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COMMISSION

AGENDA MEMORANDUM Item No. 8i

ACTION ITEM Date of Meeting December 12, 2023

DATE : November 15, 2023

TO: Stephen P. Metruck, Executive Director

FROM: Sandra Kilroy, Sr. Director, Environment and Sustainability

Sarah Ogier, Director, Maritime Environment & Sustainability

Kathy Bahnick, Sr. Manager, Environmental Programs

SUBJECT: Lower Duwamish Administrative Order on Consent Amendment

Amount of this request: \$0

Total estimated project cost: \$0

ACTION REQUESTED

Request Commission authorization for the Executive Director or General Counsel to execute a Sixth Amendment to the Administrative Order on Consent (AOC) with the U.S. Environmental Protection Agency, King County (County), City of Seattle (City), and The Boeing Company (Boeing) for the Lower Duwamish Waterway (LDW) Superfund Site.

EXECUTIVE SUMMARY

Since 2001, the Port, City, County, and Boeing (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. A consent decree for the next phase of cleanup implementation is expected in 2024. Once the consent decree is in place, the AOC will not be needed. This amendment clarifies that the obligations of the amended Remedial Investigation/Feasibility Study AOC will be incorporated into the consent decree and the AOC will terminate on the effective date of the consent decree.

JUSTIFICATION

The Duwamish is Seattle's only river. It provides important community assets, recreational fishing, and tribal cultural heritage resources, and is a critical estuarine environment for salmon and wildlife. The Duwamish has also played a crucial role in developing our region's economy for over a hundred years: today local maritime and industrial businesses employ over 100,000 people and support more than 25 percent of the manufacturing in King County.

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The Environmental Protection Agency (EPA) listed the Lower Duwamish Waterway as a Superfund site in 2001 as a result of contamination stemming from nearly a century of industrial activities (including ship and plane manufacturing) and toxic discharges to the river. Primary contaminants of concern are polychlorinated biphenyls (PCBs), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), arsenic, and dioxin/furans. In 2014, the EPA developed a detailed and comprehensive cleanup plan, called a Record of Decision (ROD). Early Action area cleanups which included the Ports Terminal 117, reduced the surface concentrations of PCBs in the river by 50%. The work to be performed for the rest of the river is expected to reduce contamination levels by at least 90 percent.

In 2001, the Port initiated a groundbreaking partnership with King County, the City of Seattle, and The Boeing Company to investigate and address contamination at the Site in coordination with EPA. For over twenty years, the Port has provided extensive staffing and financial resources toward the cleanup actions in the interest of ensuring that this work advanced. While none of the Lower Duwamish Waterway's most contaminated areas is attributable to the Port or its tenants, the Port has made significant investments to improve conditions in the Duwamish River and the surrounding community.

Under the Superfund program alone, the Port of Seattle has spent more than \$80 million to date on Lower Duwamish Superfund projects, including soil and in-water sediments cleanup at Duwamish River People's Park (formerly known as Terminal 117) and subsequent habitat restoration; Lower Duwamish Waterway investigation and design; and cleanup and source control activities at adjacent upland facilities including Terminal 108, Terminal 115, and South Park Marina.

EPA is preparing a consent decree for the completion of the remedial design and for

implementation of the LDW cleanup, which is expected to be effective in 2024. Remedial design work is currently being performed under the existing AOC. Because the obligations of the AOC will be incorporated into the consent decree, this amendment clarifies that the AOC will terminate on the effective date of the consent decree. This amendment allows for work on the Site to continue uninterrupted when EPA's administrative oversight process shifts from the AOC to the consent decree. The amendment has been agreed to in principle by EPA and the LDWG parties and, as with prior amendments, is expected to be signed by all five entities. By entering into a consent decree for the site, EPA is moving this site closer to cleanup.

Diversity in Contracting

N/A

DETAILS

Scope of Work

No new scope of work is included in this amendment. The Port's obligations under the existing AOC will continue until the effective date of the consent decree. Once the consent decree is

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effective, the AOC will terminate. Any remaining scope of work that was under the existing AOC will continue under the consent decree.

Schedule

The exact date of the consent decree's publication is unknown, but it is expected in 2024.

Adoption of this amendment will allow for a seamless transition between administrative mechanisms.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 - Do not authorize entering into AOC Amendment.

Cost Implications: \$0.

Pros:

1. None

Cons:

1. Could delay the consent decree, which would delay implementation of the cleanup.

2. Could result in confusion about which agreement (AOC or consent decree) governs which phase of work.

This is not the recommended alternative.

Alternative 2 – Authorize entering into AOC Amendment.

Cost Implications: \$0.

Pros:

1. Allows the consent decree to move forward and to begin implementation of the cleanup.

Cons:

1. None.

This is the recommended alternative.

ATTACHMENTS TO THIS REQUEST

(1) Sixth Amendment to the Administrative Order on Consent

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

- June 8, 2021 – The Commission authorized 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.

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- June 12, 2018 - The Commission authorized the Executive Director to execute the 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 - The Commission authorized the Executive Director to execute the 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 – The Commission authorized the Executive Director to execute the 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 – The Commission authorized the Executive Director to execute the First Amendment to the Lower Duwamish Waterway Group Administrative Order on Consent.
- January 22, 2013 – The Commission authorized the Executive Director to execute the 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.

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