

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA

Item No. 5c

ACTION ITEM

Date of Meeting January 22, 2013

DATE: January 11, 2013

TO: Tay Yoshitani, Chief Executive Officer

FROM: Stephanie Jones Stebbins, Director Seaport Environmental and Planning
Kathy Bahnick, Manager, Seaport Environmental and Planning

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

Amount of This Request: N/A

Source of Funds: Environmental Remediation
Liability Non Ops

Est. State and Local Taxes: N/A

Est. Jobs Created:

Est. Total Project Cost: \$3,500,000 - \$4,000,000

ACTION REQUESTED:

Request authorization for the Chief Executive Officer to execute an amendment to the Lower Duwamish Waterway Group (LDWG) Memorandum of Agreement (MOA) to provide for additional studies to further the decision-making process of the U.S. Environmental Protection Agency's (EPA's) site remediation actions. This work is estimated to cost in the range of \$2,500,000 to \$3,000,000 split evenly between the MOA members, and will likely be performed under an amendment to the Lower Duwamish Superfund Site Administrative Order on Consent (Order). No new funding is requested. Funds to perform this work will be included in the Environmental Remediation Liability annual authorization.

SYNOPSIS:

The original MOA was signed by the LDWG parties (City of Seattle, King County, The Boeing Company and the Port of Seattle) in 2000. The purpose of the MOA was to establish the process for mutual cooperation and cost sharing in performing the work identified in the Order for a Remedial Investigation/Feasibility Study. Under the MOA, the LDWG parties have hired joint consultants who have produced the final Remedial Investigation and the conditionally approved final Feasibility Study. The EPA has indicated that it will require the parties to perform additional studies under an amendment to the existing Order to further the agency's decision-making process for site remedial actions. The MOA amendment is for implementation of additional studies requested by the EPA and Department of Ecology under the amended Order, and for cost sharing for this work and the agency oversight costs.

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BACKGROUND:

The EPA and Ecology have conditionally approved the Feasibility Study, which is one of the two major studies leading to the development of the proposed cleanup plan. However, EPA needs additional information in order to finalize its final remedy decision as part of the Feasibility Study process, and is therefore being conducted under the Order.

The current schedule is for the conditionally-approved final FS, the EPA-developed Proposed Plan and the EPA-developed Environmental Justice report to be released for public comment in late February 2013. The Record of Decision (ROD) is expected to be issued in early to middle 2014.

The additional work consists of: (1) a fisher study that will help formulate the type of institutional controls that will be required by the ROD; (2) additional studies to refine the cleanup technology assumptions, such as the potential use of activated carbon treatment. Joint public outreach activities are also needed and covered under this MOA amendment.

PROJECT JUSTIFICATION:

The amendment will allow the parties to continue to fulfill the legal obligations under the Order amendment as directed by EPA to select cleanup actions for the Lower Duwamish Site.

FINANCIAL IMPLICATIONS:

Budget Status and Source of Funds:

There is no funding request as part of this authorization. Funding for the associated costs is included in the annual Environmental Remedial Liability (ERL) authorization. The costs are also partially reimbursed by our partners and are eligible for state grant recovery when it is available.

ECONOMIC IMPACTS AND BUSINESS PLAN OBJECTIVES:

As a signatory on the Order, the Port is legally obligated to do this work as directed by EPA and Ecology. The Port and the other LDWG parties continue to carefully control costs associated with the effort to minimize overall economic impact.

STRATEGIC OBJECTIVES:

This work supports the Century Agenda goal of being the greenest, most energy efficient Port in North America by moving toward cleanup of the Lower Duwamish Waterway. Meeting our obligation for this cleanup is a critical component of the Green Gateway strategy of meeting our legal obligations.

ENVIRONMENTAL SUSTAINABILITY:

Addressing unacceptable levels of environmental risk caused by the presence of contaminants in soil, groundwater and sediment is not only the goal of numerous state and federal laws, it reflects our commitment to environmental stewardship, from the perspectives of both the surrounding communities and the customers that we serve. These studies are critical steps for EPA and Ecology to create a cleanup plan for the LDW.

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ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS:

1. Do not authorize the CEO to enter into the MOA amendment. Absent entry into the MOA amendment, the Port would not be able to participate in the additional work being required by the agencies. EPA would consider non-participation to be a violation of the Order, which would subject the Port to a potential enforcement action. This is not the recommended alternative.
2. Authorize the CEO to enter into the MOA amendment with the City, Boeing and County to allow continuation of the current working relationship and to continue sharing costs, pending a final allocation, for additional studies and agency oversight, and for certain tasks related to the remedy selection process, such as public outreach. **This is the recommended alternative.**

OTHER DOCUMENTS ASSOCIATED WITH THIS REQUEST:

- Lower Duwamish Waterway Group Memorandum of Agreement

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS:

- November 6, 2007 – Briefing on Lower Duwamish Sediment Superfund site
- November 4, 2008 – Briefing on the Lower Duwamish Waterway Remedial Investigation and Feasibility Study
- May 5, 2009 – Briefing on the Lower Duwamish Waterway Feasibility Study
- October 12, 2010 – Briefing on the Lower Duwamish Waterway Feasibility Study