

RESOLUTION NO. 3479

A RESOLUTION of the Port Commission of the Port of Seattle authorizing the Chief Executive Officer, to enter into an agreement with Washington State Department of Ecology (Ecology) providing funding and management of Ecology oversight of the construction projects included in the Port's Master Plan Update for the Seattle-Tacoma International Airport.

WHEREAS, the Department of Ecology (Ecology) has issued a certification pursuant to section 401 of the Federal Water Pollution Control Act, 33 U.S. C. and an administrative order pursuant to Chap. 90.48 RCW for the Port's Master Plan Update projects at Seattle-Tacoma International Airport; and

WHEREAS, the 401 certification includes numerous conditions and requirements with which the Port is obligated to comply; and

WHEREAS, Ecology desires to conduct oversight activities that are necessary to ensure that the Port will comply with the 401 certification and other matters associated with the Master Plan Update projects;

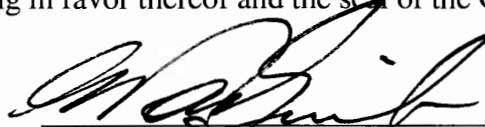
WHEREAS, Ecology estimates that it will require full-time equivalent positions and contract services, Ecology currently lacks the funding for those positions and the Port desires to facilitate Ecology oversight of the Master Plan Update project construction by funding these positions;

NOW, THEREFORE, BE IT RESOLVED, by the Port Commission of the Port of Seattle that:

Section 1. The Chief Executive Officer, is hereby authorized to execute an agreement with Ecology in substantially the form attached hereto as Exhibit A and by this reference incorporated herein.

Section 2. A copy of the final executed agreement shall be attached to this resolution as Exhibit "B" and by this reference incorporated herein.

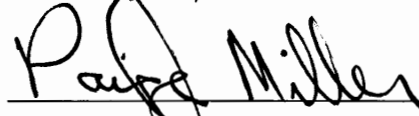
ADOPTED by the Port Commission of the Port of Seattle at a regular meeting held this 11th day of December, 2009, and duly authenticated in open session by the signatures of the Commissioners voting in favor thereof and the seal of the Commission.


CLARK NORQUIST


BOB EDWARDS


PATRICIA DAVIS


JACK BLOCK


PAIGE MILLER

Port Commission

**COOPERATIVE AGREEMENT
BY AND BETWEEN
THE WASHINGTON DEPARTMENT OF ECOLOGY AND
THE PORT OF SEATTLE**

December __, 2001

For Oversight of SeaTac Master Plan Update Project Construction Activities

This Cooperative Agreement (the "Agreement") is made and entered into by the Department of Ecology ("Ecology"), an agency of the State of Washington, and the Port of Seattle (the "Port"), an municipal corporation of the State of Washington, for the purpose of facilitating all necessary Ecology oversight of construction of the projects included in the Port's Master Plan Update for the Seattle-Tacoma International Airport.

WHEREAS, Ecology has issued a certification pursuant to Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. and an administrative order pursuant to RCW 90.48, for the Port's Master Plan Update projects at Seattle-Tacoma International Airport (the "401 Certification");

WHEREAS, the 401 Certification includes numerous conditions and requirements that the Port is obligated to comply with when constructing the Master Plan Update projects;

WHEREAS, Ecology desires to conduct oversight activities that are necessary to ensure compliance with 401 certification and RCW 90.48 conditions in the construction of the Master Plan Update projects ("Ecology Oversight"); and

WHEREAS, Ecology estimates that Ecology Oversight will require full-time-equivalent positions and contract services shown in the Budget/Staff Summary Table attached as Exhibit A; and

WHEREAS, Ecology currently lacks the ability to fund those positions and services; and

WHEREAS, the Port desires to facilitate necessary Ecology oversight of Master Plan Update project construction by funding Ecology Oversight.

NOW THEREFORE, in consideration of the provisions and conditions set forth herein, the Port and Ecology mutually agree as follows:

I. Purpose

The purpose of this agreement is to enable the Port and Ecology to facilitate Ecology Oversight.

II. Project Management and Dispute Resolution

This Agreement will be managed by Ray Helwig, Regional Director, Northwest Regional Office, Department of Ecology, 3190 160th Avenue SE, Bellevue, Washington 98008-5452 or a designee selected by the Department of Ecology, and by Elizabeth Leavitt, Aviation Environmental Program Manager, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111, (206) 433-7203, or an alternate employee selected by the Port of Seattle.

In the event that a dispute arises under this Agreement between Ecology and the Port, the dispute shall be resolved by a Dispute Board composed of one member appointed by the Ecology, one member appointed by the Port, and one member chosen by the designated Ecology and Port members. The determination of the Dispute Board shall be final and binding on the Parties.

III. Responsibilities

The Parties agree to the following responsibilities:

A. Ecology shall:

1. Identify and select appropriate project management and technical staff, who shall be responsible for Ecology Oversight.
2. Provide the Port with timely notification of access needs so that access can be arranged for Ecology Oversight with minimal disruption to Port operations and construction activities.
3. Comply with all applicable health and safety requirements for work on Port property.
4. Provide the Port with invoices summarizing the work performed, and personnel performing the work and make documents available showing a breakdown of costs/time spent by major task (see exhibit "B") and by oversight element (project/site).

Draft B, November, 2001

B. The Port shall:

1. Allow timely access to Port property as needed for Ecology Oversight, provided health and safety requirements are met in providing such access.
2. Provide timely and complete responses to Ecology questions concerning Port Master Plan Update construction activities, as necessary for Ecology Oversight.
3. Insure prompt payment of funds in accordance with the terms of this Agreement.

IV. Funding

The Parties agree to the following regarding funding:

A. Ecology shall:

1. Charge the Port in accordance with the Budget summary shown in Exhibit "A".

The Department of Ecology's indirect rate, as approved by the United States Department of Interior (its federal cognizant agency) applies to this agreement. The current rate for the time period 7/1/01 through 6/30/02 is 36.3% of all salaries and benefits.

- B. Any mutually agreed upon revisions to the cost arrangements as described herein will be accomplished by amendment as described below in Section V.
- C. Both parties agree to renegotiate a Budget/Staff Plan to support all post construction compliance monitoring associated with the Natural Resource Mitigation Plan (NRMP).

V. General Provisions

The Parties agree to the following:

A. Billing Procedure:

Ecology will submit invoices to the Port of Seattle no later than 30 days after the end of the fiscal month for which the work was performed. Invoices should be mailed to:

Elizabeth Leavitt
Port of Seattle

Draft B, November, 2001

(Address of the Port of Seattle)

Payment for the approved amount will be made by the Port of Seattle to Ecology by the due date listed on each invoice. The due date will normally be 30 days after the day the invoice is mailed. Payment for invoices should be sent to:

The Dept of Ecology
Cashiering Section/Gary Zeiler
PO Box 5128
Lacey, Washington, 98509-5128

- B. This Agreement is effective upon signature by the Parties and remains in effect until completion of construction of the Master Plan Update projects. For budgetary purposes, this agreement is effective 12/28/01 or upon signature by the Parties, whichever is sooner, through 06/30/03. The budgeted amount of this agreement is for \$677,046.
- C. Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.
- E. No Party shall be liable to any other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by force majeure. The term "force majeure" means any cause reasonably beyond the affected Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable and without the fault or negligence of the affected Party. Force majeure may include, but is not limited to, natural events, labor or civil disruption, or orders of any court or agency having jurisdiction of the Party's actions. The Party whose performance is affected by force majeure shall notify the other Parties in writing within seven days after becoming aware of any event that such affected Party contends constitutes force majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Parties written notice to that effect.
- F. Each Party shall protect, defend, indemnify, and hold harmless the other Parties, including their officers, officials, employees, and agents, while acting within the

scope of its employment as such, from any and all costs, claims, judgements and/or awards of damages, arising out of or in any way resulting from any Party's own negligent acts or omissions to the extent allowed by law. Each Party agrees that its obligations under this subparagraph 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 Parties only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event that any Party incurs any judgement, award and/or costs arising therefrom, including attorney's 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.

- G. By entering into this Agreement, no Party shall be deemed to have made any admission or waived any contention of fact or law relating to subsequent legal proceedings. This Agreement shall not be offered in evidence or cited as precedent by any Party to this Agreement in any administrative or judicial litigation, arbitration, or other proceeding, except a proceeding to establish the existence of or to enforce or implement this Agreement. This subsection shall survive any termination of this Agreement.

VI. Execution of Agreement

- A. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.
- B. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if the Party to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

IN WITNESS WHEREOF, the Parties have executed this Agreement by having their representative affix their signature below.

Port of Seattle

Name, Title: _____

Draft B, November, 2001

Date: _____

Washington Department of Ecology

Name, Title: _____

Date: _____

DRAFT

Exhibit "A"

11-15-2001

**Budget for POS/ECY MOA - 401 Oversight
FY02-03 Combined**

Salaries	\$302,750	
Benefits	\$68,488	
Contracts	\$129,000	Shannon & Wilson; King County (S&W = \$34,0000; KC = \$95,000)
Goods/Services	\$21,560	
Travel	\$6,820	
Equipment	\$12,580	Start-up Equipment
Indirect	\$135,848	Approved fed. rate = 36.3% of Salaries and Benefits
total =	<u>\$677,046</u>	

Budget covers second half of state fiscal year '02 and all of '03.

See Exhibit "B" for MOA task and staffing summary.

**** D R A F T ** Exhibit "B"**
Ecology / Port of Seattle MOA – Task and Staffing Summary

Activity / Task	Job Class, Working Title and Program	Start- Time & Duration	FTE FY'02	FTE FY'03
1. Project management, i.e. facilitate and coordinate ECY oversight of POS 401 implementation and compliance requirements Public records management	EP-4, Regional Planner, RD ES-1, RD	Dec., '01 Ongoing Dec., '01 – March '02	.5 1.0	.5 1.0
2. Review wetland, stream, riparian, mitigation monitoring and reporting documents NRMP consultation, oversight, and compliance work Monitor/verify compliance with Low-Flow Mitigation Plan water quantity requirements (in coordination with the WQP) *	ES-4, NRMP Specialist, SEA	Dec. '01 Ongoing	1.0	1.0
3. Water quality field inspections, 401 compliance investigation work Monitor/verify compliance with Low-Flow Mitigation Plan WQ requirements	ES-3, WQ Inspector, WQP	Dec. '01 Ongoing	1.0	1.0
4. Review and oversee implementation of SMP revised plans and construction work – execute necessary compliance actions Review and approve Low-Flow Mitigation O&M plan Review and oversee Acceptable Fill Criteria conditions (reporting and monitoring) Review Surface and Groundwater monitoring plan *	EE-3, WQ Engineer, WQP	Dec.'01 Ongoing	1.0	1.0

* Ecology contracts with Shannon and Wilson Inc., and King County will address workload associated with revised NRMP review and 401 decision support; as well as Low-Flow Mitigation Plan review and 401 LFM and SMP decision support – see budget amount exhibit "A"