

THE NORTHWEST SEAPORT ALLIANCE
MEMORANDUM

MANAGING MEMBERS
ACTION ITEM

Item No.: 9C
Meeting Date: August 6, 2024

DATE: July 29, 2024
TO: Managing Members
FROM: John Wolfe, CEO

Sponsor: Jason Jordan, Senior Director, Environmental & Planning Services
Project Managers: Nicola Graham, Project Manager I
Steve Nicholas, Sr. Project Manager

SUBJECT: Authorization for Grant Agreement for Climate Commitment Act Funding for ZE Drayage Truck Incentive Program and Expenditure of the Funds

A. ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) authorize the CEO or his delegate to accept Climate Commitment Act (CCA) funding in the amount of \$6,300,000 from the Washington Department of Transportation (WSDOT) and to expend subject funds to support our Zero Emission Truck Incentive Program.

B. SYNOPSIS

The NWSA's Clean Truck Program is working to facilitate a just and equitable transition to zero-emission (ZE) drayage trucks by 2050 or sooner – as called for in the 2020 Northwest Ports Clean Air Strategy, the NWSA's 2021-2025 Clean Air Implementation Plan, and the NWSA's 2023-24 Key Initiatives. Our strategy has two components: the ZE Drayage Truck Incentive Program and the Decarbonizing Drayage Roadmap, being developed by the NWSA-led Puget Sound ZE Truck Collaborative. To date, the NWSA has secured \$55.55m in state and federal funding to support these efforts. Most of that funding will support the ZE Drayage Truck Incentive Program and will be passed through to trucking companies and charging/fueling providers in our gateway to support initial deployments of ZE drayage trucks. This \$6.3m of Climate Commitment Act (CCA) funding from WSDOT – embedded in the state's 2024-25 biennial transportation budget – is the first grant ready for Managing Members authorization.

Pending your approval, the NWSA will publish an RFP inviting proposed ZE drayage truck deployments in September 2024.

C. BACKGROUND

Clean Truck Program Overview: The NWSA relies heavily on a network of about 4,500-5,000 heavy-duty trucks that provide essential drayage services in and out of terminals in Seattle and Tacoma. About half of our drayage service providers are independent owner-operators or small trucking companies that own 10 or fewer trucks. Currently, all but a handful of the drayage trucks serving our gateway are diesel-powered and their emissions constitute about six percent of all seaport-related diesel particulate matter (DPM) and about 33% of the greenhouse gases. Because of their travel patterns, drayage truck emissions contribute to environmental health disparities in overburdened communities living near NWSA terminals in Seattle and Tacoma, along major freight corridors, and close to warehousing centers. The Clean Truck Program is the NWSA's long-standing initiative to work with drayage trucking companies to reduce emissions. Historically, the core elements of that program have included the Clean Truck Rule (which requires that trucks serving the NWSA's international terminals must have a 2007 engine or newer) and a scrap-and-replace bonus program which provides financial incentives to encourage the owners of pre-2007 trucks to scrap those vehicles and purchase newer, cleaner vehicles.

Results to Date: The NWSA's Clean Truck Program has delivered excellent results since its inception. Diesel emissions from drayage trucks are down more than 90% since 2005, largely as a result of cleaner diesel trucks under our Clean Truck Program. However, cleaner diesel trucks still emit GHG emissions. The only way to eliminate GHG emissions from drayage trucks, and help the gateway achieve our 2030 and 2050 GHG goals, is to transition the fleet to fully zero emission (ZE) models (battery-electric and hydrogen fuel cell).

Transition to Zero Emission Trucks: The NWSA is focused on the transition to ZE drayage trucking, which will be as challenging as it is necessary. The transition to ZE trucks serving ports in the Pacific Northwest is a key step to meet goals adopted in the Northwest Ports Clean Air Strategy while also contributing to local, regional, and state decarbonization goals. As a region, we have a window of opportunity to harness momentum toward ZE trucking, which is growing rapidly. Responding to industry trends, green supply chain initiatives, and new state policies like the Advanced Clean Truck Rule, truck manufacturers are ramping up their manufacturing and marketing of ZE trucks in our state. There is a growing awareness of the need for ZE truck charging and fueling infrastructure, and several local utilities and fuel providers are exploring investments. An increasing number of retailers are committing to decarbonize their supply chains. And state and federal funding opportunities are on the rise. At the same time, there are significant challenges to be overcome, including the current lack of ZE

trucks and charging infrastructure in our region, high incremental costs, and social equity considerations. Staff sees the NWSA's role in this transition as one of "facilitative leadership": working with the drayage service providers and many other stakeholders to facilitate a transition to ZE trucks that is just and equitable, while reducing or eliminating the potential for the transition to be chaotic, painful, or unfair. We have an opportunity to work together to make it smoother and more equitable. Our strategy for doing that is twofold: 1) to develop, fund, and implement a Zero Emission Drayage Demonstration Program (which this request supports); and 2) to develop a coordinated, regional, longer-term strategy for achieving zero-emission drayage across the board (March 8, 2024 Managing Members briefing).

Zero-Emission Drayage Demonstration Program: It is essential that we get ZE trucks into operations in our gateway as soon as possible, for several reasons: to bolster confidence in, and support for, these new technologies within our network of drayage providers; to get initial charging and fueling infrastructure in place; to stimulate the local ZE truck industry, market, and workforce; and to gather data and garner lessons learned that can inform our longer-term strategy and solutions at-scale. ZE trucks are expensive, and the associated charging or fueling infrastructure is complex and resource-intensive (in terms of land, money, and time). Our strategy is to secure state and federal funding to support an NWSA-led incentive program that will harness additional investments from partners (e.g., charging and fueling infrastructure developers, retailers, trucking companies, utilities, etc.). To date we have secured \$55.55 million for this purpose. We have another \$79.5 million in federal grant proposals in the hopper (see Appendix A).

Program Design: Based on extensive outreach to the trucking community and industry partners through the Puget Sound Zero Emission Truck Collaborative, staff have designed a ZE truck incentive program based on our existing scrap-and-replace program, operated for nearly 15 years, where grant funding is passed through the NWSA to trucking companies. Much of the success of the program lies in its one-stop-shop nature, where the grant administration is handled behind the scenes by the NWSA, and trucking companies know who to contact at the NWSA. Following that program template, and based on grant requirements, the NWSA will open applications through an RFP, to be published in September 2024, with subsequent rounds of applications to be opened as each grant becomes available. Applications will be assessed by NWSA staff and a third-party administrator (to be procured) for the proposal's eligibility and ability to achieve the goals of the program (i.e. procure ZE trucks and install charging/fueling infrastructure, engagement with their local utility). If selected, successful applicants will sign a Subgrantee Agreement agreeing to the grant terms and conditions, and NWSA staff will conduct regular check-ins with the project team(s) throughout the deployment. NWSA staff will provide regular updates on the program and upcoming rounds of funding opportunities at Trucker Outreach Forums and events such as ride and drives.

WSDOT Grant Description: The NWSA ZE Truck Incentive Program was awarded \$6.3m in Climate Commitment Act (CCA) funding in the state's 2023-25 biennium budget, following extensive work by NWSA and Port Government Affairs staff in the 2023 session. The funds are being administered by WSDOT, alongside CCA funding towards shore power installation at Terminal 18. WSDOT typically collects 10% of the total funds to cover their administration costs. Of the \$6.3m awarded, WSDOT will use \$60,000 to cover their own internal program costs, leaving \$6.24m for the NWSA to issue as incentives. The NWSA is not using any of the funds to cover administration of the program; all the remaining funds will be passed through for the incentives. Matching funds for the trucks and charging/fueling infrastructure will be provided as private matching funds by the project teams (i.e. the remaining 20-50% project cost). NWSA is providing in-kind matching support through staff time and resources for project administration. NWSA has committed to providing \$400k in match funds in the upcoming CMAQ grant. Grants currently under negotiation (RTEPF and CFI) provide \$247k towards NWSA staffing and \$1m for a third-party administrator. Managing Members will have the chance to review and approve each upcoming grant and budget.

This initial round of CCA funding is secure once the grant agreement is signed and will not be impacted by Initiative 2117 on the ballot in November 2024 to repeal the CCA. Any future potential CCA funding for the ZE Truck Incentive Program will depend on the results of Initiative 2117 in November.

This grant will provide funding to drayage trucking companies towards the purchase of a ZE truck and associated charging/fueling infrastructure. The base level of incentive will be 50% towards both the truck and charger. A higher 80% level of funding will be available to truckers who can demonstrate that they achieve additional criteria: they operate a small fleet (less than 5 trucks), and/or are a registered DBE/MBE/WBE, and/or are operating in an overburdened community (based on Puget Sound Clean Air Agency and WA Dept of Health Environmental Health Disparities map). Based on engagement through the Puget Sound Zero Emission Truck Collaborative, we anticipate many applicants to be eligible for the 80% level of incentive. Extensive research by the Puget Sound Zero Emission Truck Collaborative and the NWSA's consulting team, GNA, who have administered ZE truck deployments in California, indicates the typical cost of one ZE battery-electric deployment (i.e. one truck and charging unit) is \$600,000. Therefore, the baseline incentive (50%) issued would be \$300,000, and the higher 80% level would be \$480,000. Depending on applications at both the 50% and 80% level, staff anticipate this grant funding 15 ZE trucks and associated charging/fueling infrastructure. Predicted uptake is shown in Table 1.

Successful applicants will be required to continue serving NWSA terminals for at least 3 years with the ZE truck, to ensure NWSA and WSDOT are able to collect operating data on how the trucks perform and to lay the groundwork for the first truck charging/fueling to be used by future deployments in fleets.

Table 1: CCA Funding distribution

	Year 1 (2025)	Year 2 (2026)	Total
Incentive Funding Issued	\$2,040,000	\$4,200,000	\$6,240,000
Number of trucks Deployed	5	10	15
Number of Baseline Incentives (50%) Issued	2	3	5
Number of Maximum Level Incentives (80%) Issued	3	7	10

Grant Schedule: Pending Managing Members approval, applications will open in September 2024 through an RFP. Staff anticipate projects taking approximately 2 years to complete, based on current truck orders and permitting and installation timelines. The current funding is tied to the 2023-25 biennial budget, with funds expiring in summer 2025. WSDOT has already been notified that the funding will need to be rolled over to allow us to continue administer incentives beyond 2025.

Table 2: CCA Grant Schedule

	Approximate Due Date
Fully Executed Grant Agreement	July 2024
Managing Member approval	August 2024
NWSA Request for Proposals published	September 2024
Projects selected by NWSA	January 2025
Contracts signed between NWSA and selected project partners	February 2025
Projects implemented by selected partners: <ul style="list-style-type: none"> - Construction of charging/fueling infrastructure - Order of ZE truck from truck OEM 	Beginning February 2025
Quarterly Progress Reports and Meetings	Quarterly
Close out project	December 31, 2026
Community/Trucker Engagement Report	January 20, 2027
Final Report	January 20, 2027

D. FINANCIAL IMPLICATIONS

The Zero Emission Incentive Program will be funded mostly via state and federal grants, with some NWSA-provided matching funds. The \$6.3 million CCA grant builds on the total we have secured for the Program, \$55.55 million as listed in Appendix A (Funding Sources). Each grant is administered by a different team at state and federal agencies, and have slightly different project scopes, depending on what the grant NOFO made eligible. The Incentive Program will manage the different grants and issue each round separately as each grant agreement is finalized. Pending the results of grant negotiations with funding agencies, staff expect the Charging and Fueling Infrastructure (CFI) grant to be ready for authorization in late 2024, ready to open for applications in spring 2025. In preparation for each grant application, staff have consulted with the NWSA Grant Steering Committee, and applied for the maximum level of funding available for each round. The remaining project costs for each project are to be met by private match from the trucking company and/or charging/fueling provider as they will retain ownership of the assets following the end of the grant.

Future Funding Opportunities: Staff worked closely with the team led by CALSTART throughout 2023 to develop recommendations to the Joint Transportation Committee (JTC) on a Medium and Heavy-Duty ZE Vehicle and Infrastructure Incentive Program Design Strategy, presented to the JTC in January 2024. Based on those recommendations, WSDOT is currently developing a program that will administer \$120m in CCA funding for ZE vehicle purchases, anticipated to launch in early 2025. Due to NWSA involvement, CALSTART recommended a 25% ‘plus-up’ for a drayage truck on top of the base level incentive of \$120,000 (i.e. the potential for a \$150,000 incentive if engaged in drayage). We have kept this upcoming state program in mind and built in flexibility so trucking companies should be able to stack NWSA incentives with this state funding, further reducing the capital impact of procurement. Staff anticipate our third-party administrator will help guide truckers to access all available sources of funding when navigating our application process.

E. ATTACHMENTS TO THIS REQUEST

- Grant Agreement
- Appendix A: Funding Sources for NWSA ZE Truck Incentive Program

PREVIOUS ACTIONS OR BRIEFINGS

- Briefing: Clean Truck Program Briefing – Zero Emission Truck Collaborative and Drayage Demonstration March 8, 2024
- Meeting with Managing Members on August 1, 2023
- Meeting with Managing Members on June 7, 2022
- Meeting with Truck Working Group on September 7, 2022
- Meeting with Truck Working Group on October 4, 2022
- Meeting with Managing Members on November 1, 2022
- Meeting of Environmental Working Group on July 14, 2022



<p>STATE FUNDING AGREEMENT</p> <p>MAXIMUM AMOUNT AUTHORIZED</p> <p>\$6,240,000</p>	<p>ORGANIZATION</p> <p>Northwest Seaport Alliance P.O. Box 2985 Tacoma, WA 98401-2985</p>
<p>AGREEMENT NUMBER</p> <p>GCB 3945</p>	<p>DESCRIPTION OF WORK</p> <p>A zero-emission drayage truck demonstration project at the Northwest Seaport Alliance facilities.</p>

This AGREEMENT is between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION hereinafter referred to as the “STATE”, and the Northwest Seaport Alliance, hereinafter referred to as the “GRANTEE,” collectively referred to as the “PARTIES” and individually the “PARTY.”

WHEREAS, in Engrossed Substitute House Bill 1125, Chapter 472, Laws of 2023 (pv), Section 309 (9) the Washington State Legislature appropriated \$6,300,000 (Six Million Three Hundred Thousand Dollars) from the carbon emissions reduction account created in RCW 70A.65.240 for a project listed in the LEAP Transportation Document 2023-2, as developed April 21, 2023;

WHEREAS, the “Drayage Truck Demonstration Project” (the “PROJECT”) is included in the LEAP transportation document and is authorized STATE funds for the expenditure of up to \$6,300,000 (Six Million Three Hundred Thousand Dollars);

WHEREAS, in chapters 47.06A, and 47.66 and 47.76 RCW the Washington State Legislature has determined that multimodal transportation programs and projects and freight mobility projects are of significant interest to the STATE, and permits the STATE to provide funding for multimodal transportation programs and projects and freight mobility projects;

WHEREAS, in chapter 70A.02 RCW (Environmental Justice) the Washington State Legislature has declared it a matter of public interest that environmental health disparities for overburdened communities and vulnerable populations be prevented and addressed in the funding and administration of ongoing and new environmental programs;

WHEREAS, in chapter 70A.65 RCW (Greenhouse Gas Emissions – Capital and Investment Program, also known as the Washington Climate Commitment Act), the Washington State Legislature has expressed the serious challenges inherent to climate change and the importance of acting to reduce its impacts upon people and the environment, including acting to advance environmental equity and to cap greenhouse gas emissions; and

NOW THEREFORE, pursuant to the above recitals that are incorporated herein as if fully set forth below and in consideration of the terms, conditions, covenants, and performances contained in this AGREEMENT, or attached hereto and by this reference made a part of this AGREEMENT, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1 SCOPE OF WORK

1.1 EXHIBIT A, which is attached hereto and by this reference made a part of this AGREEMENT, defines the Scope of Work for the PROJECT.

1.2 GRANTEE shall be responsible for overseeing all grant activities by SUBGRANTEE(S); selecting SUBGRANTEE(S); all grant reporting to WSDOT; and monitoring PROJECT performance. GRANTEE shall pass through all grant funds to the SUBGRANTEE(S) responsible for completing the PROJECT.

1.3 The GRANTEE shall contract by means of a SUBGRANTEE Agreement with trucking companies, zero emissions truck manufacturers, truck charging or fueling companies (together, "SUBGRANTEE(S)") selected by a competitive procurement process to furnish all personnel, facilities, equipment, and other materials and services (except as otherwise specified herein) necessary to perform the PROJECT as set forth in EXHIBIT A.

1.4 All work performed under this AGREEMENT shall comply with applicable provisions of federal, state and local laws and regulations.

SECTION 2 PAYMENTS TO GRANTEE

2.1 The STATE agrees to grant to the GRANTEE monies to accomplish the PROJECT detailed in EXHIBIT A.

2.2 Prior to initiating any work for performance hereunder, the GRANTEE shall provide the STATE with the proposed schedule for each item of work to be performed. The schedule shall be arranged in such a manner as to form a basis for comparison with progress billings for work performed. In the event of a change in the method or time for performance of any work, the GRANTEE shall update the schedule, subject to the STATE's approval, to reflect the changed circumstances.

2.3 The STATE agrees to reimburse the GRANTEE up to a maximum amount of \$6,240,000 (Six Million Two Hundred Forty Thousand Dollars) for the actual direct and related indirect costs expended by the GRANTEE in the course of completing the PROJECT required under this AGREEMENT. The MAXIMUM AMOUNT AUTHORIZED excludes the STATE's costs of \$60,000 (Sixty Thousand Dollars) to administer this AGREEMENT.

2.4 It is understood that the actual PROJECT costs under this AGREEMENT are based on preliminary estimates and that if unforeseen circumstances cause the demand for PROJECT costs to exceed the PROJECT estimate, the GRANTEE shall be responsible to notify the STATE of such demand at least sixty (60) days prior to the estimated date on which PROJECT funds are expected to be exhausted. Any payments beyond the committed PROJECT costs hereunder will be assumed by GRANTEE.

2.5 Any costs expended by the GRANTEE prior to the execution of this AGREEMENT will be borne by the GRANTEE and will not be eligible for reimbursement from the STATE.

2.6 The GRANTEE shall comply with all provisions of the most recent version of 48 CFR § 31 (Contract Cost Principles and Procedures) or as subsequently amended, regarding accounting conventions.

2.7 The GRANTEE shall submit quarterly invoices detailing work completed and a PROJECT status report. PROJECT status reports shall include: an account of significant progress made during the reporting period; a description of any technical and/or cost problem(s) encountered or anticipated that will affect completion of the PROJECT within the time and fiscal constraints as set forth in this AGREEMENT, together with recommended solutions or corrective action plans; an outline of work and activities planned for the next reporting period; updated milestone schedule dates; and the state of completion of items in the Scope of Work relative to expenditures of the relevant budget elements. The STATE shall make periodic payments to the GRANTEE for costs expended under this AGREEMENT. When requesting payment, the GRANTEE shall identify: (1) the total amount of costs to date; and (2) the remaining balance of dollars from the MAXIMUM AMOUNT AUTHORIZED. Supporting documentation for all costs being invoiced, including timecard records, itemized invoices, and itemized receipts, shall be submitted with the invoice each quarter. Failure to provide supporting documentation will render the cost ineligible for reimbursement. Payment by the STATE shall not relieve the GRANTEE of any obligation to make good any defective work or material upon PROJECT completion.

2.8 At the time the final PROJECT invoice is submitted, the GRANTEE shall provide the STATE with a written statement confirming it is in compliance with the terms of the AGREEMENT. The STATE will provide an example of this written statement upon request.

2.9 The GRANTEE shall receive reimbursement for the actual cost of items identified in EXHIBIT A, less net salvage value of any material being replaced in carrying out the PROJECT construction. Labor, materials, and/or other PROJECT costs supplied by the GRANTEE will only be reimbursed at actual cost without markup to the STATE or profit.

2.10 Any materials salvaged under this PROJECT will be stockpiled, inventoried, and sold with the proceeds credited to the PROJECT. Documentation shall include the amount of materials salvaged, the amount actually sold, and amount received which will be credited back to the PROJECT on the final submitted invoice.

2.11 Reimbursement for GRANTEE rented or leased equipment, if any, will be based on actual cost as supported by original receipts. Reimbursement for GRANTEE-owned equipment shall be based on rates per 23 CFR § 140.910(a) (Equipment). "Equipment" in this AGREEMENT shall mean any items or resources used in the course of completing the PROJECT and not the items, resources, or deliverables that result from completion of the PROJECT.

2.12 Reimbursement for overhead costs will not be allowed unless specified in this AGREEMENT.

2.13 Reimbursement for travel, subsistence, and lodging expenses will not be eligible under this AGREEMENT unless specifically preapproved in writing by the STATE. If preapproved, the GRANTEE shall comply with the rules and regulations regarding travel costs that are contained in EXHIBIT B, attached hereto and by this reference made a part of this AGREEMENT. Billing for non-salary cost, directly identifiable with the PROJECT, if any, shall be an itemized listing of the charges supported by copies of the original bills, invoices, expense accounts, and miscellaneous supporting data submitted by the GRANTEE with each invoice. All above charges must be essential to the work conducted under this AGREEMENT. Crew travel time between normal workstation and jobsites will not be considered travel under this restriction.

2.14 Per chapter 39.12 RCW, no payment can be made without the approved Intent to Pay Prevailing Wage being submitted to the STATE prior to payment. The online access address for the Prevailing Wage for Public Works Contracts is contained in EXHIBIT C, attached hereto and by this reference made a part of this AGREEMENT.

2.15 Most of Washington state is covered under the Industrial Fire Precautions Levels (IFPL) system which, by law, is managed by the Department of Natural Resources (DNR). In some cases, jurisdiction is transferred to the United States Forest Service or to the local fire authority. It is the GRANTEE's responsibility to be familiar with the IFPL requirements and to verify whether or not IFPL applies. The online access address for Industrial Fire Precautions Levels is contained in EXHIBIT C, attached hereto and by this reference made a part of this AGREEMENT.

2.16 If the STATE, at its sole discretion, determines that the PROJECT is not progressing in a satisfactory manner, the STATE may refuse monies for reimbursement to the GRANTEE for parts or all of the work performed to date.

2.17 If the PROJECT is not completed by June 30, 2025, the GRANTEE and STATE agree that the entire expense for the completion of the PROJECT will be borne solely by the GRANTEE. The GRANTEE shall then also be automatically in default and will be obligated to reimburse the STATE for the full amount of funds already paid to the GRANTEE. Any required repayment shall be due within thirty (30) calendar days after receipt of an invoice from the STATE.

2.18 Per chapter 43.88 RCW, any invoices for work performed between July 1 and June 30 of any given year must be submitted to the STATE no later than July 6th (or the first business day after the July 4th

holiday) of the same calendar year. If the GRANTEE is unable to provide an invoice for such work by this date, an estimate of all remaining payable costs owed by the STATE for work performed by the GRANTEE prior to July 1 must be submitted to the STATE no later than July 19th of the same year in order for the STATE to accrue the amount necessary for payment. The GRANTEE will thereafter submit any remaining invoices to the STATE for such work as soon as possible. Failure to comply with these requirements may result in delayed payment. The STATE shall not be required to pay to the GRANTEE late payment fees, interest, or incidental costs expensed by the GRANTEE or any other costs related to a delayed payment if the GRANTEE fails to comply with the invoice requirements of this Section.

2.19 The payment by the STATE for any work completed shall not relieve the GRANTEE of any obligation to make good any defective work or material.

2.20 It is agreed that any STATE payment, pursuant to any GRANTEE payment request, will not constitute agreement as to the appropriateness of any item, and that required adjustments, if any, will be made at the time of STATE's final payment. In the event that the STATE and/or their representatives conducts an audit, and that audit indicates an overpayment of moneys granted to the GRANTEE, the GRANTEE agrees to refund the overpayment to the STATE within thirty (30) calendar days after being billed therefore. Termination of this AGREEMENT will not alter the GRANTEE's obligation to return any funds due to the STATE as a result of later refunds, corrections, or other transactions. Nor will termination of this AGREEMENT alter the STATE's right to disallow costs and recover funds on the basis of a later audit or other review.

SECTION 3 TERM

3.1 This AGREEMENT shall become effective upon the date the last PARTY signs the AGREEMENT. The AGREEMENT shall continue in full force for the useful life of the equipment and materials installed with STATE funds. The PARTIES expect the useful life for the Scope of Work to be three (3) years. Accordingly, this AGREEMENT shall continue in full force and effect for three (3) years after the physical completion of the work to be performed for this PROJECT unless terminated sooner in accordance with Section 18 of this AGREEMENT.

3.2 Notwithstanding Section 33, the STATE, at its sole discretion, reserves the right to unilaterally amend the term of this AGREEMENT with respect to the duration of the reporting requirements described in Section 10 of this Agreement only, based on guidance from the Washington State Department of Ecology.

SECTION 4 CONTINGENT INTEREST

4.1 The GRANTEE agrees that the SUBGRANTEE Agreement will specify that the STATE shall retain a Contingent Interest in the PROJECT's capital improvements and the equipment purchased with the funds from this AGREEMENT as described in EXHIBIT A, which binds the SUBGRANTEE, and its successor(s), to continue and maintain the PROJECT in an operating condition that is viable for use in port infrastructure.

4.2 The STATE shall maintain its Contingent Interest for three (3) years following the PROJECT's completion. The SUBGRANTEE Agreement will stipulate that during this time the SUBGRANTEE shall not (a) use the port infrastructure, property or equipment purchased with funds from this AGREEMENT as collateral, (b) remove elements of the port infrastructure or equipment purchased with funds from this AGREEMENT for salvage, or (c) use the PROJECT capital improvements or equipment in any manner subordinating the STATE's Contingent Interest without obtaining prior written approval from the STATE. The STATE's Contingent Interest specified under this provision shall apply to any person or persons, company or companies, to include but not limited to any parent or subsidiary company or corporation of SUBGRANTEE, that may have an interest in the PROJECT.

4.3 The requirement that the PROJECT capital improvements and equipment be maintained for port operations shall also be required of all subsequent purchasers, persons, or entities acquiring all, or a

material portion of, the port facility for which the PROJECT is constructed. The SUBGRANTEE Agreement will stipulate that SUBGRANTEE shall be obligated to include in any contract of sale or other dispositional agreement for all, or any portion of, the PROJECT provisions sufficient to perpetuate the STATE's Contingent Interest to the PROJECT capital improvements and equipment upon the consummation of any such conveyance. The SUBGRANTEE shall be required by GRANTEE to further agree that, as a precondition to the SUBGRANTEE 's execution of any agreement to transfer ownership of all, or a material or equipment portion of, the PROJECT to a subsequent purchaser, assignee, or grantee, the STATE shall retain the right to review and, if necessary, reject, any such agreement that does not contain guarantees sufficient to protect the STATE's Contingent Interest.

4.4 The GRANTEE shall make appropriate entries upon its financial statements and its books and records disclosing the STATE's Contingent Interest under this Section 4.

4.5 The SUBGRANTEE Agreement will stipulate that, should the SUBGRANTEE or its successor(s) fail to continue and maintain the PROJECT for the Contingent Interest term as provided in this Section 4, the STATE may pursue compensation, including, but not limited to, the following methods: (a) issuing a lien against the assets that were improved under the PROJECT; and (b) requiring the SUBGRANTEE to pay back funds for the remaining benefits period. The STATE may conduct periodic PROJECT reviews to ensure that maintenance is occurring in accordance with its Contingent Interest.

SECTION 5 EMPLOYMENT AND INSPECTION OF WORK

5.1 The GRANTEE and its Consultants, Contractors and any Subgrantees (SUBGRANTEES) shall employ all persons or contractors necessary to perform the PROJECT work and agrees to be responsible for the management, control, operation, construction, maintenance, and repairs that are essential to this PROJECT. The STATE may place an Engineer, Project Manager, and/or other inspection personnel on the work site during the term of this AGREEMENT to monitor progress of the PROJECT and/or to monitor adherence to the required provisions of this AGREEMENT. The GRANTEE and its SUBGRANTEES shall make the site accessible to STATE inspection personnel. This may include providing transportation to remote, inaccessible work sites, at the expense of the GRANTEE and its SUBGRANTEES.

5.2 The STATE will inspect progress at the work site, as it deems appropriate.

5.3 Upon completion of the PROJECT, a joint inspection shall be made by the authorized representatives of each of the PARTIES to determine that the work has been completed within the terms of this AGREEMENT.

SECTION 6 USE AND MAINTENANCE OF PROJECT CAPITAL IMPROVEMENTS AND OTHER EQUIPMENT PURCHASED WITH FUNDS FROM THIS AGREEMENT

6.1 The GRANTEE agrees that PROJECT property, equipment, and supplies shall be used solely for the PROJECT activity for the duration of its useful life. The Subgrantee Agreement will stipulate that, should the SUBGRANTEE(S) unreasonably delay or fail to use PROJECT property, equipment, or supplies during its useful life, the STATE may require the SUBGRANTEE to return the entire amount of STATE assistance expended on that property, equipment, or supplies.

6.2 The GRANTEE shall give timely notice and receive prior written approval from the STATE for any proposal to use PROJECT property, equipment or supplies in a manner substantially different than set forth in this AGREEMENT.

6.3 The GRANTEE shall require SUBGRANTEE(S) to make all necessary repairs and reasonably maintain the capital improvements and equipment purchased with the funds from this AGREEMENT so long as the STATE retains rights as specified in Section 4 – CONTINGENT INTEREST. The costs of service, materials, and repairs in connection with the use and operation of the PROJECT shall be at the GRANTEE's or SUBGRANTEE(S)'s expense.

6.4 Reserved.

SECTION 7 RESERVED

7.1 Reserved.

SECTION 8 MAINTENANCE OF RECORDS AND AUDIT REQUIREMENTS

8.1 During the progress of the work, and for a period of not less than six (6) years from the date of final payment by the STATE to the GRANTEE, records and accounts of the GRANTEE are to be kept intact and available for inspection and audit by representatives of the STATE. Termination of this AGREEMENT does not alter the GRANTEE's requirements under this Section 8.

8.2 Copies of the records shall be furnished to the STATE upon request and shall be maintained in accordance with accepted job cost accounting procedures as established in 48 CFR § 31 (Contract Cost Principles and Procedures). All costs must be supported by actual invoices and canceled checks. The GRANTEE agrees to comply with the audit requirements contained herein, and to impose the same requirement on any consultant, contractor, or subcontractor who may perform work funded by this AGREEMENT.

8.3 The records to be maintained by the GRANTEE shall include, but are not limited to, the following:

8.3.1 Records that identify the sources and applications of funds for this AGREEMENT and contain information pertaining to outlays;

8.3.2 Supporting source documents;

8.3.3 All documentation underlying the preparation of the financial reports;

8.3.4 Any other records which are required following notification of an amendment to state of Washington or federal regulations which takes effect during the period in which costs are allowable; and

8.3.5 Any other records necessary to disclose fully the amount and disposition of the funds provided to the GRANTEE under this AGREEMENT and charged to the PROJECT, supported by documents evidencing in detail the nature and propriety of the charges, the total cost of each undertaking for which the assistance was given or used, the amount of the costs of the undertaking supplied by other sources, and other books, records, and documents needed for a full and complete verification of the GRANTEE's responsibilities and all payments and charges under this AGREEMENT.

8.4 In the event that any litigation, claim or audit is initiated prior to the expiration of said six (6) year period, the records shall be retained until such litigation, claim, or audit involving the records is complete.

SECTION 9 QUALITY ASSESSMENTS

9.1 The GRANTEE's project management of the PROJECT may be subject to periodic assessments by the STATE for quality assurance purposes. If requested, the GRANTEE shall provide the necessary staffing to attend assessment interviews, accommodate STATE personnel during field visits, and make available for the STATE to review, requested examples of documentation that supports its quality management activities.

SECTION 10 REPORTING REQUIREMENTS AND DATA COLLECTION

10.1 GRANTEE shall submit data and reports to the STATE as set forth in EXHIBIT D.

SECTION 11 FINAL REPORT AND FINAL INSPECTION

11.1 Within ninety (90) days following the completion of the PROJECT and submission of the final billing for the PROJECT, a final report and/or final inspection shall be submitted to the Project Manager from WSDOT Rail, Freight and Ports containing the following information:

11.1.1 Non-Capital Projects

11.1.1.1 A description of the PROJECT or program.

11.1.1.2 A summary of actual costs of the PROJECT or program.

11.1.1.3 An evaluation of the PROJECT or program. This should address aspects such as transportation, environmental, and/or other benefits to the public.

11.1.2 Capital Projects

11.1.2.1 A final inspection is required by the STATE for acceptance.

SECTION 12 LEGAL RELATIONS

12.1 No liability shall attach to the GRANTEE or the STATE by reason of entering into this AGREEMENT except as expressly provided herein.

SECTION 13 INSURANCE

13.1 The GRANTEE represents and warrants that it shall obtain the insurance required in this Section 13, and shall also require in its SUBGRANTEE Agreement its SUBGRANTEES to obtain and keep in force during the terms of this AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW, where applicable and commercially available.

13.1.1. Worker's compensation and employer's liability insurance as required by the STATE.

13.1.2. Commercial general liability insurance with minimum limits of three million dollars (\$3,000,000) per occurrence and five million dollars (\$5,000,000) in the aggregate for each policy period.

13.1.3. Business auto liability insurance providing coverage for any "Auto" (Symbol 1) used in an amount not less than a three million dollar (\$3,000,000) combined single limit for each occurrence.

13.1.4. Reserved.

13.1.5. Reserved.

13.1.6. Reserved.

13.2 Excepting the Worker's Compensation Insurance, the STATE, its officers, employees, and agents will be named on all policies of any SUBGRANTEE as an additional insured (the "AIs"), with no restrictions or limitations concerning products and completed operations coverage. This coverage shall be primary coverage and non-contributory and any coverage maintained by the AIs shall be excess over, and shall not contribute with, the additional insured coverage required hereunder. The SUBGRANTEE's insurer shall waive any and all rights of subrogation against the AIs. The GRANTEE and SUBGRANTEES shall be required to furnish the STATE with verification of insurance and endorsements required by this AGREEMENT. The STATE reserves the right to require complete, certified copies of GRANTEE'S required insurance policies at any time.

13.3 If the SUBGRANTEE maintains broader coverage and/or higher limits than the minimums shown above, the STATE requires and shall be entitled to the broader coverage and/or the higher limits maintained by the GRANTEE. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the STATE.

13.4 All insurance shall be obtained from an insurance company authorized to do business in the state of Washington. The GRANTEE shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Document Control
WSDOT Rail, Freight, and Ports Division
310 Maple Park Avenue SE, Box 47407
Olympia, WA 98501-2348
srmddoc@wsdot.wa.gov

13.5 No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE.

13.6 The GRANTEE and its SUBGRANTEES are allowed to self-insure with the prior written consent of the STATE. If granted by the STATE, any self-insured retention or other financial responsibility for claims shall be covered directly by the GRANTEE and/or its SUBGRANTEES in lieu of insurance. Any and all liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by SUBGRANTEE's and/or its SUBGRANTEES's insurance will be covered as if GRANTEE elected not to include a deductible, self-insured retention or other financial responsibility for claims. Prior to commencing services, GRANTEE shall furnish to the STATE an acceptable certificate(s) of insurance from an authorized company representative evidencing the required coverage(s), endorsements, and amendments.

SECTION 14 LAWS TO BE OBSERVED

14.1 General Compliance. The GRANTEE shall comply with all applicable federal, state, and local laws, rules, regulations, and orders pertaining to the PROJECT, and to the extent applicable, 48 CFR § 31 (Contract Cost Principles and Procedures) and 2 CFR § 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). If any action or inaction by the GRANTEE results in a fine, penalty, cost, or charge being imposed or assessed on or against the GRANTEE and/or the STATE, the GRANTEE shall assume and bear any such fine, penalty, cost, or charges. In the event the STATE, for any reason, is required to pay the same, the GRANTEE, upon demand, shall promptly reimburse, indemnify, and hold harmless the STATE for or on account of such fine, penalty, cost, or charge and shall also pay all expenses and attorney's fees expensed in defending any action that may be brought against the STATE on account thereof. The GRANTEE shall, in the event of any such action and upon notice thereof from the STATE, defend any such action(s) free of cost, charge, and expense to the STATE.

14.2 Permits and Compliance with land use and environmental laws. The GRANTEE shall be responsible for obtaining all necessary permits from federal, state, and local agencies of government and compliance with land use and environmental regulations pertaining to the performance of work under this AGREEMENT.

14.3 Compliance with Social Laws. During the term of the AGREEMENT, the GRANTEE and its contractors, subcontractors, and lessees shall comply with all applicable state and federal workmen's compensation, employer's liability and safety and other similar laws applicable to the GRANTEE.

14.4 Equal Employment Opportunity. In connection with the execution of this AGREEMENT, the GRANTEE or its Contractor shall not discriminate against any employee or applicant for employment because of race, creed, marital status, age, color, sex or national origin, or disability, except for a bona fide occupational qualification.

14.5 Nondiscrimination.

14.5.1 Nondiscrimination Requirement. During the term of this AGREEMENT, GRANTEE, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, GRANTEE, including any subcontractor, shall give written notice of the nondiscrimination requirement to any labor organizations with which the GRANTEE, or subcontractor, has a collective bargaining or other agreement.

14.5.2 Obligation to Cooperate. GRANTEE, including any subcontractor, shall cooperate and comply with a Washington state agency investigation regarding any allegation that GRANTEE, including any subcontractor, has engaged in discrimination prohibited by the AGREEMENT pursuant to RCW 49.60.530(3).

14.5.3 Default. Notwithstanding any provision to the contrary, the STATE may suspend GRANTEE, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by the AGREEMENT, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until the STATE receives notification that GRANTEE, including any subcontractor, is cooperating with the investigating state agency. In the event GRANTEE, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), the STATE may terminate this AGREEMENT in whole or in part, and GRANTEE, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. GRANTEE or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

14.5.4 Remedies for Breach. Notwithstanding any provision to the contrary, in the event of AGREEMENT termination or suspension for engaging in discrimination, GRANTEE, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under chapter 49.60 RCW. WSDOT shall have the right to deduct from any monies due to GRANTEE or subcontractor, or that thereafter become due, an amount for damages GRANTEE or subcontractor will owe the STATE for default under this provision.

14.6 Reserved.

SECTION 15 REINVESTMENT OF ENVIRONMENTAL CREDITS EARNINGS

15.1 To the extent GRANTEE receives any monies from the sale or disposition of energy credits, decarbonization credits, environmental credits, or any other monies through its participation in a like program, GRANTEE agrees to reinvest those monies into services and projects consistent with the state of Washington's carbon emissions reduction account (RCW 70A.65.240). GRANTEE's obligation to reinvest these monies under this Section 15 shall be in an amount no less than the proportion of the STATE's funding of this AGREEMENT.

SECTION 16 REPRESENTATIONS, WARRANTIES, AND COVENANTS

16.1 The following representations and warranties by the PARTIES hereto shall be considered conditions precedent to the effectiveness of this AGREEMENT.

16.2 The GRANTEE represents and warrants the following:

16.2.1 That it is a port development authority duly organized pursuant to chapter 53.57 RCW, validly existing and in good standing under the laws of the state of Washington;

16.2.2 That the monies the GRANTEE will derive through this AGREEMENT will be used solely

for the PROJECT as defined in this AGREEMENT;

16.2.3 That it has the full power and authority to enter into this AGREEMENT, and to carry out the obligations, which it has hereby undertaken;

16.2.4 That all proceedings required to be taken by or on the part of the GRANTEE to authorize its entrance into this AGREEMENT, have been or will be duly taken;

16.2.5 That execution of this AGREEMENT and the performance of the improvement hereunder will not violate any statute, rule, regulation, order, writ, injunction or decree of any Court, administrative agency or government body;

16.2.6 That the GRANTEE has not employed or retained any company or person to solicit or secure this AGREEMENT, and that it has not paid or agreed to pay any company or person, any fee, commission percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the STATE shall have the right to terminate this AGREEMENT without liability;

16.2.7 That the GRANTEE shall not engage on a full, part-time, or other basis, during the period of the AGREEMENT, any professional or technical personnel, to work on this AGREEMENT, who are, or have been, at any time during the period of the AGREEMENT in the employ of the STATE without written consent of the employer of such person; and

16.2.8 That the GRANTEE shall not extend any loan, gratuity, or gift of money in any form whatsoever to any employee, agent, or officer of the STATE nor will the GRANTEE rent or purchase any equipment or materials from any employee or officer of the STATE.

SECTION 17 FORCE MAJEURE

17.1 It is further understood and agreed that neither the GRANTEE nor the STATE, as the applicable case may be, shall be required to keep this AGREEMENT in effect during any period(s) it is prevented from doing so by governmental action, war, strikes, riots, terrorism, pandemic, or civil commotion, or if the port facilities or any portion thereof is made unserviceable by Acts of God including, but not limited to, floods, high water, or other damage by the elements.

SECTION 18 TERMINATION

18.1 Convenience – The STATE may terminate this AGREEMENT in whole, or in part, upon sixty (60) calendar days written notice whenever:

18.1.1 The requisite funding becomes unavailable through failure of appropriation or otherwise; and/or

18.1.2 The STATE determines that such termination is in the best interests of the STATE.

18.2 If the STATE exercises its rights under Section 18.1, the STATE shall reimburse GRANTEE for any expenses and costs eligible hereunder prior to receipt of such notice of termination.

18.3 Fault – Should either the STATE or the GRANTEE substantially fail to perform their obligations under this AGREEMENT, and continue in such default for a period of sixty (60) calendar days, the PARTY not in default shall have the right at its option, after first giving sixty (60) calendar days written notice thereof by certified mail to the PARTY in default, to terminate this AGREEMENT. Should either the STATE or GRANTEE fail to exercise any right or remedy during the sixty (60) calendar days in which the other PARTY is in default, such failure shall not subsequently be deemed a waiver of, or preclude the exercise of that or any other right or remedy hereunder. The termination of this AGREEMENT shall not impair any other rights of the terminating PARTY under this AGREEMENT or any rights of action against the defaulting PARTY for the recovery of damages. For purposes of this

provision, a substantial failure to perform on the part of the GRANTEE shall be deemed to include, but shall not be limited to, any action of the GRANTEE that jeopardizes its ability to perform pursuant to this AGREEMENT.

18.4 Default – In the event that either PARTY commits a material breach of its obligations under this AGREEMENT and fails to cure that breach within sixty (60) days after receiving written notice thereof, the other PARTY may terminate this AGREEMENT immediately upon written notice to the PARTY in breach.

18.5 After receipt of a notice of termination, and except as otherwise directed by the STATE, the GRANTEE shall:

18.5.1 Stop work under the AGREEMENT on the date, and to the extent specified, in the notice;

18.5.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the AGREEMENT that is not terminated;

18.5.3 Assign to the STATE, in the manner, at the times, and to the extent directed by the STATE, all of the rights, title, and interest of the GRANTEE and/or SUBGRANTEE under the orders and subcontracts and/or SUBGRANTEE Agreements so terminated, in which case the STATE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

18.5.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the STATE to the extent the STATE may require, which approval or ratification shall be final for all the purposes of this clause;

18.5.5 Complete performance of such part of the work as shall not have been terminated by the STATE; and, if applicable:

18.5.6 Transfer title to the STATE and deliver in the manner, at the times, and to the extent directed by the STATE any property which, if the contract had been completed, would have been required to be furnished to the STATE; and

18.5.7 Take such action as may be necessary, or as the STATE may direct, for the protection and preservation of the property related to this AGREEMENT, which is in the possession of the GRANTEE and in which the STATE has or may acquire an interest.

SECTION 19 INDEMNIFICATION

19.1 The GRANTEE shall indemnify and hold the STATE and all its officers and employees harmless from, and shall process and defend at its own expense all claims, demands, or suits at law or equity arising out of the performance or failure to perform by the GRANTEE, its agents, employees and/or its subcontractors, but not including SUBGRANTEES, of any and all duties prescribed to GRANTEE under this AGREEMENT; provided that nothing herein shall require the GRANTEE to indemnify or hold the STATE harmless against claims, demands, or suits based upon the negligent conduct of the STATE, its officers or employees; and provided further that if the claims, demands, or suit is caused by or results from the concurrent negligence of (a) the GRANTEE's agents or employees and (b) the STATE's agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision with respect to claims or suits based upon such negligence shall be valid and enforceable only to the extent of the GRANTEE's negligence or the negligence of the GRANTEE's agents or employees.

19.2 The GRANTEE agrees that its obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction and/or maintenance for the PROJECT. For this purpose, the GRANTEE, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such

claims under the Industrial Insurance provisions chapter 51.12 RCW.

19.3 This indemnification and waiver shall survive the termination of this AGREEMENT for all claims, demands, or suits at law or equity arising out of this AGREEMENT during its term.

SECTION 20 ASSIGNMENT AND SUCCESSION

20.1 The GRANTEE shall not assign or in any manner transfer either in whole or in part this AGREEMENT or any right or privilege granted to it hereunder, nor permit any person or persons, company or companies, to include but not limited to any parent or subsidiary company or corporation of GRANTEE, to share in any such rights or privileges without the prior written consent of the STATE except as otherwise herein provided. Nothing in this AGREEMENT shall be construed to permit any other port authority or any other person, corporation, or association, directly or indirectly, to possess any right or privilege herein.

SECTION 21 INDEPENDENT CAPACITY

21.1 The employees or agents of each PARTY who are engaged in the performance of this AGREEMENT shall continue to be employees or agents of that PARTY and shall not be considered for any purpose to be employees or agents of the other PARTY.

SECTION 22 NOTICES

22.1 Any notice, request, consent, demand, report, statement or submission which is required or permitted to be given pursuant to this AGREEMENT shall be in writing and shall be delivered personally to the respective PARTY set forth below, or if mailed, sent by certified United States mail, postage prepaid and return receipt required, to the respective PARTIES at the addresses set forth below, or to such other addresses as the PARTIES may from time to time advise by written notice to the other PARTY. The date of personal delivery or of execution of the return receipt in the case of delivery by certified U.S. mail, of any such notice, demand, request, or submission shall be presumed to be the date of delivery.

NOTICES IN THE CASE OF THE GRANTEE:

Nicola Graham
Environmental Project Manager
Northwest Seaport Alliance
P.O. Box 2985
Tacoma, WA 98401-2985

With a copy to:
Dana Henderson
General Counsel
Northwest Seaport Alliance
401 Alaskan Way, Suite 300
Seattle, WA 98104

22.2 Should the above Registered Agent become unavailable, the GRANTEE consents to allowing the legal notices to be sent to the Secretary of State of the State of Washington.

NOTICES IN THE CASE OF THE STATE:

Director
WSDOT Rail, Freight, and Ports Division
310 Maple Park Avenue SE, Box 47407
Olympia, WA 98501-2348

SECTION 23 INTERPRETATION

23.1 This AGREEMENT shall be construed liberally so as to secure to each PARTY hereto all of the rights, privileges, and benefits herein provided or manifestly intended. This AGREEMENT, and each and every provision hereof, is for the exclusive benefit of the PARTIES hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of a third party to recover by way of damages or otherwise against the PARTIES hereto.

23.2 If any covenant or provision, or part thereof, of this AGREEMENT shall be adjudged void, such adjudication shall not affect the validity or obligation of performance of any other covenant or provision, or part thereof, which in itself is valid, if such remainder conforms to the terms and requirements of applicable law and the intent of this AGREEMENT. No controversy concerning any covenant or provision shall delay the performance of any other provisions except as herein allowed.

23.3 All remedies provided in the AGREEMENT are distinct and cumulative to any other right or remedy under this document or afforded by law or equity, and may be exercised independently, concurrently, or successively therewith.

23.4 Any forbearance of the PARTIES in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of, or preclude the exercise of that or any other right or remedy hereunder.

23.5 Each PARTY hereby agrees to immediately notify the other PARTY of any change in law, conditions, or any other event which may significantly affect the TERM of this AGREEMENT or the PARTY's ability to perform the PROJECT in accordance with the provisions of this AGREEMENT.

SECTION 24 SUBCONTRACTING

24.1 It is understood that the GRANTEE may choose to subcontract all or portions of the work to a SUBGRANTEE. GRANTEE shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by state law. GRANTEE is required to follow procurement procedures that ensure legal, fair, and open competition.

24.2 No contract between the GRANTEE and its contractors and/or their subcontractors and/or material suppliers shall create any obligation or liability of the STATE with regard to this AGREEMENT without the STATE's specific written consent to such obligation or liability notwithstanding any concurrence with, or approval of, the award, solicitation, execution, or performance of any contract or subcontract. The GRANTEE hereby agrees to include the provisions of this AGREEMENT in all contracts entered into by the GRANTEE for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this AGREEMENT. There shall be provisions for a further flow down of such requirements to each sub-tier contractor as required.

24.3 GRANTEE is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement. Contract awards or rejections cannot be made based on MWBE participation; however, the GRANTEE is encouraged to take the following actions, when possible, in any procurement under this Agreement:

24.3.1 Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.

24.3.2 Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

24.3.3 Establish delivery schedules, where work requirements permit which will encourage participation of qualified minority and women's businesses.

24.3.4 Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

SECTION 25 SAFETY AND LIABILITIES

25.1 Safety. The GRANTEE shall do all things necessary and proper for the safe operation of the PROJECT and shall comply with all regulations prescribed by law or any public authority with respect thereto for the safety of the public or otherwise.

25.2 Personal Liability of Public Officers. No officer or employee of the STATE shall be personally liable for any act, or failure to act, in connection with this AGREEMENT, it being understood that in such matters they are acting solely as agents of the STATE.

25.3 Responsibility for Damage. The STATE, Transportation Commission, Secretary of Transportation, and all officers and employees of the STATE including, but not limited to, those of the Department of Transportation shall not be responsible in any manner for: any loss or damage to the work or any part thereof; any loss of material or damage to any of the materials or other things used or employed in the performance of the work; any injury to or death of any persons, either workers or the public, or damage to the public for any cause due to the intentional acts or negligence of the GRANTEE or its workers, or anyone employed by it.

SECTION 26 AMERICANS WITH DISABILITIES ACT

26.1 The GRANTEE agrees to utilize funds provided under this AGREEMENT in a manner consistent with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

SECTION 27 NO WAIVER OF STATE'S RIGHTS

27.1 The STATE shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore from showing the true amount and character of the work performed and materials furnished, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the AGREEMENT. Neither the granting of an extension of time, nor acceptance of and/or payment for, the whole or any part of the work by the STATE shall bar the STATE from seeking recovery of damages or any money wrongfully or erroneously paid to the GRANTEE. A waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach.

SECTION 28 VENUE

28.1 In the event that either PARTY deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the PARTIES hereto agree that any such action shall be initiated in the Superior Court of the state of Washington, situated in Thurston County. The PARTIES also agree that each PARTY shall be responsible for its own attorney's fees and other legal costs.

SECTION 29 DISPUTE RESOLUTION

29.1 In the event that a dispute arises under this AGREEMENT, which cannot be resolved between the PARTIES, the dispute shall be settled in the following manner:

29.1.1 Designated representatives from each PARTY agree to meet in good faith to resolve the dispute to the mutual satisfaction of both PARTIES. If after thirty (30) days a resolution is not reached, then;

29.1.2 Each PARTY to this AGREEMENT shall appoint a member to a dispute board. The members so appointed shall jointly appoint a third member who is not employed by or affiliated

in any way with the two PARTIES to this AGREEMENT. The dispute board shall evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The PARTIES agree to each be responsible for its own costs and further agree to equally share the cost of the third member of the dispute board.

29.1.3 The GRANTEE and STATE agree that they shall have no right to seek relief in a court of law until and unless the dispute resolution process set forth in this Section 29 has been exhausted.

29.2 The following individuals are the Designated Representatives for the purpose of resolving disputes that arise under this AGREEMENT:

Northwest Seaport Alliance
Jason Jordan
Director – Environmental Programs & Planning
1 Sitcum Plaza
Tacoma, WA 98421
jjordan@nwseaportalliance.com
253-830-5321

WSDOT Rail, Freight, and Ports Division
Capital & PCC Rail Systems Program Mgr.
310 Maple Park Ave. SE, Box 47407
Olympia, Wash. 98501-2348
srmdoc@wsdot.wa.gov
360-705-7900

29.3 In the event the Designated Representatives are unable to resolve the dispute within ten (10) business days, the following individuals, or their designee, shall confer and resolve the dispute:

Northwest Seaport Alliance
Dana Henderson
NWSA General Counsel
1 Sitcum Plaza
Tacoma WA 98421
dhenderson@nwseaportalliance.com
253-888-4712

WSDOT Rail, Freight, and Ports Division
Director
310 Maple Park Ave. SE, Box 47407
Olympia, Wash. 98501-2348
srmdoc@wsdot.wa.gov
360-705-7900

SECTION 30 NOTIFICATION OF THIRD-PARTY CONTRACT DISPUTES OR BREACHES

30.1 The GRANTEE agrees to notify the STATE of any current or prospective major dispute, breach, or litigation pertaining to any third-party contract. If the GRANTEE seeks to name the STATE as a party to litigation for any reason, the GRANTEE agrees first to inform the STATE before doing so. This proviso applies to any type of litigation whatsoever, in any forum.

SECTION 31 COMPLETE AGREEMENT

31.1 This document and referenced attachments contain all of the covenants, stipulations and provisions agreed upon by the PARTIES. No agents, or representative of either PARTY has authority to make, and the PARTIES shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

SECTION 32 EXECUTION OF ACCEPTANCE

32.1 The PARTIES adopt all statements, representations, warranties, covenants, and EXHIBITS to this AGREEMENT.

SECTION 33 AMENDMENT

33.1 Either PARTY may request changes in these provisions. Such changes that are mutually agreed upon shall be incorporated as written amendments to this AGREEMENT. No variation or alteration of the terms of this AGREEMENT shall be valid unless made in writing and signed by authorized representatives of the PARTIES hereto prior to beginning or continuing any work to be covered by the amendment.

SECTION 34 SEVERABILITY

34.1 If any provision of this AGREEMENT is held invalid, all remaining provisions of this AGREEMENT shall continue in full force and effect to the extent not inconsistent with such holding.

SECTION 35 ORDER OF PRECEDENCE

35.1 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) the AGREEMENT; (c) Scope of Work; and (d) Any provisions or terms incorporated herein by reference.

SECTION 36 COORDINATED CLIMATE COMMITMENT ACT BRANDING

36.1 The PROJECT received funding from Washington's Climate Commitment Act (CCA). To strengthen public awareness of how CCA funding is used, the Office of the Governor is directing state agencies that administer funding or manage a CCA-supported program to ensure consistent branding and funding acknowledgments are used in all communications and included in funding agreements and contracts. The "Climate Commitment Act" logo and funding acknowledgment make it easy for consumers and the public to see how the state is using CCA funds to reduce climate pollution, create jobs, and improve public health and the environment, particularly for low-income and overburdened populations.

The following provisions apply to all contractors, subcontractors, service providers and others who assist GRANTEE in implementing PROJECT.

36.2 Logo requirements. The CCA logo will be used in the following circumstances, consistent with the branding guidelines posted at climate.wa.gov/brandtoolkit.

36.2.1 Any PROJECT website or webpage that includes logos from other funding partners.

36.2.2 Any PROJECT media or public information materials that include logos from other funding partners.

36.2.3 On-site signage at any construction locations.

36.2.4 Any equipment and charging infrastructure purchased with PROJECT funds.

36.3 Funding source acknowledgement. This standard funding language must be used on websites and included in announcements, press releases and publications used for media-related activities, publicity and public outreach.

"The Zero-Emission Drayage Truck Demonstration Project is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at www.climate.wa.gov."

Recognition of CCA funding extends to publications, websites, invitations, and other media-related and public-outreach products.

SECTION 37 COUNTERPARTS

37.1 This AGREEMENT may be executed in two counterparts, each of which shall be deemed to be an original having identical legal effect.

37.2 IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the date signed last by the PARTIES below.

STATE OF WASHINGTON
Department of Transportation

By: _____

Jason Biggs, PE
Director
WSDOT Rail, Freight, and Ports Division

Date: _____

NORTHWEST SEAPORT ALLIANCE

By: _____

John Wolfe
Chief Executive Officer

Date: _____

Approved as to form:

By: _____

James Nelson, Assistant Attorney General
State of Washington

Date: _____

Dana Henderson, General Counsel
Northwest Seaport Alliance.

Any modification, change or revision to this AGREEMENT requires the further approval as to form by the Office of the Attorney General.

EXHIBIT A
SCOPE OF WORK
Containing
PROJECT DESCRIPTION
SCHEDULE
COST ESTIMATE

PROJECT DESCRIPTION

Background

This initiative will incentivize deployment of zero-emission drayage trucks through vehicle purchases and development of charging/fueling infrastructure in the Seattle-Tacoma region. This reduces emissions of greenhouse gases and diesel particulate matter, improves air quality in overburdened communities near port facilities, and improves jobs by providing affordable access to healthier vehicles for independent operators and small trucking companies.

Project benefits include:

- Reducing emissions of greenhouse gases, criteria air pollutants, and air toxics.
- Improving air quality and quality of life in our region, especially in historically disadvantaged and overburdened communities near port terminals, warehousing facilities, and along major freight corridors.
- Creating much-needed opportunities for the region’s drayage trucking companies – about 50% of which are independent owner/operators or very small companies (owning 10 or fewer trucks), including many Disadvantaged Business Enterprises (DBEs), Minority Business Enterprises (MBEs), and Women-Owned Business Enterprises (WBEs) – to access zero emission trucks and necessary charging/fueling infrastructure.
- Addressing a severe drayage truck parking shortage in our region – especially around the NWSA’s Tacoma and Seattle seaports and throughout the Kent Valley warehousing hub – and reducing illegal and unsafe parking of drayage trucks in public rights-of-way and residential neighborhoods.
- Preserving existing drayage trucking jobs and creating new, good-paying jobs related to the design, construction, and management of the truck charging/fueling stations.
- Improving the job quality and satisfaction of participating drayage truck drivers by providing affordable access to quieter, cleaner, healthier, and safer zero emission trucks, as well as secure overnight parking.
- Laying the foundation for the larger scale transition to zero-emission drayage trucking in our region and Washington state, both by establishing truck charging/fueling infrastructure “building blocks” and generating data and “lessons learned” to guide the longer-term strategy.

The NWSA Zero Emission Drayage Demonstration Fund & Program will provide financial incentives to subsidize the significant upfront costs of zero-emission trucks and associated charging/fueling infrastructure, which would otherwise remain out of reach for the NWSA’s drayage service-providers. Only projects that include, serve, and/or benefit existing companies that provide drayage services to port Terminals in Tacoma and/or Seattle will be eligible. The program will provide a higher level of subsidy to zero-emission truck deployments that demonstrably serve and benefit independent owner-operators, small trucking companies, and/or DBE/MBE/WBEs – as well as trucking companies based in overburdened communities. Based on our research, the per unit cost for a battery electric truck is \$600,000: \$500,000 for the truck (including federal and state taxes) and \$100,000 for a 50-kilowatt DC faster charger.

Incentive funds will be distributed via a competitive application process designed and managed by the NWSA in partnership with a third-party program administrator, to be hired by the NWSA via a competitive procurement process. These will be among the first such heavy-duty vehicle charging/fueling facilities in the Puget Sound region, addressing the infrastructure gap that is one of the biggest barriers our region and state face in making the transition to zero-emission heavy duty trucks.

Project Locations: Our project will be based within the NWSA's cargo gateway, which encompasses the geographic area including and surrounding the major seaports in Seattle and Tacoma. These seaports are 38 miles apart and connected by two major freight corridors: Interstate 5 and Washington State Route 167. SR 167 travels through the Kent Valley, the fifth largest industrial park in the nation and the third-largest distribution/warehouse area, behind only New York/New Jersey and Los Angeles. The Puget Sound Region, and especially the areas near the ports, Interstate 5 corridor, and the manufacturing and industrial centers, includes a high concentration of census tracts that experience significant environmental health disparities, according to the Washington State Department of Health.

All zero-emission drayage truck deployments incentivized by these state funds will occur within the NWSA cargo gateway, as defined here. Specific project locations will be determined through a competitive project selection process to be managed by the NWSA with the help of a third-party program administrator, with higher incentives available for projects located in these highly impacted communities.

Project Management

The NWSA will issue an RFP to solicit applications from teams made up of trucking companies serving NWSA terminals and carrying NWSA cargo, utilities, truck OEMs and others (e.g. Beneficial Cargo Owners, warehousing) in spring 2024. Based upon merit criteria such as emission reductions and project location, project teams will be selected by NWSA and will enter into a contract to receive grant funds. These trucking project teams will provide the private match funds to fund the remaining costs of the project not covered by this grant. The NWSA will be responsible for outreach, reporting and coordination between all successful project teams and WSDOT.

Multiple projects are anticipated to be selected through this RFP, with multiple charging/fueling locations developed by separate project teams, yet to be determined.

Project Management activities will be performed by GRANTEE using matching funding sources.

Project Deliverables

The NWSA anticipates providing the following deliverables to WSDOT:

- Quarterly invoices
- Quarterly progress reports
- Copy of published Request For Proposals (RFP)
- Copy of executed SUBGRANTEE Agreement(s)
- Copy of Decarbonizing Drayage: Roadmap to 2050 report (including lessons learnt from this project)
- Community/Trucker Engagement Report
- Final Report

Reporting

The NWSA plans to track and report the following metrics:

- Number of zero-emission trucks purchased.
- Number of zero-emission truck charging/fueling stations developed.
- Number of secure, overnight truck parking spots created.

- Emission reductions of GHG, DPM, and other criteria air pollutants.
- Cost of reduced GHG emissions, per metric ton of CO2e
- Zero emission truck visits to NWSA terminals (RFID data).
- Energy/fuel usage at each charging/fueling site.
- Whether the PROJECT provided direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities, as defined in RCW 70A.65.030(1), RCW 70A.65.230(3), RCW 70A.02.010(14), and RCW 70A.65.010(54); and if so:
 - The actual or estimated amount of expenditures to date that have provided such benefits; and
 - An explanation of how expenditures have provided such benefits.
- The actual or estimated amount of expenditures to date that have been used for programs, activities, or projects formally supported by a resolution of a federally recognized tribe.

Project Reporting will be performed by GRANTEE using matching funding sources.

Community Engagement

The proposed project is inspired and informed by extensive engagement with near-port communities in Seattle and Tacoma, drayage trucking drivers and companies, and other industry and community stakeholders in recent years to guide the development of the 2020 Northwest Ports Clean Air Strategy and the NWSA's 2021-2025 Clean Air Implementation Plan. We will continue this strong commitment to community and stakeholder engagement throughout the life of the proposed project. Near-port communities were deeply engaged in the development of the 2020 Northwest Ports Clean Air Strategy and the 2021-2025 Clean Air Implementation Plan, through a nearly three-year long process including in-person and virtual workshops, focus groups, webinars, surveys, and one-on-one consultations with key stakeholders. Local Tribes were invited to participate in these processes as well and did so as their time and bandwidth allowed. In addition, the NWSA has participated actively in the Duwamish Valley Clean Air Program, a community-led, multistakeholder initiative, the central goal of which is to reduce asthma in the Duwamish Valley, which is a historically disadvantaged, overburdened community. One of the loudest and clearest messages we received throughout these processes was a keen interest on the part of near-port communities in more information, transparency, and engagement with the NWSA on clean air and climate solutions.

To broaden and deepen engagement by near-port communities and other key stakeholders specifically related to reducing port truck emissions, the NWSA led the formation of the Puget Sound Zero Emission Truck Collaborative (PS-ZETC), which is tasked with developing a Decarbonizing Drayage Roadmap guided by the best available information, data and stakeholder input. The PS-ZETC, which launched in June 2023, includes representatives from community-based organizations and Tribes in both NWSA harbors, as well as the African Chamber of Commerce of the Pacific Northwest and the Latino Chamber of Commerce of Seattle-King County – both of whom represent hundreds of DBEs, MBEs, and WBEs in the Puget Sound region. The lessons learned from this project will inform the recommendations of the Decarbonizing Drayage Roadmap.

Community Engagement will be performed by GRANTEE using matching funding sources.

SCHEDULE

	Approximate Due Date
Fully Executed Grant Agreement	July 2024
Managing Member approval	August 2024
NWSA Request for Proposals published	September 2024
Projects selected by NWSA	January 2025
Contracts signed between NWSA and selected project partners	February 2025
Projects implemented by selected partners: <ul style="list-style-type: none">- Construction of charging/fueling infrastructure- Order of ZE truck from truck OEM	Beginning July 202 Beginning February 2025
Quarterly Progress Reports and Meetings	Quarterly
Close out project	December 31, 2026
Community/Trucker Engagement Report	January 20, 2027
Final Report	January 20, 2027

COST ESTIMATE

The project would be an addition to and an expansion of the Zero Emission Drayage Demonstration Incentive Fund & Program that the NWSA is launching for applications in fall 2024. That initial program will be supported by this funding and federal CMAQ and RTEPF funding that is already secured. The NWSA has a number of other grant applications to add to the program that are currently under consideration, listed below, that if awarded, would be added to the program to expand the deployment of ZE trucks and charging/fueling infrastructure in the gateway.

	Source	Amount	Secured or Pending
Non-Federal Funds	State of Washington’s 2023-2025 biennial transportation budget	\$6,240,000 (this grant)	Secured
	WSDOT Administration fee	\$60,000	Secured
	NWSA budget (match to CMAQ grant)	\$400,000	Secured
Federal Funds	CMAQ grant (FHWA)	\$2,800,000	Secured
	RTEPF grant (FHWA)	\$16,000,000	Secured
	CFI grant (FHWA)	\$12,000,000	Secured
Total		\$37,500,000 secured	

- Cost Detail (This funding)

All CCA funds under this agreement (\$6.24 million) will be used to incentivize zero emission drayage truck deployments (vehicle purchase and associated charging/fueling infrastructure development) at locations in the NWSA cargo gateway. The NWSA and other federal sources of grant funding will provide administrative support through NWSA staff time and a third-party administrator. These incentive funds will be issued to project teams over a 2-year period, between the start of 2025 and the end of the grant at the end of 2026.

As described above, the NWSA will issue incentive funding on a sliding scale, from a 50% baseline incentive level to an 80% level if the applicant meets additional criteria (DBE/MBE/WBEs, operating in overburdened community (based on Puget Sound Clean Air Agency and WA Dept of Health Environmental Health Disparities map). Extensive research by the Puget Sound Zero Emission Truck Collaborative and the NWSA’s consulting team GNA who have administered ZE truck deployments in California indicate the typical cost of one ZE battery-electric deployment (i.e. one truck and charging unit) is \$600,000. Therefore, the baseline incentive (50%) issued would be \$300,000, and the higher 80% level would be \$480,000.

	Year 1 (2025)	Year 2 (2026)	Total
Incentive Funding Issued	\$2,040,000	\$4,200,000	\$6,240,000

Number of Trucks Deployed	5	10	15
Number of Baseline Incentives (50%) Issued	2	3	5
Number of Maximum Level Incentives (80%) Issued	3	7	10

EXHIBIT B
TRAVEL RULES AND PROCEDURES

Appendix 23.74 Local Programs Quick Reference Travel Guide

Meals

Must be in travel status during the entire department determined meal period

Same Day Travel

- Traveler must be in travel status for 11 hours
- Meals will be reimbursed at the rate in effect for the location of the traveler's last temporary duty station of the day
- Meals will be reported as taxable income to the traveler

Overnight Travel

- Meals will be reimbursed at the rate in effect for the area where the traveler stops for sleep. The rate for the last day of travel (return day) is the rate for the location where the traveler last stopped for sleep.
- Meals are not reported as taxable income

Meal Periods

- Breakfast: the hour and a half immediately prior to the start of the regularly scheduled shift
- Lunch: the time the employee normally eats or, if eating times vary, halfway through the regularly scheduled shift
- Dinner: the hour and a half immediately following the end of the regularly scheduled shift

Note: Meal periods on scheduled day off and flex day is the same as the predominant work schedule for the week or pay period. For example, an employee works 4-9's and 1-4 hour schedule. Meal periods on day off and the 4 hour day are based on the 9 hour shift.

Per Diem Rates

Washington State Per Diem Map¹

Continental USA Per Diem Rates²

¹ www.ofm.wa.gov/resources/travel.asp

² www.gsa.gov/portal/content/104877

Lodging

- Eligible when the temporary duty station is more than fifty miles (most direct route) from the traveler's official residence and official station (50 mile rule)
- Limited to the basic government room rate plus any applicable sales taxes and/or hotel taxes
- Lodging tips or gratuities will not be reimbursed
- Travelers are reimbursed actual cost, as evidenced by receipt, for a single basic room up to the maximum lodging rate (state government room rate. See per Diem rate links pg. 1).

Exceptions-50 Mile Rule

- Approvers may approve exception to the fifty mile rule in the following situations:
- When the amount of time between the close of business on the first day and the start of business on the second is 11 hours or less (based on 3 hours personal time and 8 hours of sleep)
- When health and safety of the traveler is of concern. This requires written approval attached to the Travel Expense Voucher

Exceptions-150% Rule

- Requires written pre-approval
- Approvers may approve exception to the 150% rule in the following situations:
- The costs in the area have escalated for a brief period of time during special events or disasters
- Accommodations are not available at or below the maximum lodging amount, and the savings achieved from occupying less expensive lodging at a more distant site are consumed by an increase in transportation and other costs. Note a cost analysis must accompany this condition
- The traveler attends a meeting, conference, convention, or training session where the traveler is expected to have business interaction with other participants in addition to scheduled events. Further, it is anticipated that maximum benefit will be achieved by authorizing the traveler to stay at the lodging facility where the meeting, conference, convention, or training session is held

150% Rule Calculation for Lodging Meals + Lodging= Total Per Diem x 1.5= 150% Amount for lodging

Transportation

Privately Owned Vehicle (POV)

- Use of POV for personal reasons is reimbursable at the elective POV rate.
- The traveler's private insurance policy provides primary liability coverage when using POV for business travel -- Proof of insurance must be maintained for POVs used for state business
- Transporting unauthorized passengers in a POV is considered a personal decision. The State of Washington assumes NO responsibility for such unauthorized passengers under any circumstances

Common Non-Reimbursable Travel Costs

- Alcoholic Beverages
- Cost of the daily commute between the traveler's regular place of work, permanent duty station (or telework site) and home. This includes travel to work on day off.
- Tolls associated with the use of high occupancy toll (HOT) lanes
- Parking tickets or moving violations
- Meal costs incurred at the traveler's official duty station or official residence
- Meal costs when the traveler does not incur expenses for meals because they are furnished. This excludes continental breakfasts and airline meals.
- Lodging expenses incurred at a lodging facility located at either the traveler's official duty station or official residence.
- Lodging incurred at a lodging facility or temporary duty station located within 50 miles of either the official residence or official station.
- Lodging expenses when a traveler stays at a non-commercial lodging facility such as a private/family residence or state provided facility.
- Lodging expenses for family members accompanying the traveler
- Valet Services
- Entertainment expenses
- Out of pocket charges for vehicle service calls due to the negligence of the traveler
- Personal trip insurance
- Personal telephone calls
- Taxi fares, motor vehicle rental, and other transportation costs to or from places of entertainment and other non-state business.
- Any tips or gratuities associated with personal expenses.

EXHIBIT C

PREVAILING WAGE FOR PUBLIC WORKS CONTRACTS

Please review the Washington State Department of Labor and Industries Website for periodic updates to these rates.

<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates>

INDUSTRIAL FIRE PRECAUTION LEVELS

Fire suppression equipment shall be required at each work location, and the GRANTEE shall monitor the Industrial Fire Precaution Level at the following link.

<https://www.dnr.wa.gov/ifpl>

EXHIBIT D

REPORTING REQUIREMENTS AND DATA COLLECTION

GRANTEE shall submit data and reports, in a form and format to be provided by the STATE and at intervals determined by the STATE, regarding the following:

Emissions Reductions

1. Whether the PROJECT produced any verifiable reduction in greenhouse gas emissions or other long-term impact to emissions; and if so:
2. The quantity of reduced greenhouse gas emissions; and
3. The cost per carbon dioxide equivalent metric ton of reduced greenhouse gas emissions.

Benefits to Overburdened Communities and Vulnerable Populations

1. Whether the PROJECT provided direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities, as defined in RCW 70A.65.030(1), RCW 70A.65.230(3), RCW 70A.02.010(14), and RCW 70A.65.010(54); and if so:
2. The actual or estimated amount of PROJECT expenditures to date that have provided such benefits; and
3. An explanation of how PROJECT expenditures have provided such benefits.

Programs, Activities, or Projects Formally Supported by a Resolution of an Indian Tribe

1. The actual or estimated amount of PROJECT expenditures to date that have been used for programs, activities, or projects formally supported by a resolution of a federally recognized Indian tribe.

The STATE shall provide the methodologies and tools for quantifying information in the data and reports under this EXHIBIT D. The GRANTEE shall use only those methodologies and tools provided by the STATE to quantify information, except as otherwise permitted in writing by the STATE. The STATE may require the GRANTEE to provide raw data in lieu of, or in addition to, calculated quantities or estimates.

The PARTIES agree to amend this EXHIBIT D with respect to the duration or nature of the reporting requirements as a result of any statutory or other changes governing the STATE's data collection obligations.

Appendix A: Funding Sources for NWSA ZE Truck Incentive Program

Grant/Funder	Grant Description	Number of ZE Trucks Deployed	Funding Level	Timeline	Status
Congestion Mitigation & Air Quality (CMAQ) <i>(FHWA via PSRC)</i>	Incentives up to 50% for ZE truck and chargers based in Pierce County	14 trucks	\$2.8m grant + \$400k NWSA match	2025-26 funding	Awarded. BABA waiver submitted to FHWA in Jan 2024.
Climate Commitment Act (CCA) (WSDOT) – This request	50-80% incentive for ZE truck and charging/fueling infrastructure anywhere in gateway	15 trucks	\$6.3m grant	2023-25 biennial budget.	Awarded. Grant agreement ready for approval.


<p>Charging & Fueling Infrastructure (CFI) (FHWA)</p>	<p>Up to 45% towards dvpt of one or more truck charging depots in gateway</p>	<p>150-300 trucks</p>	<p>\$12m grant</p>	<p>Notified of award: spring 2024. 2024-26 funding</p>	<p>Awarded. Funding agreement currently being negotiated.</p>
<p>Reducing Truck Emissions at Port Facilities (RTEPF) (FHWA)</p>	<p>50-80% incentive for ZE truck and charging/fueling infrastructure anywhere in gateway and funding for Puget Sound Zero Emission Truck Collaborative</p>	<p>36-58 trucks</p>	<p>\$16m grant</p>	<p>Notified of award: spring 2024. 2025-2028 funding</p>	<p>Awarded. Awaiting grant templates from FHWA.</p>

<p>Congressional Earmark (FHWA via WSDOT)</p>	<p>Incentives up to 50% towards ZE truck chargers based in King County</p>	<p>16 chargers</p>	<p>\$850,000 grant</p>	<p>2025-2032 funding</p>	<p>Awarded. Funding agreement currently being negotiated.</p>
<p>Hydrogen Hub (Dept of Energy)</p>	<p>Incentives up to 80% towards hydrogen fuel cell trucks as part of PNW Hydrogen Hub</p>	<p>32 trucks</p>	<p>\$17,600,000</p>	<p>2027-2030 funding</p>	<p>Awarded. Funding agreement currently being negotiated.</p>

<p>Climate Pollution Reduction Grant (CPRG) (EPA)</p>	<p>50-80% incentive for ZE truck and charging/fueling infrastructure anywhere in gateway and funding for Puget Sound Zero Emission Truck Collaborative</p>	<p>80 trucks</p>	<p>\$52m total ask - \$31.5m ask for ZE trucks and charging/fueling infrastructure</p>	<p>2025-29 funding</p>	<p>Pending. Notification due October 2024.</p>
<p>Clean Ports (EPA)</p>	<p>Up to 80% towards ZE truck and charging/fueling infrastructure anywhere in gateway</p>	<p>98 trucks</p>	<p>\$500m total ask - \$48m for ZE trucks and charging/fueling infrastructure</p>	<p>2025-28 funding</p>	<p>Pending. Notification due September 2024.</p>

Item No.: 9C
Meeting Date: August 6, 2024

Grant Acceptance of Climate Commitment Act Funding for Zero Emission Drayage Truck Incentive Program and Expenditure of the Funds




**THE NORTHWEST
SEAPORT ALLIANCE**
SEATTLE + TACOMA

Nicola Graham
Environmental Project Manager I

1

ACTION REQUESTED

Request the Managing Members of The Northwest Seaport Alliance (NWSA) authorize the CEO or his delegate to accept Climate Commitment Act (CCA) funding in the amount of \$6,300,000 from the Washington Department of Transportation (WSDOT) and to expend subject funds to support our Zero Emission Truck Incentive Program.

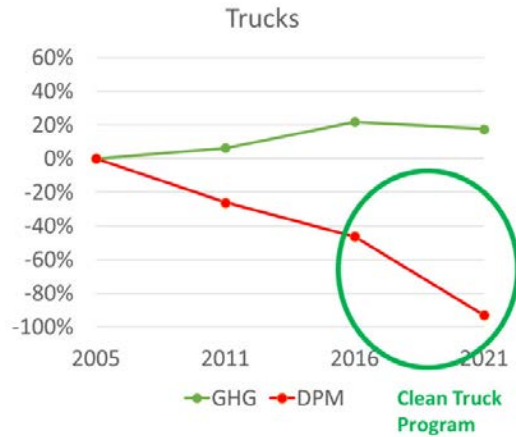


2

2

Truck Emissions

- Clean Truck Program to date:
 - Significant air quality improvement (DPM)
 - Cleaner diesel trucks still emit GHG
- Only way to completely eliminate all air pollutant and GHG emissions from trucks is to replace fleet with ZE trucks by 2050 or sooner (battery electric and hydrogen fuel cell)



DPM	2005-2021	-93%
	2016-2021	-87%
GHG	2005-2021	18%
	2016-2021	-4%

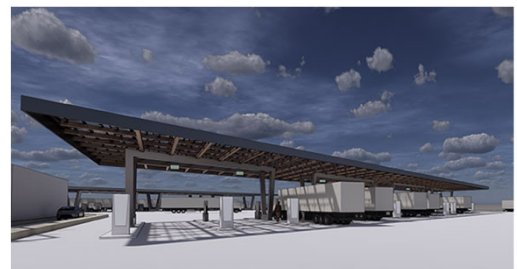


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3

ZE Truck Demonstration Program

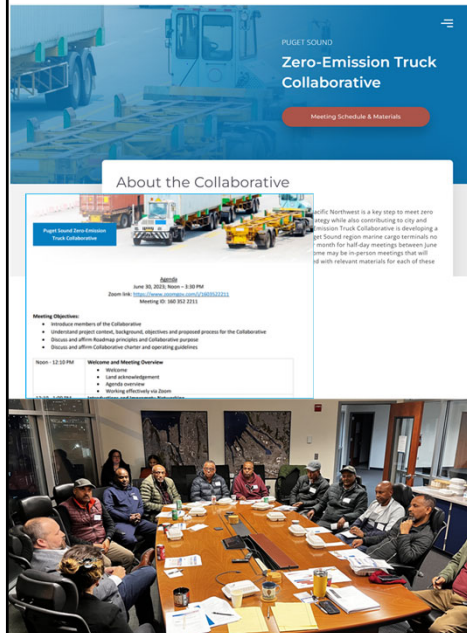
- Goal: Get zero emission drayage trucks and associated charging/fueling infrastructure in place in the NWSA gateway in order to:
 - Develop familiarity, confidence, trust
 - Kick-start local market and ecosystem
 - Generate experience and data to guide the longer-term transition
- Approach: Develop, fund, and implement program to incentivize ZE truck purchases and infrastructure development in the gateway
- Timeline: Launching Sep 2024



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4

Program Development



- Outreach through ZE Truck Collaborative:
 - Trucker listening sessions
 - Trucker survey
 - Community listening sessions
 - Panels at Collaborative meetings (truck OEMs, charging providers, utilities)
- TCO analysis (with and without incentives)
- Lessons learned from CA
- Review of other incentive programs and policies:
 - Advanced Clean Trucks rule
 - Local utility incentives
 - City of Seattle Electric Truck Pilot Project
 - NWSA Diesel Scrap & Replace program
- Input from Environmental Working Group

5

ZE Drayage Incentive Program Structure

- Focus on incentivizing ZE drayage truck *deployments* – simultaneous purchase of trucks and development of associated infrastructure
- Stay flexible with the goal of incentivizing a diverse array of deployments:
 - Truck purchases by fleets of different sizes
 - A variety of charging installations
 - “Behind the fence” installations @ trucking company HQs, warehouses, etc.
 - Publicly accessible shared charging hubs
 - ✓ Accessible to/convenient for drayage truckers
 - ✓ Power is available at site
- Serves range of trucking companies
- Serves both harbors equally

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ZE Drayage Incentive Program Structure cont.

- Base-level incentive of up to 50% of total projects costs (i.e., up to \$300,000 per truck deployed)
- Offer “plus ups” of up to 80% of total project costs (i.e., up to \$480,000 per truck deployed) if project is at least one of:
 - Independent owner/operators & small trucking companies (< 5 trucks)
 - MBEs, DBEs, and/or WBEs;
 - Trucking companies based in low-income disadvantaged communities
- Create program that's "stackable" with other funding sources
 - e.g., statewide ZE MHDV Purchase Incentive Program (coming soon)



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CCA Funding Overview

- \$55.55m funding secured to date overall, \$79.5m pending
- \$6.3m CCA funding in 2023-25 transportation budget
- Approx. 15 ZE truck and charging/fueling deployments
- 50% base level incentive (\$300,000 per truck)
- 80% level incentive (\$480,000 per truck) if:
 - Independent owner/operators & small trucking companies (< 5 trucks)
 - MBEs, DBEs, and/or WBEs;
 - Trucking companies based in low-income disadvantaged communities
- Open for applications next month
- Hiring third-party administrator



8

ZE Truck Incentive Funding

Grant/Funder	Grant Description	Number of ZE Trucks Deployed	Funding Level	Timeline	Status
Congestion Mitigation & Air Quality (CMAQ) (FHWA via PSRC)	Up to 50% for ZE truck and chargers (Pierce County)	14 trucks	\$2.8m grant + \$400k NWSA match	2025-26 funding	Awarded. BABA waiver submitted to FHWA in Jan 2024.
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9

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