INTERAGENCY AGREEMENT NO. 9F89

BETWEEN

THE STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

AND

PORT OF SEATTLE

RECEIVED
JUN 28 2012
DEPT OF ECOLOGY

THIS AGREEMENT is made and entered into by and between the DEPARTMENT OF ECOLOGY, hereinafter referred to as "Ecology", and the Port of Seattle, hereinafter referred to as the PORT.

IT IS THE PURPOSE OF THIS AGREEMENT to provide the funding for Ecology personnel to further the intent of the *Memorandum of Understanding, Cruise Operations in Washington State* (the "Cruise MOU") which was entered into between the Department of Ecology, the Port of Seattle, and the North West and Canada Cruise Association ("NWCCA"). The parties further acknowledge that the Port is acting solely as a pass-through contracting entity to facilitate the collection of funds from the individual NWCCA members and to provide payment to Ecology on behalf of the NWCCA members.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

Ecology shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A" attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on January 1, 2012, and be completed on December 31, 2012, unless terminated sooner as provided herein.

PAYMENT

The parties have determined that the cost of accomplishing the work herein will not exceed $35,199 payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount. Compensation for service(s) shall be based on the following rates or in accordance with the following terms, or as set forth in accordance with the budget in Attachment "B" which is attached hereto and incorporated herein.

Notwithstanding anything to the contrary in this Agreement, the Port's obligation to pay for the work set forth on Attachments A and B is expressly contingent on payment to the Port by NWCCA and/or its members for such work.

Recipients of state funds are subject to state audits. If during the execution of this agreement a separate audit is required, the party in which the audit is being requested will be responsible for the provisions of that audit request.

BILLING PROCEDURE

Ecology shall submit an invoice to the Port for work accomplished during the year by March 1, 2013. Payment to Ecology for approved and completed work will be made by payment from funds collected by the Port from the NWCCA associated with the 2012 cruise season, including, excess funds from previous cruise seasons.

RECORDS MAINTENANCE

The parties to this Agreement 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 service(s) 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 may be required to disclose records and documents, but 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.

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 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.

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.

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.

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.

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 failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement 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. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

GOVERNANCE

This Agreement 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.

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.

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.

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.

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.

COUNTERPARTS

This Agreement may be executed in counterparts, each of which may have the signature of only one Party, but each of which shall be deemed to be an original, and all of which, when taken together, shall be deemed to be a single Agreement.

CONTRACT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract/Program Manager for Ecology is:

Kevin Fitzpatrick
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7033
E-mail: kfit461@ecy.wa.gov

The Contract/Program Manager for Port of Seattle is:

Michael McLaughlin
General Manager, Cruise and Dock Services
Port of Seattle
P.O. Box 1209
Seattle, WA U.S.A. 98111
Phone:(206)728-3453
E-mail: mclaughlin.m@portseattle.org

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington
Department of Ecology

6/8/12

Kelly Susewind, P.E., P.G. Date
Interim Water Quality Program Manager

Port of Seattle

6/21/12

Tay Yoshitani, Date
Chief Executive Officer

APPROVED AS TO FORM:

ATTORNEY GENERAL'S OFFICE

Susan Ridgley, Senior Port Counsel

ATTACHMENT A

Department of Ecology/Port of Seattle

Cruise Ship Memorandum of Understanding Scope of Work

The Department of Ecology (Ecology), the Port of Seattle, and the North West and Canada Cruise Association (NWCCA) are signatory to the *Memorandum of Understanding, Cruise Operations in Washington State* (MOU). Originally the MOU was signed April 20, 2004 and thereafter annually amended. The member cruise lines of the NWCCA agree to comply with practices,
while operating in waters subject to the MOU, pertaining to the management of solid and hazardous wastes and wastewaters. Ecology is charged with protecting and conserving Washington's environmental resources in relation to the cruise industry's environmental practices in Washington. The NWCCA has agreed to fund Ecology's costs to implement the MOU and to accomplish the tasks listed herein.

Task 01

Compliance Work:
Work with stakeholders on drafting necessary amendments to cruise MOU. Provide technical assistance for cruise lines and vessel staff. Field questions from the public, press, environmental groups, and cruise lines. Monitor compliance with the MOU. Work with other programs within Ecology on hazardous waste, biosolids, solid waste, spill prevention, and other MOU elements. Work with Ecology policy and fiscal staff on cruise related issues. Research issues related to vessel discharges. Evaluate, draft and update guidance on Whole Effluent Toxicity (WET) testing for cruise ships and evaluate WET testing results. Work with Department of Health Shellfish program on shellfish and virus related studies and issues. Manage and update Ecology's cruise ship website.

Task 02

Inspections:
Conduct annual inspections of cruise vessels to verify the operation of the treatment systems and to evaluate compliance with the MOU. Write up inspection reports and provide recommendations for improvement. Take samples from vessels and evaluate results.

Task 03

Wastewater Discharge Approvals:
Verify documentation submitted for approval of discharges. Evaluate documentation and treatment systems for requirements of MOU to discharge and based on the information submitted and an engineering review, provide approval for discharges as appropriate.

Task 04

Annual Reports:

Draft annual assessment of cruise ship environmental effects report. Evaluate monthly sampling data results and summarize annually.

Task 05

Project Management:

Oversee the cruise ship MOU program and assist as needed. Provides Administrative oversight for compliance with the MOU, represents senior program management in duties related to protection of water quality from cruise ship discharges including negotiations.

Task 06

Additional tasks may become part of this agreement by mutual concurrence of Ecology and the Port of Seattle, or upon extension of the agreement.

Attachment B

Department of Ecology / Port of Seattle

Cruise Vessel Wastewater Treatment Inspections
Budget, by Object

The following is a detail breakdown of the salary, benefits and other costs of the Department of Ecology staff who will be funded under this agreement.

OBJECT		COST
1. Salary:		
Environmental Specialist 5 (ES5) $66,420 x .25 FTE =	$16,605	
WMS Band 2 (WMS2) 90,084 x .01 FTE =	$ 901	
Total Salary:		$17,506
2. Benefits @ 33.1% of Salary:		$ 5,794
3. FY12 Indirect Costs @ 34.4% of Salary & Benefits (1):		$ 4,008
4. FY13 Indirect Costs @ 35.1% of Salary & Benefits (2):		$ 4,089
5. Goods & Services @ $5,008 per budgeted FTE:		
ES5 $5,008 x .25 FTE =	$1,252	
WMS2 $5,008 x .01 FTE =	$ 50	
Total Goods & Services:		$ 1,302
6. Port of Seattle administration fee @ $500/month for 5 months (3):		$ 2,500
TOTAL		$35,199

(1) Ecology's indirect rate, as approved by the federal cognizant agency (United States Environmental Protection Agency) will apply. The current rate for 7/1/11 through 6/30/2012 is 34.4% of salaries and benefits.
(2) Ecology's indirect rate, as approved by the federal cognizant agency (United States Environmental Protection Agency) will apply. The current rate for 7/1/12 through 6/30/2013 is 35.1% of salaries and benefits. (See note above)
(3) Port of Seattle administration fee, as approved by the Port of Seattle will apply. The current rate for 1/1/12 through 12/31/2012 is $500 per month.