

# LOWER DUWAMISH WATERWAY GROUP MEMORANDUM OF AGREEMENT

## FOURTH AMENDMENT

THIS FOURTH AMENDMENT to the Lower Duwamish Waterway Group Memorandum of Agreement ("MOA"), dated June 9, 2000, is made and entered into by and among the Port of Seattle, City of Seattle, King County, and The Boeing Company, collectively referred to as the "Lower Duwamish Waterway Group" or "LDWG" and individually as "Member" or "Members." This Fourth Amendment to the MOA ("4<sup>th</sup> Amendment") provides for the performance of the Pre-Design Studies, as described in Attachment A (Statement of Work). This 4<sup>th</sup> Amendment also updates MOA contracting, invoicing and grant procedures to reflect current LDWG practices.

All terms and provisions in the MOA remain in effect, except as expressly supplemented and modified herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the LDWG Members mutually agree and covenant as follows:

### 1. Contracting Responsibility

The City agrees to hire a consultant ("Consultant") to conduct the technical tasks in Attachment A for the LDWG. The Consultant's scope shall be according to Attachment A, the Statement of Work (SOW), and any modifications to the SOW that are approved by the LDWG and EPA, and any other scope items that are approved by LDWG.

### 2. Effective Date and Condition Subsequent

This 4<sup>th</sup> Amendment shall become effective when all four Members have signed it. This 4<sup>th</sup> Amendment shall remain in effect until completion of the Consultant's scope or until it is terminated by the LDWG.

### 3. Pre-Design Studies

#### 3.1 Allocation of Shared Pre-Design Studies Costs

The LDWG Members hereby agree to pay the Shared Pre-Design Studies Costs (as defined in Section 3.2) by allocating such costs on an interim equal (*per capita*) basis, pending a final allocation. Each Member shall be severally, and not jointly, liable for this interim allocation of Shared Costs. A performing Member reserves all rights of action against a defaulting or non-performing Member for recovery of Shared Costs under all applicable statutes and theories of law or equity. The Members agree that such payments do not constitute a final allocation of responsibility for investigation or **cleanup of the Lower Duwamish Waterway. Members reserve their right to seek an allocation or contribution different from that set forth in Section 3.1 of this 4<sup>th</sup> Amendment from other Members and to seek an allocation or contribution from persons or entities not a Member to the MOA.**

#### 3.2 Definition of Shared Pre-Design Studies Costs

Shared Pre-Design Studies Costs shall mean: 1) payments, including payments associated with changes to original contracts that are agreed to by the Members or required by the EPA, to the Consultant hired to conduct the studies; 2) EPA and Ecology oversight costs applicable to the Pre-Design Studies, including EPA costs incurred under Task 10 of Attachment A and LDWG-funded efforts under Paragraph III of Attachment A; 3) costs associated with implementing changes or additional work required during and/or after completion of the Pre-Design Studies that are mandated by the EPA.

### 3.3 Procedure for Payments.

3.3.1 The City shall pay the Consultant according to the terms of their contract with the City. The City shall invoice the other LDWG Member's their *per capita* shares of those payments. Invoices will include sufficient backup and detail concerning the work performed to comply with each Member's cost recovery requirements. Each Member shall transmit to the City's Designated Representative, as set forth in Section 24 of the MOA, its part of the Shared Pre-Design Studies Costs, within thirty (30) days of receiving an invoice with appropriate backup from the City.

3.3.2 The Port, County and Boeing shall continue in their roles as contracting agents for LDWG's consultants other than the Consultant to be retained by the City pursuant to this 4<sup>th</sup> Amendment. The procedures established in MOA section 2.3, 3.4 and 4.4 are hereby modified as follows: the Port, County and Boeing shall pay the invoices of the LDWG consultants that are contracted to them according to the terms of their contracts. The Members shall invoice the other LDWG Member's their *per capita* shares of those payments as established in this and past amendments. Each Member shall transmit to the contracting Member its portion of the LDWG consultant costs within thirty (30) days of receiving an invoice with appropriate backup.

3.3.3 The Port shall continue being responsible for distributing invoices for each Member's share of EPA's and Ecology's oversight costs applicable to the Agreed Order. The Port shall pay valid EPA and Ecology oversight cost invoices upon receipt of appropriate invoice backup. Following payment of such invoices, the Port shall distribute invoices to the other Members for each of those Members' respective shares of the oversight cost payment to the agencies. Each Member shall transmit to the Port's Designated Representative, as set forth in Section 24 of the MOA, its part of each EPA and Ecology invoice, payable to the Port, within thirty (30) days of receipt by the Member. If backup is not provided by the agency or there is a dispute of any part of the oversight charges, the disputed amounts shall be held in escrow, in accordance with EPA and Ecology dispute resolution procedure requirements. The Port shall transmit the payments of undisputed amounts to EPA or Ecology. Individual Members will pay any interest charges that are due to EPA or Ecology because of that Member's payment being late.

### 3.4 Selection of Pre-Design Consultant

3.4.1 The City will comply with its own and all other applicable statutes regarding hiring of consultants by governmental entities in advertising for and selecting the Consultant. Members will have a reasonable opportunity to provide the City with input on the qualifications and specifications for the contract as described in Section 3.4.2 below.

3.4.2 Each Member will have one representative on the selection committee for the Consultant. Before candidates for the Consultant are interviewed and scored, each Member shall identify any candidate that has done work for the Member related to the Duwamish and the Members shall reach an agreement concerning which consultants have a conflict of interest based on their work for individual Members. The City shall execute a contract with the Consultant that is selected using the agreed upon selection process.

### 3.5 Oversight of the Consultant

3.5.1 Decisions regarding Consultant's work products will be made by consensus of the Members. Such decisions will be communicated to the consultant by the City's project manager.

3.5.2 The Consultant hired for the pre design studies will not communicate with third parties, including EPA or Ecology personnel, without first notifying the LDWG Technical Committee and receiving its authorization for the communication. Such authorization will be made by consensus of the Members and communicated by the City's project manager.

3.5.3 All documents, including but not limited to analytical data, that are prepared, developed or generated by the Consultant shall be provided to all Members and shall be subject to review by all Members prior to submission to EPA or any other third party. Members shall be given at least fifteen business days to review and comment on drafts of work by the Consultant that are going to be provided to EPA or any other third party, unless EPA's deadlines require that a shorter review time be provided. The Consultant shall compile all Member comments and distribute to all Members. The City project manager will direct the consultant on needed consensus changes to work product.

#### 4. Responsibility for Changes to the Schedule

The Members are jointly responsible for delays to the Project schedule including delays related to acquisition of property rights required for construction of the Project.

#### 5. Cooperation on Model Toxics Control Act Grants

The Members will coordinate and cooperate concerning the documentation of costs that are eligible for partial reimbursement through Model Toxics Control Act grants.

#### 6. Counterparts

This 4<sup>th</sup> Amendment to the LDWG MOA may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Members hereby enter into this 4<sup>th</sup> Amendment Each person signing this 4<sup>th</sup> Amendment represents and warrants that he or she has been duly authorized to enter into this 4<sup>th</sup> Amendment by the corporation or municipality on whose behalf it is indicated that the person is signing.

THE PORT OF SEATTLE

KING COUNTY

Ted Fick

Pam Elardo

THE CITY OF SEATTLE

THE BOEING COMPANY

Ray Hoffman

Steven Shestag