

**AGREEMENT BETWEEN THE PORT OF SEATTLE
AND THE PUGET SOUND CLEAN AIR AGENCY
FOR REIMBURSEMENT OF RETROFITTING
COSTS FOR CARGO HANDLING EQUIPMENT**

This agreement is entered into between the **Puget Sound Clean Air Agency**, a municipal corporation of the laws of the State of Washington, hereinafter referred to as the "Agency" and the **Port of Seattle** (hereinafter referred to as the "POS") Pier 69, 2711 Alaska Way, Seattle WA 98111-1209.

I. RECITALS

WHEREAS, it is in the interest of POS, Stevedore Services of America (SSA), the Agency and the region to reduce air quality impacts associated with diesel equipment operations; and

WHEREAS, the Puget Sound Clean Air Agency has established the Diesel Solutions program to promote and facilitate the retrofit of existing diesel vehicles and equipment used in public and private fleets with emission control equipment; and

WHEREAS, POS leases Terminal 18 to SSA which operates and maintains a fleet of diesel powered cargo handling equipment; and

WHEREAS, SSA has committed to switch to low sulfur fuel to enable the installation of Diesel Oxidation Catalysts (DOCs) on its cargo handling equipment; and

WHEREAS, SSA will perform the installation of DOCs at its own expense; and

WHEREAS, POS is managing this project and has received a \$35,000 grant for partial reimbursement for this project through the Environmental Protection Agency's (EPA) "Assistance Agreement/Amendment/Interagency Agreement (Agreement Identification number X5 96018901-0)" program, and a commitment from the Agency to provide reimbursement up to \$30,000 to cover the additional costs of purchasing the DOCs.

II. AGREEMENT

NOW, THEREFORE, POS and the Agency agree as follows:

A. PURPOSE. The purpose of this Agreement is to establish procedures for the Agency to reimburse the POS for the cost of purchasing DOCs for cargo handling equipment at Terminal 18.

B. TERM. This Agreement shall commence on December 1, 2005 and shall terminate June 30, 2006.

C. REIMBURSEMENT. POS may apply for reimbursement from the Agency for the costs of purchasing diesel oxidation catalysts on up to 53 cargo handling vehicles. The request for reimbursement shall be limited to the cost of purchasing DOCs, minus the \$35,000 received from EPA via Grant Number X5 96018901-0.

1. The maximum amount paid by the Agency under this Agreement shall not exceed \$30,000. Funding is provided through the State of Washington Department of Ecology Grants Number G0400074 and G0600058 for the Statewide School Bus Retrofit Program pursuant to the Agency's Diesel Solutions Ports/Marine work plan for Fiscal Year 2006.
2. POS may submit a request for reimbursement from the Agency for the cost of purchasing DOCs, minus the \$35,000 received from EPA via Grant Number X5 96018901-0. The reimbursement request shall contain a cover letter showing the total project cost less the \$35,000 received from EPA via Grant Number X5 96018901-0 and the amount the POS is seeking for reimbursement from the Agency. In addition, POS shall provide documentation supporting the POS reimbursement request, including the purchase order for purchasing the DOCs and any miscellaneous parts used in the installation.
3. The request for reimbursement shall be sent to the Agency's Manager of Finance and Purchasing. The request for reimbursement shall be submitted no later than ten (10) working days after the termination date of this Agreement.

D. HOLD HARMLESS/INDEMNIFICATION. To the extent legally permitted, each party shall indemnify and hold harmless the other party from and against any and all claims, actions, damages, liability, and expense, including, without limitation, reasonable attorney's fees, incurred as a result of such party's actions under this agreement; provided that, if such claims, actions, damages, liability, or expense arise from concurrent negligence of two or more of the parties, including instances where this agreement is subject to the provisions of RCW 4.24.115, then the obligation to indemnify under this Agreement shall be effective only to the extent of each party's own negligence. No party shall be required under this section to indemnify another for its sole negligence.

E. NOTICES. All notices hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

To the Port of Seattle
Marty Rose,
Pier 69
2711 Alaska Way
Seattle, WA 98111-1209

To the Puget Sound Clean Air Agency:
Tom Hudson
110 Union Street, Suite 500
Seattle, WA 98101

Or to such other respective addresses as either party hereto may hereafter designated in writing.

III. GENERAL PROVISIONS

A. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Washington.

B. AMENDMENTS/MODIFICATIONS. This Agreement may be amended or modified only by written agreement of the parties.

C. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

IN WITNESS HEREOF, the undersigned have, on the date set next to their signatures, executed this Agreement on behalf of the parties hereto.

**PUGET SOUND
CLEAN AIR AGENCY**

PORT OF SEATTLE

By: Bill Evans
Bill Evans
Board of Directors, Chair

By: M. R. Dinsmore
M. R. Dinsmore
Chief Executive Officer

Date: 5/31/06

Date: 5/16/06

Attest:

By: Dennis J. McLerran
Dennis J. McLerran
Executive Director

Date: 5/20/06

Approved as to form:

By: Laurie Halvorson
Laurie Halvorson
General Counsel

Date: 5/23/06

U.S. Environmental Protection Agency
Washington, D.C. 20460

**Certification Regarding
Debarment, Suspension and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

M. R. Dinsmore, Chief Executive Officer
Typed Name & Title of Authorized Representative

M. R. Dinsmore
Signature of Authorized Representative

5/16/06
Date

I am unable to certify to the above statements. My explanation is attached.

Instructions

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the regulation.

Where to Submit

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions.

A prospective prime contractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

How to Obtain Forms:

EPA includes the certification form, instructions, and a copy of its implementing regulation * (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies/assistance may be requested from:

Office of Grants and Debarment
Suspension and Debarment Division
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460
(Telephone: 202-260-8025)

**SALES AGREEMENT
DIESEL OXIDATION CATALYST MUFFLERS**

The Port of Seattle, in Seattle, Washington (Seller), agrees to sell and Stevedoring Services of America (SSA), of Seattle Washington (Buyer) agrees to buy 56 Diesel Oxidation Catalyst Mufflers at \$20.00 each, to be delivered by the Seller to Buyer at Terminal 18 Maintenance Facility, 1131 SW Klickitat Way, Seattle WA. In consideration of the promises and of the mutual benefits to each party, it is further agreed as follows:

1. Description. The goods subject of this sale and which the Seller shall deliver to the Buyer and for which the Buyer shall pay shall conform to the following specifications:

<u>Number</u>	<u>Type of diesel oxidation catalyst muffler</u>
45	Donaldson 6100 Series
11	Fleetguard 200913N

The model numbers of the goods, and the equipment on which they are to be installed, are listed in Schedule A (Inventory Form).

2. Delivery. Delivery shall be no later than five working days after final signatures of this Agreement, and shall be delivered by Seller to Buyer at Terminal 18 Maintenance Facility, 1131 SW Klickitat Way, Seattle WA. Buyer agrees to provide the means to unload the goods at time of delivery.

3. Title. The Seller warrants that the title conveyed under the terms of this agreement shall be good and its transfer rightful, and that the goods shall be delivered free from any security interest or other lien or encumbrance. Title shall remain with the Seller until delivery and actual receipt thereof by the Buyer.

4. Risk of loss. Identification shall take place on the packaging of the goods, and the risk of loss shall pass on such identification.

5. Price and time of payment. The price of the equipment shall be \$20.00 per unit, for a total of \$1,120.00. This shall be paid at the time of delivery and at the place of delivery in bank draft or cashier's check or certified check.

Both parties agree that this price does not represent the goods' fair market value, but has been set to reflect the non-financial value that accrues to the Seller through the Buyer's actions in retrofitting their cargo handling equipment with these devices.

6. Inspection. Inspection shall be made by the Buyer at the time and place of delivery.

7. Conditions of Sale. Buyer acknowledges that Seller's costs for this equipment were paid in part through grant funds that the Seller received from the U.S. Environmental Protection Agency and the Puget Sound Clean Air Agency. All three agencies have a continuing interest in assuring that the equipment is installed, maintained and utilized as expected. Because of these circumstances, special conditions of sale and remedies apply.

- a) *Use and Maintenance:* Buyer hereby agrees to perform the following actions:
- Install the mufflers on its cargo handling equipment according to manufacturer's directions and in accordance with warranty provisions;

- Use the mufflers on equipment located within the jurisdiction of the Port of Seattle, unless written permission to relocate the devices is obtained from the Seller; and
- Use and maintain the devices in good working order according to manufacturers directions and in accordance with warranty provisions, including using only those fuels containing 500 ppm of sulfur or less

b) *Reporting*: Once per year, on or near the anniversary date of the sale, the Buyer shall complete the Inventory Form, attached hereto as Schedule A, and submit it to: Barbara Cole, Port of Seattle, P.O. Box 1209, Seattle WA 98111. This obligation shall continue for three (3) years from date of sale.

8. Warranty. THE SELLER WARRANTS THAT THE GOODS ARE AS DESCRIBED IN THIS AGREEMENT, BUT IT MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY IN RESPECT TO THE GOODS, AND SPECIFICALLY THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS.

Buyer shall be limited to the warranties of the manufacturers of the products sold, which are attached as Schedule B and C.

9. Remedies.

a) *Defective Goods*: Buyer's exclusive remedy and Seller's limit of liability for any and all losses or damages resulting from defective goods, or from any other cause, shall be for the purchase price of the particular delivery with respect to which losses or damages are claimed.

b) *Breach by Buyer*. In the event of any breach by Buyer, whether by way of wrongful rejection or revocation, or failure to fulfill the conditions of sale described in Section 7 above, the Seller shall be entitled to recover the fair market value of any goods tendered hereunder at the time of sale, and upon such recovery, said goods shall become the property of the Buyer, if still in possession of the Seller. It is acknowledged by the Buyer that the purpose of this provision for recovery of the market value is that these goods are not sold in the normal course of the Seller's business, and that Seller has unusual obligations pursuant to the Environmental Protection Agency and the Puget Sound Clean Air Agency grant rules.

11. Assignment and Delegation. Buyer may not assign its right or delegate its performance hereunder without the prior written consent of the Seller, and any attempted assignment or delegation without such consent shall be void.

12. Choice of Law. This contract is to be construed according to the laws of, and under the Uniform Commercial Code, as adopted by the State of Washington.

13. Integration of Contract. This document constitutes the full understanding of the parties, and no terms, conditions, understandings or agreement purporting to modify or vary the terms of this document shall be binding unless hereafter made in writing and signed by the party to be bound.

Buyer
Date:

Seller
Date:

**SCHEDULE A
INVENTORY FORM**

Diesel Oxidation Catalyst Mufflers

Installed on Yard Hustlers (Capacity, Model TJ7000, Engine Type 6BTAA)

	Unit #	Yr.	Serial #	Type of Muffler	Installed Y/N	Still In Service Y/N
1	H 901	2002	13290	Donaldson Series 6100 Model No. M-111184		
2	H 902	2002	13291	Donaldson Series 6100 Model No. M-111185		
3	H 903	2002	13292	Donaldson Series 6100 Model No. M-111186		
4	H 904	2002	13293	Donaldson Series 6100 Model No. M-111187		
5	H 905	2002	13294	Donaldson Series 6100 Model No. M-111188		
6	H 906	2002	13295	Donaldson Series 6100 Model No. M-111189		
7	H 907	2002	13296	Donaldson Series 6100 Model No. M-111190		
8	H 908	2002	13297	Donaldson Series 6100 Model No. M-111191		
9	H 909	2002	13298	Donaldson Series 6100 Model No. M-111192		
10	H 910	2003	13977	Donaldson Series 6100 Model No. M-111193		
11	H 911	2003	13978	Donaldson Series 6100 Model No. M-111194		
12	H 912	2003	13979	Donaldson Series 6100 Model No. M-111195		
13	H 913	2003	13980	Donaldson Series 6100 Model No. M-111196		
14	H 914	2003	13981	Donaldson Series 6100 Model No. M-111197		
15	H 915	2003	13982	Donaldson Series 6100 Model No. M-111198		
16	H 916	2003	13983	Donaldson Series 6100 Model No. M-111199		
17	H 917	2003	13984	Donaldson Series 6100 Model No. M-111200		
18	H 918	2003	13985	Donaldson Series 6100 Model No. M-111201		
19	H 920	2004	14878	Donaldson Series 6100 Model No. M-111202		
20	H 921	2004	14879	Donaldson Series 6100 Model No. M-111203		
21	H 922	2004	14880	Donaldson Series 6100 Model No. M-111204		
22	H 923	2004	14881	Donaldson Series 6100 Model No. M-111205		
23	H 924	2004	14882	Donaldson Series 6100 Model No. M-111206		
24	H 925	2004	14883	Donaldson Series 6100 Model No. M-111207		
25	H 926	2005	15879	Donaldson Series 6100 Model No. M-111208		
26	H 927	2005	15880	Donaldson Series 6100 Model No. M-111209		
27	H 928	2005	15881	Donaldson Series 6100 Model No. M-111210		
28	H 929	2005	15882	Donaldson Series 6100 Model No. M-111211		
29	H 930	2005	15883	Donaldson Series 6100 Model No. M-111212		
30	H 931	2005	15884	Donaldson Series 6100 Model No. M-111213		
31	H 932	2005	15885	Donaldson Series 6100 Model No. M-111214		
32	H 933	2005	15886	Donaldson Series 6100 Model No. M-111215		
33	H 934	2005	15887	Donaldson Series 6100 Model No. M-111216		
34	H 935	2005	15915	Donaldson Series 6100 Model No. M-111217		
35	H 936	2005	15916	Donaldson Series 6100 Model No. M-111218		
36	H 937	2005	15917	Donaldson Series 6100 Model No. M-111219		
37	H 938	2005	15888	Donaldson Series 6100 Model No. M-111220		
38	H 939	2005	15889	Donaldson Series 6100 Model No. M-111221		
39	H 940	2005	15890	Donaldson Series 6100 Model No. M-111222		
40	H 941	2005	15918	Donaldson Series 6100 Model No. M-111223		
41	H 942	2005	15919	Donaldson Series 6100 Model No. M-111224		
42	H 943	2005	15920	Donaldson Series 6100 Model No. M-111225		
43	H 944	2005	15877	Donaldson Series 6100 Model No. M-111226		
44	H 945	2005	15878	Donaldson Series 6100 Model No. M-111227		
45	H 946	2005	15876	Donaldson Series 6100 Model No. M-111228		

Installed on Side Picks (Taylor, Model TECSP 157/8, Engine Type QSB6)

	Unit #	Yr.	Serial #	Type of Muffler	Installed Y/N	Still In Service Y/N
46	15903	2005	S N2 32175	Fleetguard 200913N		
47	15904	2005	S N2 32343	Fleetguard 200913N		
48	15905	2005	S N2 32344	Fleetguard 200913N		

Installed on Top Picks (Taylor, Model THDC 955, Engine Type QSM11)						
	Unit #	Yr.	Serial #	Type of Muffler	Installed Y/N	Still In Service Y/N
49	80920	2003	S X2 30808	Fleetguard 201861N		
50	80921	2004	S X2 31207	Fleetguard 201861N		
51	80922	2004	S X2 31246	Fleetguard 201861N		
52	80923	2004	S X2 31247	Fleetguard 201861N		
53	80924	2004	S X2 31969	Fleetguard 201861N		
54	80925	2004	S X2 31998	Fleetguard 201861N		
55	80926	2004	S X2 31999	Fleetguard 201861N		
56	80927	2005	S X2 31249	Fleetguard 201861N		
I hereby certify that the above information is true and correct.						
		Date:				
Authorized Signature:						