

Interlocal Agreement
University of Washington and the Port of Seattle
BIO-BARGE PILOT STUDY

This Agreement is made and entered into by the State of Washington, through the University of Washington (“UW”), an institution of higher education and an agency of the State of Washington, with its principal campus located in Seattle, Washington, USA, and the Port of Seattle (“Port”), a municipal corporation of the State of Washington, collectively referred to as the “Parties.”

RECITALS

WHEREAS, Chapter 39.34 RCW authorizes government entities to contract to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform;

WHEREAS, the Port has legal authority to evaluate different methods of mitigating wetland impacts associated with operation of its facilities and meeting its Century Agenda goal to create, restore or enhance forty additional acres of habitat in the Green-Duwamish Watershed and Elliott Bay, as per the Motion of the Port of Seattle Commission dated December 4, 2012.

WHEREAS, the UW has legal authority to conduct research into water quality and fish habitat;

WHEREAS, the Port and UW have entered into a research partnership and associated property Access Agreement, Attachment A, related to the Bio-Barge Pilot Study, which assessed the effectiveness of floating wetland islands, a.k.a. Bio-Barges, to improve water quality and fish habitat in the Duwamish River;

WHEREAS, the Port and UW collaborated to provide biological monitoring and water quality sampling associated with the first generation of bio-barge prototypes that were deployed in brackish water environments in the Lower Duwamish River at Terminal 105 and Terminal 108 from March 2019 to July 2019;

WHEREAS, the UW implemented a Water Quality Monitoring Plan, Attachment B, as directed by Professor Nancy Rottle of the Green Futures Research & Design Lab and collected data related bio-barge performance during the 2019 field research season;

WHEREAS, the Port has designed and installed second generation prototypes for study during the upcoming 2020 field research season commencing in March 2020 in freshwater environments at Fisherman’s Terminal and the Maritime Industrial Center on the Lake Washington Ship Canal, in parallel with UW-sponsored re-deployment of the original prototypes at new locations in the Lower Duwamish Waterway;

WHEREAS, the Port has previously issued the UW a license to conduct research on Port-owned property in the Lower Duwamish Waterway (Attachment A);

WHEREAS, the Port and UW intend to update the Access Agreement to allow for continued research at new locations on Port-owned and Port-managed property in the Lower Duwamish Waterway, Lake Washington Ship Canal, and Salmon Bay for the 2020 field research season;

WHEREAS, the Port desires to engage the UW to provide data and analysis related to the deployment of the first-generation prototypes, along with an updated Water Quality Monitoring Plan, with the intent to optimize the design and performance of second-generation freshwater prototypes;

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS

Roles and Responsibilities of the Parties

1. Port of Seattle: The Port of Seattle shall:

- a) Transmit \$35,000 in a lump-sum payment to UW Green Futures Research & Design Lab following transmittal by UW of water quality data, videographic data, laboratory reports, analysis conducted to evaluate year 1 of the Bio-Barge research project, and Water Quality Monitoring Plan for study of the freshwater components of the project in year 2;
- b) Facilitate site visits for UW staff, students and community members to Port study sites at Fisherman's Terminal, Maritime Industrial Center, and other Port-owned and Port-managed sites as identified through separate site access agreements;
- c) Attend periodic meetings between Port professional staff and representatives of the UW Green Futures Research and Design Lab to review and comment on presentations and deliverables related to the freshwater portion of the research project.
- d) Provide reasonable access to an environmental vessel and operator, as well as other equipment and staff support needed to undertake the Duwamish Bio-Barge Research Project (exclusive of laboratory analytical services).
- e) Transmit \$10,000 in a lump-sum payment to UW Green Futures Research & Design Lab to incorporate community scientists into monitoring processes for year Two of the Duwamish Bio-barge research project subsequent to the Port's approval of a scope of work for the outreach and upon receipt of quarterly invoices for work performed.

2. University of Washington: The UW shall:

- a) Provide processed water quality data, videographic data, analysis, research findings and laboratory reports related to year 1 of the Bio-Barge research project to the Port, with emphasis on optimizing design and performance of freshwater bio-barge prototypes
- b) Update the Water Quality Monitoring Plan to be specific to the freshwater portion of the research project;
- c) Remove, rehabilitate and replace (if necessary) original first-generation bio-barge prototypes at Terminal 102; and,
- d) Provide a plan for engaging Duwamish Valley residents and other community members to support data collection during field research to be undertaken in 2020. The plan will include who will be engaged, method of engagement, and frequency of community involvement events.

3. **Budget.** The total budget for this Project is \$45,000. The Port will contribute \$45,000 and UW may add scope to the project through funding provided by grants from the Rose Foundation and the King County Wastewater Treatment Division. UW will manage the budget for this project and provide quarterly updates to the Port.
4. **Property.** Upon termination of this Agreement, each Party will retain ownership of any real or personal property acquired in its own name prior to execution of this Agreement. Upon execution of this Agreement, the Port and UW shall negotiate an updated Access Agreement to conduct research at Port-owned and Port-managed locations in the Lower Duwamish Waterway, Lake Washington Ship Canal, and Salmon Bay.
 - 4.1 **Background Intellectual Property.** "Background IP" means all intellectual property that: (i) was owned or developed by a Party prior to the execution of this Agreement; or (ii) was independently developed by a Party without contribution, assistance or influence from the other party to this Agreement. Each Party will retain all rights, title and interest in their respective Background IP. Each Party hereby grants to the other Party a non-exclusive, nontransferable, paid-up, worldwide, royalty-free license under its Background IP as may be necessary (i) for such other Party to perform its obligations under this Agreement; or (ii) for such other Party to practice rights to the Joint IP described below in Section 4.2.
 - 4.2 **Joint Intellectual Property.** "Joint IP" means all intellectual property that is developed jointly by the Parties under this Agreement. Each Party will have the right, subject to this Agreement and applicable law, to make, have made, use, offer to sell, sell, import, publicly display and publicly perform Joint IP and freely exercise, transfer, assign, license, encumber, and enforce all of its rights in the Joint IP without the consent, joinder, or participation of, or payment or accounting, to the other Party. By mutual agreement, the Parties shall identify which Party shall file patent applications, trademark applications, or any other intellectual property filing for any Joint IP.
5. **Additional Services:** The Parties can negotiate additional and non-standard services. These services must be agreed to in writing prior to implementation.
6. **Termination of Agreement:** Either Party may terminate this Agreement upon thirty days written notice to the other Party.
7. **Dispute Resolution:** Any disputes or questions of interpretation of this Agreement that may arise between the Port and UW shall be governed under these Dispute Resolution provisions. The Port and UW agree that cooperation and communication are essential to resolving issues efficiently. If disputes about the implementation of this Agreement arise, the designated contact persons for the Port and UW shall meet to discuss the issues and attempt to resolve the dispute in a timely manner. If the designated contact persons are unable to resolve the dispute, then the Parties may pursue any legal remedies. At all times prior to resolution of the dispute, the Parties shall continue to perform and make any required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute.

8. **Term of Agreement:** The term of this Agreement shall run until one year from the date on which this Agreement has been executed by both Parties. The Parties may extend this agreement for an additional one-year term by mutual written agreement.
9. **Indemnification:** To the maximum extent allowed by law, the Parties shall protect, defend, indemnify, and save harmless each other, their officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, judgments, penalties, and/or awards of damages, arising out of or in any way resulting from the Parties' own negligent acts or omissions in connection with performance of activities under the terms of this Agreement. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 Revised Code of Washington (RCW). In the event that a Party incurs any judgment, award, and/or cost arising there from, including attorneys' fees, to enforce the provisions of this Article, all such fees, expenses, and costs shall be recoverable from the responsible Party to the extent of that Party's culpability. This indemnification shall survive the termination of this Agreement.
10. **Notification:** Any notice required or permitted to be given pursuant to this Agreement shall be in writing, and shall be sent by U.S. Mail and by email (with telephonic confirmation), to the following addresses unless otherwise indicated by the Parties to this Agreement:
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| For the UW: | Nancy Rottle
University of Washington
Seattle, WA 98195 | Copy to: University of Washington
Office of Sponsored Programs
4333 Brooklyn Ave NE, Box 359472
Seattle, WA 98195-9472
osp@uw.edu |
| For the Port: | Jon Sloan
Port of Seattle
2711 Alaska Way
Seattle, WA 98122 | |
11. **Amendment:** Either Party may request changes to the provisions contained in this Agreement. Any change to this Agreement must be mutually agreed to by both Parties, in writing and executed with the same formalities as the original Agreement.
12. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
13. **Jurisdiction and Venue:** The King County Superior Court in Seattle, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
14. **Severability:** If any court determines that any provision of this Agreement is invalid or unenforceable to any extent, the remainder of the Agreement shall not be affected thereby

and each other term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.

- 15. **Waiver of Default:** Waiver of any default by either Party shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach. Waiver of any default or breach shall be interpreted or construed to constitute a modification of the terms of this Agreement, unless so stated in writing and signed by both Parties.
- 16. **Entire Agreement:** This Agreement and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire Agreement of the UW and the Port, and there are no other agreements or understandings, oral or written, between the UW and the Port concerning this Agreement.
- 17. **Mutual Negotiation:** The Parties agree that the terms and provisions of this Agreement have been negotiated, that the Agreement shall be deemed to be mutually negotiated and mutually drafted by both Parties, and the language in the Agreement and Exhibits shall, in all respects, be construed according to its fair meaning and not strictly for or against either Party.
- 18. **Legal Obligations.** This Agreement does not relieve either Party of any obligation or responsibility imposed upon it by law. No third-party beneficiaries are intended to be created by this Agreement and no third party, by law or equity, may enforce this Agreement against the Port or UW, their officers or elected officials, or any person.
- 19. **Counterparts:** The Parties may execute this Agreement in counterparts, which, taken together, constitute the entire Agreement.

Port of Seattle:

University of Washington:

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Approved as to Form

Approved as to Form

Attorney for Port of Seattle

UW Attorney

DRAFT