



CLEAN DIESEL GRANT NO. G1400624
between the
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
and
City of Tacoma, Tacoma Public Utilities - Tacoma Rail

THIS is a binding agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "DEPARTMENT" and the City of Tacoma, Tacoma Public Utilities - Tacoma Rail, 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: Locomotive Engine Replacement Project
RECIPIENT: City of Tacoma, Tacoma Public Utilities - Tacoma Rail
2601 SR 509 North Frontage Road
Tacoma, WA 98421

Federal Tax ID: 91-6001283

Project Contact: Daniel McCabe
Telephone: (253) 922-3040
E-mail address: dmccabe@cityoftacoma.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: Cindy James
Telephone / Fax Numbers: (360) 407-6568 / (360) 407-7534
E-mail address: cjam461@ecy.wa.gov

Maximum Grant Amount: \$200,000

Effective Date: The effective date of this grant is April 1, 2014. 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 Locomotive Engine Replacement Project (the project) described in this grant must be fully completed by January 30, 2016. This grant expires on June 30, 2015 and the DEPARTMENT's portion of this project must be billed no later than July 30, 2015.

Source of funds: Source of these funds is the Local Toxics Control Account – Capital Diesel Funds. Reference: OFM Budget, Sec. 3028 (2011-13 biennium) and OFM Budget, Sec. 3064 (2013-15 biennium), For the Department of Ecology, Diesel Emissions Reduction.

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: As part of the Northwest Ports Clean Air Strategy (CAS), a voluntary effort to reduce seaport-related diesel emissions in the region, and the Diesel Particulate Emission Reduction Strategy for Washington State (the Diesel Strategy), the DEPARTMENT, in collaboration with locomotive owners, seeks to reduce diesel exhaust emissions from locomotives to help meet the goals of the CAS and the Diesel Strategy.

General Project Scope: The purpose of this grant is to provide funding assistance to the RECIPIENT to replace one unregulated locomotive engine with an EPA certified Tier 3 or better engine on locomotive TMBL 2006 or acquire a replacement locomotive equipped with a Tier 3 or better engine. This locomotive operates at the Port of Tacoma, and within the Tacoma PM2.5 non-attainment area. This project will also include the installation of Automatic Engine Start/Stop system (AESS) to reduce engine idling, and microprocessor control systems to increase locomotive efficiency. The old diesel engine being replaced must be scrapped or otherwise rendered unusable or sent back to the engine manufacturer to be remanufactured to the cleanest certified emission standard possible (but in no case less than Tier 2 EPA certified engine standard).

This project will result in an annual reduction of over 1.9 tons of diesel fine particles and nearly 54 tons for the life of the project (28 years).

This \$1,504,874 project is funded by multiple sources including a \$601,949 federal DERA grant #83561701 from the U.S.EPA, \$702,925 of the RECIPIENTS funds and the DEPARTMENT's \$200,000 Clean Diesel Grant.

The main purpose of this grant is to provide funding for the Locomotive Engine Replacement Project. 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. SCOPE OF WORK

Task 1. Replace one unregulated locomotive engine with an EPA certified Tier 3 or better engine on locomotive TMBL 2006 and install AESS and microprocessor control systems.

- a) Conduct a competitive procurement process to select Tier 3 replacement engine and vendor(s) for old engine removal and new engine installation. See PART 5, Special Terms and Conditions for requirements of competitive procurement.
- b) Remove old unregulated locomotive engine. Old engine being replaced must be:
 - i. Scrapped or otherwise rendered unusable or,
 - ii. Sent back to the engine manufacturer to be remanufactured to the cleanest certified emission standard possible (but in no case less than Tier 2 EPA certified engine standard).
- c) Install one new EPA certified Tier 3 locomotive engine.
 - i. The new replacement engine must continue to perform the same or similar function as before the replacement.
 - ii. The new replacement engine must be of similar or lower horsepower as the engine being replaced. Horsepower increase of more than 15 percent will require advance approval by the DEPARTMENT.
- d) Conduct load testing to document that new Tier 3 engine is functioning properly.

Task 1. Deliverables:

- a) Competitive procurement process is conducted. Documentation of procurement process is provided to the DEPARTMENT's Project Officer (See Part 5, Special Terms and Conditions). Procurement process is completed and vendor(s) selected by August 31, 2014.
- b) One old unregulated engine is removed and scrapped or sent back to the engine manufacturer for remanufacturing to the cleanest certified emission standard possible (but in no case less than Tier 2 EPA certified engine standard). Supporting documentation is provided to the DEPARTMENT's Project Officer. Supporting documentation includes:
 - i. Conduct a tour with the DEPARTMENT's Project Officer to view the old engine prior to removal.
 - ii. Documentation confirming that old engine is scrapped or otherwise rendered unusable. This could include a photograph of a hole drilled in the engine block or a receipt from a licensed scrap vendor. Engine serial number must be included with documentation, or
 - iii. Documentation that the old engine was sent to the engine manufacturer to be remanufactured to the cleanest certified emission standard (but in no case less than EPA Tier 2). Engine serial number must be included with documentation.
- c) One new EPA certified Tier 3 engine is installed, including an AESS system and microprocessor control systems. Supporting documentation is provided to the DEPARTMENT's Project officer including conducting a tour with the Project Officer to view the new Tier 3 engine installed in the locomotive.

- d) Load tests are conducted and a report of results and documentation provided to the DEPARTMENT's Project Officer.
- e) Invoices are submitted for all eligible costs, including supporting documentation.
- f) Progress reports are submitted with each invoice, but no less often than quarterly (see Appendix B for format).
- g) Final report is submitted within three months of project completion. The final report will provide an estimate of the amount of diesel emissions reduced as a result of the project. In addition, the final report will include a description of other economic and environmental benefits resulting from the project, lessons learned in implementing the project, and other outcomes resulting from the project. The final report should be in a format that can be shared with the rail industry and the general public.

Task 1. Completion Date: June 30, 2015. The DEPARTMENT recognizes and acknowledges that the project may not be fully completed until January 30, 2016, but portions of the project will be completed by June 30, 2015. The DEPARTMENT will be invoiced for portions of the project that are completed prior to June 30, 2015, up to the maximum grant amount.

PART 4. BUDGET SUMMARY AND CONDITIONS

- 1) The DEPARTMENT is providing \$200,000 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 project has been completed in accordance with the agreement.
- 3) Payments to the RECIPIENT from the DEPARTMENT will be made on a cost-reimbursable basis. Payment requests will be submitted to the DEPARTMENT's Fiscal Contact as phases of the project are completed, but not more frequently than monthly. The DEPARTMENT recognizes and acknowledges that the project will not be fully completed until January 30, 2016, but portions of the project will be completed by June 30, 2015. The DEPARTMENT will be invoiced for portions of the project that are completed prior to June 30, 2015, up to the maximum grant amount.

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 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 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.

Locomotive Engine Replacement Project	MAXIMUM GRANT AMOUNT
Task 1 – Replace one unregulated locomotive engine with an EPA certified Tier 3 or better engine on locomotive TMBL 2006 and install AESS and microprocessor control systems, or acquire a replacement locomotive equipped with a Tier 3 or better engine including AESS.	\$200,000
Total	\$200,000

PART 5. SPECIAL TERMS AND CONDITIONS

Competitive Procurement Process: For any of the tasks that require purchase of equipment or service 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).

Restrictions and Requirements for Use of the Locomotive Receiving an Engine Replacement or the Replacement Locomotive:

- a. The locomotive receiving the new replacement engine or the replacement locomotive must remain active in the RECIPIENT's fleet and operate at least 50 percent of its total annual operating time within Washington State for at least five (5) years after the new engine is installed.
- b. Notify DEPARTMENT to discuss options if the locomotive is to be moved out of Washington State less than five (5) years after replacement engine is installed. Options may include, but are not limited to, prorated compensation back to the DEPARTMENT.

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. 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.

SS-010 Rev. 04/04

Modified 12/13

APPENDIX B

Locomotive Engine Replacement 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 manager:**
3. **Grant agreement #:**
4. **Project Title:**
5. **Project start date:**
6. **Reporting time period:**
7. **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. In addition, the final report will include a description of other economic and environmental benefits resulting from the project, lessons learned in implementing the project, and other outcomes resulting from the project. The final report should be in a format that can be shared with the rail industry and the general public:
