

PORT OF SEATTLE
MEMORANDUM

COMMISSION AGENDA
ACTION ITEM

Item No. 4e
Date of Meeting April 12, 2016

DATE: April 5, 2016
TO: Ted Fick, Chief Executive Officer
FROM: Stephanie Jones Stebbins, Director Maritime Environmental and Sustainability
Kathy Bahnick, Manager, Maritime Environmental and Sustainability
SUBJECT: Amending existing agreements with the Environmental Protection Agency and the Lower Duwamish Waterway Group to perform the next steps in the Lower Duwamish Waterway Superfund site Clean up

Amount of This Request: No funds requested

Source of Funds: Environmental Remediation
Liability Non Ops

Est. Total Amendment Cost: \$5,000,000 - \$8,000,000, 25% of which is the Port's responsibility

ACTION REQUESTED

Request Commission authorization for the Chief Executive Officer to execute (1) a Third Amendment to the Administrative Order on Consent (Order) with the U.S. Environmental Protection Agency for Remedial Investigation/Feasibility Study (RI/FS) for the Lower Duwamish (LDW), and (2) a Fourth Amendment to the Lower Duwamish Waterway Group (LDWG) Memorandum of Agreement (MOA) to provide for contracting for, and equal sharing between the LDWG members of the costs for the Pre-Design Studies.

No funding is requested at this time. Funds to perform the Port's share of this work will be included in the Environmental Remediation Liability annual authorization.

SYNOPSIS

A final Remedial Investigation (RI) and final Feasibility Study (FS) was completed by the LDWG and approved by EPA and the Department of Ecology in 2013 and the Record of Decision (ROD) was issued in November 2014. The next phase of work contemplated in this amendment to the Order will be to complete pre- design studies that will advance implementation of the selected remedy in the ROD for the Lower Duwamish Waterway.

The amendment of the MOA between the LDWG parties is to address how the LDWG parties will contract for the studies requested by the EPA under Order Amendment 3, and share the cost of this work and the agency oversight costs. The City of Seattle will be administering the

COMMISSION AGENDA

Ted Fick, Chief Executive Officer

April 5, 2016

Page 2 of 5

needed contract(s), following its public procurement procedures, but the LDWG will retain authority to select consultants and oversee the work.

BACKGROUND

In December 2000, the Port, the City of Seattle, King County, and The Boeing Company entered into an Administrative Order on Consent for Remedial Investigation (RI)/Feasibility Study (FS) (the "Order") with EPA, the goals of which were to determine the nature and extent of contamination in the Duwamish Superfund Site, and to determinate and evaluate alternatives for remedial action to clean up the site. In June 2000, the same parties entered into the Lower Duwamish Waterway Group Memorandum of Agreement (MOA), in order to split the costs of performing the Order. The Port was the contracting agent for LDWG for this work.

Since the completion of the RI and FS, LDWG has begun two additional studies to aid in EPA's remedy decision as part of the Feasibility Study process. The first additional investigation required is the Fisher Study being performed under the First Amendment to the Order. The Fisher Study is designed to help improve the effectiveness of the institutional controls (e.g. fishing restrictions and education efforts) that are expected to be required by the ROD. This study will be completed this year.

The second required investigation is the Enhanced Natural Recovery/Activated Carbon Pilot Study (ENR/AC Pilot Study) being performed under the Second Amendment to the Order. This study is to investigate the potential use of an alternative cleanup technology (specifically, activated carbon) to enhance natural recovery that was included as a possible remedial alternative in the ROD. The results of the investigation will be used to determine if activated carbon is effective for this site and what its impacts might be.

The MOA was amended (amendments 1 and 2) at the same time that the Order was amended, to enable the LDWG parties to share costs of these studies and to modify the contracting procedures. Additionally the LDWG MOA was amended (amendment 3) to allow Boeing to be the contracting agent for a joint outreach consultant.

The new amendment will require the Lower Duwamish Waterway Group (Port of Seattle, King County, City of Seattle and The Boeing Company) to perform pre-remedial design studies at an estimated cost in the range of \$5,000,000 to \$8,000,000 (25% of which is the Port's responsibility). The new studies under the current Order amendment are pre-design work targeted at advancing the implementation of the selected remedy. Studies include baseline sampling to establish the baseline that will be the comparison used to evaluate post cleanup contaminant levels; a waterway user survey and assessment of in-water structures to help inform the cleanup technologies that can be used in those areas; and an identification of other data needs that will be need to be filled before the design can begin.

PROJECT JUSTIFICATION AND DETAILS

Project Objectives

These studies will help move the project closer to design and implementation of the cleanup.

COMMISSION AGENDA

Ted Fick, Chief Executive Officer

April 5, 2016

Page 3 of 5

Scope of Work

This amendment will allow the LDWG partners to perform a number of studies needed to inform the long-term design of the river-wide remedy including the baseline study and the water user survey. This will allow the cleanup to occur sooner with the resultant improvement to the health of the river and the river users and the local community.

Schedule

These studies are estimated to take approximately three to four years to complete, depending on the time required for agency review/public comment.

FINANCIAL IMPLICATIONS

Budget Status and Source of Funds

There is no funding request as part of this authorization. Funding for the associated costs will be 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. The estimate for this work is \$5,000,000 to \$8,000,000. In the MOA amendment covering this work, the Port would pay one quarter of the costs (\$1,250,000 to \$2,000,000) spread over 3 to 4 years. This was included in the 5 year forecast (2016 – 2020) in the Commission’s 2016 ERL spending authorization, approved on December 8, 2015. Any additional costs that might be required, as the project moves forward, will be recorded as a liability and a non-operating expense in accordance with Port Policy AC-9. These amounts will be reported annually to the Commission via routine ERL reports and spending authorization requests. The Port and the other LDWG parties continue to carefully control costs associated with the effort to minimize overall economic impact.

These costs are also eligible for state grant recovery when it is available.

The primary source of funds to pay the costs of the project will be ERL Non Ops funds from the Port’s Tax Levy.

STRATEGIES AND 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 Duwamish Superfund obligations is a critical component of the Green Gateway strategy of meeting our legal obligations as efficiently and effectively as possible.

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 a critical step in moving towards a cleanup for the LDW that is capable of implementation.

COMMISSION AGENDA

Ted Fick, Chief Executive Officer

April 5, 2016

Page 4 of 5

Cleaning up the river sooner will make the biggest impact to the local community. This work will help the process keep moving forward.

We will be utilizing the small business policies established by the City of Seattle.

ALTERNATIVES CONSIDERED AND THEIR IMPLICATIONS

Alternative 1 – Do not authorize the CEO to enter into the Third Amendment to the Order or the fourth amendment to the MOA.

Cost Implications: The cost for this alternative is unknown at this time. Depending on the allocation process, the costs could be more or less than alternative 2, and will likely include more administrative costs (staff time, outside legal, etc.) than alternative 2.

Pros:

- (1) Could delay the spending on this work until the final allocation occurs, if the Port does not enter into the Order Amendment but the other LDWG partners do.

Cons:

- (1) Could result in EPA imposing a unilateral enforcement order requiring the Port and/or LDWG to perform the work.
- (2) Could result in the remaining LDWG parties, left solely responsible to perform the work, bringing a claim for contribution against the Port.
- (3) Could impact the Port's ability to influence the extent and design of the work performed.
- (4) Would not move the cleanup of the LDW forward in an expeditious fashion.
- (5) Could result in others questioning the Port's commitment to public health and stewardship of community resources and the environment.

This is not the recommended alternative.

Alternative 2 – Authorize the CEO to enter into the Third Amendment to the Order, and the accompanying fourth Amendment to the MOA with the City, Boeing and County.

Cost Implications: The estimated cost for this alternative is 25% of \$5,000,000 - \$8,000,000, or \$2,000,000.

Pros:

- (1) Ensures compliance and continued cooperation with EPA.
- (2) Allows progress toward the ultimate cleanup.
- (3) Allows continuation of the current working relationship among the LDWG partners and continues cost sharing, pending a final allocation, for the required additional studies and agency oversight.

Cons:

COMMISSION AGENDA

Ted Fick, Chief Executive Officer

April 5, 2016

Page 5 of 5

- (1) Would incur additional costs before the final allocation is complete.

This is the recommended alternative.

ATTACHMENTS TO THIS REQUEST

- Third Amendment to the Administrative Order on Consent for Remedial Investigation/Feasibility Study for the Lower Duwamish
- Fourth Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- 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