

INTERAGENCY AGREEMENT NO. C0600208

**between
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

**And
PUGET SOUND CLEAN AIR AGENCY**

RECEIVED

MAR 27 2006

PUGET SOUND CLEAN
AIR AGENCY

THIS AGREEMENT is made and entered into by and between the DEPARTMENT OF ECOLOGY, hereinafter referred to as ECOLOGY and the Puget Sound Clean Air Agency, hereinafter referred to as the CONTRACTOR.

IT IS THE PURPOSE OF THIS AGREEMENT to provide funding for ultra low diesel fuel to the Washington State Ferries in partnership with other agencies. Puget Sound Clean Air Agency has agreed to invoice and make payment to the Washington State Ferries. Puget Sound Clean Air Agency shall then invoice Ecology for the actual dollars up to \$35,000. See Attachment A for full work plan.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

The CONTRACTOR shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A" attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence when signed by ECOLOGY, and be completed on June 30, 2006, unless terminated sooner as provided herein.

PAYMENT

Compensation for the work provided in accordance with this agreement has been established under the terms of RCW 39.34.130. The parties have determined that Ecology's share of the cost of accomplishing the work herein will not exceed \$35,000. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work which will cause the maximum payment to be exceeded.

Compensation for services shall be based on the following rates and in accordance with the following terms, or as set forth in accordance with the budget in Attachment "B" which is attached hereto and incorporated herein.

BILLING PROCEDURE

The CONTRACTOR shall submit invoices no more often than *monthly, but can be quarterly or a one time invoice at the completion of the project*. Payment to the CONTRACTOR for approved and completed work will be made by warrant or account transfer by ECOLOGY within 30 days of

receipt of the invoice. Upon expiration of the contract, any claim for payment not already made shall be submitted within 60 days after the expiration date or the end of the fiscal year, whichever is earlier.

Contractor's information is: Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101-2038. Telephone: (260) 343-8800.

Payments will be made payable to: Puget Sound Clean Air Agency, and will be mailed to the following address: 110 Union Street, Suite 500, Seattle, WA 98101-2038.

RECORDS MAINTENANCE

The parties to this contract shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the ECOLOGY. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

INDEPENDENT CAPACITY

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.

AGREEMENT ALTERATIONS AND AMENDMENTS

This agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

TERMINATION

Either party may terminate this Agreement upon 30 days prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE

This contract is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules;
- b. statement of work; and
- c. any other provisions of the agreement, including materials incorporated by reference.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

WAIVER

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this

Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

CONTRACT MANAGEMENT

The contract manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract Manager for ECOLOGY is: Sue Simms, P.O. Box 47600, Olympia, WA 98504-7600. Telephone: (360) 407-6890.

The Project Manager for Puget Sound Clean Air Agency is: Tom Hudson, (800) 552-3565 Ext. 4025.

IN WITNESS WHEREOF, the parties have executed this Agreement.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PUGET SOUND CLEAN AIR AGENCY



Stuart A. Clark
Air Quality Program Manager

1/25/06
Date



Dennis McLerran
Director

1/24/06
Date

APPROVED AS TO FORM ONLY:
Assistant Attorney General

ATTACHMENT A

WORK PLAN FOR CONTINUATION OF THE ULTRA- LOW SULFUR DIESEL (ULSD) FUEL PILOT TEST ON THE M/V ELWHA

Term of Agreement: November 1, 2005 through June 30, 2006

In September of 2004, Washington State Ferries (WSF) began utilizing Ultra Low Diesel (ULSD) Fuel as a pilot test in the vessel M.V. Elwha. The Puget Sound Clean Air Agency (PSCAA) partnered with WSF on the initial project and provided offset funding through EPA's Office of Transportation and Air Quality. This funding provided for the cost differential between low sulfur and ultra-low sulfur fuels. As a part of the Memorandum of Understanding between the parties, WSF provided the PSCAA with a final report in June of this year.

It is WSF's desire to continue the use of ULSD on this vessel in order to gain additional, long-term experience with this fuel. As such, WSF wishes to partner with The Washington State Department of Ecology, Northwest Clean Air Agency and PSCAA. In exchange for offset funding in the amount of \$70,000, WSF will perform the following tasks in order to continue the pilot test of ULSD on the M/V Elwha:

- Ensure a consistent supply of ULSD through current and future state fuel contracts.
- Continue to keep the crew of the Elwha familiarized and educated about the use of ULSD.
- Monitor operations of the M/V Elwha to ensure that the propulsion system operates effectively on ULSD for the duration of the test. Monitoring observations will include:

The Chief Engineer on board the vessel will make notations in the engine room logbook if he, or the vessel Master, observes any unusual operating characteristics over the duration of the pilot test. Things that may be observed, and will be noted in the logbook include:

- Changes in visual stack emissions;
 - Unusual engine operating temperatures;
 - Changes in fuel consumption rate; or
 - Changes in routine maintenance requirements.
- In June of 2006, at the end of this agreement, WSF will remove four fuel injectors from one main engine and send them to the manufacturer for a tear down and inspection report. A copy of this report will be provided to PSCAA.
 - In July of 2006, upon completion of the pilot test, WSF will provide a brief report to PSCAA. The report will document the following aspects of the pilot test:
 - The number of gallons of ULSD burned during the pilot test;
 - The total cost of ULSD burned during the pilot test;
 - A summary of any unusual operating characteristics observed by the crew; and
 - A summary of the results of the inspection of the fuel injectors. A copy of the manufacturer's inspection report will be provided.
 - Any other changes noted to the physical condition of the propulsion plant.

- Evaluate the pilot test results and the fuel costs for the project.
- Determine the current cost differential between Low Sulfur and Ultra-low sulfur fuels. If the cost differential is advantageous to the state, recommend to WSF executive management to make the switch over fleet wide
- Periodically evaluate the cost differential between the two fuels should the state decide not to switch over to ULSD after the pilot test.

ATTACHMENT B
BUDGET

Project Funding:

Puget Sound Clean Air Agency	\$17,500
Northwest Clean Air Agency	\$17,500
Department of Ecology	\$35,000