

**AGREEMENT BETWEEN THE PORT OF TACOMA AND THE PUGET SOUND
CLEAN AIR AGENCY TO REIMBURSE THE PORT OF TACOMA FOR
PURCHASING AND INSTALLING DIESEL PARTICULATE FILTERS AT
MARINE TERMINALS IN TACOMA, WASHINGTON**

This agreement is entered into between the **Puget Sound Clean Air Agency**, (hereinafter referred to as the "Agency"), a municipal corporation of the laws of the State of Washington, and **Port of Tacoma**, (hereinafter referred to as the "Port"), One Sitcum Plaza, Tacoma, WA 98401-1837.

I. RECITALS

WHEREAS, the Puget Sound Clean Air Agency has established the Diesel Solutions program to reduce emissions from diesel engine exhaust by retrofitting existing diesel vehicles, vessels and equipment used in public and private fleets with emission control equipment; and

WHEREAS, the Puget Sound Maritime Air Emission Inventory has identified diesel exhaust from Northwest marine terminals as a significant source of toxic air contaminant emissions; and

WHEREAS, the Agency has identified reductions of diesel emissions from maritime related operations, such as marine terminal operations using diesel powered cargo-handling equipment (CHE), as a priority to the region; and

WHEREAS, retrofitting CHE with diesel particulate filters (DPFs) has been demonstrated to be effective in reducing toxic air contaminant emissions and other air quality impacts, and

WHEREAS, the Port leases property to marine terminal operators, such as Washington United Terminals ("WUT"), Husky Terminal & Stevedoring Incorporated ("Husky"), Maersk Pacific Ltd. ("Maersk"), Evergreen Marine Corporation ("Evergreen") and Marine Terminals Corporation ("MTC"), who have volunteered to have DPFs installed on CHE used at their facilities; and

WHEREAS, it is in the interest of the Port, marine terminal operators and the region to reduce toxic air contaminant emissions and other air quality impacts associated with diesel powered CHE operations.

II. AGREEMENT

NOW, THEREFORE, the Port and the Agency agree as follows;

A. PURPOSE. The purpose of this Agreement is to establish procedures for the Agency to reimburse the Port for up to half the cost of purchasing and installing DPFs on CHE operated at the Husky, Maersk, Evergreen and MTC marine terminals located within the Port's jurisdiction.

B. TERM. This Agreement shall commence on February 15, 2008 and shall terminate on June 30, 2008.

C. CONDITIONS OF REIMBURSEMENT. The Port may submit a reimbursement proposal via email to the Agency Project Manager for up to half the cost of purchasing and installing DPFs on CHE operated at Husky, Maersk, Evergreen and MTC marine terminals, in accordance with Section II D. of this Agreement. The reimbursement proposal shall include the amount of reimbursement sought by the Port and the amount the Port or Port tenant will pay.

In addition, the Port's proposal shall include a Microsoft Excel Spreadsheet documenting the following information regarding the CHE to be retrofitted and the DPF equipment to be installed:

- name and address of the marine terminal where the CHE will be operated;
- type of CHE;
- CHE engine manufacturer;
- CHE engine year;
- CHE horse power;
- CHE equipment identification number;
- DPF manufacturer;
- DPF model number;
- DPF serial number;
- DPF purchase cost;
- DPF installation cost; and
- DPF installation date.

The Agency will evaluate the reimbursement proposal and decide whether to approve or deny the request. Approval of any proposal is at the discretion of the Agency. If the Agency approves the request, the Project Manager will send written approval to the designated Port representative and authorize the Port to proceed.

Based on the Agency's approval of the reimbursement proposal, the Port shall enter into a written agreement with the Port's tenant marine terminal operator(s). The Port's agreement with its tenant(s) shall include provisions requiring that the DPFs installed in accordance with the Agency approved reimbursement proposal remain in service within the State of Washington for at least three years from the date of equipment installation. In addition, the Port tenant agreement shall require that the Port tenant notify the Port at least two weeks in advance of the tenant's intent to sell or relocate one or more of the DPF(s) out of the State of Washington. The Port shall submit a copy of the Port tenant agreement to the Agency prior to purchasing any DPF(s). The Port shall make a written record that the DPF(s) is operating at the location identified in the approved reimbursement proposal by June 30th of each year of the three year term of service. The Port shall submit the written records to the Agency Project Manager on request.

If the Port tenant sells or relocates a DPF(s) within the State of Washington, the Port shall send an amendment to the reimbursement proposal notifying the Agency of the intent to relocate the DPF. The Port's amendment shall contain a revised Microsoft Excel Spreadsheet showing all the original date entries and all new data caused by the sale or relocation. The Port shall continue to make written records as required by the Agreement prior to the sale and relocation. No approval by the Agency is required to relocate the DPF to another application within the State of Washington. The Port shall submit the written records to the Project Manager on request.

If a Port tenant desires to sell or relocate one or more of the DPF(s) out of the State of Washington before completing the three-year term of service, the Port shall notify the Agency in writing, in advance, of one or more DPF(s) being physically relocated out of the state. The Agency may recover half the pro-rated cost for the DPFs that did not complete the three year term of service. Reimbursement to the Agency shall be based on the number of months remaining in the three-year period, and the pro-rated share of half the purchase price and installation cost of the DPF(s), or \$3,000, whichever is lower.

For example, if a CHE was retrofitted with a DPF on June 15, 2008 at a cost of \$7,000, then relocated out-of-state 9 months later on March 15, 2009, the Port would be required to reimburse the Agency \$2,250, calculated as:

$$(27 \text{ months remaining} \div 36 \text{ months total}) \times \$3,000 = \$2,250$$

The Port shall make the reimbursement payment to the Agency within two weeks after the date the DPF is sold or relocated out-of-state.

D. REIMBURSEMENT. The Port may apply for reimbursement from the Agency for the costs of purchasing and installing DPFs in accordance with the Agency approved reimbursement proposal, as described in this section.

1. The maximum amount paid by the Agency under this Agreement shall not exceed \$40,000. Funding is provided through the State of Washington Department of Ecology Grant Number G0600058 for the Statewide School Bus Retrofit Program and pursuant to the Agency's Diesel Solutions Marine work plan for Fiscal Year 2008.
2. In addition, the Port may submit a request for reimbursement to the Agency for no more than 50 percent of the cost of purchasing and installing the DPFs. The Port shall provide documentation supporting the reimbursement request, including invoices for purchasing and installing the DPFs. The documentation shall include the date of installation.
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.

E. 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.

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

Tom Hudson, Project Manager
Puget Sound Clean Air Agency
1904 3rd Ave., Ste 105
Seattle, WA 98101

Cindy Lin
Port of Tacoma
One Sitcum Plaza
Tacoma, WA 98401-1837

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: Paul Roberts
Paul Roberts
Board of Directors, Chair

By: Dorcas Nepple
Dorcas Nepple
Contracts Director

Date: 3/6/08

Date: January 28, 2008

Attest:

By: Dennis J. McLerran
Dennis J. McLerran
Executive Director

Date: 2/28/08

Approved as to Form:

By: Laurie Halvorson
Laurie Halvorson
General Counsel

Date: 3/27/08

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, Contracts Director
Typed Name & Title of Authorized Representative

Dorcax Nepple
Signature of Authorized Representative

1/28/08
Date

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

Terminal	Address
Evergreen	3600 Port of Tacoma Rd. Suite 303, Tacoma, WA
Washington United Terminals (WUT)	1815 Port of Tacoma Rd., Tacoma, WA 98421

Terminal	CHE Type	Engine Make	Engine Year	Engine Model	Engine Horsepower	CHE ID #
Evergreen	Straddle Carrier	CAT	2005	C12	455	
Evergreen	Straddle Carrier	CAT	2005	C12	455	
Evergreen	Side Pick	Cummins	2005	6 CT	210	
WUT	ReachStacker	Volvo	1998	TWD1231VE	375	201
WUT	ReachStacker	Cummins	1998	M-11	330	204

98421

DPF Make	DPF Model	DPF Serial #	DPF Purch Cost	DPF Install Cost	DPF Install Date
Sud-Chem	EnviCat		\$5,850.00	1300 + Costs	
Sud-Chem	EnviCat		\$5,850.00	1300 + Costs	
Sud-Chem	EnviCat		\$5,850.00	1300 + Costs	
Donaldson	LTF		\$8,928.37	TBD	