



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

Date

Tay Yoshitani
Chief Executive Officer

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:**
