



**COMMISSION  
AGENDA MEMORANDUM**

**Item No.**

8r

**ACTION ITEM**

**Date of Meeting**

March 8, 2022

**DATE :** January 5, 2022

**TO:** Stephen P. Metruck, Executive Director

**FROM:** Kathy Bahnick, Senior Manager, Remediation Programs  
Joanna Florer, Senior Environmental Program Manager

**SUBJECT: Eighth Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement**

**Amount of this request:** \$0

**Total estimated project cost:** \$40,000

**ACTION REQUESTED**

Request Commission Authorization for the Executive Director to execute an Eighth Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement.

**EXECUTIVE SUMMARY**

The eighth Amendment to the Lower Duwamish Waterway Group (LDWG) Memorandum of Agreement (MOA) provides an agreement to pay costs associated for the additional evaluation of carcinogenic polycyclic aromatic hydrocarbons (cPAHs) for the Lower Duwamish Waterway (LDW) upper and middle reach design, per the U.S. Environmental Protection Agency's (EPA) 2014 Record of Decision (ROD or Cleanup Plan) removal levels instead of the EPA's revised 2021 removal levels. This work is not required by EPA but is being conducted by LDWG in response to community concerns.

The estimated cost for the additional cPAH evaluation in the upper and middle reach is approximately \$160,000 split equally between the four parties. The Port's share is 25% (\$40,000). No funding is requested at this time. Funds to perform the Port's share of this work will continue to be included in the Environmental Remediation Liability (ERL) annual authorization.

**JUSTIFICATION**

This work supports the Century Agenda goal of being the greenest, most energy efficient Port in North America by further advancing the cleanup of the LDW. Going above EPA's 2021 cPAH cleanup requirements reflects our commitment to environmental stewardship, from the perspectives of both the surrounding communities and the customers that we serve. The local communities (South Park and Georgetown) are actively watching and commenting on this

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cleanup project and are eager to see the LDW cleanup continue to move forward as originally identified in EPAs 2014 Cleanup Plan.

***Diversity in Contracting***

Not Applicable

**DETAILS**

LDWG has been partnering since 2000 to study and clean up contaminated sediments in the LDW Superfund Site. In 2001, LDWG entered an Administrative Order on Consent (AOC) with EPA and the Washington State Department of Ecology (Ecology) to perform a Remedial Investigation/Feasibility Study (RI/FS) under Superfund for cleanup of contaminated sediments in the LDW. EPA selected a remedy for the site in their 2014 Record of Decision. In 2018, a fourth amendment to the AOC (AOC 4) was authorized for LDWG to conduct remedial design for the upper reach of the LDW to advance the implementation of EPA’s Cleanup Plan. In 2021, a fifth amendment to the AOC (AOC 5) was authorized to direct LDWG to conduct remedial design for the middle reach of the LDW to further advance the implementation of EPA’s Cleanup Plan. In 2021, EPA issued an Explanation of Significant Differences (ESD) for cPAHs, which revised the cPAH cleanup levels in the 2014 Record of Decision upwards based on newer scientific data that EPA is applying nationwide.

LDWG was conducting the upper reach design work per the 2014 ROD and 2021 ESD for cPAHs, but due to community concerns about the revised 2021 cPAH removal levels, LDWG has agreed to evaluate cPAHs in the upper reach and the middle reach per the 2014 ROD. This change requires additional analysis of cPAH samples, data management, and evaluation that are not required by EPA or subject to the terms of the existing MOA or previous amendments. Therefore, an eighth MOA amendment is required for the Port to continue with the 25% cost sharing agreement with the other members of LDWG for this additional cPAH work in the upper and middle reach of the LDW.

***Schedule***

<i>Activity</i>	<i>Estimated Schedule</i>
Commission authorization of MOA	Q1 - 2022

***Cost Breakdown***

	<i>Estimated Total Project</i>
Additional cPAH evaluation	\$40,000

**ALTERNATIVES AND IMPLICATIONS CONSIDERED**

**Alternative 1 – Do not authorize signing the MOA**

Cost Implications: \$0 at this time but comes with certain risks.

Pros:

- (1) No additional ERL funds would be spent if the Port does not sign the MOA amendment.

Cons:

- (1) Not participating in the cost sharing for this work could tarnish the Port’s reputation with the community as having a commitment to public health and being a steward of community resources and the environment.
- (2) Could tarnish the current working relationship among the LDWG partners
- (3) Would impact the Port’s ability to influence the extent and design of the work performed.

*This is not the recommended alternative.*

**Alternative 2 – Authorize signing the MOA**

Cost Implications: Approximately \$40,000 (25% of \$160,000).

Pros:

- (1) Continues current working relationship among the LDWG partners and continues cost sharing for the additional work.
- (2) Demonstrates the Port’s commitment to public health, social equity and being a responsible steward of community resources and the environment.

Cons:

- (1) Costs of approximately \$40,000 by the Port to complete the additional work.
- (2) Port costs may not be eligible for insurance reimbursement and/or state grant recovery.

*This is the recommended alternative.*

**FINANCIAL IMPLICATIONS**

There is no funding request as part of this authorization. Funding for the associated scope of work and costs is included in the annual Environmental Remedial Liability (ERL) authorization. Under the MOA amendment covering this work, the costs would be shared with our LDWG partners.

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**Cost Estimate/Authorization Summary**

Capital

Expense

Total

<b>COST ESTIMATE</b>			
Original estimate	\$0	\$40,000	\$40,000
<b>AUTHORIZATION</b>			
Previous authorizations (by ERL)	0	\$16,000,000	\$16,000,000

Footnote: The \$16 million is for the 2022 budget.

**ATTACHMENTS TO THIS REQUEST**

- (1) Amendment to Memorandum of Agreement

**PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

- November 9, 2021 – 2022 – 2026 Environmental Remediation Liability Program. The Commission authorized spending environmental remediation liabilities funds for 2022 in the amount of \$16,000,000 and a five-year plan of \$114,000,000 for Environmental Remediation Liability Program for 2022-2026 of which an amount estimated not to exceed \$30,000,000 will be obligated during 2022 to be spent in future years.
- June 8, 2021 - Fifth Amendment of the Lower Duwamish Waterway Administrative Order on Consent, Seventh Amendment of the Lower Duwamish Waterway Group Memorandum of Agreement for design of the Middle Reach
- June 12, 2018 - Fourth Amendment of the Lower Duwamish Waterway Administrative Order on Consent, Sixth Amendment of the Lower Duwamish Waterway Group Memorandum of Agreement for Design of the Upper Reach
- April 12, 2016 - Third Amendment of the Lower Duwamish Waterway Administrative Order on Consent, Fourth Amendment of the Lower Duwamish Waterway Group Memorandum of Agreement
- July 1, 2014 – Second Amendment of the Lower Duwamish Waterway Administrative Order on Consent, Second Amendment of the Lower Duwamish Waterway Group Memorandum of Agreement
- February 26, 2013 – First Amendment to the Lower Duwamish Waterway Group Administrative Order on Consent
- January 22, 2013 – First Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement
- October 12, 2010 – Briefing on the Lower Duwamish Waterway Feasibility Study
- May 5, 2009 – Briefing on the Lower Duwamish Waterway Feasibility Study
- November 4, 2008 – Briefing on the Lower Duwamish Waterway Remedial Investigation and Feasibility Study
- November 6, 2007 – Briefing on Lower Duwamish Sediment Superfund site