



**COMMISSION
AGENDA MEMORANDUM**

Item No. 3d

ACTION ITEM

Date of Meeting July 23, 2019

DATE: July 23, 2019

TO: Stephen P. Metruck, Executive Director

FROM: Kathy Bahnick, Manager Environmental Programs
Jon Sloan, Senior Environmental Program Manager
Ticson Mach, Capital Project Manager

SUBJECT: Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project
Procurement of General Contractor/Construction Manager (GC/CM)

ACTION REQUESTED

Request Commission authorization for the Executive Director to advertise and execute a contract with General Contractor/Construction Manager (GC/CM) "Heavy Civil," to assist with completion of design and permitting work associated with the Terminal 117 Habitat Restoration and Duwamish Shoreline Access Project (the "Project"). No funding is requested as part of this authorization since the work is covered under an existing design and permitting authorization approved June 7, 2011.

EXECUTIVE SUMMARY

The primary purpose of the Project is to rehabilitate ecological functions and restore priority habitat for Chinook salmon and other imperiled species in the Lower Duwamish Waterway. The constructed Project will create upland habitat and aquatic areas with a combined total of approximately 13.5 acres and approximately 2,050 linear feet of shoreline (from Lower Duwamish River Mile 4.1 to 4.5). The Project will create mitigation credits, including for use in natural resource damage (NRD) settlements associated with the Lower Duwamish Waterway, Harbor Island, East Waterway, West Waterway, and Lockheed West Superfund sites, which can be used by the Port or sold to generate revenue for future restoration efforts.

A component of the Project will also provide high-quality public shoreline access in the South Park neighborhood, an environmental justice community. Public shoreline access features will include a viewpoint pier, trails, seating, interpretive signage, bike racks, and public art. These features have been designed in close coordination with the surrounding community and the community is very excited about the Project. The public access component of the Project also fulfills the requirements of prior TIGER grant funding and City of Seattle public shoreline access requirements associated with the Master Use Permit for Terminal 46.

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The Port will negotiate a maximum allowable construction cost (MACC) with the GC/CM by April 2020. The MACC determination, if acceptable to the Port, will be used to support a request for construction funding approval from the Commission in April 2020, after all necessary regulatory and legal requirements have been met. Construction would then commence in in June 2020.

Construction of the Project is contingent on approval and finalization of a credits banking agreement, currently anticipated in Fall 2019. Construction funding will be requested from Commission once a banking agreement is reached and an acceptable MACC determination is received.

JUSTIFICATION

In 2009, the Commission adopted the Lower Duwamish River Habitat Restoration Plan (LDRHRP). The purpose of the Plan was to identify objectives and opportunities for habitat restoration on Port-owned properties along the river while supporting water dependent and water-related business uses. The T-117 site was identified as Site 23 in the LDRHRP. Site 25 was added to the Project with Commission approval in 2011.

In addition to regulating Superfund cleanups, CERCLA creates liability for damages to natural resources caused by “releases of hazardous substances” into the environment. EPA administers the remediation of Superfund sites, but is not responsible to bring NRD liability claims. That task falls to the Natural Resource Trustees (Trustees), who are designated federal, state and tribal government entities that have management responsibility for fish and wildlife and other resources that may have been damaged by releases of hazardous substances at a cleanup site. Potentially responsible parties generally reach settlement agreements with the Trustees by making a cash payment, restoring habitat through a Trustee-approved project, or buying “habitat credits” from a third party “bank” with an accredited restoration project. Although Trustee approval is still pending, the number of settlement “credits” available from the Project has been determined by the Trustees and it has been submitted for approval as a habitat credits bank.

No funding is requested as part of this authorization since the preconstruction contract is funded under the existing design and permitting authorization approved in June 2011. Funding authorization for construction work will be requested after a banking agreement is executed and an acceptable MACC determination is received.

Diversity in Contracting

The project team is working with the Diversity in Contracting Department and Central Procurement Office to include the WMBE aspiration goal into the solicitation and will include an inclusion plan in the selection process.

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DETAILS

Scope of Work

The scope consists of:

- (1) Advertise to procure GC/CM “Heavy Civil” Contractor
- (2) Complete design and permitting with assistance of GC/CM
- (3) Negotiate project MACC for construction funding authorization

Schedule

Commission Authorization for GC/CM Procurement	July 2019
Advertise and Award	July -January 2020
Finalize Design/Complete Negotiation of MACC	January-April 2020
Commission Authorization for Construction Funding	April 2020
Authorize GC/CM to initiate construction	May 2020

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1: Do not proceed with GC/CM procurement until a habitat banking agreement for the Project is executed and signed by all parties.

Cost Implications: Delay of construction of the Project could result in significant cost increases associated with construction cost escalation, sheet-pile wall removal (which would be required by EPA if the Project is not constructed), and risks to meet TIGER grant requirements. This would result in at least a \$1 million increase in project costs and risk of having to return some portion of the TIGER grant.

Pros:

- (1) Provides certainty that bank credits will be recognized before moving forward.

Cons:

- (1) Due to in-water construction constraints, if the Project is not ready to proceed in May 2020, the next potential construction date would not be until May 2021. Further delay in the Project means further delay in restoring much-needed Chinook habitat in the Lower Duwamish and delivering an important South Park community project
- (2) Removal of the existing sheet-pile wall could be required by EPA, and re-installation would be necessary at a later date for construction shoring to complete the Project, costing approximately \$1 million.
- (3) TIGER grant funding is at risk if the Project is not completed.
- (4) Construction costs escalate with time at +/-5% annually.

This is not the recommended alternative.

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Alternative 2: Move forward with a two-phase GC/CM contract without an executed banking agreement.

Cost Implications: Funding has already been authorized for tasks to complete design and permitting for the Project; with this contract, approximately \$300,000 in Phase 1 GC/CM will be spent. Construction funding will subsequently be requested if the GC/CM presents an acceptable MACC and a banking agreement is finalized.

Pros:

- (1) Project permitting will be completed and the Project will be shovel-ready.
- (2) Avoids construction cost escalation associated with delay to the extent possible.
- (3) Avoids removing and reinstalling the temporary sheetpile wall.
- (4) Maintains compliance with TIGER grant.
- (5) Meets community expectations.
- (6) Furthers Port’s commitment to Orca Task Force recommendations.
- (7) Continues progress on Century Agenda goal to create 40 additional acres of habitat in the Green-Duwamish watershed.

Cons:

- (1) Final construction of Project and credits banking mechanism remains uncertain until banking agreement is finalized, which will likely not occur until after GC/CM procurement (but prior to construction funding authorization).
- (2) Moving forward with a GC/CM contract which is predicated on execution of a future banking agreement entails some risk. Deciding not to move forward with the construction phase once the GC/CM has assisted with design and cost estimation, is not desirable to the contractor and could create conflict.

This is the recommended alternative.

BUDGET STATUS AND SOURCE OF FUNDS

The funding for GC/CM procurement is covered under the existing design and permitting authorization for the project approved in June 2011. The project is associated with Environmental Remediation Liability (ERL) funding.

Financial Analysis and Summary

Project cost for analysis	NA
Business Unit (BU)	Maritime
Effect on business performance (NOI after depreciation)	N/A
IRR/NPV (if relevant)	N/A
CPE Impact	N/A

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ATTACHMENTS TO THIS REQUEST

- (1) Presentation slides

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

March 26, 2013: Commission authorization for the Chief Executive Officer to: 1) purchase southern portion of the South Park Marina float structure to accommodate habitat restoration in the estimated amount of \$194,000; and 2) complete permitting, and design for a public access viewpoint pier at Site 23 for an estimated cost of \$458,000

June 07, 2011: Commission authorization for the Chief Executive Officer to: 1) Complete permitting and design of an expanded fish and wildlife habitat restoration project at Terminal 117 (T-117) for an estimated cost of approximately \$3,021,000; and 2) execute a contract for outside professional services to complete the permitting and design of the habitat restoration project at T-117.

July 7, 2009: Commission adopted the Lower Duwamish River Habitat Restoration Plan, an inventory of Port of Seattle Properties.

October 27, 2008: Commission approved entering into a Settlement Agreement with the Malarkey Parties, the Duwamish Parties, the City of Seattle and King County regarding T-117 Site and Lower Duwamish Site Cleanup Costs, and Natural Resource Damage Liability.

May 13, 2008: Commission approved entering into a MOA with the Elliott Bay Trustee Council for crediting habitat restoration projects in and near the LDW relating to future settlement of natural resource damages claims; for execution of a professional services agreement for environmental review and application of permit authorizations; and to prepare plans and specifications for design and permitting of a fish and wildlife habitat restoration project at T-117 under the MOA, for a total authorized expenditure of \$210,000.