

Item No. 8b – attach 2
Meeting Date: April 14, 2020

DRAFT
12/24/2019

**INTERLOCAL AGREEMENT BETWEEN THE PORT OF SEATTLE AND THE WASHINGTON STATE
DEPARTMENT OF ECOLOGY 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 Ecology, 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, Ecology 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, Ecology has an established core marine station for long-term water quality measurements in Elliott Bay within 4km of Smith Cove, where monthly measurement of ocean acidification parameters was implemented in October 2018;

WHEREAS, the Port has secured funding from the Port of Seattle Commission’s Energy & Sustainability Committee 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 a portion of the secured funding to support water quality assessment and technical assistance from Ecology’s Ocean Acidification Program, 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 ECOLOGY

1. Ecology shall integrate the Smith Cove project into ongoing Marine Monitoring Unit ocean acidification sampling through at least two cruises across the project site;
2. Ecology shall work with the Port of Seattle to review and finalize the Draft Monitoring Plan included as **Exhibit B**;
3. Ecology shall generate an annual technical memo and relevant sections of a final report on interim and complete findings associated with water quality data collected by Ecology and DNR at the project site, evaluating conditions at Smith Cove in the context of Marine Monitoring Unit data from Greater Puget Sound;
4. Ecology shall present on interim and complete findings associated with water quality data to Port staff and/or community partners on an annual basis.

III. RESPONSIBILITIES OF THE PORT

1. The Port of Seattle will provide up to \$36,500 in funding to Ecology to support high-level technical oversight, analysis, and participation described in Section II. Ecology 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 Ecology 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 \$36,500 to support the tasks described above. Ecology and the Port may obtain additional funding as needed to support their own activities in connection with the Monitoring Project. Ecology 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 April 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 Ecology shall be governed under these Dispute Resolution provisions. The Port and Ecology 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 Ocean Acidification Program for Ecology shall meet to discuss and attempt to resolve the dispute in a timely manner. If the Ecology 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, Ecology 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. Ecology 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 Ecology 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, Ecology 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 Ecology to the extent of Ecology'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 Ecology
c/o Micah Horwith
Ocean Acidification Sr. Scientist
300 Desmond Drive SE
Lacey, WA 98503

Port of Seattle
c/o Jon Sloan
Sr. Manager, Permitting & Compliance
2711 Alaskan Way
Seattle, WA 98121

V. 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.

VI. 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.

VII. 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.

VIII. MODIFICATION

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

IX. 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.

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

DATE: _____

DATE: _____

STATE OF WASHINGTON- ECOLOGY

PORT OF SEATTLE

BY: _____

BY: _____

Its: _____

Executive Director or designee

Its: _____

Executive Director or designee

Approved as to form:

Approved as to form:

Assistant Attorney General

Elizabeth Black
Senior Port Counsel