

DRAFT
2/25/2020

**INTERLOCAL AGREEMENT BETWEEN THE PORT OF SEATTLE AND THE WASHINGTON STATE
DEPARTMENT OF NATURAL RESOURCES REGARDING THE SMITH COVE BLUE CARBON PILOT
PROJECT**

This Interlocal Agreement is entered into between the Port of Seattle (Port), a municipal corporation of the State of Washington, and the Washington State Department of Natural Resources (DNR), a department of the State of Washington, collectively known as the “Parties” pursuant to Interlocal Cooperation Act, Chap. 39.34 RCW.

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 environmental 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 DNR has legal authority to conduct research into water quality and wildlife habitat;

WHEREAS, the Parties share common interests in promoting fish and wildlife habitat restoration, carbon sequestration, and water quality improvement in Puget Sound;

WHEREAS, the Port has taken steps to enhance, create and/or restore bull kelp, eelgrass and Olympia oyster beds in Smith Cove at the north end of Elliott Bay for the purposes of evaluating carbon sequestration, habitat restoration and water quality improvement potential associated with ‘blue carbon’ features;

WHEREAS, the DNR has co-located water quality sensors at Smith Cove for the purposes of evaluating changes in seawater chemistry, shellfish growth, and eelgrass productivity, and included the site as part of the Puget Sound-wide “Acidification Nearshore Monitoring Network” (ANEMONE);

WHEREAS, the Port of Seattle Commission’s Energy & Sustainability Committee desires the Port to conduct a three-year monitoring study related to carbon sequestration, shellfish growth/survival, eelgrass productivity and water quality (“Monitoring Project”);

WHEREAS, the Parties would like to enter into a three-year agreement to use the secured funding to support water quality assessment, biological assessment from DNR’s Aquatic Assessment and Monitoring Team, to undertake key elements of the monitoring study;

NOW, THEREFORE, in exchange for the consideration described in this agreement, the parties agree as follows:

I. BACKGROUND

Smith Cove is located on Port-owned aquatic lands as depicted in the map attached as **Exhibit A**. The site is the location of the Smith Cove Blue Carbon Pilot Project, which includes specific habitat restoration treatments undertaken to evaluate potential benefits including carbon sequestration, water quality (amelioration of seawater acidification), and habitat productivity. These treatments include installation of bull kelp, eelgrass and Olympia oyster beds. Following installation, the Port of Seattle aspires to measure potential benefits in and around the site for a period of not less than three years, including residents as part of a community-based science initiative to the extent practicable. The Parties will collaborate to implement this Monitoring Project and community-based science initiative as outlined below.

II. RESPONSIBILITIES OF THE DEPARTMENT OF NATURAL RESOURCES

1. DNR shall dedicate 50% of a Natural Resource Scientist II position to the Monitoring Project for a period of three years;
2. DNR shall undertake the pH monitoring, larval settlement tiles and shellfish survival and growth tasks detailed in the *Final Monitoring Plan*,
3. DNR shall continue to include the Smith Cove project site in the State’s Acidification Nearshore Monitoring Network (ANEMONE), including necessary installation, maintenance and monitoring of water quality sensors;
4. DNR shall incorporate ANEMONE volunteer participation into a *Community-Based Science Plan* and implement the plan to involve Port fence-line communities in the monitoring project;
5. DNR will be responsible for repairs to water quality sensors and other ANEMONE equipment required for implementation of the Monitoring Project;
6. DNR shall make water quality and biological data collected from ANEMONE available to the port and members of port fence-line communities;
7. DNR shall generate a final report due three years from execution of this agreement summarizing the water quality and biological data findings.

III. RESPONSIBILITIES OF THE PORT

1. The Port of Seattle will provide \$163,500 in funding to DNR to support a Natural Resource Scientist II position to conduct the tasks described in Section II. The DNR will invoice the Port for these funds to be paid in quarterly disbursements throughout the effective period of this agreement.
2. The Port of Seattle will provide access to the Monitoring Project site and will coordinate with designated DNR personnel for use of Port equipment, including:
 - a. Access to the Terminal 91 boathouse for storage of sampling equipment and gear;
 - b. All file materials and data which may be germane to the Monitoring Project.

IV. BUDGET

The total budget for this project is \$163,500 to support the tasks described above. DNR and the Port may obtain additional funding as needed to support their own activities in connection with the Monitoring Project. DNR will manage the budget for the project and will provide quarterly updates to the Port.

V. 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. "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 for such other Party to perform its obligations under this Agreement.

VI. TERM OF THIS AGREEMENT

This Agreement is intended to be effective on February 1, 2020, or upon the signature of the three Parties, whichever event occurs last, for a term of three years.

VII. DISPUTE RESOLUTION

Any disputes or questions of interpretation of this Agreement that may arise between the Port and DNR shall be governed under these Dispute Resolution provisions. The Port and DNR agree that cooperation and communication are essential to resolving issues efficiently. If disputes about the implementation of this Agreement arise, the Managing Director of the Maritime Division for the Port of Seattle and the Aquatics Division for DNR shall meet to discuss and attempt to resolve the dispute in a timely manner. If the DNR and the Managing Director are unable to resolve the dispute, then the Parties are free to 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.

VIII. INDEMNIFICATION AND HOLD HARMLESS

To the extent permitted by law, DNR will protect, defend, indemnify, and hold harmless the Port, its officers, employees and agents from any and all costs, claims, judgments, or awards of damages arising out of or in any way resulting from the negligent or intentional acts or omissions of the Port, its officers, employees, or agents. DNR agrees that the obligation to indemnify, defend, and hold harmless the Port and its agents and employees under this provision extends to any claim, demand or cause of action brought by or on behalf of any employee of DNR against the Port, its officers, agents, or employees and includes any judgment, award and cost arising therefrom, including attorneys' fees that may arise under the execution of this agreement. For this purpose, DNR hereby waives, with respect to the Port 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 the Port 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 DNR to the extent of DNR's culpability. This indemnification shall survive the termination of this Agreement.

IX. DISCRIMINATION

The Port hereby certifies that it is an equal opportunity employer and has developed and implemented affirmative action policies pursuant to Port of Seattle Resolution #3628, paragraph 16 and other policies and procedures of the Port of Seattle. The three parties agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, marital status, or disability. The three parties agree that they will take affirmative action to ensure that all employment actions are without regard to race, color, religion, sex, national origin, marital status or disability. Such action includes but is not limited to employment, upgrading, layoff, or termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

X. NOTICES

All notices to the parties under terms of this Agreement, unless otherwise specified herein, or as may be amended, shall be in writing, addressed as follows:

Department of Natural Resources
c/o Cinde Donoghue
Aquatic Assessment and Monitoring Team
1111 Washington St SE, 3rd floor
Olympia, WA 98504

Port of Seattle
c/o Jon Sloan
Maritime Environment & Sustainability
2711 Alaskan Way
Seattle, WA 98121

XI. ENTIRE AGREEMENT

This Agreement is intended to express the entire agreement of the Parties and may not be altered or modified in any way unless such modification is reduced to writing, signed by both parties, and affixed to this original Agreement.

XII. RIGHTS AND REMEDIES

The rights and remedies of the parties to this Agreement are in addition to any other rights and remedies provided by law except as otherwise provided in this Agreement.

XIII. ASSIGNMENT

The parties will not assign, transfer, or otherwise substitute its obligations under the Agreement without the prior written consent of the other parties. Any assignment made in violation of this provision will be null and void and confer no rights whatsoever on any person.

XIV. ADDITIONAL SERVICES, MODIFICATION, AND TERMINATION

The parties may negotiate additional and non-standard services, which must be agreed to in writing prior to implementation.

Any modifications to this Agreement may be modified by the mutual agreement of the parties under the same formalities with which this Agreement was executed and must be in writing.

Either party may terminate this Agreement upon written notice to the other Party, in which case a refund of the amount anticipated into the Section III above in an amount commensurate to the work performed shall be due to the Port within 30 days of receipt of a request for payment.

XV. APPLICABLE LAWS AND VENUE

This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Washington. Any legal action brought resulting from this Agreement shall be brought in the Superior Court of King County, Washington.

XVI. 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.

XVII. 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.

XVIII. 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.

XIX. 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 DNR, their officers or elected officials, or any person.

XX. COUNTERPARTS

The Parties may execute this Agreement in counterparts, which, taken together, constitute the entire Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth below their signatures.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES PORT OF SEATTLE

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Approved as to form:

Approved as to form:

Assistant Attorney General

Attorney for Port of Seattle

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