

MEMORANDUM OF AGREEMENT
BETWEEN THE PORT OF SEATTLE, THE CITY OF SEATTLE, AND KING COUNTY
REGARDING THE EAST WATERWAY OPERABLE UNIT
OF THE HARBOR ISLAND SUPERFUND SITE

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into by the Port of Seattle (“Port”), The City of Seattle (“City”) and King County (“County”), collectively referred to as the “East Waterway Group” (“EWG”) and individually as “member” or “members.” The effective date of this MOA is the latter date by which all three members have signed.

RECITALS

WHEREAS, the EWG members have been cooperating to fund and perform a Supplemental Remedial Investigation and Feasibility Study (“SRI/FS”) of the East Waterway Operable Unit of the Harbor Island Superfund Site (hereafter the “Site”) since 2006, pursuant to the Administrative Settlement Agreement and Order on Consent for Supplemental Remedial Investigation/Feasibility Study, CERCLA Docket No. 10-2007-0030 (“2006 Order”); and

WHEREAS, the SRI/FS has been approved by the United States Environmental Protection Agency, though some supplemental FS work continues under the 2006 Order, and EWG members intend to continue to coordinate efforts to implement and fund the remaining work required by that order; and

WHEREAS, EPA issued a Proposed Plan followed by an Interim Record of Decision (“IROD”) in which EPA selected an interim remedy for the Site; and

WHEREAS, the EWG members expect that EPA will propose an Administrative Settlement Agreement and Order on Consent (“ASAOC”) to design the interim remedy, followed by a consent decree (“Consent Decree”) to implement the remedy; and

WHEREAS, the EWG members intend to each sign, in their individual capacities, the ASAOC; and

WHEREAS, the EWG members intend to continue to coordinate their efforts, as separate signatories jointly responsible under CERCLA for meeting the requirements of any such ASAOC by cooperating to implement and fund (subject to individual appropriations, potential subsequent re-allocation of costs, and joint efforts to secure contributions from other Potentially Responsible Parties (“PRPs”) the design work required by such ASAOC;

NOW THEREFORE, the EWG members agree as follows:

TERMS

1. Applicability of this Agreement.

This Agreement shall be in full force and effect upon its execution by all EWG members. After this Agreement takes effect, it shall govern their actions and the costs they incur to complete work under the 2006 ASAOC and to implement the new ASAOC regarding remedial design. This Agreement does not supersede or alter in any way the provisions of the 2006 MOA among the EWG members, which continues in effect for actions taken and costs incurred prior to this Agreement taking effect.

2. Roles and Decision-making.

2.1 The roles and decision-making provisions outlined herein are established to facilitate coordination of EWG member efforts to fulfill their respective obligations under the 2006 Order and the anticipated ASAOC. No delegation of individual EWG member decision-making or legal authority to any other EWG member(s) is intended or implied.

2.2 The Port will continue managing the existing contract to implement tasks required under the 2006 Order for the SRI/FS. Implementation of that contract and sharing of the associated costs are now subject to this Agreement.

3. Each of the EWG members shall appoint one representative to each of three groups: 1) a Technical Group; 2) a Manager Group; and 3) a Director Group. Each Group shall make decisions by consensus, meaning that the EWG members' representatives must, for purposes of their agreed coordination under this MOA, reach unanimous agreement. An EWG member may have more of its personnel attend meetings and participate in discussions, but each EWG member may only have its designated representative or that person's substitute express that EWG member's position when an EWG decision is being made. If the Technical Group cannot reach consensus, it shall elevate the disputed issue to the Manager Group or Director Group, as appropriate. If the Manager Group cannot reach consensus, it shall elevate the disputed issue to the Director Group.

3.1 Each Group shall rotate administrative responsibilities (setting meetings, developing agendas, and the like) among its EWG member representatives or make other arrangements as it deems appropriate to perform administrative tasks.

- 3.2 Each Group shall confer and meet as often as it deems appropriate. An EWG member representative may call for a meeting of their respective Group with reasonable notice and the other Group representatives shall cooperate. As a guideline, the Technical Group should meet at least once per month; the Manager Group should meet at least once every two months; and the Director Group should meet at least once every six months.
- 3.3 Technical Group: The responsibilities of the Technical Group shall include, but are not limited to: reviewing, evaluating and revising deliverables required by the Scopes of Work (“SOWs”) attached to the 2006 Order and the ASAOC before such deliverables are provided to EPA; responding to EPA drafts of orders, SOWs, or other documents; responding to EPA requests and directives under the 2006 Order and ASAOC; identifying the consultants and contractors needed to implement the SOWs and participating cooperatively in selecting them; directing consultants and contractors implementing the SOWs under the 2006 Order and ASAOC, including reviewing and commenting on deliverables; communicating with the Site EPA remedial project manager, their support staff, and other regulatory agencies as appropriate, keeping the Manager Group and Director Group informed of the status of the implementation of the SOWs; carrying out tasks assigned by the Manager Group or Director Group; and overseeing the development of cost estimates.
- 3.4 Manager Group: The responsibilities of the Manager Group shall include, but are not limited to: evaluating and guiding approaches to strategic and policy issues; guiding communication with the public and with stakeholder groups; overseeing the work of the Technical Group; communicating with EPA and other regulatory agencies as appropriate; and approving the retention of consultants and contractors to implement the SOWs.
- 3.5 Director Group: The responsibilities of the Director Group shall include but are not limited to: making decisions on disputed issues; overseeing the Manager Group; guiding strategic and policy choices.
- 3.6 If the Directors are unable to resolve a disputed issue, the EWG members may choose to employ a third-party facilitator or mediator, or they may choose another way to resolve the dispute, such as escalating it to a more senior level (e.g., Directors’ supervisors) of their respective agencies.
- 3.7 The EWG members shall have equal access to all consultant and contractor work product, including all drafts and final versions, including but not limited to, reports, sampling plans, analytical data, and cost estimates.
4. **Contracting Responsibility.** With EWG member agreement as to the timing for doing so, the Port shall procure and administer the design contract to implement

the ASAOC SOW. For any other consultants or contractors determined necessary to retain to implement the 2006 Order or ASAOC SOWs, and/or to perform any other work deemed necessary by the EWG members, the EWG members shall agree which of them will procure and administer the contract. The EWG member that procures and administers a contract shall be the “Contract Administrator.”

- 4.1.1 The EWG members will reach consensus on the technical qualifications and scope of work for each contract. The Contract Administrator will comply with its own requirements and all applicable statutes regarding hiring of consultants and contractors by governmental entities in advertising for and selecting any consultant or contractor.
- 4.1.2 Consultant Selection: The Contract Administrator will have two members (project delivery and technical lead) on the selection committee to select any consultant. Each other member shall have one representative on the selection committee. Before candidates for the consultant are interviewed and scored, each EWG member shall identify any candidate that has done work for the member related to the East Waterway or Lower Duwamish. Members shall reach an agreement concerning which consultants have a conflict of interest based on their work for individual members and what mitigating measures, if any, may be taken to address the conflict. The Contract Administrator shall execute a contract with the consultant that is elected using the agreed upon selection process. The contract shall include provisions (1) requiring the contractor to indemnify all EWG members and the United States for losses or liabilities to the maximum extent permitted by law; (2) requiring that the contractor maintain (at minimum) the types and limits of insurance specified in the ASAOC; and (3) requiring that any insurance policies name all EWG members and EPA as additional insureds.
- 4.1.3 The Contract Administrator shall send invoices to the other EWG members for their share of Shared Costs, as described below in Sections 4.1.4 and 4.1.5. Invoices from consultants and contractors shall be sent to the other EWG members when those invoices are received and approved by the Contract Administrator.
- 4.1.4 The Contract Administrator shall pay the consultants and contractors when invoices meet the contract requirements and then send invoices for Shared Costs, other than Staff Costs, on a monthly basis, or as close to monthly as is feasible, to the other EWG members, who shall reimburse the Contract Administrator for their shares of the costs.
- 4.1.5 The Contract Administrator shall send the other EWG members invoices for Staff Shared Costs at least quarterly.

- 4.1.6 Payment by the other EWG members to the Contract Administrator for reimbursement of all applicable invoices shall be due no later than forty-five (45) days from issuance of an invoice from the Contract Administrator, however, members shall endeavor to pay invoices in no more than 30 days.
- 4.1.7 In the event a party disputes an invoice or portion of an invoice for Shared Costs, the disputing party shall pay the invoice in full with written notification to the Contract Administrator identifying the disputed amount. Disputes regarding costs or payments of invoices shall be handled in the same manner as disputes regarding other matters under Section 31 except that if the EWG members cannot resolve the dispute within thirty (30) days, they shall select a neutral outside person and authorize that person to resolve it. The selected neutral person shall be directed to resolve the dispute in no more than sixty (60) days from receiving it. In the event that the dispute is resolved in the disputing party's favor, the Contract Administrator will refund the disputed funds to the disputing party within 30 days of resolution.

5. Contract Oversight.

- 5.1 Decisions regarding consultants' work products will be made by consensus of the members. Such decisions will be communicated to the consultant by the Contract Administrator's project manager.
- 5.2 Any consultant performing work in accordance with this MOA will not communicate with third parties, including EPA or Ecology personnel, without first notifying the Technical Group and receiving its authorization for the communication. Such authorization will be made by consensus of the Members and communicated by the Contract Administrator's project manager.
- 5.3 All documents, including but not limited to analytical data, that are prepared, developed or generated by any consultant doing work in accord with this MOA shall be provided to all members and shall be subject to review by all members prior to submission to EPA or any other third party. Members shall be given at least fifteen business days to review and comment on drafts of work by the consultant that are going to be provided to EPA or any other third party, unless EPA's deadlines require that a shorter review time be provided. The consultant shall compile all member comments and distribute them to all members. The Contract Administrator's project manager will direct the consultant on needed consensus changes to work products.

6. Shared Costs.

- 6.1 The EWG members shall share the following costs (“Shared Costs”) equally on an interim basis, subject to later agreement or allocation: 1) oversight costs billed by EPA; 2) costs for consultants and contractors retained by the Contract Administrator with agreement of all the EWG members to implement the 2006 Order and ASAOC SOWs; 3) salary, benefits, and overhead (at rate(s) for overhead agreed to by the EWG members) (“Staff Costs”) for hours worked by a Contract Administrator’s staff who are directly involved in contract development, procurement, oversight and management, and related expenses (such as publication of an RFP; legal review of contracts and conflict waiver requests for consultants and contractors retained to implement the SOWs, technical and legal staff involved in developing access agreements and tribal fishing and business interruption agreements, and handling reimbursement billings to other EWG members). Shared Costs includes all costs incurred or yet to be incurred to implement the 2006 Order. The EWG members may also agree in writing to share other costs. Such agreement may be memorialized in e-mail between the Technical, Manager, or Director groups as appropriate.
- 6.2 The EWG members shall not share: 1) the Staff Costs of representatives of the Technical, Manager, or Director groups described in Section 3 above, or any Staff Costs or any legal/attorney costs other than as described in Section 6.1 above (unless the EWG members all agree to include such costs as Shared Costs); and 2) costs for work not required by the SOWs (unless the EWG members all agree to perform such work and consider the costs for such work to be Shared Costs).
- 6.3 The agreement to share some costs and not others shall not have any bearing on the recoverability of costs under CERCLA or MTCA, or preclude or restrict claims regarding the same. This MOA shall not be used by any member in any future litigation or other cost allocation proceeding as the basis for asserting what any member’s final share of responsibility should be.
7. **Financial Assurance.** The Port agrees to use its best efforts to fulfill the financial assurance requirements of Paragraph 87 of the ASAOC on behalf of the EWG using the financial test criteria. The parties acknowledge that the Port is subject to certain budget limitations as described in Section 20 below. If the Port is unable to meet EPA’s financial test requirements, or if EPA is unwilling to accept the Port’s “standby funding commitment” letter, due to the restrictions imposed under 49 U.S.C. § 47133, the County agrees that it will instead fulfill the financial assurance obligations of Paragraph 87 of the ASAOC on behalf of the EWG.

- 7.1 In the event that no party is able to meet the financial test criteria to EPA's satisfaction, the parties agree to share equally the costs of obtaining an alternative financial assurance mechanism (e.g., bond or letter of credit).
- 7.2 If EPA issues a notice of implementation of a Work Takeover under Paragraph 68.b of the ASAOC, the parties will pay equal shares of any amount demanded by EPA within 30 days of the demand, except for amounts exceeding the current budget authority of the responsible departments for the Respondents. For amounts exceeding current budget authority, Respondents shall immediately initiate the steps necessary to obtain sufficient budget authority. Payment of the remaining amounts shall be made no later than 30 days after the necessary budget authority has been enacted and in any event within 120 days of the demand unless an alternative payment schedule is approved by EPA.
8. **Ex Parte Communications.** The EWG members agree to confer with each other prior to having communications with EPA, the Washington Department of Ecology ("Ecology"), other regulatory agencies, the public, stakeholders, or the news media about the 2006 Order and/or ASAOC, any other EWG work regarding the Site, or implementation of the SOWs for the Site. The EWG members shall endeavor to make such communications in the best interests of their collaboration as EWG members. If an EWG member has communications regarding the 2006 Order and/or ASAOC, any EWG work related to the Site, or implementation of the SOWs with any such entities, the communication shall be promptly disclosed to the other EWG members. The intent of this provision is to protect all the EWG members and to maintain the credibility, reliability, and effectiveness of the EWG, and to avoid creating confusion.
9. **Responsibility for Changes to the Schedule.** The members are jointly responsible for delays to the schedule for any work done under the 2006 Order and ASAOC, as may be amended by EPA, including delays related to acquisition of property rights required for completion of work.
10. **Cooperation on Model Toxics Control Act Grants.** The members will coordinate and cooperate concerning the documentation of costs that are eligible for partial reimbursement through Model Toxics Control Act grants.
11. **Allocation; Reservation of Claims; Bar on litigation; Tolling of the Statute of Limitations.**
- 11.1 The parties intend to work in good faith to develop by January 31, 2026, the terms of a final settlement agreement among them that they will recommend to their respective legislative bodies (as necessary for approval) to govern their cost-sharing. Until the parties have executed a final settlement agreement regarding their cost shares, the terms of the 2006 MOA shall

continue to govern regarding costs incurred prior to the effective date of this Agreement.

- 11.2 The EWG members shall not file any claim against any other EWG member regarding any costs for investigation or remedial action for the East Waterway for as long as this Agreement is in effect, except that if an EWG member withdraws from this Agreement, then it may file claims against the other EWG members and vice versa.
- 11.3 By entering into this agreement, the EWG members are not reviving any expired statute of limitations but are tolling any currently applicable statute of limitations that applies to claims they could bring against each other for costs under CERCLA or costs under MTCA. The statute of limitations shall be tolled for the duration of this Agreement; provided, however, that tolling shall cease with respect to parties withdrawing from this Agreement pursuant to Section 12 upon their withdrawal.
- 11.4 The EWG members will cooperate in seeking to include additional PRPs in an alternative dispute resolution process for the allocation of any and all costs that are recoverable under CERCLA or MTCA. The EWG members reserve all claims they may have against PRPs that are not parties to this Agreement.

12. Withdrawal.

- 12.1 An EWG member may withdraw from this agreement with thirty (30) days prior written notice to the other EWG members. An EWG member that withdraws shall remain obligated to pay its share of costs that have been incurred prior to its notice of withdrawal or that have not yet been incurred but that the withdrawing EWG member agreed to or became obligated to pay, such as by approving retention of a consultant or contractor. The obligation to pay shall continue for costs for or related to completion of any SOWs for which the EWG members contracted prior the member's withdrawal.
- 12.2 An EWG member that withdraws also shall remain subject to the provisions in this Agreement regarding confidentiality and privilege as to all confidential and privileged communications or documents to which they were privy prior to their withdrawal.

13. Default.

- 13.1 An EWG member that fails to pay its share of costs when due, or that breaches another substantive provision of this Agreement, is in default. If that EWG member fails to cure the default within thirty (30) days of receiving written notice of the default from the other EWG members, or within such

longer time as the other EWG members grant, that EWG member may be expelled from the EWG by the remaining EWG members and shall have no further rights under this Agreement. An EWG member that is expelled from the EWG shall continue to be obligated to pay Shared Costs as described in Section 6.1 above.

13.2 An EWG member that is expelled from the EWG shall remain subject to the provisions in this Agreement regarding confidentiality and privilege.

14. **Notices.** Any notices required by this Agreement shall be in writing and shall be provided to the EWG member's designated Technical, Manager, and Attorney representatives. Receipt of the notice must be promptly acknowledged. EWG members' designated representatives are identified in Appendix A. An EWG member may change its designated representative by sending notice by e-mail to the other EWG members' Technical and Attorney representatives.
15. **Consultants and contractors shall not testify against the EWG members.** The EWG members shall not individually retain consultants or contractors that are retained to implement the 2006 Order or ASAOC SOWs as testifying experts against any of the EWG members in litigation or in any proceeding to recover or allocate costs for the Site, without the written agreement of all the EWG members.
16. **Additional parties.** Other parties may be added to this Agreement by unanimous consent of the EWG members.
17. **Confidentiality and privilege.**
 - 17.1 Nothing in this MOA shall be construed to affect the separate and independent representation of the members by their respective legal counsel; however, the EWG members recognize the potential of litigation with other PRPs, with EPA or Ecology, or other entities. They intend that their communications with each other be subject to the Joint Defense Privilege in order to retain the Attorney-Client Privilege and Attorney Work Product protection to the same extent as if they had not communicated with each other, and the members shall take reasonable steps to protect and preserve the confidentiality of communications subject to the Joint Defense Privilege.
 - 17.2 If an EWG member receives a discovery request or a request for public records pursuant to state law for communications or documents shared with one or more of the EWG members, that party shall immediately notify the other EWG members of the request. In responding to the request, the recipient shall assert objections and exceptions that it deems appropriate. The recipient shall endeavor to provide at least ten business days' notice to the other EWG members before producing documents in response to the request. The other EWG members may take what actions they deem

appropriate, which may include but are not limited to, seeking a restraining order, moving to quash a subpoena, or intervening in litigation.

18. **No partnership, joint venture, etc.** This Agreement does not create a partnership, joint venture, new governmental entity, nor any independent nongovernmental entity. The EWG has no staff, no address, no budget and no independent authority. The EWG members remain subject to the governance of their respective entities.
19. **Litigation with non-EWG members.** The EWG members may, individually or collectively, bring a claim for East Waterway costs against any party that is not an EWG member. The EWG members shall confer with each other prior to initiating litigation against other parties and shall endeavor to cooperate to protect all of their interests.
20. **Budget Authority.** The commitments made by EWG members in this Agreement are subject each to their respective appropriations or budget approvals as well as restrictions under applicable state and federal law. The EWG members shall use their best efforts to obtain budget authority that is sufficient to fulfill their obligations under this Agreement. The EWG members acknowledge that the Washington Anti-Deficiency Act requires public entities to have budget authority for financial commitments: No EWG member is committing to expend or contract to expend any money in excess of amounts appropriated or authorized in their respective budgeting processes, and this MOA may be unilaterally terminated by any EWG member for lack of appropriation or budget authority. The costs associated with such a termination, if any, shall not exceed the appropriation or authorization for the budget period in which termination occurs. In addition, the Port is subject to the restrictions under 49 U.S.C. § 47133 regarding the use of airport revenue to cover its costs under this Agreement because such costs are not an airport capital or operating expense. Under no circumstances will the Port be obligated to use airport revenue to fund work under this Agreement.
21. **No third-party beneficiaries.** This Agreement is not intended to benefit any third party and is not enforceable by any third party, including but not limited to any regulatory agency.
22. **No admission of liability.** This Agreement does not constitute, nor can it be used as evidence of, any admission of law or fact or any waiver of a claim or defense except as expressly provided in this Agreement.
23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together they shall constitute a single instrument.

(Signatures on the following pages)

IN WITNESS WHEREOF, the parties hereto enter into this MOA. Each person signing this MOA represents and warrants that he or she has been duly authorized to enter into this MOA by the district or municipality on whose behalf it is indicated that the person is signing.

DATED this _____ day of _____, 2025.

KING COUNTY

By: Kamuron Gurol
Title: Director, King County Wastewater Treatment Division

CITY OF SEATTLE

By: Andrew Lee, PE, PMP, PgMP
Title: General Manager/Chief Executive Officer

THE PORT OF SEATTLE

By: Stephen P. Metruck
Title: Executive Director

Appendix A
EWG Members' Designated Representatives

	Tech Group	Manager Group	Director Group
Port	Brick Spangler spangler.b@portseattle.org 206-295-9538	Joanna Florer florer.j@portseattle.org 206-612-9540	Sarah Ogier Ogier.s@portseattle.org 206-476-4820
City	To be added	To be added	To be added
County	Debra Williston Mail Stop: KSC-NR-6200 201 S. Jackson St. Seattle, WA 98104 debra.williston@kingcounty.gov (206) 477-4850	Jeff Stern Mail Stop: KSC-NR-6200 201 S. Jackson St. Seattle, WA 98104 jeff.stern@kingcounty.gov (206) 477-5479	Kamuron Gurol Mail Stop: KSC-NR-6200 201 S. Jackson St. Seattle, WA 98104 kgurol@kingcounty.gov (206) 263-5767