

**AGREEMENT BETWEEN THE VANCOUVER FRASER PORT AUTHORITY  
AND THE PUGET SOUND CLEAN AIR AGENCY  
FOR FUNDING THE HOLLAND AMERICA LINE SEAWATER SCRUBBER  
DEMONSTRATION PROJECT**

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This Agreement is entered into between the **Puget Sound Clean Air Agency**, a municipal corporation of the laws of the State of Washington, United States, (the "Agency") and the **Vancouver Fraser Port Authority** 999 Canada Place, Vancouver BC V6C 3T4 Canada. (Formerly, amongst others, Vancouver Port Authority) ("VFPA")

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**WITNESSETH**

**WHEREAS**, it is in the interest of VFPA, the Agency and the other Holland America Line (HAL) Seawater Scrubber Demonstration Project (the "Project") participants, (including Port of Seattle, Environment Canada, Holland America Line, British Petroleum and Caterpillar Corporation (each a "Participant" together the "Participants") to reduce air quality impacts associated with diesel powered oceangoing ships; and

**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**, the Agency has allocated \$100,000 from its state clean diesel grant to support the Project; and

**WHEREAS**, U.S. Environmental Protection Agency has provided a \$300,000 West Coast Diesel Emission Reduction Collaborative grant to the Agency to help fund the Project; and

**WHEREAS**, VFPA has agreed to contribute a maximum amount of US\$50,000 to the Project; and

**WHEREAS**, the Agency has contracted with HAL to conduct the Project and will serve as the fiscal manager of the funds from the Participants; and

**WHEREAS**, the Agency and VFPA entered into an agreement for the Project under Contract No. 2006000093, and this contract expired on December 31, 2008; and

**WHEREAS**, the Board of Directors of the Agency deems it desirable to enter into a new agreement with VFPA to continue the Project; and

**WHEREAS**, VFPA provided funds to the Agency in the amount of \$50,000 on January

18, 2007 in full payment of the amount committed to the Project; and

**WHEREAS**, the Agency and Holland America Line Inc. entered into an agreement for the Project under Contract No. 2006000075 and this contract expired on December 31, 2008; and

**WHEREAS**, the Agency and Holland America Line Inc. entered into a new contract for the Project under Contract No. 2009000019, which extended the project term to December 31, 2009; and

**NOW, THEREFORE**, VFPA and the Agency agree as follows:

**1. SERVICES.**

**A. PURPOSE.** The purpose of this Agreement is:

- a. Limit the scope of the Project to that contained in Attachment 1. VFPA expects the Agency to fulfill the obligations contained in Attachment 1 except that all timelines referenced in Attachment 1 are extended by one calendar year. Contract No. 2009000019 describes the amount and use of funds contributed by each partner to the project. A copy of Contract No. 2009000019 is attached as Attachment 2; and
- b. To agree on the participation of and contribution by VFPA to the Project.

**B. TERM.** This Agreement shall commence upon signature by the parties and shall terminate December 31, 2009.

**C. PROJECT TECHNICAL ADVISORY COMMITTEE.** As a funding Participant in the Project, VFPA will be invited to participate on the Project technical committee co-chaired by Holland America Line Inc. and the Agency. Members of the committee will receive all Project status reports and be asked to comment on all interim and on the final draft reports. Each Participant will have equal opportunity in the decision making process, regardless of the size of the financial contribution of a Participant.

**2. COMPENSATION.** The Agency has prior to December 31, 2006, and in accordance with the provisions of Contract No. 2006000093 invoiced VFPA for VFPA's full contribution to the Project. VFPA paid the amount of \$50,000 on January 18, 2007 to the Agency. VFPA's contribution was made subject to the following conditions:

1. The maximum amount contributed by VFPA to the Project is US\$50,000.
2. If the seawater scrubber system is not installed, operated and tested as described in Attachment 1, except that all the timelines referenced in Attachment 1 are extended by

one calendar year, the full financial contribution made by VFPA will be refunded to VFPA, immediately upon request therefore.

3. VFPA's unrestricted participation in the Project.

**3. 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 wrongful actions relating to this Agreement. Each party shall be severally liable for its wrongful actions to any third party under this Agreement and no joint and several liability will arise as a result of this Agreement.

**4. NO PARTNERSHIP.** Nothing contained in this Agreement shall be construed as creating a partnership between the parties or the other participants of the Project. VFPA is purely funding a portion of the Project costs to share in the interim and final Project results. Any participation by VFPA in the Project steering committee is in kind support to the Project and such participation will not create any legal partnership obligations or liabilities upon VFPA. The Agency covenants and agrees that it has no authority to give any guarantee or warranty whatsoever, express or implied, on behalf of VFPA and it is in no way a partner, legal representative or agent of VFPA and that it has no right or authority to create any obligation on behalf of VFPA or to bind VFPA in any way. The Agency specifically covenants and agrees that it will not represent to any third party that it has the capacity, authority or ability to represent or bind VFPA.

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

To Vancouver Fraser Port Authority  
Darrell Desjardin  
Director, Environmental Programs Department  
Vancouver Fraser Port Authority  
100 The Pointe  
999 Canada Place  
Vancouver BC V6C 3T4 Canada

To the Puget Sound Clean Air Agency:  
David Kircher  
Manager, Air Resources Department  
1904 3<sup>rd</sup> Ave Suite 105  
Seattle, WA 98101

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

**6. GOVERNING LAW.** This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the Province of British Columbia and the laws of Canada applicable therein, and in cases where federal and provincial laws conflict, the federal law shall prevail. The 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.

7. **CHANGES.** The Agency or VFPA may, from time to time, request changes in the scope of services performed under this Agreement, in which event the parties shall mutually agree to such changes by written amendment to the Agreement.

8. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision is illegal or invalid for any reason whatsoever, that illegality or invalidity shall not affect the validity of the rest of the Agreement.

9. **TIME OF THE ESSENCE.** Time is of the essence in this Agreement.

10. **CONTENT AND UNDERSTANDING.** This Agreement contains a complete and integrated understanding and agreement between the parties. All Attachments and Schedules to this Agreement form part of this Agreement.

11. **NO INDUCEMENT.** The Agency confirms that it has not, nor has any person on its behalf, given, promised or offered to any official or employee of VFPA or **Her Majesty The Queen in Right of Canada** for or with a view to obtaining this Agreement any bribe, gift or other inducement and that it has not nor has any person on its behalf, employed any person to solicit or secure this Agreement for a commission, percentage, brokerage or contingent fee.

12. **COUNTERPARTS.** Delivery of an executed copy of this Agreement by facsimile transmission shall be as effective as delivery of a manually executed copy of this Agreement, and the parties hereto undertakes to provide each other with a copy of this Agreement bearing original signatures, forthwith upon demand.

**IN WITNESS HEREOF**, the Agency and the Vancouver Fraser Port Authority have executed this Agreement.

**PUGET SOUND  
CLEAN AIR AGENCY**

**VANCOUVER FRASER PORT  
AUTHORITY**

By:   
Paul Roberts  
Board of Directors, Chair

By:   
Lori Lindahl  
Vice-President, Human Resources  
and Sustainability

Date: 4.23.09

Date: April 15, 2009

**Attest:**

By:   
Dennis J. McLerran  
Executive Director

Date: 4/21/09

**Approved as to form:**

By:   
Laurie Halvorson  
General Counsel

Date: 4/21/09



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.

LORI LINDBALL, U.P. Human Resources & Sustainability  
Typed Name & Title of Authorized Representative

Lori Lindball  
Signature of Authorized Representative

April 15, 2009  
Date

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