



**COMMISSION
AGENDA MEMORANDUM**

Item No. 10b

ACTION ITEM

Date of Meeting June 8, 2021

DATE: April 23, 2021

TO: Stephen Metruck, Executive Director

FROM: Sandra Kilroy, Director, Maritime Environment & Sustainability
Kathy Bahnick, Senior Manager, Remediation Programs

SUBJECT: **Clean-Up Design for the Middle Third of the Lower Duwamish Waterway**

Amount of this request: \$0

Total estimated project cost: \$4,000,000 - \$5,000,000

ACTION REQUESTED

Request Commission Authorization for the Executive Director to: (1) execute a Fifth Amendment to the Administrative Order on Consent with the U.S. Environmental Protection Agency for the Lower Duwamish Waterway (LDW) Superfund Site; and (2) execute a Seventh Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement to contract for and perform cleanup design of the middle third of the LDW.

EXECUTIVE SUMMARY

The purpose of this amendment is to continue the design of the cleanup work for the Lower Duwamish Waterway Superfund 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 LDW.

The estimated cost is approximately \$16,000,000 - \$20,000,000, split equally between the four parties and subject to later reallocation. The Port's share is 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.

For purposes of designing and implementing the cleanup, EPA has divided the Waterway into thirds. LDWG is more than halfway through design of the cleanup of the upper (southern) third, which is being conducted under the fourth amendment to the Order. The next phase of work in this new amendment to the Order is the design of the cleanup of the middle third. This work will include studies to delineate the location of the different cleanup approaches, development of the engineering design drawings and specifications; and an assessment of regional existing fish and shellfish chemistry data to refine background concentrations. This amendment will allow LDWG's continued participation in the design work that must be completed prior to

Meeting Date: June 8, 2021

implementation of the LDW cleanup. The design of the middle reach is anticipated to take four years.

The Memorandum of Agreement (MOA) amendment identifies the contracting and cost sharing arrangement for this work. Under the amendment, the City will be the contracting agent for this work on behalf of LDWG. The City will follow their public contracting process which includes WMBE goals, records retention, and prompt payment, among other requirements. The consultant will be selected by consensus by LDWG.

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 LDW. Meeting our LDW Superfund obligations is a critical component of the Green Gateway strategy of meeting our legal obligations as efficiently and effectively as possible. It also supports the 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. Design is a critical step in moving towards cleanup of the LDW.

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

DETAILS

LDWG completed the Remedial Investigation/Feasibility Study, a fisher study, a carbon amendment pilot study, and a pre-design study under the original Order and three subsequent amendments.

The Statement of Work detailed in the fifth amendment to the Order requires that LDWG perform cleanup design tasks for the middle third of the Waterway from river mile 1.6 to 3.0 and an assessment of regional existing fish and shellfish chemistry data to refine background concentrations. Source control work continues and is expected to be complete for the middle third of the river prior to construction being initiated.

Scope of Work

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

1. Design of the middle third of the LDW

Meeting Date: June 8, 2021

2. Ongoing monitoring of site conditions
 - a. Water quality
 - b. Fish, crab, and clams
3. Assessment of Fish and Shellfish Tissue Data to Refine Background Concentrations
4. Continued funding for the Institutional Control Plan for seafood consumption, aimed at educating local fisher people on safe resident seafood consumption. The work is led by EPA and the Seattle King County Department of help with members of the community as advisory educators.

Schedule

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

<i>Activity</i>	<i>Estimated Schedule</i>
Commission authorization of Order	Q2 - 2021
Contracting	Q3/ Q4 -2021
Begin Clean-up Design process for the middle third	Q1 – 2022

Cost Breakdown	Estimated Total Project
Design of the middle third	\$4,000,000

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 other LDWG parties, potentially left responsible to perform the work, 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.

Meeting Date: June 8, 2021

- (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.

Alternative 2 – Authorize entering into both Amendments

Cost Implications: Approximately \$4,000,000 (25% of \$16 million).

Pros:

- (1) Ensures compliance and continued cooperation with EPA.
- (2) Allows 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, social equity and being a responsible steward of community resources and the environment.

Cons:

- (1) Costs of approximately \$4,00,000 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.

<i>Cost Estimate/Authorization Summary</i>	Capital	Expense	Total
COST ESTIMATE			
Original estimate	\$0	\$4,000,000	\$4,000,000
AUTHORIZATION			
Previous authorizations (by ERL)	0	\$4,000,000	\$4,000,000
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

Meeting Date: June 8, 2021

- (2) Fifth Amendment of the Lower Duwamish Waterway Administrative Order on Consent and Statement of Work
- (3) Seventh Amendment to the Lower Duwamish Waterway Group Memorandum of Agreement

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- November 10, 2020 – The Commission authorized spending environmental remediation liabilities funds for 2021 in the amount of \$33,100,000 and a five-year plan of \$106,200,000 for Environmental Remediation Liability Program for 2021-2025 of which an amount estimated not to exceed \$30,000,000 will be obligated during 2021 to be spent in future years.
- 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
- 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