

INTERAGENCY AGREEMENT NO. 9F9U

BETWEEN

THE STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

AND

PORT OF SEATTLE

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 Individual Member lines. 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 member lines and to provide payment to Ecology on behalf of the member lines.

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 the initial term of this Agreement shall commence on January 1, 2023, and be completed on December 31, 2023, unless terminated sooner as provided herein. The parties can agree to extend this Agreement for up to four (4) additional one year periods. If Ecology would like to extend the contract, it shall request an extension of the term in writing to the individual identified in the Contract Management section below no more than sixty (60) days and no less than thirty (30) days by providing an updated annual cost. The Port may accept the proposal and extend this Agreement by written notice to the individual identified in the Contract Management Section below prior to the expiration of this Agreement.

PAYMENT

The parties have determined that the cost of accomplishing the work in 2023 will be reimbursed as a program fee under item 4035 in the Port of Seattle Terminal Tariff No. 5 in the amount of \$34.60 per passenger vessel per call.

Notwithstanding anything to the contrary in this Agreement, the Port's obligation to pay for the work set forth on Attachment A expressly contingent on payment to the Port by member lines 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

The Port shall submit payment to Ecology for the amount collected under the Payment section above by December 31st of each agreement year.

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.

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 member lines are signatory to the *Memorandum of Understanding, Cruise Operations in Washington State* (MOU). The MOU was originally signed April 20, 2004 and later amended. The member cruise lines agree to comply with practices while operating in waters subject to the MOU. Ecology is charged with protecting and conserving Washington's environmental resources in relation to the cruise industry's environmental practices in Washington. The member cruise lines have agreed to fund Ecology's costs to implement the MOU and to accomplish the tasks listed herein. The total reimbursement to Ecology for each calendar year will be a maximum of ten thousand dollars (\$10,000 U.S.).

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 to implement the MOU. This work includes:

Task 01

Compliance Work:

Work with stakeholders on drafting necessary amendments to the 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 ship related issues. Research issues related to vessel discharges. Work with Department of Health Shellfish Program on shellfish and virus-related studies and issues. Manage and update Ecology's cruise ship webpage.

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 inspection reports and provide recommendations for improvement. Take samples from vessels and evaluate results as necessary.

Task 03

Wastewater Discharge Approvals:

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

Task 04

Annual Reports and Annual Meeting:

Draft an annual assessment of cruise ship environmental effects report as necessary. Evaluate monthly sampling data results and summarize annually as necessary. Lead an annual meeting to review the effectiveness of the MOU.

Task 05

Project Management:

Oversee the cruise ship MOU program and assist as needed. Provide administrative oversight for compliance with the MOU. Represent 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.