

**Agreement Between The Port of Tacoma and the Puget Sound Clean Air Agency for Funding the Off-Highway Truck Replacement and Retrofit of Cargo Handling Equipment at Marine Terminals**

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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 the **Port of Tacoma** (hereinafter referred to as the "Port"), 802 Port Center Road, Tacoma, WA 98421-3800.

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**I. RECITALS**

**WHEREAS**, the air quality of Wapato Hills/Puyallup River Valley violates national ambient air quality standards and has been designated by the Environmental Protection Agency as "non-attainment" for fine particulate matter; and

**WHEREAS**, the Puget Sound Maritime Air Emissions Inventory has identified diesel exhaust from Northwest marine terminals as a significant source of fine particulate matter; 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 in the region; and

**WHEREAS**, the mission of the Port is to create sound economic growth in Pierce County and Washington State, and without significant reductions, commercial growth in the Port may be limited in the future; and

**WHEREAS**, the Port has adopted the Northwest Ports Clean Air Strategy, the goal of which is to reduce air emissions from current and future maritime, port operations in the Pacific Northwest through specific strategies and actions within each category of port operation; and

**WHEREAS**, reducing diesel emissions from cargo-handling equipment is a priority in the Northwest Ports Clean Air Strategy; and

**WHEREAS**, the 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 Agency received Grant No. DE-96085001-0 from the U.S. EPA on January 15, 2009 under the Diesel Emissions Reduction Act ("DERA") to replace or retrofit cargo-handling equipment at Northwest ports; and

**WHEREAS**, the Port has committed \$100,000 in support of this DERA grant-funded project to help pay for retrofits at the Port that improve air quality and allow commercial growth at the Port; and

**WHEREAS**, the Agency will be responsible for administering all retrofit and replacement contracts, under the terms of the grant.

## II. Agreement

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

- A. **Purpose.** The purpose of this Agreement is to establish procedures to implement the Agency's grant-funded Diesel Solutions program so that targeted cargo handling equipment can be retrofitted at container terminals within the Port to improve air quality and allow future growth.
- B. **Process.** The Port will transfer funds to the Agency as part of the DERA grant funded retrofit and replacement effort and assist the Agency in gathering equipment data lists for each terminal participating in this project. The Agency is the recipient of a \$850,000 Federal DERA Grant No. DE-96085001-0. A copy of the grant agreement is attached as Attachment "A" and is hereby incorporated as part of this agreement. Under the terms of the grant, the Agency agrees to contribute funds totaling \$118,000 and the Port of Tacoma and Port of Seattle each agree to contribute \$100,000 to the Agency. The total amount of funds available under this grant is \$1,168,000.
- C. **Term.** This Agreement shall commence February 28, 2009, and it shall terminate December 31, 2010.
- D. **Port Responsibilities.**
  - a. The Port agrees to provide the Agency with a list of the cargo-handling equipment at each terminal participating in this grant-funded retrofit and replacement project. The list will include the terminal name, type of cargo-handling equipment, ID number, and status of the equipment as a retrofit

candidate. The Port will submit the list to the Agency within 30 days of signing this Agreement. The Agency will not issue a request for proposals to conduct the work for this off-highway truck replacement and cargo handling equipment retrofit project until the Port submits this list to the Agency.

- b. The Port agrees to transfer \$100,000 to the Agency, which payment shall be used solely for the purchase and installation of cargo-handling equipment retrofits. The Agency shall submit an invoice to the Port for this amount no later than May 30, 2009, and the Port shall pay it within 30 days of receipt of the invoice. Payment shall be sent to: Karen Houser, Puget Sound Clean Air Agency Finance Manager, 1904 3<sup>rd</sup> Ave Suite 105 Seattle, Washington 98101.
  
- E. **Agency Responsibilities.** The Agency agrees to use the list of cargo-handling equipment generated by the Port to determine which equipment to retrofit. This will be the basis of the request for the proposal issued by the agency. The actual retrofit projects, including the purchase and installation of the retrofit equipment, will be performed under separate contracts between the Agency and the terminal operators.
  
- F. **Deliverables.** The Agency shall provide the Port with a copy of all quarterly and final reports submitted by the Agency to the US EPA under the terms of the grant. The reports will include a list of equipment retrofitted at each terminal at the Port and such retrofits will be done under separate contract. The Port shall provide the Agency with the comprehensive list of cargo-handling equipment described in section C, above.
  
- F. **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.

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

**The Agency Project Manager is:**

Elizabeth Gilpin  
Air Resources Associate,  
Puget Sound Clean Air Agency  
1904 3<sup>rd</sup> Ave., Ste 105  
Seattle, WA 98101  
[elizabethg@pscleanair.org](mailto:elizabethg@pscleanair.org)  
(206) 689-4026

**The Port of Tacoma Project Manager is:**

Cindy Y. Lin P.E., Ph.D.  
Senior Manager, Environmental Compliance  
Port of Tacoma, USA  
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

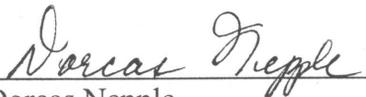
- A. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the state of Washington.
- B. **AMENDMENTS/MODIFICATIONS.** This Agreement may be amended or modified only by written agreement of the parties.
- C. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties 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**

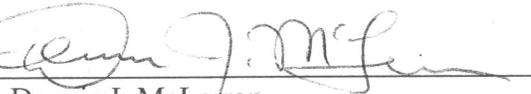
By:   
Paul Roberts  
Board of Directors, Chair

By:   
Dorcas Nepple  
Contract Director

Date: 5/24/09

Date: May 13, 2009

Attest:

By:   
Dennis J. McLerran  
Executive Director

Date: 5/20/09

Approved as to Form:

By:   
Laurie Halvorson  
General Counsel

Date: 5/19/09



Puget Sound Clean Air Agency  
1904 3<sup>rd</sup> Ave., Ste 105  
Seattle, WA 98101

### 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

Typed Name & Title of Authorized Representative

*Dorcas Nepple*  
Signature of Authorized Representative

*May 13, 2009*  
Date

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

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Grant Agreement</b>	<b>ASSISTANCE ID NO.</b>			<b>DATE OF AWARD</b> 01/15/2009	
		<b>PRG</b>	<b>DOC ID</b>	<b>AMEND#</b>		
		<b>DE - 96085001 - 0</b>			<b>MAILING DATE</b> 01/22/2009	
		<b>TYPE OF ACTION</b> New			<b>ACH#</b> X0316	
<b>PAYMENT METHOD:</b>						
<b>RECIPIENT TYPE:</b> Special District		<b>Send Payment Request to:</b> Las Vegas Finance Center FAX # 702-798-2423				
<b>RECIPIENT:</b> Puget Sound Clean Air Agency 1904 Third Avenue, Suite 105 Seattle, WA 98101 EIN: 91-0823558		<b>PAYEE:</b> Puget Sound Clean Air Agency 1904 Third Avenue, Suite 105 Seattle, WA 98101				
<b>PROJECT MANAGER</b> Beth Carper 1904 Third Avenue, Suite 105 Seattle, WA 98101 E-Mail: bethc@pscleanair.org Phone: 206-689-4057		<b>EPA PROJECT OFFICER</b> Fredianne Gray 1200 Sixth Avenue, Suite 900, AWT-107 Seattle, WA 98101 E-Mail: Gray.Fredianne@epa.gov Phone: 206-553-6387		<b>EPA GRANT SPECIALIST</b> Cathy Reese 1200 Sixth Ave., Suite 900, OMP-145 Seattle, WA 98101 E-Mail: Reese.Cathy@epa.gov Phone: 206-553-6286		
<b>PROJECT TITLE AND DESCRIPTION</b> NW Ports Clean Air Strategy - Cargo Handling Equipment Replacement & Retrofit. The project will fund the replacement of heavy-duty diesel engine trucks and installation of Environmental Protection Agency (EPA) or California Air Resources Board (CARB) verified retrofit exhaust emission control technologies on heavy-duty diesel cargo handling equipment operating at the Ports of Seattle and Tacoma.						
<b>BUDGET PERIOD</b> 01/02/2009 - 12/31/2010		<b>PROJECT PERIOD</b> 01/02/2009 - 12/31/2010		<b>TOTAL BUDGET PERIOD COST</b> \$1,168,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$1,168,000.00	
<b>NOTICE OF AWARD</b>						
Based on your application dated 11/06/2008, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$850,000. EPA agrees to cost-share <u>72.77%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$850,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.						
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>			
<b>ORGANIZATION / ADDRESS</b> EPA Region 10 Mail Code: OMP-145 1200 Sixth Avenue, Suite 900 Seattle, WA 98101			<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 10 Office of Air Waste and Toxics 1200 Sixth Avenue, Suite 900 Seattle, WA 98101			
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>						
<b>SIGNATURE OF AWARD OFFICIAL</b> Digital signature applied by EPA Award Official		<b>TYPED NAME AND TITLE</b> Julie M. Hagensen, Director - Office of Management Programs		<b>DATE</b> 01/15/2009		
<b>AFFIRMATION OF AWARD</b>						
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>						
<b>SIGNATURE</b>		<b>TYPED NAME AND TITLE</b> Dennis McLerran, Executive Officer		<b>DATE</b>		

## EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 850,000	\$ 850,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 118,000	\$ 118,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$ 200,000	\$ 200,000
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 1,168,000	\$ 1,168,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.039 - National Clean Diesel Funding Assistance Program (B)	Energy Policy Act 2005 Public Law 109-58	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	0910BDG020	09	E4C	10B4	101AH4E	4112			850,000
									850,000

## Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$111,535
2. Fringe Benefits	\$30,484
3. Travel	\$0
4. Equipment	\$1,019,981
5. Supplies	\$6,000
6. Contractual	\$0
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$1,168,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>27.23</u> % Federal <u>72.77</u> %.)	\$1,168,000
12. Total Approved Assistance Amount	\$850,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$850,000
15. Total EPA Amount Awarded To Date	\$850,000

## **Administrative Conditions**

### **1. Payment Information**

All recipients must be enrolled to receive funds electronically via the EPA-EFT Payment Process. This electronic funds transfer process was initiated by EPA in response to the Debt Collection Improvement Act of 1996, P.L. 104-134 that requires all federal payments be made via Direct Deposit/Electronic Funds Transfer (DD/EFT). By signing the assistance agreement you are agreeing to receive payment electronically.

**In order to receive payments electronically, the ACH Vendor/ Miscellaneous Payment Enrollment Form (SF3881) must be completed and faxed to Marge Pumphrey at (702) 798-2423.**

After reviewing and processing the SF3881, the Las Vegas Finance Center (LVFC) will send you a letter assigning you an EFT Control Number, an EPA-EFT Recipient's Manual, and the necessary forms for requesting funds and reporting purposes.

If you need further assistance regarding enrollment, please contact Marge Pumphrey at (702) 798-2492 or by e-mail to: [pumphrey.margaret@epa.gov](mailto:pumphrey.margaret@epa.gov).

**Any recipient currently using the Automated Standard Application for Payments (ASAP) system with another government agency should contact Marge Pumphrey at (702) 798-2492 or e-mail to: [pumphrey.margaret@epa.gov](mailto:pumphrey.margaret@epa.gov).**

Under any of the above payment mechanisms, recipients may request/draw down advances for their immediate cash needs, provided the recipient meets the requirements of 40 CFR 30.22(b) or 40 CFR 31.21(c), as applicable. Additionally, recipients must liquidate all obligations incurred within 90 calendar days of the project period end date. Therefore, recipients must submit the final request for payment, and refund to EPA any balance of unobligated cash advanced within 90 calendar days after the end of the project period.

### **2. Cost Principles/Indirect Costs Not Included (All Organizations)**

The cost principles of OMB Circular A-21, "Cost Principles for Educational Institutions," relocated to 2 CFR Part 220, OMB Circular A-87, "State, Local or Indian Tribal Governments," relocated to 2 CFR Part 225, or OMB Circular A-122, "Cost Principles for Non-Profit Organizations," relocated to 2 CFR Part 230, are applicable, as appropriate, to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

### **3. Financial Status Report (FSR) and Federal Cash Transactions Reports**

#### **FINAL FSR**

The Financial Status Report (FSR), Standard Form 269A (or Standard Form 269 if program income is generated), for this award is due to EPA no later than 90 days after the budget period expires.

For agreements with multiple budget activities, separate FSRs must be provided for each of the activities, sites, or budgets, as applicable.

#### **FEDERAL CASH TRANSACTIONS REPORTS**

The recipient will provide timely reporting of cash disbursements and balances through annual submission (within fifteen (15) working days following December 31 of any given calendar year) of a Federal Cash Transactions Report (SF-272).

**The Final FSR and Federal Cash Transactions Reports may be faxed to (702) 798-2423 or mailed to:**

US Environmental Protection Agency  
Las Vegas Finance Center  
P.O. Box 98515

Las Vegas, NV 89193-8515

For additional information, please contact Marge Pumphrey at (702) 798-2492 or email: [Pumphrey.Margaret@epa.gov](mailto:Pumphrey.Margaret@epa.gov).

EPA may take enforcement actions in accordance with 40 CFR 30.62 or 40 CFR 31.43 if the recipient does not comply with this term and condition.

#### 4. Audit Requirements

The recipient agrees to comply with the requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

#### 5. Hotel-Motel Fire Safety Act

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

#### 6. Recycled Paper

##### **INSTITUTIONS OF HIGHER EDUCATION HOSPITALS AND NON-PROFIT ORGANIZATIONS:**

In accordance with 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

##### **STATE AGENCIES AND POLITICAL SUBDIVISIONS:**

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

##### **STATE AND LOCAL INSTITUTIONS OF HIGHER EDUCATION AND NON-PROFIT ORGANIZATIONS:**

In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

##### **STATE TRIBAL AND LOCAL GOVERNMENT RECIPIENTS:**

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

#### 7. Lobbying

##### **ALL RECIPIENTS:**

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited

expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

**PART 30 RECIPIENTS:**

All contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

**8. Lobbying and Litigation**

**ALL RECIPIENTS:**

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

**9. Suspension and Debarment**

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

**10. Drug-Free Workplace Certification for all EPA Recipients**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

**11. Management Fees**

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

**12. Reimbursement Limitation**

If the recipient expends more than the amount of federal funding in its EPA approved budget in anticipation of receiving additional funds from EPA, it does so at its own risk. EPA is not legally obligated to reimburse the recipient for costs incurred in excess of the EPA approved budget.

### **13. Trafficking Victims Protection Act of 2000**

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

### **14. Disadvantaged Business Enterprise Requirements (Effective May 27, 2008)**

#### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

#### **FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D**

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

#### **Accepting the Fair Share Objectives/Goals of Another Recipient**

The dollar amount of this assistance agreement is over \$250,000; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is over \$250,000. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Washington Office of Minority and Women's Business Enterprises** as follows:

MBE: PURCHASED GOODS 8%; PURCHASED SERVICES 10%; PROFESSIONAL SERVICES 10%  
WBE: PURCHASED GOODS 4%; PURCHASED SERVICES 4%; PROFESSIONAL SERVICES 4%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **Washington Office of Minority and Women's Business Enterprises**.

#### **Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404**

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified

MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

#### **SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

#### **MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31<sup>st</sup> and September 30<sup>th</sup> for:

- Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and
- All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30<sup>th</sup> and October 30<sup>th</sup>). Reports should be sent to the EPA Region 10, Grants Administration Unit, 1200 Sixth Avenue, Suite 900, Mailcode: OMP-145, Seattle, WA 98101. For further information, please contact Greg Luchey at (206) 553-2967, email: [Luchey.Greg@epa.gov](mailto:Luchey.Greg@epa.gov). Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

**BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

**15. Equipment Disposition**

The recipient may keep the equipment and continue to use it on the project originally funded through the assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

**STATE AGENCIES:**

State agencies may manage and dispose of equipment acquired under assistance agreements in accordance with state laws and procedures.

**SUPERFUND PROGRAM TO ALL RECIPIENTS:**

Equipment purchased under Superfund projects is subject to specific disposal options. Refer to 40 CFR 35.6345.

**16. Recipient Contribution**

There is no statutory requirement for recipient contribution. However, in accordance with the application dated 11/6/2008, the recipient agrees to contribute to the project. Reduction to this amount must be negotiated with the EPA Project Officer.

**Programmatic Conditions**

**1. Emissions Control Technologies**

The recipient agrees to use certified engine configurations or verified technologies for emissions control projects funded by the recipient pursuant to this assistance agreement. Technologies are verified under EPA or California's Retrofit Verification Program. See <http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm> for an updated list of EPA's verified technologies and <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm> for a list of CARB's verified technologies.

**2. Quarterly Reporting and Environmental Results**

The recipient agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after the end of each reporting period.

Quarterly reports due within 30 days after the end of each quarter:

- Q1: January – March 2009 – Due by April 30, 2009
- Q2: April – June 2009 – Due by July 30, 2009
- Q3: July – September 2009 – Due by October 30, 2009
- Q4: October – December 2009 – Due by January 30, 2010
- Q5: January – March 2010 – Due by April 30, 2010
- Q6: April – June 2010 – Due by July 30, 2010
- Q7: July – September 2010 – Due by October 30, 2010
- Q8: October – December 2010 – Final Report due by March 31, 2011

Format and content requirements may be subject to change during the project/budget period. Quarterly reports are considered project status reports and will address the progress made regarding achieving the work plan goals. In accordance with 40 CFR Part 31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas:

- (a) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement work plan for the period;
- (b) the reasons for slippages if established outputs/outcomes were not met;
- (c) additional pertinent information, including when appropriate, analysis and information of cost overruns or high unit costs.

The recipient must also complete the diesel emissions reductions spreadsheet provided by EPA, providing either estimated emissions reductions or actual emissions reductions where appropriate.

### **3. Final Report**

The recipient agrees to submit a final project report that includes actual results, including emissions calculations, in addition to the successes and lessons learned for the entire project and all categories of information required for quarterly reporting in the spreadsheet and narrative questions provided by EPA. This report shall be submitted to the Project Officer within 90 days after the expiration or termination of the assistance agreement. In order to facilitate awarding funds from a new fiscal year allocation, it is recommended that the report be completed well before 90 days.

### **4. Use of Funds Restriction**

The recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under Federal, State or local law. This refers to when the mandate takes effect not when it is passed. Funds can be used for measures that are included in the State Implementation Plan (SIP).

### **5. Delays or Favorable Developments**

The recipient agrees to notify EPA of any problems, delays, or adverse conditions which may materially impair its ability to deliver on the outputs/outcomes specified in the work plan. This disclosure must include a statement of the action taken or contemplated and any assistance needed to resolve the situation. The recipient also agrees to notify EPA of any favorable developments which may enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

### **6. Procurement Procedures**

The recipient agrees to follow applicable procurement procedures. EPA will not be a party to these transactions. Approval of a funding proposal does not relieve recipients of their obligations to compete service contracts and conduct cost and price analyses in accordance with Subpart B Section 210 of OMB Circular A-133.

### **7. Diesel emissions control technology reinstallations and/or continued use**

Consistent with local, state and federal property disposition rules, the recipient shall, to the extent practicable, reinstall diesel particulate filters or diesel oxidation catalysts (hereafter "controls") purchased with EPA grant funds on other equipment, if the original equipment with the controls is scrapped or not otherwise to be used in the future and the controls are under warranty and operational. If the original equipment with the controls is sold or leased to another party, the controls will remain on the equipment so they can be used by the new purchaser or lessee.

### **8. Environmentally preferable products/services/meetings**

Consistent with local, state and federal grant procurement rules, recipient shall, when feasible, purchase environmentally preferable products/services and hold conferences/meetings using environmentally preferable measures. Environmentally preferable products/services and environmentally preferable measures include those that have a lesser or reduced effect on the environment when compared with competing products, services, or measures that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation,

maintenance, or disposal of the product or service. In addition, environmentally preferable measures for conferences/meetings apply to large gatherings of ten or more persons.

## 9. Scrappage

Recipient agrees to require scrappage of vehicles and/or engines in the case of engine and/or vehicle replacement for all projects funded by the recipient, including sub-awards and sub-grants. For engine and/or vehicle replacement or repower, the following criteria apply:

- A. The vehicle, engine or equipment being replaced will be scrapped, or the replaced engine would be returned to the original engine manufacturer for remanufacturing to a cleaner standard;
- B. The replacement vehicle, engine or equipment will perform the same function as the vehicle, engine or equipment that is being replaced (e.g. an excavator used to dig pipelines would be replaced by an excavator that continues to dig pipelines); and
- C. The replacement vehicle, engine or equipment will be of the same type and similar gross vehicle weight rating or horsepower as the vehicle, engine or equipment being replaced (e.g. a 300 horsepower bulldozer would be replaced by a bulldozer of similar horsepower).

In addition, this program funds the early replacement of vehicles, engines and/or equipment. Emission reductions that result from vehicle, engine or equipment replacements that would have occurred through normal attrition are considered to be the result of normal fleet turnover and are not eligible for funding under this program. The purchase of new vehicles or equipment to expand a fleet is not covered by this program. To be considered a replacement, the purchase of new vehicles, engines and equipment must be accompanied by the scrappage or remanufacturing of old vehicles, engines and equipment. Furthermore, for engine repowers, EPA requires that the engine being replaced must be scrapped, remanufactured by an original engine manufacturer to a cleaner emission standard or rendered permanently disabled. Drilling a hole in the engine block and manifold while retaining possession of the engine is an acceptable scrapping method. Other methods may be considered. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA.

**END OF GRANT AGREEMENT NO. DE-960850-01-0**

