

Agreement Between the Port of Seattle and the Puget Sound Clean Air Agency to Reduce Diesel Emissions

This Agreement is entered into between the **Puget Sound Clean Air Agency**, ("Agency"), a Washington municipal corporation, and the **Port of Seattle** ("Port"), a Washington municipal corporation, located at Pier 69, 2711 Alaskan Way, Seattle WA 98111-1209.

I. RECITALS

WHEREAS, the Puget Sound Maritime Air Emissions Inventory has identified diesel emissions from maritime sources in the Puget Sound region as a significant source of air pollution; and

WHEREAS, the Port has adopted the Northwest Ports Clean Air Strategy ("Strategy"), the goal of which is to reduce air emissions from current and future maritime port operations in the Pacific Northwest; and

WHEREAS, the Puget Sound Clean Air Agency has developed the Diesel Solutions program (as defined as of the date of this agreement) to reduce diesel emissions; and

WHEREAS, the Port and the Agency have identified reducing diesel emissions from maritime sources as a priority, thereby improving the air quality, the public health, and the environment of the Puget Sound Region; and

WHEREAS, it is desirable for the Port and the Agency to enter into this Agreement.

II. AGREEMENT

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

A. PURPOSE The purpose of this Agreement is to reduce diesel emissions related to the maritime industry in the Puget Sound region consistent with the Strategy.

B. TERM. This agreement shall terminate on June 30, 2010. Either party may terminate this agreement upon 30 days' prior written notice.

C. PORT OBLIGATIONS.

1. Monetary

a. The Port will provide up to two million three hundred thousand dollars (\$2,300,000) funding to the Agency in quarterly installments, with the first payment being

made on July 1, 2009.

- b. The Agency may request additional payments from the Port up to the \$50,000 total amount at any time in order to cover expenses related to implementing this Agreement. The Port may grant such request at its sole discretion.
- c. The Agency may include up to a 25% administrative charge as part of each quarterly invoice.
- d. The Port will send its payments to the Agency, attention Finance Department.

2. Services

- a. The Port will publicize the programs funded by the Agency as part of this Agreement.
- b. When requested by the Agency in connection with Agency programs under this Agreement, the Port will provide the necessary enrollment documentation and request for reimbursement forms to participants and process such documentation. The Port will submit copies of the documentation to the Agency and keep track of the order of the enrollees.
- c. When requested by the Agency in connection with Agency programs under this Agreement, the Port will verify the suitability of participants' request for reimbursements.
- d. When requested by the Agency in connection with Agency programs under this Agreement, the Port will provide quarterly summaries to the Agency describing which participants qualified for reimbursements and in what amounts.
- e. When requested by the Agency in connection with Agency programs under this Agreement, the Port may initiate and fund third party audits of the Agency's programs. The parties will mutually agree upon the focus and scope of the audit.
- f. The Port may provide recognition incentives for program participants.
- g. When requested by the Agency in connection with Agency programs under this Agreement, the Port will assist the Agency in working with the program participants in furthering the program objectives.

D. AGENCY OBLIGATIONS.

1. The Agency's overarching obligation is to undertake measures that it reasonably believes will assist in achieving the clean air goals described in the Strategy.
2. The Agency will provide to the Port a written report every three months, with the first report being submitted on October 31, 2009, describing in detail reasonably satisfactory to the Port what actions the Agency has taken in the reporting period to achieve some or all of the objectives for cleaner air as described in the Strategy and how it has targeted its funding for particular measures consistent with the Strategy. The Agency will quantify, if possible, the reductions achieved and describe actions that may be taken to achieve further air quality improvements as part of the Strategy.
3. The Agency will provide the Port a quarterly summary of all warrants that were issued under the ABC Program and a summary of the Agency's fees to administer the ABC Program.
4. To the extent that any of the Agency's programs involve payment of reimbursement funds to program participants, the Agency will issue checks to the appropriate participants. The conditions of the release of the checks will be subject to the conditions mutually agreed to by the parties and coordinated with the Port if the Port is involved in the records management of the program.
5. The Agency will review the Port's quarterly summaries issued as part of this Agreement and verify they are supported by the documentation collected by the Port.
 - a. The Agency will contribute \$118,000 as matching funds for a cargo-handling and equipment retro-fit program for marine terminal operators at the Port's container facilities related to Grant No. DE-96085001-0.
 - b. The Agency's staff will work with the Port's customers and Port staff to evaluate program requirements and implementation.
 - c. If agreed between the parties, the Agency will provide quarterly reports to the Port on specific programs.
 - d. Once the Agency has developed a program as part of this Agreement, the Agency will work with the Port to specify specific requirements and roles the parties will play in the programs' implementation.

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:

The Agency Project Manager is:

Beth Carper
Air Resources Associate,
Puget Sound Clean Air Agency
1904 3rd Ave., Ste 105
Seattle, WA 98101
206-689-4057
bethc@pscleanair.org

The Port of Seattle Project Manager is:

Sarah Flagg
Seaport Environmental Programs, Pier 69
P.O. Box 1209
Seattle, WA 98111-1209
206-728-3249
Flagg.S@portseattle.org

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 SEATTLE

By: Paul Roberts
Paul Roberts
Board of Directors, Chair
Date: 7/23/09

By: Tay Yoshitani
Tay Yoshitani
Chief Executive Officer
Date: 7/6/09

Attest:

By: Dennis J. McLerran
Dennis J. McLerran
Executive Director
Date: 7/15/09

Approved as to Form:

By: Laurie Halvorson
Laurie Halvorson
General Counsel
Date: 7/15/09

By: Tom Tanaka
Tom Tanaka
Senior Port Counsel
Date: June 23, 2009



Puget Sound Clean Air Agency
1904 3rd 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.

Tay Yoshitani, CEO
Typed Name & Title of Authorized Representative

[Signature]
Signature of Authorized Representative

7/6/09
Date

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