

NO. 80328

AGREEMENT

VANCOUVER FRASER PORT AUTHORITY

AND

**PORT OF SEATTLE, A WASHINGTON MUNICIPAL CORPORATION
PORT OF TACOMA, A WASHINGTON MUNICIPAL CORPORATION
PUGET SOUND CLEAN AIR AGENCY, A WASHINGTON MUNICIPAL
CORPORATION**

AUTHORITY: Director, Environmental Programs 9 January 2008

DATE: January 1, 2008

SUBJECT: Northwest Ports Maritime Yard Truck Initiative
Phase 1

CONTRACT AMOUNT: \$21,250.00 USD

AGREEMENT

NORTHWEST PORTS MARITIME YARD TRUCK INITIATIVE, PHASE 1

This Agreement (“Agreement”) is made and dated for reference the 14th day of January, 2008, by and among the parties listed below. These parties are collectively referred to as the “Northwest Ports Maritime Yard Truck Initiative, Phase 1 Steering Committee” (hereafter, the “Steering Committee”), and individually as “Member(s).”

1. Port of Seattle, a Washington Municipal Corporation
2. Port of Tacoma, a Washington Municipal Corporation
3. Puget Sound Clean Air Agency, a Washington Municipal Corporation
4. Vancouver Fraser Port Authority, a Canada Port Authority

Additional parties may be added at a later date pursuant to the terms of this Agreement.

RECITALS

WHEREAS, fuel costs are a significant, growing, and undependable portion of port operational costs. The need for equipment and operations that use cleaner, more predictable and less expensive energy is a significant and growing need for Northwest ports; and

WHEREAS, Members support clean electric transportation, reduced environmental impacts, and taking a leadership role in efforts to combat global warming and achieve energy security; and

WHEREAS, electric yard trucks are the most technically feasible, economically attractive, and operationally efficient option to begin electrifying port terminal operations that have previously relied on diesel;

NOW THEREFORE, the Members hereby agree as follows:

1. Purpose. The purpose of this Agreement is to define the authority and responsibilities of the Port of Tacoma and the Steering Committee in Phase 1 of the Northwest Ports Maritime Yard Truck Initiative (“the Project”). The goal of Phase 1 is to produce a report which, evaluates the technical and economic feasibility for future Project phases, coordinates and expands membership and funding, verifies key technical assumptions and component availability, and elaborates a sound business case. The preliminary scope of work for Phase 1 is defined in Exhibit A. This Agreement makes reference to a “Phase 2” of the Project but does not require, imply, or govern participation of any Members in any subsequent phases or collaborations. “Phase 2” is considered the next step in the overall project. It would involve refinement of the system

design and building of one or more prototype vehicles depending on the level of funding and participation available.

2. Effective Date. This Agreement shall become effective on the day that the last of the originating Members, listed above, signs this document. The Agreement will remain in effect until June 30th, 2008, unless amended by the Steering Committee. If the Project is completed prior to this date, Agreement termination is based on the criteria described in section 4.8.2.

3. Port of Tacoma (“POT”) Responsibilities. POT agrees to the following:

3.1 Administration.

3.1.1 The POT shall designate one person to act as initial coordinator (“Coordinator”) for the Steering Committee. The Coordinator shall determine Members’ availability for meetings, notify Members of meetings, distribute materials and information as required, and facilitate meetings.

3.1.2 Any other Member of the Steering Committee may take on the Coordinator role in the future as determined by agreement of the Steering Committee pursuant to section 4.4.

3.2 Project Management.

In consultation with, and for approval by the Steering Committee, POT shall prepare a scope of work, budget and schedule for Phase 1 (the “Scope of Work”), and maintain records related to the project.

3.3 Consultant Management.

3.3.1 POT shall solicit potential qualified consultants through POT’s own contracting process.

3.3.2 In accordance with POT contracting policies and State law, and based on the recommendation of the Steering Committee as described in Section 4.7.3, POT shall select one or more qualified consultant(s) (the “Consultant”) from the list of potential candidates. POT shall execute a contract with the Consultant and pay all invoices.

3.3.3 POT shall manage performance of the Consultant’s work, which shall be performed as described in the Scope of Work.

3.3.4 The Coordinator shall act as the liaison between the Consultant and the Steering Committee, collectively and individually. POT will be responsible for all direction given to the Consultant. No

change in the Scope of Work or Consultant's contract will be effective unless issued in writing by POT.

3.4 Financial Management.

3.4.1 POT shall establish a separate fund (the "Fund") to manage the Project, and deposit all monies received from Members or any new Members added pursuant to Section 4.2, grant funds or other sources into the Fund. POT shall use monies deposited in the Fund for no other purpose than to pay the Consultant(s) and Project-related expenses.

3.4.2 POT shall invoice the Vancouver Fraser Port Authority by January 11, 2008.

3.4.3 POT shall invoice all other Members for the amounts listed in Section 4.6.1 as Project expenses are accrued based on the following schedule: when Project expenses reach \$42,500 the POT shall invoice POS for \$21,250; when expenses reach a total of \$63,750 POT shall invoice PSCAA; and when Project expenses reach \$85,000, POT will pay the remaining \$21,250.

3.4.4 POT shall provide a final financial report to the Members upon completion of Phase 1.

3.5 Grants. All Members of the Steering Committee are strongly encouraged to identify and pursue grant funds and other available monies and contributions to assist in future Project costs. The POT will coordinate application and management of grants if appropriate. If the terms of a grant fund or contribution or additional membership would substantially alter the goals of the initiative or require substantial change to any aspect of this Agreement, the parties may amend the Agreement pursuant to Section 7.

4. Steering Committee Tasks and Responsibilities. The Steering Committee hereby agrees to the following:

4.1 Members and Designated Representatives.

4.1.1 Each Member shall appoint one designated representative (the "Designated Representative"), and one alternate representative, to the Steering Committee. Each Member shall have the right to change its Designated Representative upon five (5) days written notice to each of the other Members and the Coordinator.

4.1.2 The Steering Committee shall consist of one Designated Representative from each of the Members and any additional parties added in accordance with Section 4.2.

4.1.3 All notices, draft reports, and other communications to or by a Member or the Consultant relating to the Project or the Agreement shall be sent to the Designated Representative.

4.1.4 Only the Designated Representative, or alternate representative, shall be entitled to vote on behalf of such Member in connection with Steering Committee decisions pursuant to Section 4.4.

4.2 Additional Parties. At any time during the course of Phase 1, additional entities that have interest in participating in the Project may, with the unanimous written consent of the Steering Committee, become signatories to this Agreement by executing and delivering a counterpart hereof and by making a significant financial contribution to the Project in an amount to be proposed by the new participant and approved by the Steering Committee, which then enables the new signatory to become a Member. New Members must accept the Steering Committee decisions that have been made to date.

4.3 Administration. The Steering Committee shall hold such meetings as it deems necessary, which may be called at any reasonable time by any Designated Representative. Meetings may be in person, by teleconference or a combination thereof.

4.4 Decision-making. A Steering Committee meeting or teleconference cannot be held unless a majority of the Designated Representatives (or alternate representatives) are present or available by telephone. The goal of the Steering Committee is to reach decisions by consensus, *i.e.* a unanimous vote of all Members, with each Member being entitled to one vote. The Members shall endeavor in good faith to reach consensus in resolving all matters to be decided by the Steering Committee. However, if a pending decision has been discussed at two (2) Steering Committee meetings without reaching consensus, at the conclusion of the second meeting the decision shall be made by majority vote of the Members present.

4.5 Withdrawal. Each Member, including the POT, shall have the unilateral right to withdraw at any time, upon thirty (30) days written notice to the Steering Committee. However, a withdrawing Member is not entitled to a refund of the payment described in Section 4.6.

4.5.1 If POT were to withdraw from the Project, it must complete the following tasks prior to withdrawal:

4.5.1.1. The Consultant must be paid for any and all work that was incurred prior to POT's withdrawal announcement.

4.5.1.2. The Coordinator will provide each Member with an electronic copy of the most final work product produced prior to POT's withdrawal announcement.

4.5.1.3. POT shall return any remaining funds to the Members proportional to the amounts contributed.

4.6 Payments

4.6.1 Majority Payment: After receiving the invoice described in Section 3.4.2 and 3.4.3, each Member shall transmit a check, in the US dollar amount listed below, payable to the Port of Tacoma, in consideration for its participation in Phase 1 and eventual receipt of the Final Phase 1 Report.

- 4.6.1.1. Port of Tacoma: \$21,250
- 4.6.1.2. Port of Seattle: \$21,250
- 4.6.1.3. Puget Sound Clean Air Agency: \$21,250
- 4.6.1.4. Vancouver Fraser Port Authority: \$21,250

4.6.2 Excess Funds. At the conclusion of Phase I, if the Steering Committee decides to proceed pursuant to Section 4.8.2, any unexpended funds may be applied to the second phase of the Project (“Phase 2”). In the event that some or all Members decide not to proceed with Phase 2, excess Funds from Phase 1 will be returned to the Members, pro-rated in accordance with the portion of each Member’s original contribution.

4.7 Management Tasks.

4.7.1 The Steering Committee shall work with POT to finalize and approve the Scope of Work. Only following this approval can the Project begin to incur expenses.

4.7.2 With the understanding that substantive changes may be needed to the Scope of Work as new information becomes available during Phase 1, the Steering Committee may amend the Scope of Work as necessary to achieve an acceptable work product or accommodate additional funding.

4.7.3 The Steering Committee shall function as a consultant selection team. The Steering Committee shall review the list of consultants proposed by POT and recommend a consultant for selection.

4.7.4 POT will circulate a draft Phase 1 Report to Members for comment before the Final Phase 1 Report is prepared. The Steering Committee shall approve the Final Phase 1 Report, and some or all Members may make a decision to proceed or terminate, as further described in Section 4.8.

4.8 Final Phase 1 Report Approval and Decision to Proceed or Terminate.

4.8.1 Final Report: The Final Phase 1 Report shall contain sufficient analysis to enable the Steering Committee to make a judgment as to the technical, economic, and political feasibility of pursuing Phase 2 (“the Phase 2 Decision”). As mentioned in Section 1, Phase 2 would involve the actual building of at least one prototype Electric Yard Truck to be operated, tested, and refined under terminal conditions under the auspice of participating Port Members and their partner terminals.

4.8.2 Decision to Proceed to Phase 2: The Steering Committee will meet within 30 days of receipt of the Final Phase 1 Report and will make the Phase 2 Decision. The Steering Committee will make one of three conclusions regarding the Phase 2 Decision and some or all Members may take the associated action:

4.8.2.1. Proceed without reservation: The Final Phase 1 Report has adequately described the technical and economic feasibility of the Project and necessary technical and financial resources have been identified to support Phase 2. In this case, some or all Members may negotiate a new or amended Agreement for the subsequent Phase 2.

4.8.2.2. Proceed with reservation: The Final Phase 1 Report has adequately described the technical and economic feasibility of the Project but not all necessary technical or financial resources have been identified to support Phase 2. In this case, within 90 days of the Phase 2 Decision, the Steering Committee will create a plan describing steps needed to address any impediments preventing the Project from proceeding. Members agree to undertake the steps of that plan insofar as they do not require significant financial contributions beyond those described in section 4.6. In this case, some or all Members may negotiate a new or amended Agreement for the subsequent Phase 2.

4.8.2.3. Do not proceed: The Final Phase 1 Report has not adequately described or has illustrated a fatal flaw in the technical or economic feasibility of the Project and there is no reasonable way to proceed to Phase 2 at this time. In this case, the Steering Committee will compose a brief statement detailing its decision and the Agreement will terminate sixty (60) days after the Final Phase 1 Report is issued, or payment of the final Consultant invoice, whichever is later.

4.9 If the Steering Committee agrees that future Project phases are likely, some or all Members may recruit and appoint additional Members to advisory groups to support future phases of the Project. Prior to recruitment, an amendment to the Agreement will be drafted by the Coordinator and approved by those Members choosing to participate in future phases of the Project, detailing the roles and requirements for each additional group. Additional groups may include, but not be limited to, a technical work group and a communications and outreach group.

4.10 Public Communication. Members agree to endeavor to exercise good judgment and to act in the best interests of the Steering Committee in communicating in any manner with any governmental agencies or other entities concerning the subject of this Agreement. Substantive communications by a Member with such third parties concerning the subject of this Agreement should be disclosed to the other Members. Members shall not hold public meetings, press conferences, or issue press releases concerning the subject of this Agreement without obtaining the prior consent of the Steering Committee.

5. No Admission of Liability. A Member's participation in the Steering Committee and compliance with this Agreement shall not be considered an admission of liability for any purpose.

6. Enforceability by Third Parties. This Agreement is not intended for the benefit of any person or entity not a signatory to this Agreement and is not enforceable by any third party.

7. Amendments. This Agreement may be amended only by the unanimous written approval of the Members, by receipt of written concurrence from each Member's signing authority. Such amendments shall become effective on the date written notice of such amendments is postmarked to all Members. However, nothing in this Section prohibits Members from entering into separate agreements with other Members, and unanimous approval is not required for such separate agreements.

8. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder shall release the assigning Member without the prior written consent of the other Members.

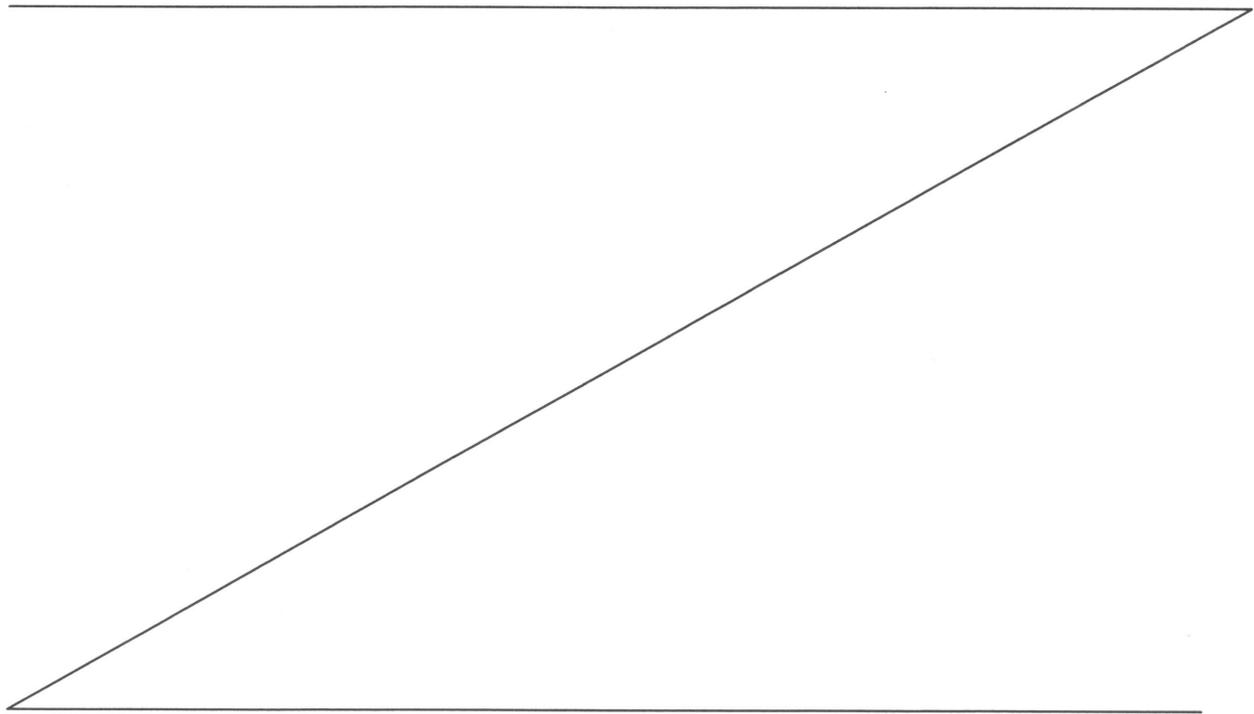
9. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of the Agreement shall remain in full force and effect, provided that such remaining provisions are still reasonable within the context of this Agreement.

10. Authority of Members. Each Member represents and warrants that he or she has all requisite power (corporate or otherwise) to enter into and be bound by the terms and conditions of this Agreement and to carry out its respective obligations

hereunder and the execution and delivery by such Member of this Agreement and the performance of such Member's obligations hereunder have been duly authorized by all necessary action (corporate or otherwise) of such Member. Each Member expressly disclaim any intention to create a partnership, joint venture or agency. It is understood, acknowledged and agreed that nothing contained in this Agreement shall constitute or be deemed to constitute the Members as partners, joint venturers or principal and agent in any way or for any purpose. No Member shall have any authority to act for or to assume any obligations or responsibility on behalf of any other Member.

11. Counterparts. This Agreement may be executed by facsimile or other electronic means and in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument and shall become effective when one or more of the counterparts have been signed by all the Members and delivered to each of the Members. All counterparts will be construed together and evidence only one agreement which will be deemed to be dated the reference date set out above.

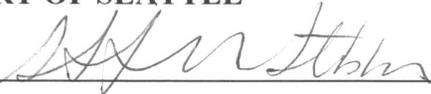
12. Governing Law. This Agreement shall be construed under and in accordance with laws of the state of Washington and venue shall lie in Pierce County Superior Court, except for any action against the Vancouver Fraser Port Authority, in which event the laws of the Province of British Columbia and the laws of Canada applicable therein shall govern in all respects, including validity, interpretation and effect, by and in cases where federal and provincial laws conflict, the federal law shall prevail and in such instance parties shall attorn only and exclusively to the jurisdiction of courts of the Province of British Columbia save and except in the circumstance where the Federal Court has exclusive jurisdiction.



13. Entire Agreement. This Agreement, including documents incorporated by reference, constitutes the entire agreement of the Members with respect to its subject matter.

IN WITNESS WHEREOF, the Members hereto enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the corporation, entity or municipality on whose behalf the person is signing.

PORT OF SEATTLE

By: 

Name: STEPHANIE JONES Stebbins

Position: SR. Manager, Secyrd Env. Programs

PORT OF TACOMA

By: 

Name: Sue Mauermann

Position: Director, Environmental Programs

PUGET SOUND CLEAN AIR AGENCY

By: 

Name: Dennis J. McLerran

Position: Executive Director

VANCOUVER FRASER PORT AUTHORITY

By: 

Name: Darrell Desjardins

Position: Director Environmental Programs

By: 

Name: J. Dean Readman

Position: Corporate Secretary

Exhibit A – Initial Draft Scope of Work for Phase 1

Phase 1 Scope of Service:

To accomplish Phase 1 of the Project, the work has been divided into 4 categories to include, but not be limited to, the following four elements:

1) Technical System Design and Proof of Viability

Design and integrate major components and systems to retrofit and fully re-power an existing diesel powered yard truck to be battery-electric. The battery-electric yard truck must be capable of duplicating the duties and performance of the existing diesel powered yard truck with above-average loads in standard terminal operating conditions with no significant impact on operational efficiency or vehicle performance. The system will have to include a regular recharging scheme that can be accommodated within the times and phases of standard terminal operations, have a design life equal to or exceeding existing vehicle life, and have significant net-lower lifetime operating costs in full scale production.

The result of this portion of the work will be a clear and specific description of the major components involved in the retrofit, how they will be integrated to create a fully functional system, and rigorous proof that the components and integrated package will meet the proposed specifications in a commercially cost-effective manner.

This portion of the work will also specify key technical requirements and costs for the fixed, terminal-based charging systems and infrastructure with a description of the specific requirements for grid power supply, location, and other operational concerns at partner terminals at each participating Port.

This section will also estimate the total costs of routine, non-critical components in the prototype, requirements for labor and machining resources, further engineering and design needs, and any other significant resources needed during Phase 2 of the project.

2) Specification and Secured Sourcing of Major Components

For the key systems listed in item (1) of this section, provide a detailed list of the critical components best suited for the application with an associated price for a prototype scale project and projected price in a future commercial manufacturing scenario. For each of the specified critical components, secure a written commitment from the supplier to provide the component or system in sufficient quantity for up to three prototype systems to be manufactured in Phase 2 of this project. Written commitments must include a price that would be reasonable in the overall context of a prototype design or an agreement to provide the component under acceptable terms.

For each critical component, provide a list of alternative parts or technologies available (whether better or worse than selected option) with a discussion of the technical and economic trade-offs. Where possible, all specified components should be evaluated and verified for their availability for commercial production.

3) Commercial Viability

The product of this section will use better researched and refined data to enhance the estimated and anecdotal values used for the original business case in the original Project proposal.

These values will be derived from compiling actual operating costs from participating ports and terminal operators. Costs associated with electric power supply and use, maintenance, and operation of the re-powered yard truck will be projected based on best available data and reported with average and 95th percentile values based on projected future energy, labor, and technology costs.

The business case will also describe the benefits generated specifically for the Ports who are participating in this project, benefits to the regional economy, and potential impact on the broader maritime industry. An important aspect of this section will be a consideration of the current and future markets for yard trucks in the US and worldwide.

Additional topics to be addressed in this section:

- Risks or pitfalls associated with prototype development or commercialization.
- Options and opportunities for profit sharing, royalties, or other future revenue generating arrangements should be considered.
- Overall life-cycle environmental costs and benefits with specific discussion of greenhouse gas reductions and benefits for local air and water quality compared to diesel powered equipment.
- Rationale for a retrofit system rather than a full vehicle redesign
- Effects of existing, pending, and potential future incentives, regulations, or political conditions to help or hinder a commercial EV yard truck.

4) Partnerships and Funding for Subsequent Phases

Given that the initial Members are not likely be able to provide the entire required funding and support for subsequent project phases, successfully moving on to a prototype development phase will require significant additional funding, support, and cooperation with other industrial and public organizations. This section of Phase 1 will require coordinating with the initial project Members to assemble a network of funding and support that will be sufficient to ensure that Project Phase 2 can commence in Spring, 2008.

Key aspects of this section include:

- A discussion of available arrangements for cooperation, oversight, direction, and funding of subsequent project phases with the benefits and risks associated with each.
- Identify and enlist participation of key stakeholders from the public and private sector who would contribute critical financial, political, or technical resources.
- Describe necessary legal arrangements and costs/returns available for each model of funding and membership.

Phase I Schedule and Budget

Phase I is expected to take six months, once the consultant has begun work.
The cost is expected to be \$85,000.