

CONTRACT FOR SERVICES

This contract 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 **City of Issaquah**, (hereinafter referred to as the "Cost-Share Partner"), 130 East Sunset Way, Issaquah, Washington 98027.

WHEREAS, the United States Department of Energy (U.S. DOE) established the Clean Cities program in 1993 as a voluntary government-industry partnership program within the Office of Energy Efficiency and Renewable Energy's Vehicle Technologies Program; and

WHEREAS, the Puget Sound Clean Cities Coalition is part of the U.S. DOE Clean Cities program and is an Agency program that promotes the use of alternative fuels and advanced vehicle technologies in fleet operations with the goal of reducing the use of petroleum fuels and their associated emissions; and

WHEREAS, the Agency was awarded Grant No. DE-EE0002020 by the U.S. DOE using funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) on December 3, 2009 to fund the Puget Sound Clean Cities Petroleum Reduction Project, which includes a cost reimbursement program for fleet operations to facilitate the purchase of alternative fuel and advanced technology vehicles; and

WHEREAS, the Board of Directors of the Puget Sound Clean Air Agency deems it desirable to enter into an Agreement with the Cost-Share Partner for the purposes of increasing the use of alternative fueled vehicles and advanced technology vehicles as a means to reduce U.S. dependence on imported petroleum, increase fuel economy, and improve emissions; and

WHEREAS, the Cost-Share Partner represents and warrants that it is available, experienced, and qualified to perform said services; and

NOW, THEREFORE, the Agency and the Cost-Share Partner mutually agree as follows:

1. **Services**

The purpose of this Agreement is to establish procedures by which the Cost-Share Partner shall receive partial cost reimbursement payments from the Agency toward the cost of the vehicle purchases.

Task I. Vehicle Verification, Authorization, and Procurement

- a. On or before April 30, 2010, the Cost-Share Partner shall verify that the vehicles planned for purchase and authorized for reimbursement under this Agreement are listed in Attachment A. The Cost-Share Partner may request that the Project Manager revise Attachment A to add a vehicle or category of vehicles by submitting an e-mail request to the Project Manager not more often than once per calendar quarter and obtaining an amended Attachment A from the Project Manager.

- b. The Cost-Share Partner shall complete and submit an Interim Status Report to the Project Manager using the form provided in Attachment C.

Deliverable: An Interim Status Report shall be submitted by January 20, 2011 by e-mail to the Project Manager.

- c. Upon receipt of "Clean Cities" vehicle decals and Application Instructions from the Project Manager, the Cost-Share Partner shall affix these decals to the exterior of the authorized vehicles as directed under the Application Instructions.
- d. The Cost-Share Partner shall photograph one (1) vehicle showing the "Clean Cities" vehicle decal affixed for each vehicle model identified in Attachment A (e.g., when purchasing twenty-seven (27) Ford Fusions, submit one (1) photo of a Ford Fusion with Clean Cities decal affixed as directed) as an e-mail attachment to the Project Manager.

Deliverable: Photographs shall be submitted to the Project Manager in JPEG format within four weeks of the date the decals are provided to the Cost-Share Partner by the Project Manager.

2. Highlighted Requirements from Grant No. DE-EE0002020.

The Cost-Share Partner shall comply with the following requirements from Grant No. DE-EE0002020 highlighted in this section:

A. COST SHARING

- i. The Cost-Share Partner's cost share must come from non-Federal sources unless otherwise allowed by law. By accepting federal funds under this award, the Cost-Share Partner agrees that they are liable for the total cost share shown in Attachment A, even if the project is terminated early or is not funded to its completion.
- ii. If the Cost-Share Partner discovers that they may be unable to provide cost sharing of at least the amount identified in Attachment A, they should immediately provide written notification to the Project Manager indicating whether they will continue or phase out the project. If the Cost-Share Partner plans to continue the project, the notification must describe how replacement cost sharing will be secured.
- iii. The Cost-Share Partner must maintain records of all project costs that they claim as cost sharing, including in-kind costs, as well as records of costs to be paid by U.S. DOE/NNSA through the Agency. Such records are subject to audit.
- iv. Failure to provide the cost sharing required by this Agreement may result in the subsequent recovery by U.S. DOE/NNSA of some or all the funds provided under the award.

B. STATEMENT OF FEDERAL STEWARDSHIP

U.S. DOE/NNSA will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

C. SITE VISITS

the use and condition of the property; and (c) in the event of disposition, the Cost-Share Partner notifies the Agency and follows the property disposition rules set forth in 10 CFR 600.321 if the property is no longer used by the Cost-Share Partner for the objectives of the project, and the fair market value of property exceeds \$5,000.

Once the per unit fair market value of the property is less than \$5,000, pursuant to 10 CFR 600.321(f)(1)(i), U.S. DOE's residual interest in the property shall be extinguished and the Cost-Share Partner shall have no further obligation to the U.S. DOE with respect to the property.

The regulations as set forth in 10 CFR 600 and the requirements of this article shall also apply to property in the possession of any team member, sub-recipient or other entity where such property was acquired in whole or in part with funds provided by U.S. DOE under this grant or where such property was counted as cost-sharing under the grant.

I. FINAL INCURRED COST AUDIT

In accordance with 10 CFR 600, U.S. DOE reserves the right to initiate a final incurred cost audit on this award. If the audit has not been performed or completed prior to the closeout of the award, U.S. DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

J. INDEMNITY

The Cost-Share Partner shall indemnify the Federal Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

3. **Full Cooperation regarding Reporting Requirements.** The Cost-Share Partner shall fully cooperate with the Agency to provide any requested or necessary information regarding or related to reporting requirements associated with the Grant No. DE-EE0002020.

4. **Communications About Performance.** The Cost-Share Partner understands that Agency staff members have been encouraged to communicate any concerns about the performance of the Cost-Share Partner directly and respectfully to the Project Manager in a good faith attempt to resolve any issues. Similarly, if the Cost-Share Partner has a concern about the performance of the contract or an interaction with an Agency staff member, the Cost-Share Partner agrees to communicate that concern directly and respectfully to the Project Manager in a good faith attempt to resolve any issues.

5. **Compensation.** The total amount paid by the Agency for satisfactory performance of the work under this contract shall not exceed the amount specified in Attachment A. The funding for this contract is provided by Grant No. DE-EE0002020 by the U.S. DOE using funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) and is part of the Agency's Climate Protection Work Plan and Puget Sound Clean Cities Coalition work plan for Fiscal Years 2010 and 2011, respectively. The Cost-Share Partner shall submit requests for cost reimbursement to the Project Manager not more often than monthly.

9. **Agency Access to Data.** The Cost-Share Partner shall provide the Agency, at no additional charge, access to all data generated under this contract. "Data" includes all information that supports the findings, conclusions, and recommendations of the Cost-Share Partner's reports, including computer models and the methodology for those models.

The Agency shall have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Cost-Share Partner must provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

10. **Copyright Provisions.** Unless otherwise provided, all materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, the Cost-Share Partner hereby irrevocably assigns all right, title, and interest in materials, including all intellectual property rights, to the Agency, effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

For materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, the Cost-Share Partner hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Cost-Share Partner warrants and represents that the Cost-Share Partner has all rights and permissions, including intellectual property rights, moral rights, and rights of publicity, necessary to grant such a license to the Agency.

The Cost-Share Partner shall notify the Project Manager by e-mail two (2) weeks in advance of any planned media events related to activities funded through this Agreement.

The Cost-Share Partner shall exert all reasonable effort to advise the Agency, at the time of delivery of materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of copyright infringement received by the Cost-Share Partner with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Cost-Share Partner.

11. **Cost-Share Partner Not An Employee of the Agency.** The Cost-Share Partner and the Agency intend that an independent contractor relationship will be created under this contract. The Cost-Share Partner and his or her employees or agents are not employees of the Agency and shall not be entitled to compensation or benefits of any kind other than as specifically provided herein. The Cost-Share Partner will not hold himself/herself out as nor claim to be an officer or an employee of the Agency or of the State of Washington by reason hereof, nor will the Cost-

18. **Governing Law.** This contract shall be governed by the laws of the state of Washington. The Cost-Share Partner, by execution of the contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.
19. **Severability.** The provisions of this contract 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 contract.
20. **Nondiscrimination.** During the performance of this contract, the Cost-Share Partner shall comply with all federal and state nondiscrimination laws, regulations, and policies. In the event of the Cost-Share Partner's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the Cost-Share Partner may be declared ineligible for further contracts with the Agency. The Cost-Share Partner shall, however, be given a reasonable time in which to remedy this noncompliance.
21. **Utilization of Minority and Women-Owned Business Enterprises (MWBE).** To the extent practicable, when performing the services agreed to under this contract, the Cost-Share Partner should utilize MWBEs certified by the Office of Minority and Women's Business Enterprises under the state of Washington certification program.
22. **Assignment.** The work provided under this contract, and any claim arising thereunder, is not assignable or delegable by either party, in whole or in part, without the express prior written consent of the other party.
23. **Attorneys' Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorneys' fees and costs.
24. **Content and Understanding.** This contract and all Attachments hereto contain a complete and integrated understanding and contract between the parties. No other statements or representations, written or oral, shall be deemed a part hereof.
25. **Dispute Resolution.** When a dispute arises between the parties and it cannot be resolved by direct negotiation between the Project Manager and the Cost-Share Partner, the process described in this section will be used to resolve the dispute.
- a. The Cost-Share Partner may request a dispute hearing with the Agency Executive Director. The request for a dispute hearing must:
- i. Be in writing
 - ii. State the disputed issue(s)
 - iii. State the relative positions of the parties
 - iv. Include any relevant documentation
 - v. State whether the Cost-Share Partner desires to meet in person with the Agency Executive Director to discuss the dispute
 - vi. Be received by the Agency Executive Director by U.S. postal mail or e-mail within 5 (five) working days after the parties agree they cannot resolve the dispute.

By: Laurie Halvorson
Laurie Halvorson
Director of Compliance and Legal

Date: 5/28/10



**CITY COUNCIL
AGENDA BILL**

UPDATED AB 6111
April 19, 2010
Consent Calendar

**PUGET SOUND CLEAN CITIES GRANT - CLEAN
FLEETS COST-SHARE**

Proposed Council Action:

Authorize the cost-share agreement.

| | |
|----------------------------------|--|
| DEPARTMENT OF | Public Works Engineering, (RCO) |
| COUNCIL COMMITTEE LIAISON | Mark Mullet |
| OTHER COUNCIL MEETINGS | April 5, 2010 |
| EXHIBITS | A. Contract for Services (Previously Submitted) |

| | |
|-----------------------|--|
| Comp Plan Policy Nos. | L-7, L-8 |
| Consistent | Yes |
| Explanation Provided | Page 2 |
| Other Policies | Transportation Goals and Land Use Vision and Goals |

| Expenditure Required | |
|----------------------|-----------------|
| \$ | 2010: 65,726.09 |
| Amount Budgeted | |
| \$ | 2010: 65,726.09 |

SUMMARY STATEMENT

The City of Issaquah is a member of the Puget Sound Clean Cities Coalition and a founding member of the Evergreen Fleets Initiative. The Puget Sound Clean Cities Coalition, part of the U.S. Department of Energy Clean Cities program, promotes the use of alternative fuels and advanced vehicle technologies in fleet operations with the goal of reducing the use of petroleum fuels and their associated emissions. Evergreen Fleets is an effort designed to both guide and provide recognition for Fleets in making smart, environmentally responsible choices to reduce fuel consumption and greenhouse gas emissions in the region of the Coalition.

The Puget Sound Clean Cities Coalition, led by the Puget Sound Clean Air Agency, was awarded grant funds authorized under the American Recovery and Reinvestment Act of 2009 to fund the **Puget Sound Clean Cities Petroleum Reduction Project**. This project includes a cost reimbursement program for fleet operations to facilitate the purchase of alternative fuel and advanced technology vehicles.

The purpose of this Agenda Bill is to authorize the City to enter into a Contract for Services as a **Cost-Share Partner** (commencing on January 1, 2010 and terminating on January 31, 2014) to allow the City to submit requests for cost reimbursement for hybrid and alternative fuel vehicles under the project. The grant would pay for incremental costs associated with qualifying vehicles.

The City's Public Works Operations Department, Fleets Division, currently has approval for the purchase of vehicles that meet the criteria of the project in 2010 (Ford Escape Hybrids) and additional vehicles are planned in the Capital Improvement Program (CIP) program in 2011 which would also meet the criteria of the project. The proposed agreement allows the City to pursue reimbursement for qualifying vehicles and also provides matching funds to the regional Coalition partnership. However, the City retains the ability to alter planned purchases at anytime during the contract with a written amendment should budget, purchasing or other decisions change in the future.

The 2010 budget included expenditures for two Ford Escape Hybrid vehicles. Following the purchase and receipt of the vehicles, the City would be reimbursed \$3,000 per vehicle, resulting in a savings of \$6,000 to the City for these purchases. The Contract for Services is attached.

CONSISTENCY WITH COMPREHENSIVE PLAN:

UPDATE:

The Council Utilities, Technology, and Environment Committee met on April 13, 2010 to review AB 6111. Following review, the Committee recommends the Puget Sound Clean Cities Grant Clean Fleets cost share contract be approved.

ALTERNATIVE(s):

1. Do not signature of the contract. This would result in the City not receiving grant funds to support the purchase of City vehicles.

RECOMMENDATION

Administration/Public Works Engineering:

~~MOVE TO: Refer AB 6111 the April 13, 2010 Council Utilities, Technology and Environment Committee for review and recommendation, returning to the full Council on May 3, 2010.~~

Council Utilities, Technology, and Environment Committee/Mark Mullet, Chair:

MOVE TO: Authorize the Administration to enter into the Puget Sound Clean Cities Grant Clean Fleets Cost Share Agreement as outlined in AB 6111.

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.

Deputy City Administrator

Typed Name & Title of Authorized Representative

Signature of Authorized Representative

Date

5/25/2010

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