

**CONTRACT FOR THE REIMBURSEMENT OF COSTS
FOR PURCHASING DIESEL ENGINE POWER ASSEMBLIES
FOR THE M/V TILLIKUM OR OTHER DESIGNATED WASHINGTON STATE FERRY**

This contract is entered into this 25th day of March, 2010 between the **Puget Sound Clean Air Agency** (hereinafter referred to as the "Agency"), a municipal corporation of the laws of the state of Washington, and the **Washington State Department of Transportation Ferries Division**, operating as Washington State Ferries (hereinafter referred to as "WSF"), 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, for the purposes and terms set forth in this contract.

I. RECITALS

WHEREAS, the Agency implements the Diesel Solutions program to reduce harmful emissions from diesel-powered vehicles, vessels and equipment in order to improve air quality, public health, and the environment; and

WHEREAS, the WSF owns, operates and maintains a fleet of diesel-powered ferries, including the *M/V Tillikum*; and

WHEREAS, it is in the interest of WSF, the Agency, and the public to reduce air quality impacts associated with ferry operations; and

WHEREAS, the Agency has discretionary grant money from the Washington Department of Ecology to reduce diesel emissions; and

WHEREAS, the Agency desires to use a portion of this grant money to fund the partial costs of purchasing Ultra Low Lube Oil diesel engine power assemblies ("UL packs") for installation on the diesel engines of WSF's auto/passenger ferry *M/V Tillikum* or other qualified ferry designated in writing by WSF; and

WHEREAS, the UL packs are a component of U.S. Environmental Protection Agency (EPA) certified kits for diesel engines; and

WHEREAS, the UL packs are estimated to reduce particulate emissions by 40% to 60% by reducing the consumption of lubricating oil in the engine and thus reducing air quality impacts associated with operation of the *M/V Tillikum*; and

WHEREAS, the Board of Directors of the Agency deems it desirable to enter into this contract with WSF to reimburse WSF for the partial cost of purchasing the UL packs.

II. CONTRACT

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

- A. PURPOSE.** The purpose of this contract is to establish procedures for the Agency to reimburse WSF up to \$40,000 toward the cost of purchasing UL packs as detailed in this contract.
- B. TERM.** This contract shall commence on March 25, 2010 and shall terminate on December 31, 2011.
- C. REIMBURSEMENT.** WSF may apply for partial reimbursement from the Agency for the costs of purchasing UL packs, as described in this section.
 - 1. The total amount paid by the Agency under this contract shall not exceed \$40,000. The funding for this contract is provided by Ecology Grant No. G0600058, under Task C of the Diesel Solutions Work Plan.
 - 2. The Agency shall pay up to \$40,000 of the cost of purchasing UL packs, including sales tax and shipping costs, if applicable, for use only on diesel engines on the *M/V Tillikum* owned by WSF

or other qualified ferry designated in writing by WSF. The UL packs shall be capable of reducing particulate matter emissions.

3. In support of its request for reimbursement for purchase of the UL packs, WSF will provide the Agency with a copy of the bill from the vendor of the UL packs and a record of WSF paying the bill. The WSF submittal to the Agency shall clearly identify the number of UL packs purchased and installed, and the type/model of UL packs installed, the unit cost of each UL pack, and the total cost of the purchase, including any applicable taxes and shipping costs. The WSF submittal shall also include documentation showing the UL packs were installed by WSF; that documentation may include copies of WSF's Maintenance Productivity Enhancement Tool (MPET) report showing the installation, or other equivalent documentation approved by the Agency Project Manager.
4. The request for reimbursement shall be sent to the Agency's Manager of Finance and Purchasing and shall be paid within thirty (30) days after review and approval by the Project Manager. The request for reimbursement must be submitted no later than ten (10) working days after the termination date of this contract.
5. The Agency and WSF agree that the UL packs shall be the property of WSF. The Agency and WSF agree that the UL packs shall remain in operation on ferries within the State of Washington for at least four years to ensure that the public benefits from the resulting reduced emissions. If, within four years of installation, a UL pack is removed from the *M/V Tillikum* and not replaced with equipment that provides equivalent or greater emissions reductions, or the *M/V Tillikum* is no longer operated on a route within the State of Washington, WSF shall reimburse the Agency's Ecology Grant No.G0600058 for the remaining value of the UL pack that has been removed. The amount WSF will reimburse the grant fund shall be a pro-rata share of the \$40,000 based on the number of months remaining in the four-year period calculated from the date of installation and the number of UL packs replaced.

For example, if the UL pack installation was completed on September 1, 2009, and half of the UL packs were replaced on September 1, 2011, with equipment that did not provide equivalent or greater emissions reductions, WSF would be required to reimburse the grant fund \$10,000, calculated as:

$$(24 \text{ months remaining divided by } 48 \text{ months total}) \times (\$40,000 \times 0.50 \text{ (UL packs)}) = \$10,000$$

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 contract; 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 contract is subject to the provisions of RCW 4.24.115, then the obligation to indemnify under this contract 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:

WSF:

Tim McGuigan, Director of Legal Services & Contracts
Washington State Ferries
2901 3rd Avenue, Suite 500
Seattle, WA 98121-3014
Phone: (206) 515-3601
Fax: (206) 515-3605
E-mail: mcguigan@wsdot.wa.gov

Agency:

Paul Carr, Project Manager
Puget Sound Clean Air Agency
1904 Third Avenue, Suite 105
Seattle, WA 98101-3317
Phone: (206) 689-4085
Fax: (206) 343-7522
E-mail: paulc@pscleanair.org

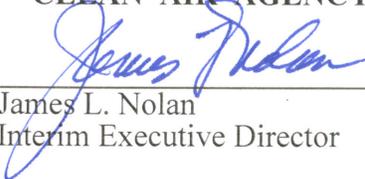
Or to such other respective addresses as either party hereto may hereafter designate in writing.

III. GENERAL PROVISIONS

- A. **APPLICABLE LAW.** This contract shall be governed by the laws of the State of Washington.
- B. **AMENDMENTS/MODIFICATIONS.** This contract may be amended or modified only by written contract of the parties.
- C. **ENTIRE CONTRACT.** This contract contains the entire contract of the parties hereto and no representations, inducements, promises or contracts, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

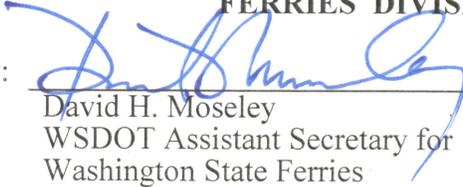
IN WITNESS HEREOF, the undersigned have, on the date set next to their signatures, executed this contract on behalf of the parties hereto.

**PUGET SOUND
CLEAN AIR AGENCY**

By: 
James L. Nolan
Interim Executive Director

Date: 5/11/10

**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
FERRIES DIVISION**

By: 
David H. Moseley
WSDOT Assistant Secretary for
Washington State Ferries

Date: 5/4/10

Approved as to form:

By: 
Laurie Halvorson
General Counsel

Date: 5/10/10