



**NORTHWEST REGIONAL OFFICE**  
**Facsimile Cover Sheet**

**DATE:** 2-19-02

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**TO:** Tom Young - AAG

(360) 586-6760

**FAX #** \_\_\_\_\_

**FROM:** Ray Hellwig

**PHONE:** 425 649-7010 **SECTION:** RD

**Department of Ecology**  
**Northwest Regional Office**  
**3190 - 160th Avenue S.E.**  
**Bellevue, WA 98008-5452**  
**Phone: (425) 649-7000**  
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**COMMENTS:** \_\_\_\_\_  
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**AR 034032**



**RECEIVED**

FEB 7 2002

DEPT OF ECOLOGY

MEMORANDUM

February 7, 2002

Ray Hellwig  
Washington State Department of Ecology  
3190 - 106<sup>th</sup> Avenue SE  
Bellevue, WA 98008-5452

Attached is the original Inter-local Agreement between State of Washington Department of Ecology and Port of Seattle for your review and signature.

Please return the signed document to:

Robin Kordik  
Port of Seattle  
17900 International Blvd. Suite 402  
SeaTac, WA 98188

Thank you.



Agreement No.

**INTER-LOCAL AGREEMENT**

between

**STATE OF WASHINGTON****DEPARTMENT OF ECOLOGY**

and

**PORT OF SEATTLE****A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON**February 8, 2002

**THIS AGREEMENT** is made and entered into by and between the **WASHINGTON STATE DEPARTMENT OF ECOLOGY**, hereinafter referred to as **ECOLOGY** and the **PORT OF SEATTLE**, a municipal corporation, hereinafter referred to as the **PORT**, for purposes of facilitating necessary oversight of construction of projects included in the Port's Master Plan Update for the Seattle-Tacoma International Airport (STIA).

**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**, given the scope, size and complexity of the project; oversight activities are necessary to help document compliance with 401 certification and RCW 90.48 conditions in the construction of the Master Plan Update projects ; and

**WHEREAS**, such oversight activities are anticipated to require the full-time-equivalent positions and contract services shown in the Budget Summary attached as Exhibit A.

**WHEREAS**, Ecology is vested with broad authority and, under chapter 90.48 RCW, has been designated as the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, and is authorized to participate fully in the programs of that act as well as to take all actions necessary to meet the requirements thereof.

WHEREAS, the Port is a Washington Port District with the powers and authorities of port districts under RCW Title 53.

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 cooperatively facilitate oversight activities necessary to help document compliance with 401 certification and RCW 90.48 conditions in the construction of the Master Plan Update projects.

**II. STATEMENT OF WORK**

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 oversight.
2. Provide the Port with timely notification of access needs so that access can be arranged for 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 that identify expenditures for each major task in Exhibit B, itemized by the budget categories as shown in Exhibit A.
5. Provide the Port with a monthly report identifying each employee and the hours they worked on each major task in Exhibit B.

**B. The Port shall:**

1. Allow timely access to Port property as needed for 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 oversight.
3. Insure prompt payment of funds in accordance with the terms of this Agreement.

### **III. FUNDING AND PAYMENT**

The Parties agree to the following regarding funding:

Compensation for the work provided in accordance with this agreement has been established under terms of RCW 39.34. The parties have estimated that the cost of accomplishing the work herein will not exceed \$677,046.

**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 IV and VII A.**

- C. Both parties agree to negotiate a Port funded Budget/Staff Plan to support all post construction compliance monitoring associated with the Natural Resource Mitigation Plan (NRMP).**

**D. Billing Procedure:**

Ecology will submit invoices to the Port no later than 45 days after the end of the month for which the work was performed. Invoices should be mailed to:

Elizabeth Leavitt  
Port of Seattle  
AV/Environmental  
PO Box 68727  
Seattle, WA 98168

Payment for the approved amount will be made by the Port 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  
PO Box 5128  
Lacey, Washington, 98509-5128

Upon expiration of the contract, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year,

whichever is earlier.

#### **IV. PERIOD OF PERFORMANCE**

Subject to its other provisions, the period of performance of this Agreement shall be effective upon signature by the Parties and remains in effect until completion of construction of the Master Plan Update projects. The initial budget for this agreement is effective 02/01/02 or upon signature by the Parties, whichever is sooner, through 06/30/03. New budgets will be negotiated for future budget periods/cycles with the life of the agreement.

#### **V. CONTRACT AND PROJECT MANAGEMENT**

This Agreement will be managed by Ray Hellwig, Regional Director, Northwest Regional Office, Department of Ecology, 3190 160<sup>th</sup> 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 68727, Seattle, Washington 98168, (206) 433-7203, or designee selected by the Port of Seattle.

#### **VI. DISPUTES**

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 Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

#### **VII. GENERAL PROVISIONS**

##### **A. Agreement Alterations and Amendments.**

This agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

##### **B. Records Maintenance**

The parties to this contract shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the services described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by

the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

**C. Rights in Data.**

Unless otherwise provided, data which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the ECOLOGY. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

**D. Independent Capacity.**

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party. No employee or agent whose position or contract is funded pursuant to this Agreement shall make any recommendations or decisions regarding Ecology enforcement actions against the Port. Nothing contained herein shall grant any enforcement authority or discretion to the Port. Nothing contained herein shall divest Ecology of any of its enforcement authority or discretion.

**E. Termination.**

Either party may terminate this Agreement upon 30 days prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

**F. Termination for Cause.**

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

**G. Governance.**

This contract is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules;
- b. statement of work; and
- c. any other provisions of the agreement, including materials incorporated by reference.

**H. Assignment.**

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

**I. Waiver.**

A failure by either party to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

**J. Severability.**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

**K. All Writings Contained Herein.**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

**L. Applicability of Rights – Third Parties.**



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.

**M. "Force Majeure."**

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.

**N. Negligent Acts.**

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, judgments 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 judgment, 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.

- O.** 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.

**VIII. 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.**

State of Washington  
Department of ECOLOGY

PORT OF SEATTLE

Linda Hoffman  
By: \_\_\_\_\_

Thomas Tierney  
By: \_\_\_\_\_

Name, Title: Linda Hoffman  
Deputy Director

Name, Title: THOMAS TIERNEY  
DEPUTY CHIEF EXECUTIVE OFFICER

Date: 2/8/02

Date: January 31, 2002

**APPROVED AS TO FORM ONLY:**  
**CHRISTINE O. GREGOIRE**  
Attorney General

2/7/2002

**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	Feb. '02 Ongoing  Feb. '02 – April '02	.5  1.0	.5
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)  *	Contract	Feb. '02 Ongoing		
3. Water quality field inspections, 401 investigation work  Monitor/verify Low-Flow Mitigation Plan WQ requirements  *	ES-4, WQ Specialist/ Adviser, WQP  Contract	Feb. '02 Ongoing	.5	.5
4. Review and oversee implementation of SMP revised plans and construction work –  Review Low-Flow Mitigation O&M plan  Review Acceptable Fill Criteria conditions (reporting and monitoring)  Review Surface and Groundwater monitoring plan  *	ES-4, WQ Specialist/ Adviser, WQP  Contract	Feb. '02 Ongoing	.5	.5

\* Ecology contracts with Shannon and Wilson Inc., and King County/other 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"

AR 034042

## Exhibit "A"

01-22-02

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

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Salaries	\$141,050	
Benefits	\$31,595	
Contracts	\$423,511	Shannon & Wilson; King County (est. - S&W = \$111,823; KC /other= \$311,688)
Goods/Services	\$14,700	
Travel	\$3,100	
Equipment	\$6,290	Start-up Equipment
Indirect	\$56,800	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/contract summary.

AR 034043