

MEMORANDUM OF AGREEMENT
PUGET SOUND AIR EMISSIONS INVENTORY

This Memorandum of Agreement (“MOA”) is entered into by and among the parties listed below. These parties are collectively referred to as the Puget Sound Marine Emissions Inventory Project Funding Committee (hereafter, the “Project Funding Committee”), and individually as “Members.”

1. Northwest Clean Air Agency, a local regulatory agency
2. Pacific Merchant Shipping Association, a private non-profit org
3. Port of Seattle (“POS”), a Washington Municipal Corporation
4. Port of Tacoma, a Washington Municipal Corporation
5. Port of Everett, a Washington Municipal Corporation
6. Port of Anacortes, a Washington Municipal Corporation
7. Port of Olympia, a Washington Municipal Corporation
8. Puget Sound Clean Air Agency, a local regulatory agency
9. Washington State Department of Transportation Ferries Division
10. Department of Ecology, a Washington State Agency
11. Western States Petroleum Association, a private non-profit organization.
12. North West & Canada Cruise Association

Additional parties may be added at a later date pursuant to the terms of paragraph 4.2.

RECITALS

WHEREAS, diesel emissions are a growing concern for public health and a top priority of the Puget Sound Clean Air Agency and other regulators, and maritime sources (vessels, cargo-handling equipment, locomotives, buses and trucks) have historically been significant generators of diesel emissions; and

WHEREAS, the Puget Sound Maritime Air Forum, a regional coalition of organizations interested in this issue, was formed to increase the level of shared knowledge about maritime diesel emissions and to provide a means to facilitate collaborative efforts to voluntarily reduce impacts from this transportation sector; and

WHEREAS, the Puget Sound Maritime Air Forum has completed a Puget Sound Marine Emissions Inventory in 2007 for inventory Year 2005; and

WHEREAS, the Puget Sound Maritime Air Forum has decided that updating to the baseline Puget Sound Marine Emissions Inventory is a necessary step to show progress in emission reductions programs and to assist collaborative efforts for future emission reduction projects; and

WHEREAS the Puget Sound Maritime Air Forum has established the Project Funding Committee and directed that they conduct such a coordinated and consistent Puget Sound Marine Emissions Inventory; and

WHEREAS the Project Funding Committee acknowledges that the development of such a Puget Sound Marine Emissions Inventory will be a costly endeavor, requiring not only that each participating entity individually generate high quality information but also the joint development of uniform methods and reports, and the services of a consultant to collect and summarize this information; and

NOW THEREFORE, the members of the Project Funding Committee hereby agree as follows:

1. Purpose. The purpose of this MOA is to define the authority and responsibilities of the Port of Tacoma and the Project Funding Committee as they pertain to the joint development of an information database and report concerning maritime sources of air quality emissions throughout the Puget Sound area in 2011, hereafter called “the Puget Sound Marine Emissions Inventory” or “the Project”.

2. Effective Date. This MOA shall become effective for each Member on November 4, 2010.

3. Port of Tacoma (POT) Responsibilities. POT agrees to the following:

3.1 Appointments. POT shall appoint one Designated Representative, and one alternate, to the Project Funding Committee.

3.2 Administration. The POT Designated Representative shall serve as Administrative Lead for the Project Funding Committee. The Administrative Lead shall determine Members’ availability for meetings, notify Members of meetings, distribute materials and information as required, and facilitate meetings.

3.3 Project Management. In consultation with the Project Funding Committee, POT shall prepare a Final Scope of Work, budget and schedule for the Project.

3.4 Consultant Management.

3.4.1 POT shall comply with procurement law and state policies applicable to port districts in the state of Washington. At a minimum, POT shall hire a consultant qualified to perform the work as described in Exhibit A “Draft Scope of Work”. POT shall prepare a short list of potential consultants qualified to perform the work, as described in Exhibit A (“Draft Scope of Work”). The Consultant Selection Team, as described

in Section 4.7.3 shall be responsible for determining the best-value selection based upon the information it is provided.

3.4.2 In accordance with POT contracting policies and State law, and in consultation with the Consultant Selection Team described in Section 4.7.3, POT shall select one or more qualified consultant(s) (“the Consultant”) from this short list. POT shall execute a contract with the Consultant and pay all invoices.

3.4.3 POT shall manage performance of the Consultant’s work, which shall be performed substantially as described in Exhibit A.

3.4.4 The POT Designated Representative shall act as the liaison between the Consultant and the Project Funding Committee, collectively and individually. POT will be responsible for all direction given to the Consultant. No change in the Scope of Work or Consultant’s contract will be effective unless issued in writing by POT.

3.5 Financial Management.

3.5.1 Overhead costs shall be distributed among Members on an allocation basis to be determined by the Project Funding Committee from the funds collected as reflected in paragraph 4.6. “Overhead” shall consist of establishing methodology and standards for data collection, coordinating the data collection, running the model, attending meetings and drafting the preliminary and final reports. Data collection authorized by a party in writing and performed by the selected Consultant will be done on a direct charge basis to the authorizing party. Written authorization signed by appropriate authority must be provided to the POT prior to data collection taking place. All charges for such data collection shall be invoiced separately or shown as separate line items on combined invoices.

3.5.2 After receipt of the Consultant’s first invoice or not later than June 30, 2011, POT shall send an invoice to the Members listed in Section 4.6 for the amounts shown in such section. POT shall deposit all monies received from Members into the Fund created for this purpose.

3.5.3 POT shall provide quarterly financial reports to the Members. Upon completion of the Project, any unexpended funds shall be returned to the Members, pro-rated in accordance with Member’s original contribution share.

3.6 Database.

3.6.1 The Project Funding Committee retains the right to ensure that the format, systems applications and platform developed by the Consultant will be compatible with Project Funding Committee members' information management systems.

3.6.2 POT agrees to accept all data provided by Members for inclusion into the database, if it is received in the format specified by the Port of Tacoma Administrative Lead.

4. Project Funding Committee Tasks and Responsibilities. The Project Funding Committee Member organizations hereby agree:

4.1 Members and Designated Representatives.

4.1.1 Each Member shall appoint one Designated Representative, and one alternate, to the Project Funding Committee. Each Member shall have the right to change its Designated Representative upon five (5) days written notice to each of the other Members and the Administrative Lead.

4.1.2 The Project Funding Committee shall consist of one Designated Representative from each Member contributing funds and any additional organizations contributing funds and added in accordance with Section 4.2.

4.1.3 All notices, draft reports, and other communications to or by a Member or the Consultant relating to the Project or the MOA shall be sent to each Designated Representative.

4.1.4 Only the Designated Representative, or alternate, shall be entitled to vote on behalf of such Member in connection with Project Funding Committee decisions pursuant to Section 4.4.

4.2 Additional Parties. At any time during the course of the Project, additional parties that have interest in participating in the Project may, with the unanimous consent of the Project Funding Committee regarding the admission of such additional party and the one-time fee to be paid by such additional party, join this MOA by executing and delivering a counterpart hereof and by paying a one-time fee. Additional parties must accept the Project Funding Committee decisions that have been made to date.

4.3 Administration. The Project Funding Committee shall hold such meetings as it deems necessary, which may be requested at any reasonable time by any designated representative and shall be called by the

Administrative Lead at any reasonable time. Meetings may be in person, by teleconference or a combination.

4.4 Decision-making. A Project Funding Committee meeting or teleconference cannot be held unless a majority of the Designated Representatives (or alternates) are present or participating by electronic means (e.g. Webex, telephone, etc.) The goal of the Members is to reach decisions by consensus, *i.e.* a unanimous vote of all Members, with each Member being entitled to one vote. An absent Member may vote by giving a written proxy to another Member. The Members shall endeavor in good faith to reach consensus in resolving all matters to be decided by the Project Funding Committee. However, if a pending decision has been discussed at two (2) Project Funding Committee meetings without reaching consensus, at the conclusion of the second meeting the decision shall be made by majority vote of the Members present or participating by electronic means, unless unanimous agreement is expressly required with respect to such matter by this MOA.

4.5 Termination and Withdrawal. This MOA shall terminate thirty (30) days after the Final Report is issued to the public, or payment of the final Consultant invoice, whichever is later. Each Member, including the POT, shall have the unilateral right to withdraw at any time, with thirty (30) days notice to the Project Funding Committee. However, a withdrawing Member is not entitled to a refund of the payment described in Section 4.6. In addition, POT must complete the following tasks prior to withdrawal:

4.5.1 The Consultant must be paid for any and all work that was incurred prior to POT's withdrawal announcement.

4.5.2 POT will provide each Member with an electronic copy of the most final work product produced prior to POT's withdrawal announcement.

4.5.3 POT shall return any remaining funds to individual Members in accordance with the percentage of their original contribution in comparison to the total funds received to compensate for overhead costs as described in 3.5.1.

4.6 Payments

4.6.1 Majority Payment: After receiving the invoice described in Section 3.5.2, the following Members of the Project Funding Committee shall transmit a check, in the amount listed below, payable to the Port of Tacoma, in consideration for its participation in this Project and receipt of the drafts and Final Report and underlying database.

- 4.6.1.1. Pacific Merchant Shipping Association: \$5,000
- 4.6.1.2. Port of Tacoma: \$75,000
- 4.6.1.3. Port of Everett: \$10,000
- 4.6.1.4. Port of Anacortes: \$10,000
- 4.6.1.5. Port of Seattle: \$75,000
- 4.6.1.6. Puget Sound Clean Air Agency: \$25,000
- 4.6.1.7. Western States Petroleum Association: \$10,000
- 4.6.1.8. WSDOT Ferries Division: \$10,000
- 4.6.1.9. Port of Olympia: \$10,000
- 4.6.1.10. North West & Canada Cruise Association: \$5,000

4.7 Management Tasks.

4.7.1 The Project Funding Committee shall review all Draft Scopes of Work and approve the Final Scope of Work, and amend it as necessary.

4.7.2 The Project Funding Committee shall review and approve the Schedule and Budget, and amend it as necessary.

4.7.3 The Project Funding Committee shall select five (5) Members to function as a Consultant Selection Team. This Team shall review the short list of consultants provided by POT and recommend a Consultant for selection.

4.8 Data Transmission and Report Approval Process.

4.8.1 Each Member shall collect within its area of jurisdiction the air emissions information necessary for the Project according to the assumptions and protocols developed by the Consultant and approved by the Project Funding Committee. No later than the date specified in the approved Schedule, each Member shall provide the data to the Administrative Lead and the Consultant in the approved format. Each Member shall respond in a timely fashion to any questions that the Administrative Lead may have about the content or format of its data.

4.8.2 Each Member shall receive an electronic copy of first draft report and that portion of the underlying database that contains its data ("Draft 1"). Members shall have ten (10) days to review Draft 1 for data quality and accurateness, and provide any necessary corrections, delivered in electronic format.

4.8.3 The second draft report ("Draft 2") shall consist of a strikeout/underline version incorporating all Members' comments on Draft 1. Each Member shall receive an electronic copy of Draft 2. Unless the Project Funding Committee determines that it is unnecessary, Draft 2 shall

be reviewed at a Project Funding Committee meeting, the purpose of which is to obtain agreement on the final content of the report. Failure to attend the meeting shall be construed as agreement with the content of Draft 2.

4.8.4 Draft 3 will be the Final Report. Each Member shall have an opportunity to formally approve or disapprove the Final Report. Each Member shall receive an electronic copy of the Final Report, and the entire database.

4.9 Public Communication.

4.9.1 Prior to the Final Report being released to the public, the Project Funding Committee shall develop a media/ communications plan, including the preparation of a press release about the Final Report coordinated by the Port of Tacoma.

4.9.2 Members agree to endeavor to exercise good judgment and to act in the best interests of the Project Funding Committee in communicating in any manner with any governmental agencies or other entities, concerning the subject of this MOA. Substantive communications by a Member with such third parties concerning the subject of this MOA should be disclosed to the other Members. Members shall not hold public meetings, press conferences, or issue press releases concerning the subject of this MOA without obtaining the prior consent of the Project Funding Committee.

5. Confidentiality and Use of Information.

5.1 Confidential Information. "Confidential Information" consists of documents, communications or mental impressions concerning the Project that have not been published or have not become a part of the public domain and are so marked. The Final Report, and its underlying database, are not Confidential Information. From time to time, the Members may elect to disclose or transmit Confidential Information to each other or to the Consultant. Confidential Information may be disclosed to or transferred among the Members orally or in writing or by any other appropriate means of communication. The Members intend that no claim of attorney-client privilege or work product immunity or any other privilege be waived as a result of exchange or transmittal of Confidential Information.

5.2 Maintenance of Confidentiality. Each Member agrees that all Confidential Information received from any other Member or the Consultant shall be held in strict confidence by the receiving Member, and that such Confidential Information shall be used only for conducting such activities that are necessary and proper to carry out the purposes of this MOA. Each Member shall take all

necessary and appropriate measures to ensure that any person who is granted access to any Confidential Information or who otherwise assists the Consultant in connection with this MOA is familiar with the terms of this MOA and complies with the terms hereof as they relate to the duties of such person.

5.3 Compelled Disclosure. If Confidential Information becomes the subject of a Public Records Act request, or an administrative or judicial order requiring disclosure by a Member, the Member may satisfy its confidentiality obligations under this MOA by either (1) objecting to production of any such Confidential Information on grounds of confidentiality and/or any privilege, and at such Member's option seeking an order for protection from disclosure, or (2) promptly notifying the Member(s) that generated the Confidential Information at least five (5) days prior to any such required disclosure and informing the generating Member(s) of all material information concerning the required disclosure, to permit the generating Member(s) to seek an order for protection from disclosure.

5.4 Nonconfidential Information. Nothing in this MOA shall prevent the Members from disclosing to others or using in any manner information which the Member can show:

5.4.1 Was known by the Member prior to execution of the MOA, has been published or has become part of the public domain other than by the acts, omissions or fault of Members or their agents or employees in violation of this MOA; or

5.4.2 Was furnished or made known to the Member by third parties (other than those acting directly or indirectly for or on behalf of the Members) or was obtained by the Member in some manner other than pursuant to this MOA, as a matter of legal right, without any applicable restrictions on its disclosure; or

5.4.3 Was in the Member's possession prior to the disclosure thereof by or on behalf of any of the Members; or

5.4.4 Is information that has been made final pursuant to Report Approval Process described in Section 4.8. This includes both the Final Report and all data contained in the underlying database.

6. No Admission of Liability. A Member's participation in and compliance with this MOA shall not be considered an admission of liability for any purpose.

7. Enforceability by Third Parties. This MOA is not intended for the benefit of any person or entity not a signatory to this MOA and is not enforceable by any third party.

8. Amendments. Amendments to this MOA may be proposed by Members only. This MOA may be amended only by the unanimous written approval of the Members. Such amendments shall become effective on the date written notice of such amendments is postmarked to all Members. However, nothing in this Section prohibits Members from entering into separate agreements with other Members, and unanimous approval is not required for such separate agreements.

9. Successors and Assigns. This MOA shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder shall release the assigning Member without the prior written consent of the other Members.

10. Severability. If any provision of this MOA is deemed invalid or unenforceable, the balance of the MOA shall remain in full force and effect.

11. Authority of Members. Each Member represents and warrants that he or she has all requisite power (corporate or otherwise) to enter into and be bound by the terms and conditions of this MOA and to carry out its respective obligations hereunder and the execution and delivery by such Member of this MOA and the performance of such Member's obligations hereunder have been duly authorized by all necessary action (corporate or otherwise) of such Member.

12. Counterparts. This MOA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

13. Entire Agreement. This MOA, including documents incorporated by reference, constitutes the entire understanding of the Members with respect to its subject matter.

14. Governing Law. This MOA shall be construed under and in accordance with laws of the state of Washington and venue shall lie in Pierce County Superior Court.

IN WITNESS WHEREOF, the Members hereto enter into this MOA. Each person signing this MOA represents and warrants that he or she has been duly authorized to enter into this MOA by the corporation or municipality on whose behalf it is indicated that the person is signing.

PORT OF OLYMPIA

PACIFIC MERCHANT SHIPPING
ASSOCIATION

By: E. B. Galligan
Name: E. B. Galligan
Its: Executive Director

By: _____
Name: _____
Its: _____

PORT OF SEATTLE

PORT OF TACOMA

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

PORT OF EVERETT

PORT OF ANACORTES

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

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PORT OF OLYMPIA

PACIFIC MERCHANT SHIPPING
ASSOCIATION

By: _____

By: MR Moore

Name: _____

Name: MICHAEL R MOORE

Its: _____

Its: VICE PRESIDENT

PORT OF SEATTLE

PORT OF TACOMA

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

PORT OF EVERETT

PORT OF ANACORTES

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

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PORT OF OLYMPIA

PACIFIC MERCHANT SHIPPING
ASSOCIATION

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

PORT OF SEATTLE

PORT OF TACOMA

By: Nora Hvey

By: _____

Name: Nora Hvey

Name: _____

Its: Director CPO

Its: _____

PORT OF EVERETT

PORT OF ANACORTES

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

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PORT OF OLYMPIA

PACIFIC MERCHANT SHIPPING
ASSOCIATION

By: _____

By: _____

Name: _____

Name: _____

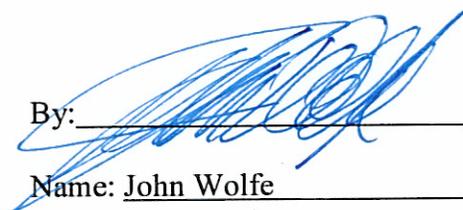
Its: _____

Its: _____

PORT OF SEATTLE

PORT OF TACOMA

By: _____

By:  _____

Name: _____

Name: John Wolfe

Its: _____

Its: Chief Executive Officer

PORT OF EVERETT

PORT OF ANACORTES

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

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PORT OF OLYMPIA

PACIFIC MERCHANT SHIPPING
ASSOCIATION

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

PORT OF SEATTLE

PORT OF TACOMA

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

PORT OF EVERETT

PORT OF ANACORTES

By: 

By: _____

Name: David M. Clark

Name: _____

Its: Executive Director

Its: _____

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PORT OF OLYMPIA

PACIFIC MERCHANT SHIPPING
ASSOCIATION

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

PORT OF SEATTLE

PORT OF TACOMA

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

PORT OF EVERETT

PORT OF ANACORTES

By: _____

By: _____

Name: _____

Name: Robert W. Hyde

Its: _____

Its: Executive Director

Interlocal Agreement No. 2011020-0-IAA

PUGET SOUND CLEAN AIR AGENCY

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION
FERRIES DIVISION

By: Craig T. Kenworthy

By: _____

Name: Craig T. Kenworthy

Name: _____

Its: Executive Director

Its: _____

WESTERN STATES PETROLEUM
ASSOCIATION

WASHINGTON STATE DEPARTMENT
OF ECOLOGY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

NORTHWEST CLEAN AIR AGENCY

Its: _____

By: _____

Name: _____

Its: _____

NORTHWEST & CANADA CRUISE SHIP ASSOCIATION

By: _____

Name: _____

Its: _____

PUGET SOUND CLEAN AIR AGENCY

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION
FERRIES DIVISION

By: _____

By: Jean Baker

Name: _____

Name: Jean Baker

Its: _____

Its: Deputy Chief,
Finance & Administration

WESTERN STATES PETROLEUM
ASSOCIATION

WASHINGTON STATE DEPARTMENT
OF ECOLOGY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

NORTHWEST CLEAN AIR AGENCY

By: _____

Name: _____

Its: _____

NORTHWEST & CANADA CRUISE SHIP ASSOCIATION

By: _____

Name: _____

Its: _____

PUGET SOUND CLEAN AIR AGENCY

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION
FERRIES DIVISION

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

WESTERN STATES PETROLEUM
ASSOCIATION

WASHINGTON STATE DEPARTMENT
OF ECOLOGY

By:  _____

By: _____

Name: Catherine H. Rehess-Boyd

Name: _____

Its: President

Its: _____

NORTHWEST CLEAN AIR AGENCY

By: _____

Name: _____

Its: _____

NORTHWEST & CANADA CRUISE SHIP ASSOCIATION

By: _____

Name: _____

Its: _____

PUGET SOUND CLEAN AIR AGENCY

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION
FERRIES DIVISION

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

WESTERN STATES PETROLEUM
ASSOCIATION

WASHINGTON STATE DEPARTMENT
OF ECOLOGY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

NORTHWEST CLEAN AIR AGENCY

By: Mark Asmundson

Name: MARK Asmundson

Its: Exec. Director

NORTHWEST & CANADA CRUISE SHIP ASSOCIATION

By: _____

Name: _____

Its: _____

PUGET SOUND CLEAN AIR AGENCY

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION
FERRIES DIVISION

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

WESTERN STATES PETROLEUM
ASSOCIATION

WASHINGTON STATE DEPARTMENT
OF ECOLOGY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

NORTHWEST CLEAN AIR AGENCY

By: _____

Name: _____

Its: _____

NORTH WEST & CANADA CRUISE SHIP ASSOCIATION

By: _____

Name: JOHN HANSEN

Its: _____