

ORDINANCE No. 189509

Settlement with the U.S. Environmental Protection Agency for certain Portland Harbor Remedial Design Costs (Ordinance).

The City of Portland ordains:

Section 1. The Council finds:

1. In January 2017, the U.S. Environmental Protection Agency (EPA) issued a Record of Decision for the Portland Harbor Superfund Site (Site).
2. In December 2018, EPA informed more than 150 parties who are potentially responsible for cleanup at the Site, including the City, that they must begin negotiations with EPA by June 30, 2019, to perform remedial design at areas of the Site not currently under order and execute the remedial design agreements by December 31, 2019. The City is supportive of EPA's current efforts to expedite remedial design.
3. The City is or was involved in numerous areas in the Site. Several areas of the Site have many potentially responsible parties, but no party or group of parties has entered into an agreement yet with EPA to conduct remedial design in those areas.
4. EPA has identified the City as a potentially responsible party that may have liability for remedial design costs.
5. The City, State and EPA have collaborated on a unique proposed settlement agreement (City and State Settlement Agreement) that leverages City and State funds to move cleanup design forward and helps address the City's legal obligations for cleanup design, thus avoiding enforcement action by EPA.
6. Rather than enter into numerous agreements to perform remedial design, the City and State find it more efficient and financially advantageous to pool their funds and place them in a trust. The City has negotiated a proposed Intergovernmental Cooperative Agreement with the State to cooperate on remedial design activities and to comply with the City and State Settlement and establish the trust.
7. This trust would transfer a set amount of money per acre of remedial design to EPA to be disbursed to parties who perform design in conformance with EPA deadlines. Parties who step forward and sign an agreement with EPA to perform 100% design and agree to receive this funding must accept settlement terms with the City and State that apply to their design area.

8. The proposed City and State Settlement Agreement with EPA identifies how parties receive funds from the trust to reimburse the specified remedial design costs and the legal protections that the parties must provide to the City and State in consideration for those funds.
9. Administrative fees to establish and maintain the trust will be funded through trust earnings. Residual earnings and trust funds will be returned to the City and State in the same proportions paid into the trust.
10. The City may wish to use residual trust fund earnings for Portland Harbor Superfund Site community involvement related activities.
11. Under the agreement with EPA, the City would be obligated to provide \$1.5 million of non-refundable, initial funding to EPA in July 2019. The City will transfer an additional \$4.5 million to the trust in July 2019 and the remaining required trust funds in July 2020 and July 2021. Additional transfers to the trust required by the City and State Settlement Agreement would be made in 2020 and 2021 depending on number of acres covered in remedial design agreement by parties who have accepted the City and State offer. The City's total obligation to fund the offer is capped at \$12 million.
12. The Mayor's Proposed Budget for fiscal year 2019 – 2020 established the Portland Harbor Superfund Reserve and transferred the funding necessary for fiscal year 2019-2020. Funding for funding for fiscal years 2020-2021 and 2021 - 2022 will continue under the direction of the Mayor.

NOW, THEREFORE, the Council directs:

- a. The Director of the Bureau of Environmental Services, or the Director's Designee, is authorized to sign a City and State Settlement Agreement with the EPA in a form similar to the agreement attached as Exhibit A and modify the administrative terms of the agreement to include notice recipients, payment instructions and timeline extensions as mutually agreed upon with EPA and the State.
- b. If needed, the Director or Designee is authorized to sign Remedial Design Administrative Settlements and Agreement Orders on Consent as defined in the City and State Settlement Agreement with the EPA that contain the standard terms identified in Exhibit D to that agreement.
- c. The Mayor and City Auditor are hereby authorized to fund the trust up to \$12 million from the Portland Harbor Superfund Reserve in accordance with the terms of the Settlement Agreement with the EPA and the Intergovernmental Cooperative Agreement for Portland Harbor Remedial Design with the State.

d. The Director of the Office of Management and Finance, or the Director's Designee, is authorized to establish a ministerial trust to the benefit of the City and the State of Oregon to hold and distribute funds to effectuate the terms of the Settlement Agreement with the EPA attached as Exhibit A to this Ordinance, the Intergovernmental Cooperative Agreement with the State and in compliance with ORS § 295 Depositories of Public Funds and Securities as applicable.

e. Residual trust earnings or funds returned to the City shall be deposited in the Portland Harbor Superfund Reserve.

f. The Director of the Bureau of Environmental Services, or the Director's Designee, is authorized to sign an Intergovernmental Cooperative Agreement for the Portland Harbor Remedial Design Offer in a form similar to the agreement attached as Exhibit B and modify the administrative terms of the agreement regarding notice recipients, payment instructions and timeline extensions as mutually agreed upon with the State.

Passed by the Council: MAY 22 2019

Commissioner Nick Fish
Mayor Ted Wheeler
Prepared by: Annie Von Burg
Date Prepared: May 5, 2019

Mary Hull Caballero
Auditor of the City of Portland

By

 Deputy

Agenda No.
ORDINANCE NO. 189509

Title

Settlement with the U.S. Environmental Protection Agency for Certain Portland Harbor Remedial Design Costs (Ordinance)

<p>INTRODUCED BY Commissioner/Auditor: <u>Wheeler & Fish</u></p>	<p>CLERK USE: DATE FILED <u>MAY 07 2019</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance & Administration - Wheeler <i>MP</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish <i>mmf</i></p> <p>Position 3/Affairs - Hardesty</p> <p>Position 4/Safety - Eudaly</p>	<p>Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p>
<p>BUREAU APPROVAL</p> <p>Bureau: <u>BES</u></p> <p>Bureau Head: <i>[Signature]</i></p> <p>Prepared by: <u>ANNIE VON BULOW</u></p> <p>Date Prepared: <u>5/5/2019</u></p>	<p>ACTION TAKEN:</p> <p>MAY 15 2019 PASSED TO SECOND READING MAY 22 2019 9:30 A.M.</p>
<p>Impact Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances <i>[Signature]</i></p> <p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter</p>	
<p>Council Meeting Date <u>MAY 15, 2019</u></p>	

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/></p> <p>Start time: <u>4:00</u></p> <p>Total amount of time needed: <u>30 MIN</u> (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Hardesty	✓	
4. Eudaly	✓	
Wheeler	✓	