



**COMMISSION
AGENDA MEMORANDUM**

Item No.

6f

ACTION ITEM

Date of Meeting

June 12, 2018

DATE: March 22, 2018

TO: Stephen P. Metruck, Executive Director

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

SUBJECT: Begin cleanup design of the Lower Duwamish Waterway

Amount of this request: \$0

Total estimated project cost: \$3,750,000

ACTION REQUESTED

Request Commission authorization for the Executive Director to: (1) execute a Fourth Amendment to the Administrative Order on Consent with the U.S. Environmental Protection Agency for the Lower Duwamish Waterway Superfund Site; and (2) execute a Sixth Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement to contract for and perform cleanup design of the upper third of the waterway. The estimated cost is approximately \$15,000,000, split equally between the four parties.

EXECUTIVE SUMMARY

The purpose of this fourth amendment to the Administrative Order on Consent (Order) is to begin the design of the cleanup work for the Site. Since 2001, the Port, the City of Seattle, King County, and The Boeing Company (referred to as the Lower Duwamish Waterway Group, or LDWG) have been working under an agreement with the U.S. Environmental Protection Agency (EPA) to perform cleanup investigation activities for the Lower Duwamish Waterway (LDW) Superfund Site (Site).

LDWG completed the Remedial Investigation/Feasibility Study, a fisher study and a carbon amendment pilot study under the original Order and two subsequent amendments. LDWG has nearly completed the pre-design study under the third amendment to the Order. The next phase of work contemplated in this new amendment to the Order will be to complete remedial design for the upper third of the waterway in order to advance implementation of the selected remedy for the LDW. This work will include studies to delineate the location of the different cleanup approaches, development of the engineering design drawings and specifications, and continuing fish tissue and water monitoring. The Port anticipates continued participation, along with the other LDWG partners, in this initial remedial design work that must be completed prior to implementation of the LDW site cleanup.

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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 annual authorization.

The Memorandum of Agreement (MOA) amendment identifies the contracting and cost sharing arrangement for this work. The amendment of the MOA between the LDWG parties is to address how the LDWG parties will contract for the design and studies requested by the EPA, and share the cost of this work and the agency oversight costs.

JUSTIFICATION

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 LDWG Superfund obligation is a critical component of the Green Gateway strategy of meeting our legal obligations as efficiently and effectively as possible. It also supports the emerging strategic focus on social equity by moving the cleanup forward for a site located on the shores of two environmental justice communities, South Park and Georgetown.

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

The local communities (South Park and Georgetown) are actively watching and commenting on this cleanup project and are eager to see the Site cleanup continue to move forward.

DETAILS

The Statement of Work detailed in the fourth amendment to the Order requires that LDWG perform remedial design tasks for the upper third of the waterway from river mile 3.0 to 5.0. Source control work continues and is expected to be complete for the upper third of the river prior to construction being initiated.

Scope of Work

As presented in the Statement of Work attached to the fourth amendment to the Order, LDWG will perform the following tasks:

1. Design of the cleanup for the upper third of the LDW
2. Ongoing monitoring of site conditions

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- a. Water quality
 - b. Fish and crab tissue
3. Continued funding for development of the Institutional Control Plan for seafood consumption, aimed at educating local fisherpeople on safe resident seafood consumption.

Schedule

The schedule of the required work is based on the Statement of Work attached to the fourth amendment to the Order.

<i>Activity</i>	<i>Estimated Schedule</i>
Commission authorization of Order	Q2 – 2018
Contracting	Q3/ Q4 – 2018
Begin Design process for the upper third	Q1 – 2019

Cost Breakdown

Estimated Total
Project (Port Share)

Design of upper third	\$3,750,000
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ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not authorize entering into either Amendment

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

Pros:

- (1) Could delay the spending on this work until a later date, 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 and/or a collection of other parties including the Port to perform the work.
- (2) Could result in other parties, including the LDWG parties, potentially left responsible to perform the work and later bringing a claim for contribution against the Port.
- (3) Would 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) Would not be consistent with the values of the Port.
- (6) Not performing this work could tarnish the Port’s reputation with EPA and the community as having a commitment to public health and being a steward of community resources and the environment.

This is not the recommended alternative.

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Alternative 2 – Authorize entering into both Amendments

Cost Implications: Approximately \$3,750,000 (25 percent of \$15 million).

Pros:

- (1) Ensures compliance and continued cooperation with EPA.
- (2) Enables progress toward the ultimate cleanup.
- (3) Continues current working relationship among the LDWG partners and continues cost sharing for the required additional studies and agency oversight.
- (4) Demonstrates the Port’s commitment to public health and being a responsible steward of community resources and the environment.

Cons:

- (1) Costs of approximately \$3,750,000 by the Port to complete the Order’s Statement of Work.

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. Port costs may also be eligible for insurance reimbursement and/or state grant recovery.

Cost Estimate/Authorization Summary

Capital

Expense

Total

	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$0	\$3,750,000	\$3,750,000
AUTHORIZATION			
Previous authorizations (by ERL)	0	\$3,750,000	\$3,750,000
Current request for authorization	0	0	0
Total authorizations, including this request	0	0	0
Remaining amount to be authorized	\$0	\$0	\$0

ATTACHMENTS TO THIS REQUEST

- (1) Presentation Slides
- (2) Fourth Amendment to the Administrative Order on Consent for Remedial Investigation/Feasibility Study for the Lower Duwamish
- (3) Sixth Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement

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PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- November 6, 2017 – The Commission authorized spending environmental remediation liabilities funds for 2018 in the amount of \$19,800,000 and a five-year plan of \$88,800,000 for Environmental Remediation Liability Program for 2018-2022 of which an amount estimated not to exceed \$30,000,000 will be obligated during 2018 to be spent in future years.
- 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