension and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Dorcas Nepple, Director, Contracts & Purchasing
Typed Name & Title of Authorized Representative

Dorcas Nepple
Signature of Authorized Representative

12-5-05
Date

I am unable to certify to the above statements. My explanation is attached.

Instructions

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the regulation.

Where to Submit

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions.

A prospective prime contractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

How to Obtain Forms:

EPA includes the certification form, instructions, and a copy of its implementing regulation * (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies/assistance may be requested from:

Office of Grants and Debarment
Suspension and Debarment Division
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460
(Telephone: 202-260-8025)