

**SECOND AMENDED INTERLOCAL AGREEMENT BETWEEN THE
PORT OF SEATTLE AND THE PUGET SOUND CLEAN AIR AGENCY
FOR A DRAYAGE TRUCK REPLACEMENT PROGRAM**

This second amended Interlocal Agreement (“Agreement”) is entered into between the **Puget Sound Clean Air Agency**, (hereinafter referred to as the “Agency”), a municipal corporation under the laws of the State of Washington, and the **Port of Seattle** (hereinafter referred to as “Port”), a Washington municipal corporation, located at Pier 69, 2711 Alaskan Way, Seattle, WA 98111.

WHEREAS, the Port of Seattle and the Board of Directors of the Puget Sound Clean Air Agency deem it desirable to amend the original interlocal agreement No. 2014-052 dated January 2, 2014, and amended October 8, 2014, to incorporate additional funding and to reflect mutually agreeable schedule changes; and

WHEREAS, the Port has been awarded a supplemental grant No. CM-1140(060), in the amount of \$638,215 from the U.S. Department of Transportation Federal Highway Administration Congestion Mitigation and Air Quality (CMAQ) Program through the Washington State Department of Transportation (WSDOT) to provide financial incentives to nineteen or more truck owners to replace their older, higher-polluting vehicles with trucks that meet the United States Environmental Protection Agency’s (EPA’s) 2010 engine standards; and

WHEREAS, the CMAQ Supplemental grant to replace nineteen trucks is consistent with the goals of the Scrappage and Replacement for Air in Puget Sound (“ScRAPPS 2”) program currently funded by grants awarded to the Port under the U.S. Department of Transportation’s CMAQ Program through WSDOT, by the Washington State Department of Ecology’s (Ecology) Clean Diesel Program, by the EPA’s Diesel Emission Reduction Act (DERA) Grant Program, and by matching funds provided by the Port; and

WHEREAS, the Port has agreed to provide matching funds needed to execute the supplemental CMAQ grant; and

WHEREAS, the Port has determined that the Agency is qualified and available to expand the current drayage truck scrappage and replacement to implement the supplemental CMAQ grant; and

WHEREAS, the nineteen CMAQ Supplemental grant-funded truck replacements and corresponding administrative costs will be tracked separately from those funded by the other CMAQ, Ecology and DERA grants; and

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

A. Interlocal Agreement No. 2014-052, as amended by No. 2015-052-01, is hereby amended as follows:

I. Section 1, "Purpose and Scope of this Agreement," is replaced with the following:

1. Purpose and Scope of this Agreement.

- A. The purpose of this agreement is to implement the CMAQ grant No. CM-1140(055) under WSDOT Local Agency Agreement LA-8219 dated August 2, 2013; Washington State Department of Ecology Clean Diesel Grant No. G1400386 dated December 18, 2013; U.S. Environmental Protection Agency DERA Grant No. DE-83561401 dated March 31, 2014; and CMAQ grant No. CM-1140(060) under WSDOT Local Agency Agreement LA-8464 dated August 13, 2014 to replace 242 or more pre-2007 engine-year drayage trucks that serve the Port's marine terminals with trucks that have newer engines and/or EPA-verified or California Air Resources Board (CARB)-verified emissions reduction upgrades. The result will be trucks that meet (or achieve equivalency with) either the EPA's 2007 or 2010 engine standards for heavy-duty diesel highway vehicles, depending upon which grant program funds each replacement truck. Truck owners will be able to participate in one of three grant programs, as described below. If a grant administrator approves a lesser number of truck replacements under its grant based on revised program standards, the Port and the Agency shall adjust the number of truck replacements accordingly under this Agreement by written notice signed by both parties.
- B. Funding for this work is provided from the following sources: (i) by the Port; (ii) an Ecology grant (Clean Diesel Grant No. G1400386, dated December 18, 2013, and amended August 13, 2014 and April 15, 2015) to the Port, included as Attachment A, A-1, and A-2 respectively, and incorporated herein by reference; (iii) a WSDOT Agreement (Local Agency Agreement LA-8219, dated August 2, 2013) with the Port, included as Attachment B and incorporated herein by reference; (iv) an EPA DERA Grant (No. DE – 83561401, dated March 31, 2014) to the Port, included as Attachment C and incorporated herein by reference; and (v) a WSDOT Agreement (Local Agency Agreement LA-8464, dated August 13, 2014) with the Port, included as Attachment D and incorporated herein by reference.
- C. Throughout this Agreement, the EPA-funded grant will be referred to as the "DERA grant program", the grants funded by WSDOT and Ecology will be referred to as the "CMAQ/Ecology grant program," and the supplemental CMAQ funding will be referred to as the "CMAQ Supplemental grant program."

Collectively, these separate grant programs are referred to as the “ScRAPS 2 program.”

- D. Each grant program will provide financial incentives to replace or upgrade trucks. If the Agency identifies a suitable retrofit or upgrade kit that will enable an existing truck to meet the required emission standards of one of the CMAQ grants, then truck owners participating in that grant program will be offered financial incentives to have such a kit installed, instead of replacing the truck. All trucks with pre-2007 model-year engines being replaced under the ScRAPS 2 program will be scrapped and all replacement trucks will meet the program requirements of the grant that funds the replacement.

II. Section 2, “Duties of the Agency,” is replaced with the following:

2. Duties of Agency

The Agency will undertake the following actions:

A. Develop Program Work Plan

- 1) Develop, in collaboration with the Port, a detailed program work plan to include, but not be limited to, a description of the following tasks for the CMAQ/Ecology grant program:
 - a. Open and operate a truck outreach center for potential applicants at or near a Port-owned marine terminal, to be in place by May 27, 2014, and to operate through December 31, 2015. If funds available from all grant programs are exhausted prior to December 31, 2015, the Port and the Agency will end the ScRAPS 2 Program earlier by mutual agreement. The Agency will operate the outreach center consistent with the work plan.
 - b. Process applications from truck owners for financial assistance per Port-provided guidelines.
 - c. Assess suitability of trucks that are proposed to be scrapped or retrofitted, to verify program eligibility.
 - d. Assess suitability of proposed replacement trucks to verify program eligibility.
 - e. Coordinate scrapping and associated documentation for trucks being scrapped and replaced.
 - f. Process ScRAPS 2 scrapping/upgrading incentive payouts.
 - g. Track emission reductions associated with each truck replacement/upgrade.

- h. Maintain up-to-date records and report on the above actions.

Deliverable date for initial work plan: January 31, 2014.

- 2) Update the work plan to incorporate the DERA grant program. These updates will include but not be limited to, a description of the following tasks:
 - a. Operate the DERA grant program concurrently with the CMAQ/Ecology grant programs as one unified ScRAPs 2 program. Provide details on the unique requirements of both the DERA grant program and the CMAQ/Ecology grant program and how these programs will be administered concurrently.
 - b. Describe how the agency will track the DERA grant program vouchers and the corresponding administrative costs and truck scrap income separately from the CMAQ/Ecology grant program vouchers and corresponding administrative costs and truck scrap income.

Deliverable date for initial work plan update: October 3, 2014.

- 3) Update the work plan to incorporate the CMAQ Supplemental grant program. These updates will include but not be limited to, a description of the following tasks:
 - a. Operate the CMAQ Supplemental grant program concurrently with the other grant programs as one unified ScRAPs 2 program. Provide details on the unique requirements of the CMAQ Supplemental grant program and the other grant programs and how these programs will be administered concurrently.
 - b. Describe how the agency will track the CMAQ Supplemental grant program vouchers and the corresponding administrative costs and truck scrap income separately from the other grant program vouchers and corresponding administrative costs and truck scrap income.

Deliverable date for initial work plan update: July 1, 2015.

- 4) Update the work plan to reflect any grant amendments or revisions approved by the grant administrators at the funding agency within one month of the Port providing written notice to the Agency that it has received the grant amendment or the official approval from the funding agency.

Deliverable date for work plan revisions: One month after the Port notifies the Agency of the grant amendment or revision approval from the funding agency.

B. Create and Provide Contracts, Forms, and Other Relevant Documents as Needed

- 1) Allow the Port an opportunity to review any new forms, contracts RFPs, or promotional materials.

Deliverable date: No less than 3 days before issuing them.

- 2) Send a copy of all contracts, form templates, and other relevant documents to the Port.

C. Select Partner Truck Dealers, Truck Retrofitters, and Truck Scrapping Service Providers

- 1) Identify and contract with truck scrapping service providers and truck retrofitters via a competitive process that meets procurement requirements of the applicable federal and state grants.

Deliverable date: June 6, 2014.

- 2) Identify and contract with truck dealers via a competitive process that meets requirements of the applicable federal and state grants. All agreements with the dealers must state that all dealers agree to honor ScRAPs 2 vouchers issued by the Agency that are redeemable as individual incentive payouts for specific, pre-approved trucks and specific, pre-approved truck owners.

Deliverable date: May 7, 2014.

- 3) Pursue new contractors via a competitive process and amend existing contracts with truck dealers to incorporate any requirements of the grant programs. All new agreements with the dealers must state that all dealers agree to honor ScRAPs 2 vouchers issued by the Agency that are redeemable as individual incentive payouts for specific, pre-approved trucks and specific, pre-approved truck owners.

Deliverable date: Ongoing through an open Request for Qualifications and amendments as program needs are identified.

D. Assist the Port in Determining Program Eligibility Criteria

Review the draft program eligibility criteria developed by the Port and provide comments on the draft. Deliverable dates:

- 1) February 28, 2014, for the CMAQ/Ecology grant program;
- 2) Within two weeks after Port provides draft eligibility criteria for the DERA grant program;
- 3) Within two weeks after the Port provides draft eligibility criteria for the CMAQ Supplemental program.

E. Assist with Outreach to Truck Owners

Assist the Port in conducting an outreach campaign to truck owners that will promote the ScRAPs 2 program. This includes assisting in planning and delivering information to truck owners at a minimum of five events. Obtain approval from the Port prior to initiating additional outreach activities or promotional materials.

Deliverable date: December 31, 2015.

F. Make Equivalency Determinations

As part of the WSDOT/Ecology grant program, the Agency will prepare and submit to the Port analyses of truck technologies/upgrades that would achieve equivalency to the 2007 EPA emission standards for heavy-duty diesel truck engines. These equivalency determinations will: address the fuel and retrofit actions necessary to meet these standards; provide the ScRAPs 2 program with criteria to determine if a fuel/technology is eligible for an incentive payment under the ScRAPs 2 program; and include an estimated per unit cost of upgrade and recommended incentive level. The Port will make the final determination on the level of incentive provided to participating truck owners for truck replacements, truck upgrade kits and retrofit kits.

Deliverable date: Initial determination on March 15, 2014, and updated by the Agency as new relevant information becomes available.

G. Launch and Operate Truck Center

- 1) Enter into a License Agreement with the Port for office space for a truck outreach center at the Port's Terminal 5. If the space becomes committed to another Port user and is no longer available for the ScRAPs Program, the Agency will work with the Port to find an alternate suitable space from which to run the program. Terms and conditions to use Port property are set forth in the License Agreement attached hereto as Attachment E and incorporated by reference.
- 2) Open the truck center to the drayage truck community and accept and process truck replacement or upgrade authorization requests. Deliverable date: May 27, 2014, through December 31, 2015. If grant funds are exhausted prior to December 31, 2015, the Port and the Agency will end the ScRAPs 2 program earlier by mutual agreement.
- 3) Complete all incentive processing for approved truck replacements, upgrade kits and retrofit kits. Deliverable Dates:
 - a. December 31, 2015, for the CMAQ/Ecology grant program;
 - b. September 30, 2015, for the DERA grant program;
 - c. December 31, 2015, for the CMAQ Supplemental grant program.

H. Maintain separate records for the DERA grant program, the CMAQ/Ecology grant program, and the CMAQ Supplemental grant program.

- 1) Keep separate records for the grant participants for each of the three grant programs. The Agency will identify each truck replacement as either being part of the CMAQ/Ecology grant program, the DERA grant program, or the CMAQ Supplemental grant program. The records that will be kept separate include but are not limited to application forms, vouchers, and scrapping reimbursements.
- 2) Submit invoices itemized as specified in Section 5 of this Agreement for each of the three grant programs. The agency will submit with each invoice the required documentation for each truck voucher and the corresponding administrative costs incurred under each program.

I. Conduct Recordkeeping and Reporting

- 1) Develop and implement an auditable system meeting federal and state grant requirements to document truck evaluation, scrapping, replacement, and upgrade processes, including cash flow, lien and insurance search procedures and scrap yard coordination. Deliverable dates:
 - a. March 31, 2014, for the CMAQ/Ecology grant program;
 - b. October 10, 2014, for the DERA grant program;
 - c. July 1, 2015, for the CMAQ Supplemental grant program.
- 2) Provide information to the Port to meet the requirements of the CMAQ/Ecology, the DERA and the CMAQ Supplemental grants (see Attachments A, A-1, B, C, and D). Submit a monthly project report and invoice for each program, including the number of trucks upgraded or replaced, the reimbursable costs for each truck, program income due to scrapping replaced trucks and emission calculations showing the annual reduction attributable to each upgraded or replaced truck.
Deliverable dates: Monthly, throughout the term of the agreement.
- 3) Cooperate with routine Port-led audits and budget reconciliation as required.
- 4) Submit final project reports summarizing results of programs and project costs. Verify all files are complete. Deliverable dates:
 - a. January 31, 2016, for the CMAQ/Ecology grant program;
 - b. November 30, 2015, for the DERA grant program;
 - c. January 31, 2016, for the CMAQ Supplemental grant program.

II. Section 3, "Duties of the Port," is replaced with the following:

The Port will undertake the following actions:

3. Duties of the Port

A. Approve Invoice Package

- 1) The Port will work with the Agency to develop a sample invoice documentation package for voucher reimbursement requests.

Deliverable Date: Prior to the first voucher invoice.

- 2) The Port's Project Manager will sign off on the final sample invoice documentation package.

Deliverable Date: Prior to the first voucher invoice.

B. Make Payments

The Port will make payments to the Agency as set forth in Section 5 of this agreement.

C. Manage and Administer Grants

Manage and administer all WSDOT, Ecology, and EPA grants, including auditing Agency performance under this agreement, processing reimbursements, and submitting reports to these organizations.

D. Ensure Billing Requirements Are Vetted and Approved

Ensure that any changes to the itemized billing requirements described in Section 5 have been vetted and approved in writing by the finance departments of all funding sources in the ScRAPs 2 program prior to requiring the Agency to implement those changes.

E. Review and Approve Work Plans

Review and approve the Agency's draft work plans within one week of receipt.

Deliverable dates: Within one week of receipt.

F. Provide Comments on Documents

Provide comments on any documents that the Port has requested to review.

Deliverable date: Within three days of receiving the draft document.

G. Provide Truck Owner Eligibility Criteria

Provide the Agency with final truck owner eligibility criteria for participation in the ScRAPs 2 Program.

Deliverable date: One month prior to the launch date of each respective grant program.

H. Provide Program Review

Perform regular on-site and ScRAPS 2 program review of the drayage truck outreach center to ensure compliance with grant requirements.

I. Lead Outreach and Marketing Efforts

Lead an outreach and marketing effort to engage candidate drayage truckers in the ScRAPS 2 Program.

Deliverable date: December 31, 2015.

J. Provide the Agency with a Truck Outreach Center if Space is Available

1) Office Space. The Port shall enter into a License Agreement with the Agency for office space for a truck outreach center at the Port's Terminal 5. Terms and conditions to use Port property are set forth in the License Agreement attached hereto as Attachment E and incorporated by reference. If the space at Terminal 5 becomes committed to another Port user and is no longer available for the ScRAPS Program, the Port will first try to identify other suitable office space on Port property. If no alternative space is available on Port property, the Port will work with the Agency to find space near Port property and will reimburse the Agency for the cost of that space. The Port shall have the right to terminate the License Agreement for Port-owned ScRAPS office space, but must provide the Agency no less than ninety (90) days' notice before terminating the License Agreement.

2) Office Equipment. The Port shall either provide the Agency with office furniture and equipment and all utilities and services for the truck outreach center, or reimburse the Agency for the cost of office furniture and equipment and all utilities and services for the truck outreach center. The Agency will provide five (5) business days' prior written notice to the Port of its intent to acquire office furniture or equipment, including a specific list of the items and their cost. The Agency may proceed with the acquisition of the listed items after the Port approves or after the Port has not responded within five (5) days of receipt of the written notice.

III. Section 4, "Highlighted Grant Requirements," is replaced with the following:

4. **Highlighted Grant Requirements.** Compliance with the requirements of the Ecology grant (Clean Diesel Grant No. G1400386, dated December 18, 2013, and amended August 13, 2014), the CMAQ WSDOT Agreement (Local Agency Agreement LA-8219, dated August 2, 2013) the EPA grant (DERA Grant No. DE – 83561401), and the CMAQ Supplemental WSDOT Agreement (Local Agency Agreement LA-8464, dated October 8, 2014), all of which are included as Attachments (A, A-1, B, C, & D),

is required by the Port and the Agency. The Port, as recipient of the grants, has the responsibility to the granting agencies for adhering to the grants' conditions. The Agency acknowledges the grants' conditions and agrees to carry out its obligations under this Agreement in accordance with those conditions. The Agency agrees to obtain approval from the Port prior to accruing expenses for overtime compensation or overtime differential for work performed under the CMAQ/Ecology grant program, the DERA grant program, or the CMAQ Supplemental grant program.

IV. Section 5, "Compensation," is replaced with the following:

5. Compensation

- A. The total amount paid by the Port for satisfactory performance of the work under this Agreement shall not exceed six million, three hundred forty-eight thousand dollars (\$6,348,000). Up to five million, four hundred thirty thousand dollars (\$5,430,000) will be to provide financial incentives to the truck owners; up to nine hundred eighteen thousand dollars (\$918,000) are to cover the Agency's administrative costs, and will be paid on a time and expense basis. The estimated costs to administer the DERA, CMAQ/Ecology, and CMAQ Supplemental grant programs are described in Attachment F, which is hereby incorporated by reference. The Port and the Agency may mutually agree to modifications to the cost breakdown and hourly rates shown in Attachment F.
- B. To ensure that the Port has all of the required information for each of the grants, the Agency will itemize its invoices by the following categories.
- 1) Truck center costs and supplies (supporting documentation: receipts)
 - 2) Vouchers for truck replacements funded by CMAQ/Ecology (WSDOT and Ecology) grants (supporting documentation: vouchers)
 - 3) Vouchers for truck replacements funded by the DERA grant (supporting documentation: vouchers)
 - 4) Vouchers for truck replacements funded by the CMAQ Supplemental grant (supporting documentation: vouchers)
 - 5) Hourly administrative costs related to the CMAQ/Ecology grants (supporting documentation: timesheets and hourly rate schedules)
 - 6) Hourly administrative costs related to the DERA grant (supporting documentation: timesheets and hourly rate schedules)
 - 7) Hourly administrative costs related to the CMAQ Supplemental grant (supporting documentation: timesheets and hourly rate schedules)
- C. To ensure that the Agency has all of the required information for any audits related to this project, the Port will provide details with each payment showing what

portion of each payment is attributed to the funding sources described in the table below. If mutually agreeable, the Port may provide the Agency with a blanket statement indicating the percentage allocation for all payments by invoice type.

Table of Funding Sources

Administrative Costs	Voucher Costs
Washington State Dept. of Ecology G1400386	Washington State Dept. of Ecology G1400386
Washington State Dept. of Transportation CMAQ LA-8219	Washington State Dept. of Transportation CMAQ LA-8219
Port's CMAQ Match under LA-8219	Port's CMAQ Match under LA-8219
Port's DERA Match under DE-83561401	U.S. Environmental Protection Agency DERA DE-83561401
Washington State Dept. of Transportation CMAQ Supplemental LA-8464	Washington State Dept. of Transportation CMAQ Supplemental LA-8464
Port's CMAQ Supplemental Match under LA-8464	Port's CMAQ Supplemental Match under LA-8464

D. Program income from scrapping trucks that have been replaced under each grant program (DERA, CMAQ/Ecology, or CMAQ Supplemental) will be put back into the corresponding grant program to increase the amount available for incentives under that grant program. At the end of the ScRAPs 2 program, any remaining scrapping income that is insufficient to allow another complete replacement incentive shall be handled as follows:

- 1) For the CMAQ/Ecology and CMAQ Supplemental grant programs, any remaining scrapping income that is insufficient to allow another complete replacement incentive will be used to offset the Agency's administrative costs in that billing period;
- 2) For the DERA grant program, any remaining scrapping income that is insufficient to allow another complete replacement incentive will be remitted to the Port for submittal to EPA.

E. The Agency will submit invoices for administration expenses for each grant program to the Port monthly and for voucher expenses for each grant program twice monthly, using a template approved by the Port. The Agency will also

submit a monthly written report describing the progress made on each task that the Agency is administering under Section 2 of this Agreement, for reimbursement for work performed during the preceding month. Invoices will list the name of the person(s) who performed the work; the actual wages and benefits per hour for the persons(s) who provided the services; and the specific number of hours spent within a given billing period (monthly). Indirect charges shall utilize the Agency's federally approved indirect rate, which shall be applied to direct wages and benefits. Direct expense shall be supported by actual receipts. All labor and expenses submitted to the Port for reimbursement shall comply with the conditions specific to the applicable grant. The Agency shall submit invoices to the Port's Project Manager listed in Section 7. The Port will send its payments within fifteen (15) business days of receipt of the Agency's invoice to the Puget Sound Clean Air Agency, attention Finance Department, and 1904 3rd Ave., Suite 105, Seattle, WA 98101.

V. Section 7, "Term," is replaced with the following:

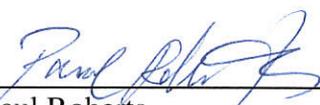
Term: The effective date of this Agreement is December 31, 2013. The termination date of this Agreement is March 31, 2016.

B. All other terms and conditions of Interlocal Agreement No. 2014-052, as amended by Interlocal Agreement No. 2014-052-01, remain in full force and effect.

IN WITNESS HEREOF, the Agency and the Port have executed this amended Interlocal Agreement No. 2014-052-2 as to the date first above written.

PUGET SOUND CLEAN AIR AGENCY

PORT OF SEATTLE

By: 
Paul Roberts
Board of Directors, Chair

By: 
Ted J. Fick
Chief Executive Officer

Date: 6/29/15

Date: 6/15/2015

Attest:

By: 
Craig T. Kenworthy
Executive Director

Date: 6/17/2015

Approved as to Form:

By: 
Laurie Halvorson
Director of Compliance and Legal

Date: 6/17/15

By: 
Tom Tanaka
Senior Port Counsel

Date: 6/9/15



RECEIVED DEC 18 2013

ATTACHMENT A

CLEAN DIESEL GRANT NO. G1400386
between the
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
and
PORT OF SEATTLE

THIS is a binding agreement entered into by and between the State of Washington, Department of Ecology, hereinafter referred to as "DEPARTMENT" and the Port of Seattle, hereinafter referred to as the "RECIPIENT" to carry out the activities described herein as authorized by Chapters 70.94 RCW, Washington Clean Air Act.

PART 1. GENERAL INFORMATION

Project Title: Port of Seattle Clean Truck Program Incentive Project

RECIPIENT: Port of Seattle
P.O. Box 1209
Seattle, WA 98111

Federal Tax ID: 91-6001-025

Project Contact: Janice Gedlund
Telephone: (206) 787-7924
E-mail address: gedlund.j@portseattle.org

DEPARTMENT: Air Quality Program
PO Box 47600
Olympia, WA 98504-7600

Project Officer: Frank Van Haren
Telephone / Fax Numbers: (360) 407-6870 / (360) 407-7534
E-mail address: fvan461@ecy.wa.gov

Fiscal Contact: Carrol Johnston
Telephone / Fax Numbers: (360) 407-6805 / (360) 407-7534
E-mail address: carr461@ecy.wa.gov

Maximum Grant Amount: \$500,000

Effective Date: The effective date of this grant is **October 1, 2013**. Any work performed prior to the effective date of this grant shall be at the sole expense and risk of the RECIPIENT.

Completion Date: The Project described in this grant expires on, and must be completed by **June 30, 2015**.

The RECIPIENT shall acknowledge and inform the public at their discretion about the DEPARTMENT's funding participation in this project through the use of project signs and/or acknowledgement in published materials and reports, the news media, or other public announcements.

PART 2. PROGRAM BACKGROUND

Information regarding the Washington State Clean Diesel Grant Program, including grant guidelines, current priorities, eligibility, application forms and instructions, and current and past awards can be found at the Washington Department of Ecology's Clean Diesel Grant Program webpage: <http://www.ecy.wa.gov/programs/air/cars/DieselGrantPage.htm>

Project Summary

Background: The Port of Seattle's Clean Truck Program was created in response to the Northwest Ports Clean Air Strategy (CAS), a voluntary program to reduce seaport-related diesel emissions in the region. The CAS specifies truck engine emission performance targets for years 2010 and 2017 for trucks that visit the Port of Seattle to deliver or take cargo. The Port of Seattle provides incentives for truckers to meet the emission performance targets.

General Project Scope: This project will provide monetary incentives to owners of approximately 183 older (model year 1994 – 2006) drayage trucks serving the Port of Seattle marine terminals to scrap the older trucks and replace with trucks having 2007 model year engine or newer. Upon advance approval by the DEPARTMENT alternatives to scrapping and replacing may be allowed, such as replacing only the engine of the truck (known as repowering) or providing exhaust retrofits. Incentive amount for alternatives may be set at different amounts than incentives for scrapping and replacing.

Conducting and managing the day to day activities of the project and conducting independent audits of the project will be performed by a consultant and/or a local government sub-recipient. Consultant services will be acquired through a competitive procurement process. Sub-recipient services will be contracted through a contract agreement.

The monetary incentive is estimated at around \$20,000 per truck. Old engines will be scrapped or otherwise rendered unusable. In addition, consultant and/or sub-recipient fees to manage and conduct the project (e.g. processing trucker applications, process and manage scrapping and incentive payout, reporting, and auditing) are estimated at \$4,461.85 per truck. RECIPIENT costs for general administration of project are estimated at \$613.50 per truck.

This \$4,587,281 project is funded by multiple sources including a \$3,535,498 federal Congestion Mitigation Air Quality (CMAQ) grant from the Federal Highways Administration, \$551,783 in matching funds from the RECIPIENT, and this Ecology Clean Diesel grant of \$500,000. Ecology's Clean Diesel Grant funds will be used to pay 10.9 percent of all eligible project costs. Eligible project costs include a monetary incentive paid to truck owners to scrap and replace their old truck, or other allowed alternative; consultant and/or sub-recipient costs for managing, conducting and auditing the project; and RECIPIENT administration of the project (staff time, benefits and overhead).

The main purpose of this grant is to provide funding for the Clean Truck Program Incentive project at the Port of Seattle. However, this grant may also be used to fund other diesel emission reduction projects as approved in advance by the DEPARTMENT. Diesel emission reduction projects at ports will be given precedence.

PART 3. BUDGET SUMMARY AND CONDITIONS

- 1) The DEPARTMENT is providing \$500,000 of its Washington Clean Diesel Grant funds to the RECIPIENT to conduct the project.

- 2) The RECIPIENT shall designate an individual who has signatory authority to verify and certify to the DEPARTMENT that the Clean Truck Program Incentive Project is conducted in accordance with the agreement.
- 3) Payments to the RECIPIENT from the DEPARTMENT will be made on a cost-reimbursable basis at 10.9 percent of total eligible itemized expenses for the billing period. CMAQ funding and RECIPIENT funding will cover the remaining 89.1 percent. Payment requests will be submitted to the DEPARTMENT'S Fiscal Contact as phases of the Clean Truck Program Incentive Project are completed, but not more frequently than monthly.

This is a performance based grant agreement. Compensation for all work will be based on the satisfactory performance or completion of deliverable(s) or percentage of completion of deliverable(s) accepted and approved by the DEPARTMENT'S Project Officer. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. A progress report is required with each invoice submitted, but no less often than quarterly. The DEPARTMENT will not pay any invoice until the progress report is received. See Appendix B for suggested progress report format.

- 4) The RECIPIENT shall submit invoice vouchers using an approved A19-1A Invoice Voucher, Form B2 and Form C2. Invoice vouchers shall not be submitted more frequently than monthly. Payment to the RECIPIENT for approved and completed work will be made by warrant or account transfer from the DEPARTMENT within 30 days of receipt of the invoice.
- 5) Invoice Voucher amounts must coincide with, and be supported by, backup documentation. Backup documentation must include copies of contractor and/or sub-recipient invoices.
- 6) For the administration of this agreement the RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans", current edition. (<http://www.ecy.wa.gov/biblio/9118.html>)
- 7) Expenditures shall be monitored by the DEPARTMENT Fiscal Office for compliance with the EXPENDITURE BUDGET (listed below) at the PROJECT LEVEL.

Clean Truck Program Incentive Project	MAXIMUM GRANT AMOUNT
Task 1a – Manage, conduct and audit a clean truck incentive project, and provide monetary incentives to truck owners.	\$487,750
Task 1b – Project administration (Port of Seattle staff time, benefits and overhead)	\$12,250
Total	\$500,000

PART 4. SCOPE OF WORK

Task 1a. Manage, conduct, and audit a clean truck incentive project, and provide monetary incentives to truck owners.

- A. Enter into a Interagency Agreement with a local government sub-recipient to manage and conduct a clean truck incentive program, and/or:

- B. Using the competitive procurement process described in Part 5. SPECIAL TERMS AND CONDITIONS, select the vendor(s) to manage, conduct and audit a clean truck incentive project at the Port of Seattle.
- C. Manage, conduct, and audit a clean truck incentive project, including providing monetary incentive to truck owners to replace older trucks (model year 1994 – 2006) with a 2007 or newer model year trucks serving the Port of Seattle; or other allowed alternative. Old engines must be scrapped or otherwise rendered unusable.

Task 1a. Deliverables:

- Interagency agreement entered into with sub-recipient for conducting and managing the project by February 15, 2014. Interagency Agreement documentation must be provided to the DEPARTMENT's Project Officer.

and/or

- Competitive procurement process conducted and vendor(s) for conducting, managing and auditing the project are selected by February 15, 2014. Procurement documentation must be provided to the DEPARTMENT'S Project Officer (see Part 5 of this agreement).
- Clean truck incentive project managed and conducted, including monetary incentive payouts and project audits.
- Invoices submitted for managing, conducting, and auditing the clean truck incentive project and monetary incentive payouts, including back-up documentation.
- Progress reports are submitted with each invoice, but no less often than quarterly (see Appendix B for format).
- Final report is submitted (see Appendix B for format).

Task 1a. Completion Date: June 30, 2015

Task 1b. Administer the clean truck incentive project

Administer the clean truck incentive program, including procuring vendor and/or sub-recipient services, tracking project progress, providing progress reports and general oversight of all project activities.

Task 1b. Deliverables:

- Clean truck incentive project administered, including procuring vendor and/or sub-recipient services, tracking project progress, providing progress reports and general oversight of all project activities.
- Invoices submitted for administering the project, including overhead.
- Progress reports are submitted with each invoice, but no less often than quarterly (see Appendix B for format)

Task 1b. Completion Date: June 30, 2015

PART 5. SPECIAL TERMS AND CONDITIONS

Competitive Procurement Process: For any of tasks that require purchase of equipment or services the RECIPIENT will:

- a. Solicit vendor(s) through a competitive procurement process that ensures fair and open competition.
- b. Follow RECIPIENT'S own standard procurement procedures to select vendor(s). If RECIPIENT has no formal procurement procedures, RECIPIENT

will use procedures issued by the State of Washington, Department of Enterprise Services'. Use this link to read about the procedures and guidelines that apply. <http://des.wa.gov/about/pi/ProcurementReform/Pages/Policies.aspx>

- c. Once vendor is selected, provide written procurement documentation to the DEPARTMENT'S Project Officer that includes:
1. a copy of the solicitation document,
 2. a list of vendors solicited,
 3. a list of bidders,
 4. a copy of evaluation criteria, and
 5. the name of selected vendor(s).

PART 6. ALL WRITINGS CONTAINED HEREIN

This agreement, the appended 'General Terms and Conditions' (Appendix A), 'Progress Report' (Appendix B), and the DEPARTMENT'S current edition of 'Administrative Requirements for Recipients of Ecology Grants and Loans', contain the entire understanding between the parties. There are no other understandings or representations except those set forth or incorporated by reference herein. No subsequent modification(s) or amendments to this agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and DEPARTMENT and made a part of this agreement; EXCEPT a letter amendment will suffice to change DEPARTMENT's Project Officer or the RECIPIENT's Project Contact or to extend the completion date as set forth in the agreement.

In Witness Whereof, the parties hereby sign this grant agreement:

Washington State
Department of Ecology

Port of Seattle



Stuart A. Clark
Program Manager

12/18/13
Date



Tay Yoshitani
Chief Executive Officer

12/16/13
Date

Approved as to form only by the
Assistant Attorney General

APPENDIX A

GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements of the Department Of Ecology

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT's employees. The RECIPIENT shall only use contractor/consultant assistance if that has been included in the agreement's final scope of work and budget.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. If the agreement is federally-funded, the RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.
3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.
4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object. All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.
3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.
4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$500,000 or more in a year in Federal funds. The \$500,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within thirty (30) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and approved as satisfactory by the Project Officer.

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for RECIPIENTS of Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee. Payment requests shall be submitted to the DEPARTMENT and directed to the Project Officer assigned to administer this agreement.

2. Period of Compensation. Payments shall only be made for actions of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.
3. Final Request(s) for Payment. The RECIPIENT should submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.
4. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT'S performance. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT'S sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.5. herein.

5. **Unauthorized Expenditures.** All payments to the RECIPIENT may be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.
6. **Mileage and Per Diem.** If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.
7. **Overhead Costs.** No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

K. TERMINATION

1. **For Cause.** The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds there under and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. **Insufficient Funds.** The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT's fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT's governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

3. **Failure to Commence Work.** In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

M. PROPERTY RIGHTS

1. **Copyrights and Patents.** When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes. Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.
2. **Publications.** When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. **Tangible Property Rights.** The DEPARTMENT's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.
4. **Personal Property Furnished by the DEPARTMENT.** When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT's possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
5. **Acquisition Projects.** The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:
 - a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
 - b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.
6. **Conversions.** Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. SUSTAINABLE PRODUCTS

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is encouraged to implement sustainable practices where and when possible. These practices include use of clean energy, and purchase and use of sustainably produced products (e.g., recycled paper). For more information, see <http://www.ecy.wa.gov/sustainability/>.

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT's sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per year from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Project Officer or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Project Officer or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Project Officer or other designated official

who shall provide a written statement of decision to the RECIPIENT. The decision of the Project Officer or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

V. PRECEDENCE

In the event of inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable Federal and State statutes and regulations; (b) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; and (e) the General Terms and Conditions.

W. SUSPENSION

The obligation of the DEPARTMENT to make payments is contingent on the availability of funds. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this agreement, the DEPARTMENT may elect to renegotiate the agreement subject to new funding limitations and conditions or terminate the agreement, in whole or part. The DEPARTMENT may also elect to suspend performance of the agreement until such time as the DEPARTMENT determines that the funding insufficiency is resolved in lieu of terminating the agreement. The DEPARTMENT will provide written notice to RECIPIENT if funding is not available.

APPENDIX B

Port of Seattle Clean Truck Program Incentive Project PROGRESS REPORT

Instructions: *Submit a progress report with each invoice, but no less often than quarterly, to the Department of Ecology's Project Officer to include at a minimum the information listed below.*

1. **Grantee name:**
2. **Grantee project contact:**
3. **Grant agreement #:**
4. **Project start date:**
5. **Reporting time period:**
6. **Narrative describing the activities accomplished since the last progress report, or in the case of the first progress report, since project start, and activities anticipated to occur in the next quarter. For the final report, estimate the amount of diesel emissions reduced as a result of the project:**



**AMENDMENT NO. 1
TO
GRANT NUMBER G1400386
BETWEEN THE
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
PORT OF SEATTLE**

PURPOSE: To amend the Agreement between the Department of Ecology hereinafter referred to as "DEPARTMENT" and Port of Seattle hereinafter referred to as the "RECIPIENT". Amendment 1 modifies task descriptions, task deliverables, and dollar amount for each task, replaces Clause W in Appendix A, General Terms and Conditions, and provides clarifying language to the General Project Scope.

IT IS MUTUALLY AGREED that the Agreement is amended as follows:

- 1. Fiscal Contact:** is changed to Cindy James, (360) 407-6568, cjam461@ecy.wa.gov
- 2. Part 2. Program Background, Project Summary, General Project Scope**

Is amended to read:

General Project Scope: This project will provide monetary incentives to owners of approximately 183 older (model year 1994 – 2006) drayage trucks serving the Port of Seattle marine terminals to scrap the older trucks and replace with trucks having 2007 model year engine or newer. Replacement trucks must operate for at least 36 months after replacing the old truck and operate at least 50 percent of its total annual operating time within Washington State during those 36 months. Other project eligibility criteria and requirements will be developed by the RECIPIENT and approved in advance by the DEPARTMENT.

Upon advance approval by the DEPARTMENT, alternatives to scrapping and replacing may be allowed, such as replacing only the engine of the truck (known as repowering) or providing exhaust retrofits. Incentive amounts for alternatives may be set at different amounts than incentives for scrapping and replacing.

Conducting and managing the day to day activities of the project will be performed by a consultant and/or a local government sub-recipient. Grant administration and project audits will be conducted by a consultant. The RECIPIENT will provide general grant and project oversight. Consultant services will be acquired through a competitive procurement process. Sub-recipient services will be contracted through a contract agreement.

The monetary incentive is estimated to be \$20,000 per truck. In addition, the RECIPIENT's, consultant(s) and/or sub-recipient(s) fees to manage and conduct the project (e.g. processing trucker applications, process and manage scrapping, and monetary incentive payout), project audits, grant administration, and general grant and project oversight are estimated to be \$5,067 per truck.

This \$4,587,281 project is funded by multiple sources including a \$3,535,498 federal Congestion Mitigation Air Quality (CMAQ) grant from the Federal Highways Administration, \$551,783 in matching funds from the RECIPIENT, and this Ecology Clean Diesel grant of \$500,000. Ecology's Clean Diesel Grant funds will be used to pay 10.9 percent of all eligible project costs. Eligible project costs include a monetary incentive paid to truck owners to scrap and replace their old truck, or other allowed alternative; consultant and/or sub-recipient costs for managing and conducting the project, auditing the project, and administration of the grant; and RECIPIENT costs for general grant and project oversight.

The main purpose of this grant is to provide funding for the Clean Truck Program Incentive project at the Port of Seattle. However, this grant may also be used to fund other diesel emission reduction projects as approved in advance by the DEPARTMENT. Diesel emission reduction projects at ports will be given precedence.

3. Part 3. Budget Summary and Conditions

Number 7 is amended to read:

7) Expenditures shall be monitored by the DEPARTMENT Fiscal Office for compliance with the EXPENDITURE BUDGET (listed below) at the PROJECT LEVEL.

Clean Truck Program Incentive Project	MAXIMUM GRANT AMOUNT
Task 1a – Provide monetary incentives to truck owners for replacing trucks	\$398,929.13
Task 1b – Project management, project audits, grant administration and general grant and project oversight	\$101,070.87
Total	\$500,000

4. Part 4. Scope of Work

Is amended to read:

Task 1a. Provide monetary incentives to truck owners for replacing trucks

- A. Provide monetary incentives to owners of approximately 183 older (model year 1994 – 2006) drayage trucks serving the RECIPIENTS marine terminals to scrap the older trucks and replace with trucks having 2007 model year engine or newer. Incentive amount is estimated to be \$20,000 per eligible truck. The engine of the old trucks must be scrapped or otherwise rendered unusable.
- B. Replacement trucks must operate in Washington State for at least 36 months after replacing the old truck and operate at least 50 percent of its total annual operating time within Washington State during those 36 months. Other project eligibility criteria and requirements will be developed by the RECIPIENT and approved in advance by the DEPARTMENT.
- C. Upon advance approval by the DEPARTMENT, alternatives to scrapping and replacing may be allowed, such as replacing only the engine of the truck (known as repowering) or providing exhaust retrofits.

Task 1a. Deliverables:

- Monetary incentive payouts are made for eligible truck replacements.
- Invoices are submitted for monetary incentive payouts, including supporting documentation.
- Progress reports are submitted with each invoice, but no less often than quarterly (see Appendix B for format).
- Final report is submitted (see Appendix B for format).

Task 1a. Completion Date: June 30, 2015

Task 1b. Project management, project audits and grant administration

- A. Conduct, manage, audit and administer the clean truck incentive program, including procuring vendor and/or sub-recipient services, tracking project progress, auditing project, providing progress reports and general oversight of all project activities.
- B. Enter into an Interagency Agreement with a local government sub-recipient to manage and conduct a clean truck incentive program,

and/or
- C. Using the competitive procurement process described in Part 5. SPECIAL TERMS AND CONDITIONS, select the vendor(s) to manage, conduct, administer and audit a clean truck incentive project at the Port of Seattle.

Task 1b. Deliverables:

- Interagency agreement entered into with sub-recipient for conducting and managing the project by February 15, 2014. Interagency Agreement documentation must be provided to the DEPARTMENT's Project Officer.

and/or

- Competitive procurement process conducted and vendor(s) for conducting, managing and auditing the project are selected by February 15, 2014. Procurement documentation must be provided to the DEPARTMENT'S Project Officer (see Part 5 of this agreement).
- Clean truck incentive project managed, conducted, audited and administered.
- Invoices submitted for managing, conducting, auditing and administering the clean truck incentive project, including supporting documentation.
- Progress reports are submitted with each invoice, but no less often than quarterly (see Appendix B for format).
- Final report is submitted (see Appendix B for format).

Task 1b. Completion Date: June 30, 2015

- 5. Appendix A, General Terms and Conditions, Clause W is replaced with the following:**

W. FUNDING AVAILABILITY

The DEPARTMENT's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this agreement, the DEPARTMENT, at its sole discretion, may elect to terminate the agreement, in whole or part, or to renegotiate the agreement subject to new funding limitations and conditions. The DEPARTMENT may also elect to suspend performance of the agreement until the DEPARTMENT determines the funding insufficiency is resolved. The DEPARTMENT may exercise any of these options with no notification restrictions.

All other terms and conditions of the original Agreement and any Amendments remain in full force and effect, except as expressly provided by this Amendment.

Grant Agreement No. G1400386 – Amendment 1
Between the Washington State Department of Ecology and the Port of Seattle

This Amendment is signed by persons who represent that they have the authority to execute this Amendment and bind their respective organizations to this Amendment.

This Amendment is effective on April 1, 2014.

IN WITNESS WHEREOF, the parties have executed this amendment:

Washington State Department of Ecology

Port of Seattle

SACCO 8/13/14
Stuart A. Clark
Date
Program Manager

Tay Yoshitani 8-6-14
Tay Yoshitani Date
Chief Executive Officer

Approved as to form only by the
Assistant Attorney General

LETTER AMENDMENT

EXTENDING THE EXPIRATION DATE OF AN ECOLOGY GRANT OR LOAN

To: Janice Gedlund, Port of Seattle

From:

Project Officer: Frank Van Haren
Section: Program Development
Program: Air Quality

Re: Amendment No: 2 to Agreement No: G1400386

Project Title: Port of Seattle Clean Truck Incentive Project

Effective Date: April 15, 2015

In response to your written request, I authorize the extension of the expiration date of this agreement.

From (previous expiration date): June 30, 2015

To (revised expiration date): June 30, 2017

THIS AMENDMENT IS NOT EFFECTIVE UNLESS ALSO SIGNED BY THE BUDGET ANALYST FOR THE APPROPRIATE GRANT OR LOAN PROGRAM.

Project or Financial Officer Approval:



Project or Financial Officer Signature

Budget Analyst Approval:



Budget Analyst Signature

Date: 4/15/15

cc: Fiscal Office

ECY 060-19 (09/04)



Local Agency Agreement

Region 1

Agency Port of Seattle
 Address P. O. Box 1209
Seattle, WA 98111

CFDA No. 20.205
 (Catalog of Federal Domestic Assistance)
 Project No. CM-1140/055
 Agreement No. PA 8219
 For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR 225, (4) Office of Management and Budget Circulars A-102, and A-133, (5) the policies and procedures promulgated by the Washington State Department of Transportation, and (6) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name Puget Sound Regional Clean Truck Program Length N/A
 Termini N/A

Description of Work

This project will result in air quality benefits by replacing or retrofitting 160 or more older polluting drayage trucks that serve Port of Seattle marine terminals with newer model years trucks and/or EPA-certified emission reduction retrofits to render them equivalent to a 2007 model year truck. Trucks that are not retrofitted will be scrapped.

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
_____ %			
a. Agency			
b. Other			
c. Other			
d. State			
e. Total PE Cost Estimate (a+b+c+d)			
Right of Way			
_____ %			
f. Agency			
g. Other			
h. Other			
i. State			
j. Total RW Cost Estimate (f+g+h+i)			
Construction			
k. Contract			
l. Other (Consultants: Administration & Audit)	\$ 727,281	\$ 98,183	\$ 629,098
m. Other (Truck replacement/retrofit incentives)	\$ 3,260,000	\$ 440,100	\$ 2,819,900
n. Other			
86.5% Federal Aid Participation Ratio for CN			
o. Agency	\$ 100,000	\$ 13,500	\$ 86,500
p. State			
q. Total CN Cost Estimate (k+l+m+n+o+p)	\$ 4,087,281	\$ 551,783	\$ 3,535,498
r. Total Project Cost Estimate (e+j+q)	\$ 4,087,281	\$ 551,783	\$ 3,535,498

Agency Official
 By Tay Yoshitani
 Title Tay Yoshitani, Chief Executive Officer

Washington State Department of Transportation
 By [Signature]
 Director of Highways and Local Programs
 Date Executed 1/30 022013

Construction Method of Financing (Check Method Selected)

State Ad and Award

- Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
- Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of \$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

- Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____ March 4 _____, 2013 _____, Resolution/Ordinance No. _____ Ord 6103 _____

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR 225 and Office of Management and Budget circulars A-102 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR 225 - Cost Principles for State, Local, and Indian Tribal Government, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency’s share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency’s share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant’s records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency’s files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State’s billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed the Director of Highways and Local Programs.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency’s execution,

performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Additional Provisions

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 83561401 MODIFICATION NUMBER: 0 PROGRAM CODE: DE	DATE OF AWARD 03/31/2014
		TYPE OF ACTION New	MAILING DATE 04/07/2014
		PAYMENT METHOD: ACH	ACH# X0308
		RECIPIENT TYPE: Special District	
RECIPIENT: Port of Seattle P.O. Box 1209 Seattle, WA 98111-1209 EIN: 91-6001025		PAYEE: Assistant Director, Accounting and Financial Reporting Port of Seattle P.O. Box 1209 Seattle, WA 98111-1209	
PROJECT MANAGER Janice Gedlund Port of Seattle P.O. Box 1209 Seattle, WA 98111 E-Mail: gedlund.j@portseattle.org Phone: 206-787-7924	EPA PROJECT OFFICER Faye Swift 1200 Pennsylvania Ave, NW, 6406 Washington, DC 20460 E-Mail: Swift.Faye@epa.gov Phone: 202-343-9147	EPA GRANT SPECIALIST Jessica Durand 1200 Pennsylvania Ave, NW Washington, DC 20460, 3903R E-Mail: Durand.Jessica@epa.gov Phone: 202-564-5317	
PROJECT TITLE AND DESCRIPTION Port of Seattle Drayage Trucks This project will improve air quality at the Port of Seattle and the surrounding communities by reducing emissions from in-use diesel engines. This project will provide financial incentives to scrap approximately 40 model year 1994-2006 drayage trucks and replace them with trucks powered by 2010 or newer certified engines.			
BUDGET PERIOD 05/01/2014 - 09/30/2016	PROJECT PERIOD 05/01/2014 - 09/30/2016	TOTAL BUDGET PERIOD COST \$3,200,000.00	TOTAL PROJECT PERIOD COST \$3,200,000.00
NOTICE OF AWARD			
<p>Based on your Application dated 02/12/2014 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$1,200,000. EPA agrees to cost-share <u>37.50%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,200,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. 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.</p>			
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)		AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS Grants and Interagency Agreement Management Division 1200 Pennsylvania Ave, NW Mail code 3903R Washington, DC 20460		ORGANIZATION / ADDRESS Environmental Protection Agency Office of Air and Radiation 1200 Pennsylvania Ave, NW Washington, DC 20460	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official for Jill D. Young - Chief - Grants Management Branch A & B Phillip Schindel - Award Official delegate			DATE 03/31/2014

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 1,200,000	\$ 1,200,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 2,000,000	\$ 2,000,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 3,200,000	\$ 3,200,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.039 - National Clean Diesel Funding Assistance Program (B)	Diesel Emissions Reduction Act of 2010 codified at 42 U.S.C. 16131 et seq	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
	1456F30229	13	E4	56FC	102AH4	4122			1,200,000
									1,200,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$0
7. Construction	\$0
8. Other	\$3,200,000
9. Total Direct Charges	\$3,200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>62.50</u> % Federal <u>37.50</u> %.)	\$3,200,000
12. Total Approved Assistance Amount	\$1,200,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,200,000
15. Total EPA Amount Awarded To Date	\$1,200,000

Administrative Conditions

A. General Terms and Conditions

The recipient agrees to comply with the applicable EPA general terms and conditions available at : <http://www.epa.gov/ogd/tc.htm>. These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below .

B. In accordance with Section 2(d) of the Prompt Payment Act (P.L. 97-177), Federal funds may not be used by the recipient for the payment of interest penalties to contractors when bills are paid late nor may interest penalties be used to satisfy cost sharing requirements . Obligations to pay such interest penalties will not be obligations of the United States .

C. UTILIZATION OF SMALL , MINORITY AND WOMEN 'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE , 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities 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 participation in procurement under the financial assistance agreements .

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption .

Accepting the Fair Share Objectives /Goals of Another Recipient

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the WASHINGTON DEPARTMENT OF ECOLOGY as follows:

	MBE	WBE
Construction	10%	6%
Supplies	8%	4%
Services	10%	4%
Equipment	8%	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 the WASHINGTON DEPARTMENT OF ECOLOGY .

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 require 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, Subpart E

MBE/WBE reporting is limited to annual reports and only required for assistance agreements where one or more the following conditions are met:

- (a) there are any funds budgeted in the contractual, equipment or construction lines of the award;
- (b) \$3,000 or more is included for supplies ; or
- (c) there are funds budgeted for subawards or loans in which the expected budget(s) meet the conditions as described in items (a) and (b).

This award meets one or more of the conditions as described above, therefore, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due within 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on planned procurements. Recipients with funds budgeted for

non-supply procurement and/or \$3,000 or more in supplies are required to report annually whether the planned procurements take place during the reporting period or not. If no procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to Veronica Parker, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW Mail Code 3903R, Room 51225, Washington, DC 20460, 202-564-5347. The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D.

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.

D. Payment to consultants. EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2014, the limit is \$602.16 per day and \$75.27 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Contracts with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

E. For-Profit Sub-recipients

In addition to the EPA General Term and Condition #8 "Establishing and Managing Subawards", the recipient agrees to:

- 1) Utilize terms and conditions in all subgrants to for-profit sub-recipients that apply the following regulations to for-profit sub-recipients: 40 CFR Sections 30.2, 30.13, 30.14, 30.16, 30.17, 30.18, 30.20, 30.23, 30.25, 30.26(d), 30.28, 30.31, 30.34, 30.35, 30.36, 30.37, 30.40-47, 30.51, 30.53, 30.61, 30.62. For the purposes of applying the listed regulations to for-profit sub-recipients, the Recipient shall perform the functions that the regulations provide will be performed by EPA.
- 2) Establish a procedure for resolving disputes with for-profit sub-recipients.
- 3) Not reimburse a for-profit sub-recipient until receipt of documentation that the sub-recipient has incurred eligible and allowable costs. Per 40 CFR 30.27, the allowability of costs incurred by for-profit organizations is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR Part 31.
- 4) Obtain a final report detailing how the for-profit sub-recipient expended funds in a format prescribed by the Recipient.
- 5) Ensure that for-profit sub-recipients are aware of requirements imposed upon them by applicable Federal statutes, regulations, and these terms and conditions.

Programmatic Conditions

A. Substantial Federal Involvement for Cooperative Agreements

EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.

B. Emissions Control Technologies

Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs. See <http://epa.gov/cleandiesel/verification/verif-list.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. Any question as to the eligibility or preference of a retrofit technology, including vehicle/equipment replacement and repowers, should be directed to the EPA Project Officer. Technology changes may not be allowed after a final workplan has been approved. If technology compatibility issues arise, EPA may elect to terminate the cooperative agreement, at which time assistance funds must be returned to EPA.

C. Quarterly Reporting and Environmental Results

Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving the work plan goals. In general, quarterly reports will include summary information on technical progress and expenditures, and planned activities for next quarter. A template for the quarterly report is available at <http://www.epa.gov/cleandiesel/grant-reporting.htm>.

Quarterly reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.

April 1 - June 30 Reporting Period: report due date July 30

July 1 - September 30 Reporting Period: report due date October 30

October 1 - December 31 Reporting Period: report due date January 30

January 1 - March 31 Reporting Period: report due date April 30

If a project start date falls within a defined Reporting Period the recipient must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the award agreement.

D. Final Report:

The final project report will include all categories of information required for quarterly reporting, including a final, detailed fleet description. The final project report will also include a narrative summary of the project or activity, actual project results (outputs and outcomes) including actual emissions benefit calculations, and the successes and lessons learned for the entire project.

For projects involving vehicle/equipment replacement and repowers the recipient must provide in the final report: 1) Evidence that the replacement activity is an "early

replacement,” and would not have occurred through normal attrition/fleet turnover (i.e. without the financial assistance provided by EPA) within three years of the project period start date. Supporting evidence can include verification that the vehicles or equipment being replaced have useful life left and fleet characterization showing fleet age ranges and average turnover rates per the vehicle or fleet owner’s budget plan, operating plan, standard procedures, or retirement schedule; 2) Evidence of appropriate scrappage or remanufacture (such as a photograph of the scrapped engine), including the engine serial number and/or the vehicle identification number (VIN); and 3) Specification of the model years and the emission standard levels for PM and NOx, for both the engine being replaced and the new engine.

For projects that take place in an area affected by, or includes vehicles, engines or equipment affected by federal law mandating emissions reductions, the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate.

The final report shall be submitted to the EPA Project Officer within 90 days after the project period end date or termination of the assistance agreement. A template for the final report is available at <http://www.epa.gov/cleandiesel/grant-reporting.htm>.

E. Use of Funds Restriction :

- 1) **Mandated Measures:** Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under federal law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered “mandated”, regardless of whether the reductions are included in the State Implementation Plan of a State.
- 2) **Normal Attrition:** Recipient agrees that funds under this award cannot be used for emission reductions that result from vehicle/equipment replacements or repowers that would have occurred through normal attrition/fleet turnover within three years of the project start date. Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.
- 3) **Fleet Expansion:** Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles, engines, or equipment to expand a fleet. The recipient agrees that:
 - i. The replacement vehicle, engine, or equipment will perform the same function and operation 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);
 - ii. 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 is replaced by a bulldozer of similar horsepower). Horsepower increases of more than 10 percent require written approval from the EPA Project Officer prior to purchase.
 - iii. The engine being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or remanufactured to a certified cleaner emission standard. Permanently disabling the engine while retaining possession of the engine is an acceptable scrapping method. Disabling the engine may be completed by drilling a hole in the engine block (the part of the engine containing the cylinders) and manifold. Alternatively, disabling the engine may be completed by removing the engine oil from the crankcase, replacing it with a 40 percent solution of

sodium silicate and running the engine for a short period of time at low speeds, thus rendering the engine inoperable. Remanufacturing shall be performed by the original engine manufacturer, or by a dealership/distributor that has a service program that is sponsored/backed by original engine manufacturer warranties (i.e. the new, remanufactured and upgraded engine is warranted by the OEM). Non-road engines shall be remanufactured to the cleanest certified emission standard possible. Highway engines shall be remanufactured to Model Year (MY) 2007 or newer certified emission standards. Remanufacturing must be completed during the project period. Other acceptable scrappage methods may be considered and will require prior written approval from the EPA Project Officer. If scrapped or remanufactured engines are to be sold, program income requirements apply.

- iv. The vehicle/equipment being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or remanufactured to a certified cleaner emission standard. Permanently disabling the chassis and disabling or remanufacturing the engine (see iii above) while retaining possession of the vehicle/equipment is an acceptable scrapping method. Disabling the chassis may be completed by cutting through the frame/frame rails on each side at a point located between the front and rear axles. Other acceptable scrappage methods may be considered and will require prior written approval from the EPA Project Officer. Vehicle/equipment components that are not part of the engine or chassis may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, etc.). If scrapped or remanufactured vehicles/equipment or salvaged vehicle/equipment chassis or components are to be sold, program income requirements apply.
- 4) Matching Funds: Recipient agrees that funds under this award cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings, and cannot be used to sue the Federal Government or any other government entity.
- 5) Formerly Verified Technologies: Recipient agrees that funds under this award cannot be used for retrofit technologies on EPA's or CARB's, "Formerly Verified Technologies" lists: <http://www.epa.gov/cleandiesel/verification/deleted-list.htm>, www.arb.ca.gov/diesel/verdev/vt/fv1.htm, www.arb.ca.gov/diesel/verdev/vt/fv2.htm, and www.arb.ca.gov/diesel/verdev/vt/fv3.htm. Recipient agrees that funds under this award cannot be used for idle reduction technologies on EPA's "Technologies No Longer Verified" list that can be found at: <http://epa.gov/smartway/forpartners/technology.htm#tabs-4>. Recipient agrees that funds under this award cannot be used for technologies on the Emerging Technologies list which can be found at: www.epa.gov/cleandiesel/verification/emerg-list.htm.
- 6) Emissions Testing: Recipient agrees that funds under this award cannot be used for emissions testing and/or air monitoring activities (including the acquisition cost of emissions testing equipment), or research and development.
- 7) Fueling Infrastructure: Recipient agrees that funds under this award cannot be used for fueling infrastructure, such as that used for the production and/or distribution of biodiesel, compressed natural gas, liquefied natural gas, and or other cleaner fuels.
- 8) Drayage Truck Model Year: With regards to drayage trucks, recipient agrees that funds under this award cannot be used to retrofit, repower or replace a model year 1989 or older engine, or to retrofit a model year 2007 or newer engine with DOCs or DPFs, or retrofit a model year 2010 or newer engine with SCR, or replace model year 2004 or newer engine, or repower or convert model year 2007 or newer engine.
- 9) Nonroad Useful Life and Operating Hours: Recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace a nonroad engine or equipment

that has less than seven years of useful life remaining. A table distinguishing which nonroad engine model years EPA has determined to have at least seven years of useful life remaining, based on the type and age of vehicle, can be found at <http://www.epa.gov/cleandiesel/documents/fy13-nonroad-remaining-useful-life.pdf>. In addition, recipient agrees that funds under this award cannot be used to retrofit, repower, upgrade or replace nonroad engines and equipment that operate less than 500 hours per year.

- 10) Nonroad Repower/Replacement: Recipient agrees that funds under this award cannot be used to repower or replace nonroad Tier 0 (unregulated) engines to a nonroad Tier 1 or lower nonroad engine standard or from a Tier 2 nonroad engine standard to a Tier 3 or lower nonroad engine standard.
- 11) Marine Repower/Replacement/Upgrade: Recipient agrees that funds under this award cannot be used to repower, replace or upgrade Tier 3 or Tier 4 marine engines, or to repower or replace marine engines from Tier 1 marine engine standard to Tier 1 or lower marine engine standard, or from a Tier 2 marine engine standard to a Tier 2 or lower marine engine standard.
- 12) Locomotive Retrofit/Repower/Replacement/Upgrade: Recipient agrees that funds under this award cannot be used to retrofit unregulated or Tier 0 locomotives with SCR, or to upgrade, repower or replace locomotives from: Tier 0+/1 to Tier 0+ or lower; Tier 1+/2 to Tier 1+ or lower; Tier 2 to Tier 1+ or lower; or, from Tier 2+ to Tier 2+ or lower. In addition, recipient agrees that funds under this award cannot be used upgrade, repower or replace line-haul locomotives from Tier 2 to Tier 4, or to upgrade, repower or replace line-haul locomotives from Tier 2+ to Tiers 3 and 4 , or to install Automatic Engine Start-Stop technologies on locomotives currently certified to Tier 0+ or higher.
- 13) Marine Shore Connection: No funds awarded under this RFP shall be used for marine shore connection system projects that are expected to be utilized less than 2,000 MW-hr/year.
- 14) Locomotive Shore Connection: No funds awarded under this RFP shall be used for locomotive shore connection system projects that are expected to be utilized less than 1,000 hours/year.
- 15) Locomotive and Marine Operating Hours: Recipient agrees that funds awarded under this RFP cannot be used to retrofit, repower, replace, upgrade or install idle reduction technologies on eligible locomotives or marine engines that operate less than 1000 hours per year.
- 16) Engine Upgrade: In the case of an engine upgrade with a certified remanufacture system applied at the time of rebuild (not manufacturer upgrades that are retrofits verified by EPA or CARB), recipient agrees that funds under this award cannot be used for the entire cost of the engine rebuild, but only for the incremental cost of the certified remanufacture system and associated labor costs for installation. Any question as to eligibility of engine upgrade costs should be directed to the EPA Project Officer.

F. Drayage Vehicle Replacement Project Requirements :

- 1) In addition to the scrappage requirements for all vehicles/equipment described in E.3.iv above, recipients replacing drayage vehicles are required to establish and document guidelines to ensure that the scrapped vehicle has a history of operating on a frequent basis over the prior year as a drayage truck.
- 2) The recipient must establish and document guidelines to ensure that all drayage trucks receiving grant funds are operated in a manner consistent with the definition of a drayage truck, defined as any Class 8a and 8b in-use on-road vehicle with a gross weight rating (GVWR) of greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading or transporting cargo,

such as containerized, bulk or break-bulk goods.

G. Delays or Favorable Developments :

The recipient agrees that it will promptly notify the EPA Project Officer 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 agrees that it will also notify the EPA Project Officer 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.

H. Procurement and Sub-grant Procedures :

The recipient must follow applicable procurement and sub-grant procedures. EPA will not be a party to these transactions. If EPA funds are used to purchase goods or services, recipient agrees to compete the contracts for those goods and services and conduct cost and price analyses to the extent required by the fair and open competition for procurement provisions of 40 CFR Part 30 or 40 CFR Part 31, as applicable. Approval of a funding proposal does not relieve recipients of their obligations to compete service contracts, conduct cost and price analyses, and use sub-grants only for financial assistance purposes, in accordance with Subpart B Section .210 of OMB Circular A-133.

I. Employee and/or Contractor Selection :

EPA will not help select employees or contractors hired by the recipient.

J. Program Income :

If program income is generated during the course of the project, program income requirements apply. Program income is defined as gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the Award Document. Program income earned during the project period shall be retained by the recipient and, in accordance with 40 CFR Parts 30.24 and 31.25 as applicable, recipient is authorized to use program income as follows:

- 1) Program income may be added to funds committed to the project by EPA and recipient and used to further eligible project or program objectives. The program income shall be used for the purposes and under the conditions of the grant agreement.
- 2) Program income may be used to finance the non-federal share of the project or program, including any mandatory or voluntary cost-share. The amount of the Federal grant award remains the same.
- 3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the federal share of costs is based. This means that the recipient shall spend program income on project activities before spending/requesting federal funds for project activities. This may result in unspent federal funds at the end of the project period.

The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income.

K. Equipment Use, Management, and Disposition

These equipment use, management, and disposition instructions are applicable to assistance agreement recipients and subrecipients acquiring equipment under this award. State agencies may use, manage and dispose of equipment acquired under assistance agreements by the State in accordance with State laws and procedures.

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 40 CFR 30.34 and 31.32, as applicable. Equipment is defined as tangible non-expendable personal property having a useful life of more than one year and an acquisition cost and/or current market value of \$5,000 or more per unit. Certified or verified technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by federal funds.

L. Leveraging

The recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution or overmatch, that is described in its final approved workplan dated March 10, 2014. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its final approved workplan dated March 10, 2014, EPA may take action as authorized by 40 CFR Parts 30 or 31 and/or 2 CFR Part 180 as applicable.

M. Voluntary Cost-Share or Overmatch

This award and the resulting federal funding of \$1,200,000 is based on estimated costs requested in the recipient's final approved workplan dated March 10, 2014. Included in these costs is a voluntary cost-share contribution of \$800,000 by the recipient in the form of a voluntary cost-share or overmatch (providing more than any minimum required cost-share) that the recipient included in its final approved workplan dated March 10, 2014. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded.

If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its final approved workplan dated March 10, 2014, EPA may take action as authorized by 40 CFR Parts 30 or 31 and/or 2 CFR Part 180 as applicable.

N. Mandatory Cost-Share Requirement

This award and the resulting federal funding share of **37.5%** of total project costs, as shown under "Notice of Award" above, is based on estimated costs requested in the recipient's final approved workplan dated March 10, 2014. While actual total costs may differ than those estimates, the recipient is required to provide no less than the cost-share percentages outlined below, as applicable, of the final equipment costs. EPA's participation shall not exceed the total amount of federal funds awarded or the maximum federal cost-share percentages outlined below, as applicable, of the final equipment costs. Recipients must satisfy any applicable cost share requirements with allowable costs as set forth in 40 CFR 30.23 or 31.24, as appropriate. The cost share requirements are as follows:

- 1) Engine Upgrades: EPA will fund up to 40% of the cost (labor and equipment) of an eligible engine upgrade; recipient is responsible for cost-sharing at least 60% of the cost of an eligible engine upgrade.
- 2) Idle Reduction Technologies on Locomotives: EPA will fund up to 40% of the cost (labor and equipment) of an eligible idle reduction technology on a locomotive; recipient is responsible for cost-sharing at least 60% of the cost of an eligible idle reduction technology on a locomotive.
- 3) Marine Shore Power Connection and Alternative Maritime Power: EPA will fund up to 25% of the cost (labor and equipment) of an eligible shore connection system or truck stop electrification technology; recipient is responsible for cost-sharing at least 75% of the cost of an eligible shore connection system or truck stop electrification technology.
- 4) Certified Engine Repower: EPA will fund up to 40% of the cost (labor and equipment) of an eligible engine repower; recipient is responsible for cost-sharing at least 60% of the cost of an eligible engine repower.
- 5) Certified Vehicle/Equipment Replacement:
 - i. Nonroad Diesel Vehicles and Equipment: EPA will fund the incremental cost of a newer, cleaner vehicle or piece of equipment powered by a 2013 model year or newer certified nonroad diesel engine, up to 25% of the cost of an eligible replacement vehicle or piece of equipment; recipient is responsible for cost-sharing at least 75% of the cost of an eligible replacement vehicle or piece of equipment.
 - ii. **Drayage Vehicle Replacement : EPA will fund up to 50% of the cost of eligible drayage trucks with a 2010 model year or newer heavy -duty engine equipped with a diesel particulate filter (or diesel oxidation catalyst in the case of a CNG engine); recipient is responsible for cost -sharing at least 50% of an eligible drayage replacement vehicle .**
- 6) Clean Alternative Fuel Conversions: EPA will fund up to 40% of the cost (labor and equipment) of an eligible clean alternative fuel conversion; recipient is responsible for cost-sharing at least 60% of the cost of an eligible clean alternative fuel conversion.

The eligible acquisition cost of equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.



Local Agency Agreement

Agency Port of Seattle AGENCY
 Address P.O. Box 1209
Seattle, WA 98111

CFDA No. **20.205**
 (Catalog of Federal Domestic Assistance)
 Project No. CM-1140(060)
 Agreement No. LA 8464
 For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) 2 CFR 225, (4) Office of Management and Budget Circulars A-102, and A-133, (5) the policies and procedures promulgated by the Washington State Department of Transportation, and (6) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name Puget Sound Regional Clean Truck Program - Phase 2 Length N/A
 Termini N/A

Description of Work

This project involves efforts to reduce diesel truck emissions by the Port of Seattle. This project will replace 19 or more, older polluting drayage trucks that serve Port of Seattle marine terminals with newer model year trucks and/or EPA-certified emission reduction retrofits to render them equivalent to a 201 model year truck. Trucks that are not retrofitted will be scrapped.

Proposed Advertisement Date:

Type of Work	Estimate of Funding		
	(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE			
% a. Agency			
b. Other			
c. Other			
Federal Aid Participation Ratio for PE d. State			
e. Total PE Cost Estimate (a+b+c+d)			
Right of Way			
% f. Agency			
g. Other			
h. Other			
Federal Aid Participation Ratio for RW i. State			
j. Total R/W Cost Estimate (f+g+h+i)			
Construction			
k. Contract			
l. Other (truck incentives)	570,000	76,950	493,050
m. Other (consultant)	20,000	2,700	17,300
n. Other (interlocal agreement)	117,821	15,906	101,915
86.5% Federal Aid Participation Ratio for CN o. Agency	30,000	4,050	25,950
p. State			
q. Total CN Cost Estimate (k+l+m+n+o+p)			
r. Total Project Cost Estimate (e+j+q)	737,821	99,606	638,215

Agency Official
 By Tay Yoshitani
 Title Chief Executive officer

Washington State Department of Transportation
 By [Signature]
 Director of Local Programs
 Date Executed AUG 13 2014

Construction Method of Financing (Check Method Selected)

State Ad and Award

- Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
- Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of \$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

- Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

July 22, 2014, Resolution/Ordinance No. see attached

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

Once written authorization is given, the Agency agrees to show continuous progress through monthly billings. Failure to show continuous progress may result the Agency's project becoming inactive, as described in 23 CFR 630, and subject to de-obligation of federal aid funds and/or agreement closure.

If right of way acquisition, or actual construction of the road for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which preliminary engineering phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

If actual construction of the road for which right of way has been purchased is not started by the close of the tenth fiscal year following the fiscal year in which the right of way phase was authorized, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, 2 CFR 225 and Office of Management and Budget circulars A-102 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in 2 CFR 225 - Cost Principles for State, Local, and Indian Tribal Government, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed by the Director of Local Programs.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

- (1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.
- (2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.
- (3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.
- (4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary is notified by the Federal Highway Administration that the project is inactive.
- (5) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Additional Provisions

FIRST AMENDMENT TO LICENSE AGREEMENT

THIS FIRST AMENDMENT TO LICENSE AGREEMENT is made as of _____, 2015, by and between the PORT OF SEATTLE, a Washington municipal corporation, hereinafter called "the Port," and PUGET SOUND CLEAN AIR AGENCY, a municipal corporation of the laws of the State of Washington, hereinafter called "Licensee,"

WHEREAS, the parties entered into a license agreement dated December 31, 2013, hereinafter called "License," covering certain premises and activities by Lessee located at Terminal 5 and commonly referred to the Container Freight Station, 3520 26th AVE SW, Seattle, Washington; and

WHEREAS, the parties now wish to further revise the License as previously amended, by extending the License term, and by revising the utilities and termination of agreement paragraphs.

NOW THEREFORE, in consideration of their mutual promises, the parties hereby agree as follows:

- 1. The term of the License is extended to January 31, 2016.
- 2. Paragraph 6, Utilities, of the License is hereby deleted in its entirety and replaced with the following:

"6. The Port will provide the Licensee for the following utility services to the Premises: janitorial and garbage collection services, electricity, water, surface water management fee (drainage), and security alarm monitoring. The Licensee will be responsible for any other services required."

- 3. Paragraph 11, Termination of Agreement, of the License is hereby deleted in its entirety and replaced with the following:

"11. Notwithstanding any specific term set forth in this License, the Port may terminate this License, in its sole discretion and for any reason whatsoever, effective upon delivery of ninety (90) days written notice to Licensee at the address set forth above."

- 4. Except as expressly amended herein, all provisions of the License shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year first above written.

PORT OF SEATTLE

PUGET SOUND CLEAN AIR AGENCY

By 
Its Director, Lease & Asset Mgt.

By 
Its Executive Director

OTHER EXPENSES - DETAILED		Category					TOTAL
Equipment, Supplies, Miscellaneous		CMAQ Only	DERA Only	Supplemental		TOTAL	
Zipcar	utilities	\$ 500.00	\$ 153.85	\$ 153.85	\$ 808		
	equip.supp,						
Mileage Reimbursement - \$ 0.565 per miles	misc	\$ 11,800.00	\$ 2,622.22	\$ 1,245.56	\$ 15,668		
Laptop Computers, docking stations, keyboards and m	one-time purchase	\$ 4,110.00			\$ 4,110		
Computer Monitors (3)	one-time purchase	\$ 900.00			\$ 900		
Wi-Fi Router	one-time purchase	\$ 100.00			\$ 100		
Printer/copier	one-time purchase	\$ 1,200.00			\$ 1,200		
Flyer printing	misc	\$ 2,000.00		\$ 211.11	\$ 2,211		
Printer and office supplies	equip.supp,	\$ 3,000.00		\$ 316.67	\$ 3,317		
Postage and Delivery	misc	\$ 3,000.00		\$ 316.67	\$ 3,317		
Cell phone service for program manager	utilities	\$ 1,900.00	\$ 584.62	\$ 438.46	\$ 2,923		
Two Digital Cameras, memory cards	one-time purchase	\$ 500.00			\$ 500		
Truck lien search	one-time purchase	\$ 500.00			\$ 500		
Basic tools and shop and storm water supplies	one-time purchase	\$ 1,000.00			\$ 1,000		
SonicWall Net Extender VPN license (3)	purchase	\$ 120.00			\$ 120		
Antivirus Software (3)	one-time purchase	\$ 90.00			\$ 90		
MS Office Software licenses (3)	one-time purchase	\$ 975.00			\$ 975		
Phone and Internet	utilities	\$ 4,200.00	\$ 1,200.00	\$ 900.00	\$ 6,300		
TOTAL		\$ 35,895	\$ 4,561	\$ 3,582	\$ 44,038		